Legislative Assembly of Manitoba

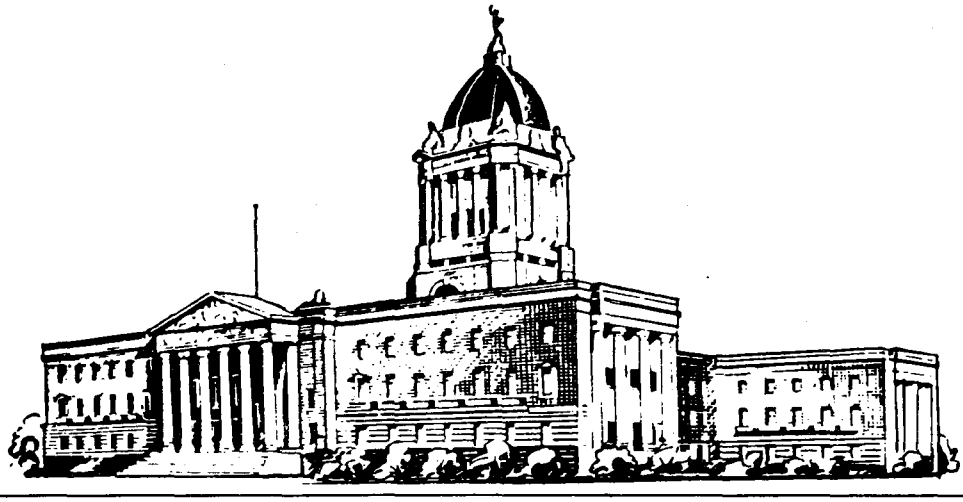
HEARING OF THE STANDING COMMITTEE

ON

STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. D. James Walding
Constituency of ST. Vital



THURSDAY, June, 2, 1977, 8:00 p.m.

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TIME: 8:00 p.m.

CHAIRMAN: **Mr. D. James Walding**

MR. CHAIRMAN: Order please. Gentlemen, we have a quorum. The committee will come to order. The next name on my list of speakers is Laurie Allen. If Laurie Allen is here, would she come forward please.

MS. LAURIE ALLEN: I'm appearing tonight on behalf of the Manitoba Association of Women and the Law. I'd like to say that I'm a practising lawyer, and many members of our group are either lawyers or law students. I'd like to start by stating that we support the basic principles behind this Act. We believe that marriage is an equal partnership and that society as a whole recognizes this principle and wishes to see legislative action taken to embody the relationship between the spouses into the laws of this province.

We strongly agree with the concept of joint ownership of the matrimonial home, instantaneous community of family assets, the retroactive nature of the definition of shareable assets, and the fact the Act does not permit unilateral opting out. We have had some opportunity to look at the first set of amendments, I understand there are further ones out which we haven't looked at, but we're pleased to see that they seem to clear up some of the more obvious omissions in the original Act.

The first area I'd like to comment on — this is an area that is an omission, in our opinion, in both the Act and the amendments — is the omission of income as a family asset. With the amended definition of "asset" read along with the Section 18(2) of the amendment, I think it makes it clear that the Legislature wishes to exclude income and any type of bank account as a family asset. We don't agree with the exclusion of income from the family assets, as in many families, the only asset is, basically, the pay cheque, with perhaps a small savings account. We believe that it is contrary to the concept or the principles that are established within the Act to say that, well, spouses have the right to usage, possession and management of family assets. Once the asset is purchased, they do not have any right to participate in the decision of when or how, or with what to acquire that asset. This is something we would ask you to consider.

Looking next to the question of separated spouses, I see several problems both through the Act itself and again the amendments. We feel strongly, as I believe most people do, that existing agreements or court orders dealing with family property of the spouses, cannot and should not be opened up at this time. If a couple have put their minds to the property issues or have fought them out in court, that should end the matter. I'm sure this must be the intention of the Act, although the Act itself is silent and the amendments themselves are in conflict. The conflict arises through Section 2(2) of the amendments and Section 28(1). If you take a look at them, Section 2(2) states that the standard marital regime does not apply to spouses living separate and apart, pursuant to the order of a court. Then, turning to Section 28(1), it states that subject to Subsection (5) the standard marital regime does not apply to spouses who have a subsisting separation agreement or court order where the order contains provisions relating to the disposition of marital home or any shareable asset.

I think that Section 28(1) seems to be more correct in trying to interpret the intention, but it does not prevent the opening up of separation agreements or court orders, because, as the section reads, it's subject to Section 28(5). I think that we have chosen to emphasize the term that I have mentioned which doesn't appear in the Act, family assets, in these sections, family assets when looking at the question of property disposition. As it stands now, the operation of Section 28(5), as it reads, has the practical effect of reopening almost every separation agreement in existence. The reason for this is in the past, a wife had no right to share in her husband's business, and therefore, the bargaining position of the parties did not start with that concept in mind. As the position of the parties then was so completely different from the situation contemplated under this Act, I doubt if there are any separation agreements that have considered these provisions of the standard marital regime with respect to commercial assets.

Section 28(5) states that if an agreement does not deal with a specific provision, the provision is presumed to remain applicable. Looking at a quick example of what could happen, if you had a husband and wife who separated five years ago, the husband owned a business and was also the owner of the marital home, on their separation, the husband agrees to give the wife the marital home as their property disposition. Now it appears that under Section 28(5) she can apply to the courts, ask for and receive, a half share, or the value thereof, of his business, because their agreement was silent with respect to the disposition of commercial assets. She will keep the house because that is one provision of the regime that has been specifically contemplated. It's really kind of a Catch 22 situation, because how could they contemplate something they didn't anticipate coming into force. So I think the problem with this section is that you cannot deal with the same section looking at agreements prior to the Act and agreements after the Act. Whether or not your intention is to say whatever agreement you've made, whether you've considered any type of property, the home or your furniture or anything else, you're bound by it, or whether the intention is to say, agreements that don't

deal with the new definition of family assets could be looked at again, must be made clear. At this point, it appears that almost every agreement could be reopened under this presumption on Section 28(5). That's something that we feel definitely should be clarified because people are extremely concerned, people who felt that they had settled some of their differences, may, under the basis of these amendments, be having to look at it again.

Looking at Division 2 of the Act, in shareable assets, I see with respect to Section 9, amendments have been introduced that I would imagine hope to deal with the situation where one spouse has already started making gifts to the other prior to the Act. I think that as the Act stood originally, in its first form, where a husband, through a gift, gave his wife half of something that was owned by him, immediately that half is exempt under the definitions of shareable assets. Therefore, with the coming into force of the Act, the wife receives half of his half, so suddenly has three-quarters. Now the amendment to Section 9 tries to deal with that, but I think it fails because in the amendment, Section (c) of the amendment of Section 9, it states that where an asset has already been shared equally between the spouses otherwise than under those provisions it's not included. However, if you have a husband or a wife giving less than half of an asset to their spouse, there still is a problem, so I think that's just a question of wording but we would like to make it clear. I think the intention is that sharing should take place equally, and where a husband or wife has tried to share in the past by giving part or half of the asset, they shouldn't be penalized now, if they were trying to bring in their own concept of equality of marriage prior to this Act.

Looking at Division 3, Family Assets, as I've stated, we support instant community of property and we endorse in the amendments the recitals of entitlement. One thing that we feel is missing however, is that it should be made specifically clear that the half interest in the asset is a half interest in the equity of the asset. Problems could arise both with family assets or the marital home, for example, where there are unregistered charges or a charge account situation, where a wife or a spouse could conceivably claim half of the value of the asset when it hasn't been totally paid for. So I think it should be made clear that what we are talking about is the equity, when and if you do come to the point of an evaluation or a trying to trade off on a separation.

With respect to the commercial aspect of the Act and the deferred sharing concept there, I have already mentioned our objections in the question of income as an asset. I think the addition of Section 18, Sub (2), makes it fairly clear what is intended. However, we object to the principle behind that in terms of family income or family bank account. While I haven't had a chance to go through the amendments with a great deal of study, I think that some of the amendments in this Section seem to clarify some of the practical questions and problems and seem to eliminate some of the ridiculous examples that have been brought up in terms of if you take the Sections to their logical extension. I think we think that it is proper that the six-year-period for looking at dissipation of assets and excessive gifts starts as of May 6th, 1977.

I would also like to again emphasize our support of the principle of bilateral opting out. It is our feeling that to permit any form of unilateral opting out would defeat the basic purpose, the basic principles of the Act.

One question that was raised quite often last night is, I think, the question of some of the tax implications. I would just like to say at this point it's our feeling that should the Federal Government be unwilling to amend sections which will penalize spouses, we certainly agree that the liability, if it arises, should be shared between the spouses.

Looking now at the Family Maintenance Act, I don't think the amendments that I have seen, which are the first batch, clarify a lot — they clarify some of the original problems with that Act. It appears from the intention of the Act that a spouse no longer needs to prove grounds for separation. If that is indeed correct, we feel that it should be clearly stated. With the amendments that have been brought forward, Section 7(1), the new Section 7(1), states when a person can apply for relief, and it does state where the spouse desires an order for separation, etc. However, nowhere that I can see in the Act or the amendments, does it say what a judge is able to do on such an application, what he is able to do or not to do. And I think that it should be made clear that it is not a question of proving fault in terms of going for your separation.

I note that the amended Section 8 dealing with orders, states that a judge may make an order saying the parties are no longer bound to cohabit, but nowhere in the Act is it really clear, if he could refuse if he wanted to or why he could refuse, and I think this is something that should be clarified as well.

Looking at the maintenance aspect of the Act and the criteria set out in Section 5, as it stands right now it is not our opinion that it is no-fault maintenance. I think that looking at Section 5, Sub (1)(e), "the judge shall consider whether there is a domestic arrangement between the spouses and whether and to what extent each spouse is fulfilling domestic service obligations pursuant to the agreement or otherwise." I think that that changes the situation somewhat, because the judge no longer basically is to look at how the parties treated each other, but to what extent they are fulfilling their domestic arrangements. It could perhaps lead to more dirty laundry in the courts, rather than less.

Because suddenly vacuuming or the lack thereof, or things like that, may assume more importance as parties may try to persuade the judge that this factor is the most important factor in the list set out in Section 5(1).

It is our position that Section 5(1)(e) should be removed from the Act to truly provide for no-fault maintenance.

The other area . . .

MR. PAWLEY: Would you please repeat that, I couldn't hear, 5(1)(e)?

MS. ALLEN: 5(1)(e) should be removed to truly make this no-fault maintenance.

Something that has been commented on before is the problem of trying to define "financial independence." And I think the absence of the definition is probably because it is impossible to define to fit every situation. While the Act states that the factors in Section 5 apply to a consideration, I would imagine, of whether or not a spouse has reached financial independence, several of those factors are inapplicable and I really am afraid I don't have too many things to offer as suggestions with respect to this point. I think it is very very difficult to try and evaluate financial independence in a vacuum, and I think some of these criteria are correct. The Act does seem somewhat unclear what a spouse must do if he feels his or her spouse has become financially independent prior to the dates, and that is something that I think should be set out so that the procedures are clear.

It also doesn't appear from the Act or the amendments that I have seen that this Act provides for making of Consent Orders, where the parties agree between themselves, but wish to have an order of the court. I was unable to find it and as Family Court, in particular, is a court of statutory jurisdiction, it is definitely arguable, it should be there so the court does not have to go through a hearing if the parties are in agreement and wish it confirmed by the court.

Basically those are all the comments that I have with respect to this Act. We tried to inform you of the basic principles that we supported and tried to pick out some of the problems that we see in the basis of the amendments that exist. There are situations where there still could be some inequities and I hope some of the points that I have raised will be considered in terms of drafting the Act so that the things that I have mentioned become clearer and less of a problem.

MR. CHAIRMAN: Thank you. There are some questions. Mr. Wilson. you are representing the Manitoba

MR. WILSON: Yes' Association of Women and the Law, and I wondered if . . . You talked about removing some of the sections, but I wondered if you could explain to the Committee or certainly to myself, when we get down to the part where the only asset seems to be the family cheque. You talked about women's rights to be able to determine how the pay cheque was spent. Did you mean in equal participation in how that would be spent? You talked about the rights as how that pay cheque could be spent, could you sort of elaborate? I know it is only a small matter, but I just wanted to get your view.

MS. ALLEN: It is difficult to elaborate because every situation is different. But some examples that were raised to me more to show that there can be inconsistencies is, for example, the situation where a spouse works and says, "I just do it for the fun of it" and you know, "All my money goes into clothes, that sort of thing. My husband should be looking after the family, purchasing the assets." So that on a separation there seems to be some unfairness there. There is no question that he can discuss is with his wife in terms of the situation as to a declaration or whatever that is in the Act with respect to that. And then on a separation she becomes half owner of the family assets that he has used because he feels more responsible or whatever during the marriage, and all her money has gone into articles of personal adornment which are exempt.

The reverse side of that is, for example, where a husband goes and spends his money on whatever, but nothing tangible, and the wife is either having a great deal of difficulty looking after herself or he is using her money in the reverse situation. That is sort of the kinds of fact situations you can dream up that show that really, the income, if it is treated as a family asset, in terms of practicalities what the husband is going to say to the wife or whatever I can't give you any ideas on, but in terms of fitting within the theory, I think that that is a logical inclusion. Personally speaking, you know, I couldn't imagine having my pay cheque made out jointly to my husband and myself but that is the logical extension of it so I have a little bit of difficulty personally speaking, but I can certainly follow through the principle of it.

MR. WILSON: You talked about gifts and you said that the wife would get three-quarters of a gift. Are you talking about, say' a $5,000 set of wedding rings? What type of a gift situation? Could you break that down into an example? When you talked about credit cards, splitting the equity on a situation, what happens if there is a depreciation, say, on an item like a boat? Could you envision what problem may arise there?

MS. ALLEN: Dealing first with the gift aspect, what I'm talking about is an asset that prior to this Act was definitely the husband's, whether it was purchased with his money, he decides he would like to give half of that asset to his wife, prior to the Act. He does so. That half as a gift is exempt from this

Act when it comes into force because it was a gift to the person. Now, he's left with his half and half of that half automatically becomes his wife's. Now, with the half example, I think that the amendments have corrected that, but if you are talking about gifting one-quarter to someone, or gifting a third, you haven't. So I think it's just a question of trying to reword that definition so that it doesn't read "equally" because there are situations where a person may give less than a half of something he or she owns to their spouse.

MR. WILSON: On the evaluation of assets bought on credit, who is going to determine the value of that? I talked about the example of a boat that was bought for $3,000; there is still $2,000 owing. Who determines whether the $1,000 is split equally when the boat may be worth only $1,800.00?

MS. ALLEN: I don't think it's a question of who is determining the value of it *per se*, I think it just has to be clear that we are talking about the equity of it. It's the same as if it was completely owned and had depreciated. You still may be discussing the question of what the value of it is, but as it stands right now, if one person incurs the liability or the debt with respect to the asset, I think it's conceivable — looking at the Act, it certainly is conceivable — that a claim could be made for the value of the asset, not the value of the equity.

MR. WILSON: My last question, Mr. Chairman, is, as a lawyer — I appreciate as a Member of the Committee trying to get a free legal opinion — I wonder, do you see these bills as a windfall to lawyers and would you explain what the fees for a divorce are now and what they would be under a simple sharing legislation? In other words, if this Act is amended and it's going to be a simple sharing legislation, could you give me examples of what it cost now and what it would be? Is there a saving in these bills for people separating, in legal fees, as compared to what it is now?

MR. PAWLEY: Mr. Chairman, on a point of order.

MR. CHAIRMAN: Mr. Pawley state his point of order.

MR. PAWLEY: Maybe the honourable member should be aware that this legislation would not affect the fees for divorce.

MR. WILSON: Could the lawyer in front of us tell us what the approximate range of the cost of a divorce is now?

MS. ALLEN: No, I couldn't really comment on that tonight but if the drafting problems in the Act are corrected so that things are clear, it is certainly our hope and feeling that it should have the result of less litigation and not more.

MR. WILSON: My point is this, the way it is now, it seems to me from the delegations, that it is getting to be rather complicated. Do you anticipate — I'm asking for your own personal opinion, I know the room is half-full of lawyers — but would you see these amendments in the bill as a windfall to lawyers as far as work goes?

MS. ALLEN: As the bill stands right now?

MR. WILSON: Yes.

MS. ALLEN: Well, I'm afraid to say yes, because I don't think things are clear enough. As the bill could be amended and as the amendments have started' I don't think it would be that situation at all.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I wonder, Ms. Allen, if, in connection with the point that you raised re Section 2, Subsection 2 of the Amendments to The Marital Property Act, if we made this change — I would like you just to follow it — if you think it would deal with the problem which you raised earlier in your submission. I would just read this: "The standard marital regime does not apply to spouses who, as of May 6, 1977 . . ." then striking out all the words from "Upon" to "Act" in the second line thereof, then continuing on, "are living separate and apart from each other." Then the third line, we strike out the words from "pursuant" right down to the fifth line to "marriage," all the words there. In other words, we are striking out the words "pursuant to the order of a court of following the commencement of proceedings for the dissolution or annulment of their marriage," and then we would be ending up with the words still there, "and the standard marital regime remains inapplicable to those spouses for such period of time as they continue living separate and apart from each other."

Do you feel that that change would deal with the concerns that you expressed?

MS. ALLEN: I think I lost you somewhere.

MR. PAWLEY: Could I just reread it as it would read with the change?

MS. ALLEN: Yes.

MR. PAWLEY: "The standard marital regime does not apply to spouses who, as of May 6, 1977, are living separate and apart from each other and the standard marital regime remains inapplicable to those spouses for such period of time as they continue living separate and apart from each other."

MS. ALLEN: I would have to think about that a little bit.

MR. PAWLEY: Would you like to just think about that. Let me just indicate to the Committee that in view of the submissions raised to this point — and I think it is fair to those who will be submitting briefs later — it would be my intention to change 2(2) along those lines, to propose and move them. — (Interjection)— Well, Mr. Graham, this is the whole purpose of receiving public submissions, is it not?

MR. CHAIRMAN: Order please. Members can debate when the time comes. This is the question

period.

MR. PAWLEY: Mr. Chairman, I heard one of the opposition members, "scrap the entire bill." This is what obviously the member would like to see done but we are meeting here to deal with proposals for changes.

MR. CHAIRMAN: Mr. Johnston on a point of order.

MR. F. JOHNSTON: Let's not make the meeting a . . . if the Minister wants to start arguing about what we have to say to one another . . . which is a debate as to whether what party thinks of what now, if he wants to have it now, let's have it. Or rather, let's get to the hearings.

MR. CHAIRMAN: I would remind all members that this is the part of the proceedings for questions and not for debates. Mr. Pawley, do you have another question?

MR. PAWLEY: Mr. Chairman, I thought I was attempting to be helpful to indicate a proposed amendment at this point so that time could be saved later. Ms. Allen, in connection with the reference to financial independence, I wonder if, in dealing with that, if a change was made in 5(1) to indicate — and I don't want to go into too much detail on this — but simply to indicate in determining whether financial independence is achieved or lost as the case may be that the factors outlined in Section 5 would be considered for that purpose?

MS. ALLEN: Well, I think that some of them are clearly inapplicable to the situation once you are looking at the question of financial (e) independence. For example, 5(1) certainly is. But I think those are the kind of factors that a court would have to consider, especially the first four, of course, in evaluating independence. I think it should be made clearer.

MR. CHAIRMAN: Are there any further questions? Mr. Cherniack.

MR. CHERNIACK: Ms. Allen, I want to refer you to your discussion on Part 1 of The Maintenance Act dealing with spouses and your concern that it is not clearly spelled out that fault shall not be a consideration. I did not have quite the problem that you envisioned in understanding it because I assume that an order may be made whilst the couple is not separated and therefore I have read the first five sections and the sixth as well, to apply to the possibility — and it's not likely of course but it is a possibility — that during a marriage and whilst husband and wife are living whatever kind of life they choose to live together, that an application could be made for an Order for Support in accordance with the rights set out there, and that under those circumstances, then 5(1)(e), it seems to me, would be relevant. Then — if you are with me so far — then I go onto a reference later on that there may be a separation, under (g) and (f) where they are or will be living separate and apart. Then under those circumstances, I just read it that in the event that they will be living separate and apart, the order shall be made and an application may be made which sets out the provisions of 8(2) which provide for, "No longer bound to cohabit or shall not enter any of the premises," and those clauses that we already know that are required to determine the forthcoming relationship, or lack of, between the parties.

So I didn't quite have your problem. What one of the persons preceding you said about 8(1) is they thought that instead of a judge may on application for relief, a judge "may" — that it should be a judge "shall" make an order, that then meaning that he doesn't have discretion as to whether or not there should be an order but of course it is such relief as he deems fit where he does have discretion as to the extent or nature of the order.

That's the way I read it and that's why I didn't seem to have the same problem that I think you had, although I admit to you I didn't quite follow your point.

MS. ALLEN: I'm trying to envision situations where the parties don't wish to live together. This isn't an application for maintenance while they are still married and I don't know that that is clear that that is available in the Act. The only place is 7(1) where it says, "Where a spouse desires an Order for Separation," that's the application for relief. Then if you turn back, you look at Section 5, those considerations don't apply, I gather, for the strict order of separation and the only thing you are looking to is the Order Section which states what a judge may do and in Section 8, it says a judge "may" and then, flowing through to 8(b), "order that the spouses be no longer bound to cohabit." Well, "may," if that part of it was "shall," I think it would be clear.

With respect to the other sections, I think the "may" should be in there.

MR. CHERNIACK: Which other sections?

MS. ALLEN: Well, the specific provisions that he has to consider Section 5 for, such as maintenance and that kind of thing because, you know, there are considerations that he's bound to consider. But my original point was just that I don't think it is clear from the way these sections work together that if you want a separation, all you must do is apply to the court and advise them of your wish for a separation and your circumstances and you can get that separation order without dealing with custody access and that type of thing.

MR. CHERNIACK: Let me ask you then what you consider is the purpose of a separation order or to get a separation if it isn't probably the essence of 8(2)(b) on the question of custody?

MS. ALLEN: I don't know, because I see people coming in to see me who don't want maintenance or their husband can't pay it or whatever. All they want is a separation order. What it means to them psychology, I don't know, but they want it.

MR. CHERNIACK: But does it really mean 8(b); isn't that really what it means? Isn't that the

difference between a separation — an agreed upon written separation or order, isn't (b) the essence of it? I don't know what else it could be.

MS. ALLEN: Well, I would like to see it spelled out clearly; that's my concern. While it says "may," if that's the only thing you were going for, could a judge refuse? How could he refuse? It's just not clear enough, I think.

MR. CHERNIACK: I agree with you; I think it should be "shall."

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I would just like to perhaps have more of an explanation on your suggestion that Section 5(1)(e) be removed. Was that done in light of the proposed amendments, the new Section 5(2)?

MS. ALLEN: If those are the second set of amendments, I haven't seen them. If it's the first set that you've got there . . .

MR. AXWORTHY: I'm not sure which set. I have as much trouble as you have keeping up with them. I'm just more interested as to why you would object to that particular definition because the way I read it, it would mean that if there was an arrangement between spouses for one or the other to take on certain arrangements, looking after the children, properties, or whatnot, that should be considered as part of the calculation in making an order. I'm just interested why you want it removed.

MS. ALLEN: Well, I see it as being possible for interpretation, that it's a question of whether the husband or the wife was a good husband or a good wife in terms of domestic service obligations which are, you know, the various things with respect to the household, child care, providing family income and that sort of thing. I just see that that certainly leaves it open to people to come to court and say this was never done right, he never did this, she never did that. My concern is that that will become the overriding section in the Act; that possibility is open.

MR. AXWORTHY: I'm sorry, you seem to be talking about this as if it would be considered in the past tense as to what were the domestic arrangements. My reading of the section is that these would be the guidelines that would instruct a judge as to — if one of the spouses was all of a sudden having to take on certain responsibilities in relation to children, property, family, whatever, that that would be the criteria for determining the nature of the order that would be issued. Am I correct or am I wrong?

MS. ALLEN: Well, I see this basic section as an order once the relationship has broken down, so then you are looking back to the marriage.

MR. AXWORTHY: Oh, you do say it because I was reading it as if there was an arrangement that would be continuing and one partner or the other had taken on certain obligations in terms of still maintaining certain requirements of family . . . particularly those related to children, someone who was looking after a house with children in it and so on.

MS. ALLEN: Well, I don't really envision this section coming into play when the marriage is ongoing.

MR. CHAIAN: Mr. Spivak.

MR. SPIVAK: In your presentation, you refer to the dissipation of assets and then automatically went into excessive gifts. Now, I want to understand something. In your terms or in your undserstanding, do you consider the dissipation of assets is really related to excessive gifts or do you have another interpretation of dissipation of assets?

MS. ALLEN: No, I consider them as being separate and the reason I mentioned them together is because the amendment deals with the time limits for which you are looking at them and that's the reason I dealt with them together.

MR. SPIVAK: I wonder then if you can indicate what you would consider dissipation of assets.

MS. ALLEN: Well, again, that is something that I don't know if it's capable of definition before the fact. I would imagine that one of the reasons there is no definition is because, you know, you can imagine a thousand different examples, depending on the type of business or the type of asset.

MR. SPIVAK: Mr. Chairman, I would just like to ask, just by way of example, a few situations and then just see what your impression would be. Assuming that within the six year period, the husband who was in charge of the commercial assets and operating them has become an alcoholic for a period of time and, as a result, the commercial assets in their management suffered in some way. Would that be considered dissipation of assets?

MS. ALLEN: Well, on facts like that, it's hard to say but I think perhaps it certainly could be if there is an objective standard as to how to handle the type of asset that you are dealing with in a specific situation. It certainly is evolved in other areas of law. I think that certainly could be considered dissipation if he was, you know, unable to manage the assets up to the objective standard. It would certainly permit someone to try and move in so that everything wasn't completely lost due to complete lack of any sort of of business judgment that the person had before.

MR. SPIVAK: Let's take another example. A situation where a husband is involved the spouse is involved in the managing of commercial asset or the business or the profession — well, the

commercial asset itself which I assume would be part of the professional asset as well in terms of professional income earned — can I ask whether if he was during that period of six years subject to some psychological trauma which may or may not have required psychiatric care —(Interjection)— Beg your pardon? We're going to come to the politicians in a few moments. But, would you consider that is a dissipation of assets?

MS. ALLEN: Well, I think again you have to look at what the person was doing prior to this intervening event that you're talking about. I don't think the Act is saying that everybody has to be a Nelson Rockefeller or something in terms of business astuteness or anything like that, but if there is some sort of change that is affecting the person or they are doing something differently so that there's problems in the business, I think that that's what it should cover.

MR. SPIVAK: Well, let me take Mr. Axworthy's example. Let's assume that someone leaves the commercial field and enters politics say on the municipal level to the extent that full time is devoted in this respect and the commercial assets in fact are used for part of the living during that period of six years. Do you consider that dissipation?

MS. ALLEN: Your point is that you're saying that by going into politics or whatever and not staying to manage the assets, you don't have . . . yes. Oh, I don't know.

MR. SPIVAK: Well, the point being with respect to the concern, is the concern really not that somehow or other during the period of time of the management when ostensibly the two partners are living together and that there is nothing done which would provide someone else, who is a third party to it, with an excessive gift, that would in fact be really part of the sharing that the two should be involved in. Isn't that really your concern as opposed to really an evaluation of whether there has been good judgment or bad judgment in the operation of the commercial assets over a six year period? Isn't that really the real concern, that there not be something done which would provide someone else a benefit as a result of during that period of time which, in fact, would have the effect of decreasing the value of the assets itself.

MS. ALLEN: Well, no, I can think of examples that don't fall within that thing. It is difficult to sort of bring them up right away but, for example, take somebody who otensibly is going down to Toronto for a business trip every weekend and it's a drain on the company in some way taking these trips and it turns out that really he's going down to visit his girlfriend, for example, — this all comes out after the fact — that's something that I can see could objectively be looked at in terms of dissipation.

MR. SPIVAK: But that's fault.

MS. ALLEN: No, it's not a question of fault. It's a question of you're doing something for one purpose and really it's not something to do with the business, it's not as if you . . . I don't know, that's just a quick example that comes to mind but I am sure there must be others.

MR. SPIVAK: But, on the other hand, there is nothing that suggests that the other spouse who is not involved in the commercial assets who may very well be conducting herself in such a manner in which she is really utilizing part of the income for purposes other than the family unit, is in any way asked to in any way account. Now, again, all I am trying to suggest is that surely in terms of dissipation the issue of equity has to come in in terms of evaluating realistically what has happened.

MS. ALLEN: Well, when you say equity, you mean in terms of fairness.

MR. SPIVAK: Yes.

MS. ALLEN: **ell, I think that because of the fact that dissipation isn't defined, because of the fact that every situation certainly is different, obviously you're going to have to look at the situation in itself and assess it that way. I don't think it could be done any other way.**

MR. SPIVAK: But really what you are suggesting though is that dissipation is really related to some issue of fault, somewhere.

MS. ALLEN: No.

MR. SPIVAK: It's not a question of judgment; it's not a question of bad management; it's not a question of lack of attendance to business for whatever reasons other than the specific reasons that you're talking about.

MS. ALLEN: Well, no, I don't think, for example, the person who becomes an alcoholic or has psychiatric problems is a question of fault but objectively looked at, the business ability may certainly suffer so that it's not the same as it was before in terms of how the business has been run.

MR. SPIVAK: You're prepared to let the court make the determinations with respect to dissipation and to set up the whole criteria and establish the rules under which this section would be applied — I mean in terms of its whole interpretation. There's no interpretation of dissipation in the Act and without it, are you prepared really to allow the court to set up its precedents for this and to establish what is dissipation and what is not?

MS. ALLEN: Well, looking at the incredibly wide variety of things that can be commercial assets, you know, I think it would be extremely difficult to try and reach a definition to cover all that.

MR. SPIVAK: Can you visualize a situation where the husband and wife have been married and find difficulty. The marriage has not broken up but during that period of time, because of the difficulties that they've had, the husband just does not attend to business. And, as a matter of fact, the

resolution comes forward to separate. Would you consider that during that period of time the failure to attend to business basically is caused as a result of the relationship between husband and wife which ultimately led to their separation or divorce, would you consider that that action if, in fact, the values went down, is a dissipation?

MS. ALLEN: Just on those facts I can't really give you a definite answer. I think that, as with any sort of fact situation, the reason I think this is in there is because under the scheme of the Act, we're saying that you do have a deferred share of the commercial assets and the person who is the owner is the manager in the meantime. So I think that that's property there in that section following on from the principle of the deferred sharing.

MR. SPIVAK: If a wife was to visit her mother in another town and take a trip using part of the income of the family but, in fact, see someone else, would you consider that there's any fault or anything that should in fact jeopardize her right to receive the 50 percent on a separation or on a divorce?

MS. ALLEN: Well, I'm not sure what you mean as part of the income from the family.

MR. SPIVAK: Well, what I'm simply saying to you, you're suggesting that if, in fact, someone made a trip and the trip was for another purpose and it was charged to the commercial assets that there should be an ability on the part of the court to be able to determine that in effect those trips were in fact dissipation and therefore in the terms of commercial assets, the value should be increased accordingly. Now, I'm simply saying, where in effect the reverse situation takes place, do you still consider that the wife is still entitled as a right to 50 percent of the commercial assets?

MS. ALLEN: Well, I think the difference is that you are looking at a business and you can look in terms of dollars and cents what's going on in the business. It's the same as people coming back at directors or whatever for treating themselves excessively later on. I think that's the same type of principle in commercial law that can be followed through.

MR. CHAIRMAN: Mr. Graham .

MR. GRAHAM: Thank you, Mr. Chairman. Through you to Ms. Allen. Ms. Allen you are a practicing lawyer in the Province of Manitoba?

MS. ALLEN: Yes.

MR. GRAHAM: Do you do much of your legal work in the field of family law?

MS. ALLEN: Yes, a certain amount of it I do.

MR. GRAHAM: In this proposed legislation, in particular dealing with maintenance and Part I dealing with spouses, I notice Sections 2 and 3 probably deal with the principle of maintenance and probably deal with it before separation and 4 and 5 deal with it more or less after separation. In your practical experience, do you find many cases which deal with maintenance before separation occurs?

MS. ALLEN: You mean an application for maintenance before . . .

MR. GRAHAM: No, I'm dealing in practical terms. Do you have many cases that come to your attention of spouses who want a court clarification and maybe even a court order dealing with maintenance before separation occurs?

MS. ALLEN: You mean and the intention is to separate after . . .

MR. GRAHAM: No' I'm talking about intending to carry on with the colabitation.

MS. ALLEN: Well, right now it's not possible. A wife has the right to be supported by her husband in terms of necessaries which is a legal concept that is quite limited in effect in terms of what she is entitled to purchase or not, or to have from her husband.

MR. GRAHAM: Mr. Chairman, maybe for a matter of clarification, I believe M — s. Allen told us I can't quite quote her words but I believe she said that most of them were concerned about separation first and maintenance afterwards, that separation became the predominant factor rather than the maintenance.

MS. ALLEN: No, no, I was talking about people who, for whatever reason, do not at any time want maintenance from their husband. I am talking about people who feel that they want to go off on their own and they're just concernee, or have been concerned in the past with actually having the piece of paper saying you're separated. That's all I meant by my earlier comments.

MR. GRAHAM: Well, then can I ask you that in your own personal experience in practising law, is that a predominant feeling of those clients that have come to your attention?

MS. ALLEN: No, it's not a predominant feeling but it certainly exists. Every situation is different . There are many many people who are extremely concerned with maintenance and custody and that sort of thing but my point was that the situation does arise where the person is not concerned with the other things, just the actual separation.

MR. GRAHAM: Mr. Chairman, I would like to ask Ms. Allen then, we are dealing with various aspects of family law and is the concept of preservation of the family unit an important factor to be considered or should we be concerned more with preservation of the individuals after separation occurs?

MS. ALLEN: Well, I think they're both very important. I don't know how much the Legislature can

look into somebody's marriage that's existing very happily. Legislation usually comes into effect where there are trouble spots and so I think that they are both important but certainly the legislation has to look at realities and see what's going on in terms of marriage breakdown in an attempt to amend the law so that it conforms with people's ideas about it.

MR. GRAHAM: Well, then, I would like to ask Ms. Allen, if we pass this legislation that's before us plus the amendments that have been handed to us and the amendments that the Attorney-General talks about introducing further, in your opinion, will that expedite the breakdown of the family unit and facilitate the separation and the preservation of the individual as a separate entity rather than as a married entity.

MS. ALLEN: No, I certainly don't think it will have any effect on the rate of marital breakdown.

MR. GRAHAM: Thank you, Mr. Chairman.

MR. CHAIRMAN: If there are no further questions, thank you, Ms. Allen.

Marilyn McGonigle, please. Come forward.

MS. MARILYN McGONIGLE: Gentlemen, the Manitoba Action Committee on the Status of Women has for many years been actively seeking changes in the legal and social circumstances of women in Manitoba and in Canada, changes that will equalize the status of women and men, erase discrimination on the basis of sex and create an environment in which independence and self-fulfillment of all persons is not hampered by cultural, legal and social barriers and lack of support from government and community. For three or four years, Manitoba Action Committee has been involved in assessing family law and recommending reform in Manitoba. We have followed closely the Law Reform Commission's reports and recommendations and wish to comment on the legislation.

The Manitoba Action Committee is a member of the Action Coalition on Family Law and generally supports Bills 60 and 61 and urges the passage of this legislation with appropriate amendments.

The two bills deal with the three major areas of concern of M.A.C.S.W. on which we expressed opinions to the Law Reform Commission in response to their interim report two years ago. Our three concerns were:

1. that the law articulate the principle of equally shared property and income in the ongoing marriage,

2. that an appropriate no-fault standard for determining maintenance for separated spouses replace current uncertainties and inequities, and

3. that serious enforcement of maintenance orders be made possible and be backed by government.

To a limited extent Bills 60 and 61 rectify some of the injustices in existing family law. M.A.C.S.W. is disappointed that this legislation does not articulate completely equitable ownership of property, or enact joint ownership and management of income in the ongoing marriage or effectively meet the maintenance enforcement needs of spouses and children.

It was and is M.A.C.S.W.'s position that without effectively enacting a right of sharing and management of income in marriage and effectively enforcing appropriate maintenance orders and agreements, any legislative change is merely academic, having declaration value only, and irrelevant to many wives and mothers, who are legally and practically helpless in their situations.

Our comment and criticism is not that this legislation is so poorly drafted that it should not be enacted with appropriate amendments, but that it does not go far enough in crucial areas of concern to the large majority of Manitobans. Here before Law Amendments Committee our concern is that the changes that are intended by the Legislature do not create any injustice or unnecessary confusion. It is most important that no situation insofar as it is foreseeable is created that is contrary to the principles of equality and equity. The corrections of unjust situations that married women and men in similar, that is, reversed situations, have found themselves without recourse in law in the past must not render any person the legislation is intended to assist, worse off than before enactment.

Now, with regard to The Marital Property Act and Section 2 Jointly owned Marital home — Specifically, section 2, for example, should not provide that a sole support parent or spouse, now separated, who has not received any or adequate support or maintenance, should now find her or his house jointly owned by the other spouse notwithstanding the separation. Joint ownership should not apply to spouses who are separated at the time of proclamation except that each spouse should share equally the equity and increased value of the home acquired during cohabitation. This is to say that if the house that is owned by one separated spouse was owned during cohabitation, one-half of the equity and increase in value up to the time of separation is owing to the non-owning spouse. To impose joint ownership in such situations is to ignore the reality that mutuality and agreement is no longer part of the relationship. Furthermore, it should be possible for a separated spouse to challenge the above assessment of the portion owing to the non-owning spouse on the basis that maintenance was or would have been forthcoming to the spouse who owned the house, for him or herself and the children in his or her custody, notwithstanding that maintenance was not requested

at the time of separation.

With regard to this, in such cases interest shouldn't be deemed to accrue to the amount determined to be owing, nor rent or rent equivalent imposed for the years since separation.

What this suggestion of ours envisages is the situation in which one spouse has now the custody of the children and is and has been earning the income and paying for the house, and during a separation, and because the house had been marital property, it will now become partly owned, half owned by the spouse that is not there anymore. In the meantime that spouse may have gone out and bought a home that would not be shared because it isn't a marital home.

Now we feel that that is an oversight but it might not be the correct interpretation of the legislation as it has been amended.

The second suggestion is with regard to separation agreements and I understand the amendment has partially taken care of this. The Act is unclear just how separation agreements and property of now separated spouses are to be dealt with. The Act should not nullify all separation agreements. They should be challengeable on the basis that the distribution of property and maintenance order was inequitable and inadequate in the light of the principles of the Act. Otherwise separation agreement should remain enforceable if unchallenged.

The standard marital regime should apply on death of one's spouse. It is our position that the legislation should not create a situation whereby a person will be better off to separate from than to survive his or her spouse. The spouse who has only Dower rights for protection exists in a separate property regime with respect to commercial property and has no testamentary freedom with respect to assets which would be shared on marriage breakdown.

Whereas the spouses who separate must opt out, the spouses who stay married must opt in to deferred sharing. The anomaly would best be cured by applying the SMR to the marriage that ends by death of a spouse. Greater certainty and equity between spouses is assured for the non-owning spouse whether that spouse predeceases the other or not.

With regard to the Family Maintenance Act, the principle to be applied here is equality during marriage and no-fault maintenance after separation based on need and relative standard of living of the spouses with a goal of economic independence as soon as reasonably can be expected. There is some confusion in the Act as to the very different circumstances of mutual obligation in marriage and maintenance on separation.

The problem is with the word "contribution" in Section 2; the definition of financial independence and the criteria in S.5(1)(e).

First of all it is absolutely necessary to articulate in law that "contribution" includes non-monetary inputs, as well as monetary — and I believe the amendment has included a definition of "contribution" — that the economic equality of the spouses legally arises at the time of the marriage commitment and subsists during cohabitation whatever form the contribution takes and whatever life style is adopted by the married partners.

Section 5 (1) (e) is an anomaly in this respect — it articulates a concept contrary to the principles of equal partnership.

First it has never been recommended or intended in any submission or preliminary report of the Law Reform Commission or otherwise that the contribution be defined or examinable on the basis of domestic arrangements. Even those who would retain fault to vary the property and maintenance rights of non-earning spouses do not suggest that a new category of behavior be added to the existing list of marital misdemeanors.

Secondly, where in this Act is it open to challenge how much the earning spouse contributes monetarily? Can a wife say that her husband should have been a doctor and not a bus driver, should have earned $30,000 or $100,000 and not $10,000 earned at the preferred occupation? Who has ever suggested that "objective" criteria dictate that a domestic relationship even exist in marriage today? Not MACSW or any other group. Who is to define or challenge the fulfillment of domestic service?

Section 5(1)(e) articulates a concept that implies that the role of the non-earning spouse is that of a domestic servant. While it is no surprise that some would consider it an improvement over the 19th Century property or slave status of wives to elevate them to that of domestic servant in the 20th Century, it is not a concept that is endorsed by women or men interested in defining marriage as an equal partnership.

Section 5(1)(e) should be deleted and Section 5(2) or the definition section should define "contribution" for the purposes of the Act to include monetary and non-monetary inputs. Specific performance of personal services is unenforceable in law. No definition of "contribution" should imply that obligations exist or are measurable or enforceable in accordance with a definition of marriage that is like a contract for domestic services.

Sections 4, sub (2) and sub (3) and Section 5(1)(g)(i) refer to the phrase "financial independence." Financial independence is not defined in the Act and a great deal depends on the interpretation put on these words by the courts. MACSW endorses the principle of financial independence as soon as is reasonably to be expected. However, it should be defined such that a

substantially similar standard of living is possible for both spouses after separation. This is particularly important where there are children of the marriage in the custody of the dependent spouse or spouse with the lower income. It is of equal importance where after a lengthy marriage and where the children are no longer dependent a spouse's earning capacity will provide a mere subsistence level of living. There is no reason why either spouse should be substantially better off than the other. A person should not be forced into menial employment to supplement maintenance or be subject to a reduction in maintenance dollar for dollar upon earning income while the other spouse is in a better financial position. The aim of financial independence should not create an onus on the less well off spouse to in effect subsidize the other's higher standard of living or create the hopeless situation similar to the welfare system or 100 percent taxation where extra effort toward independence is economically punitive.

Comparable standard of living does is not clearly articulated in Section 5 considerations and MACSW urges the adoption of an equal standard of living guideline (1) for the courts; (2) to equalize negotiating power between spouses and (3) to encourage out of court settlement of a couple's financial affairs.

With regard to the enforcement of orders, maintenance enforcement, the Act does not adequately strengthen procedures for collection and support and assistance for the dependent spouse. This matter will be dealt with by other members of the Action Coalition on Family Law. MACSW urges this government to actively assist in the enforcement of maintenance orders by undertaking collection of default judgments and by providing financial assistance for women and children victimized by non-payment of maintenance orders.

MR. CHAIRMAN: Does that complete your submission? Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman. Mrs. McGonigle, on page 3 of your brief you say that with respect to separation agreements your organization believes that the Act should not nullify all separation agreements. Such agreements should be challengeable on the basis that the distribution of property and maintenance order was inequitable and inadequate in light of the principles in the Act. Separation agreements should remain enforceable if unchallenged. I interpret this as being at least a sort of a tacit sanctioning of the concept of retroactivity, or at least partial retroactivity which has been a major source of difficulty for many of us, I think, on the Committee.

Let me put a personal, not a personal but a specific example to you that I am personally familiar with, the case of a woman who has had an unsuccessful and an unfortunate marriage, whose husband is at fault for the difficulties that developed in the marriage, who has raised the children on her own, who has done a good job of that, who has paid off the house, who has put herself through university and who has, in general, acquitted herself as a serious and responsible parent and citizen. Are you suggesting that the husband now should have, because there is no specific written agreement that I know of, although there might be one, I don't think there is, that the husband should have a right under this legislation to half the house, and half the property which was part of the marital regime at the time that they were married and living together, or should have any right of action against that woman at all, for satisfaction of a financial or property nature?

MS. McGONIGLE: I think that what we were trying to get at here was an avoidance of just such a situation whereby property splitting would occur, notwithstanding a separation. In other words the Act as we read it was going to nullify the separation agreements and apply the SMR to existing marriages including separations. And as a kind of compromise with the idea, there are two possibilities, you either include separated spouses or you don't, in which case obviously there's going to be an inequity either way. The situation such as you have articulated has been posed before and what we're trying to do is introduce equality during the marriage. And so what I mean by this is that for the period of time that the spouses were married there was sharing of property, that it would apply to that period of time that they were married if the property belonged to them then. So that if a house were purchased in just such a situation you are talking about, a house was purchased in '63 and the couple separated in '67 and one spouse owned the house and owns it today, the sharing would be the value during cohabitation, from '63 to '67. Now I know you have an evaluation problem there but it's a better solution than saying that in 1977 that house belongs to both spouses and that the last ten years in which there hasn't been a mutuality in agreement and they haven't been cohabiting in the house that it is shared.

Now, when we say it should be challengeable on the basis of. . . In a situation where the woman that you're talking about has children or should have been receiving maintenance during those years that that should be taken into consideration if the non-owning spouse is suing for the value. Meanwhile you've got the opposite situation, a recent separation of a woman who is now without a house, whose husband is living in the house. He owned it. He is living in it. She's elsewhere with the children and she should have had a share of the house. If they cohabited in that house as a marital home for ten years and they have been separated for three years, the value during that ten years should be — she should have something coming to her on the basis of that. I don't know if I'm very clear.

MR. SHERMAN: I can see, Mr. Chairman, that the inequity certainly can cut both ways but just to refer again to the specific case that I raised The situation is a fairly recent one and the fact of the matter is that the husband and wife did own the house together. Under the legislation we're considering right now, they would own it together anyway, but even notwithstanding that legislation, they owned it together.

MS. McGONIGLE: And when did that end?

MR. SHERMAN: It ended within the past two years. Now what happened was, at that time they arrived at an agreement rather informal, I think, although there might be a formal agreement, that the husband repudiated all interest in the house and went off on his own and said the house is yours. She also took on the responsibility, as I say, for raising the children and educating herself and is in the midst of that process and doing well at it, went into debt to undertake that responsibility. Now, on the basis of the legislation we're looking at right now, that agreement — and on the basis of your recommendation, and I know the Attorney-General is suggesting amendments, but on the basis of your recommendation — that agreement under which the husband said, "The house is yours; I give up my half of it; I'm leaving," could be challenged. He could now come back and say, "Well, half of all of that is mine." — on the basis of your recommendation.

MS. McGONIGLE: Yes, and this is exactly . . . Now, whether or not we make a more limited challenge, the difficulty there is, in a situation, is that the Manitoba Action Committee is interested in the status of women and it is mostly women, let's face it, who are looking for more equity in this legislation and it is they whom we can't abandon, like the women in the situation you're describing, who have made all the contribution, including all the monetary contribution. Now, it is difficult to deal with this without dealing with situations where it is usually men and situations where it's usually women, but what I thought would be a reasonable thing, if that is challengeable, so is the maintenance that she should have received and sort of an offset situation could develop whereby if there is anything she has owing, he wouldn't become half owner of the house but there would be something that she would probably owe him in the value during their cohabitation in it. If she had maintenance and so forth coming to her on the basis of their circumstances since, then there would be nothing owing. Do you see what I mean? If we could develop a concept whereby it is not inequitable without opening up the whole bag of fault and litigation.

MR. SHERMAN: Well, I see what you mean but I think you'd need ideal conditions to ensure that that trade-off took place. I think there would be many women and I am sure the one that I am referring to would be one of them, who would say they wouldn't want to take their chances on maintenance. What they want is to know that the property that they have supported and paid for and maintained is theirs and that there is no right of action to it by the other party.

MS. McGONIGLE: Well, I think that that is possibly better yet if that's the case with all people. I am very concerned about people who are have separation agreements now, women, who had no bargaining power when they made their separation agreement. Their separation agreement was just whatever hand-out was coming and whatever would avoid litigation or fighting over children. They have more coming to them and that should be reopenable and I don't know how you can do it without saying, "For women we're going to do this and for men we're going to do that." Given that this legislation is really trying to correct inequities that traditionally apply to women. Now, I wish there were a way and I thought that this might be a suggestion for it. I don't like the idea of the legislation completely abandoning the people in separated situations that are unsatisfactory by agreement because agreements have been heretofor very easily coerced.

MR. SHERMAN: Well, I appreciate your position and your explanation. I hope that you will also appreciate that many of us feel pretty strongly about the retroactivity concept and require some persuasion before we would be in favour of retroactivity.

MS. McGONIGLE: Well, the legislation is amending to the extent that they are not nullifying the agreements and the suggestion would be that . . .

MR. SHERMAN: But they could be challenged.

MS. McGONIGLE: . . . is a challenge on the basis of the principles in the Act. It wouldn't really change the equity you see, if inequity, the agreement should be changed, portions of it changed, in order to bring it more up to date. An agreement a year ago that gave a woman about one-tenth of her husband's income as maintenance, no property and God-knows-what, you know, very little and we can't abandon these women. There are a lot of them too and it is going to make it difficult for some people but, on the other hand, a lot of agreements have been reached that are equitable and that neither party will challenge. People who haven't litigated to death the whole thing, they've got agreements that are satisfactory and they've finished it and they don't want to reopen it and they wouldn't have to.

MR. SHERMAN: Well, it's obviously a tough question. Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: Following up on that, since you represent the Action Committee on the Status of Women, I wonder if you could help me by . . . brief here seems to generalize in a number of areas and

. . .

MS. McGONIGLE: Yes.

MR. WILSON: . . . just to clear it up, I wondered if you could explain non-monetary inputs. Are you talking about the government and the courts would put a value on such things as housework and community work? What do you mean by non-monetary input?

MS. McGONIGLE: Where are you referring to?

MR. WILSON: Section 5(1)(e).

MS. McGONIGLE: Yes, what we're looking for is a definition of contribution that is not as narrow as was articulated in the Murdoch decision which was that it had to be money. **ow, what we want is a recognition that marriage is a 50-50 partnership or an equal partnership in all aspects and we want the definition broadened of the word "contribution" which is the stickler, one of the sticklers, in current law, because it requires a monetary contribution. We simply want that clarified and it is not necessary to go into domestic relationships for this. This is precisely a concept that we've been trying to get away from, the idea that we have a domestic arrangement, like a domestic service contract. And I really meant it when I said that in the 19th century wives were property or slaves and in the 20th century now we are going to articulate that they are domestic servants.**

A marriage arrangement, a marriage concept, two people make commitments to each other that encompass all sorts of things and this is precisely why we want to get away from examining by articulating equality, that it is deemed to be an equal partnership, that they are both putting into it, and as long as that marriage subsists, that's the way it is defined. When it breaks down, you take a look at the criteria in Section 5, which section 5(1) (e) detracts from but there is no need for this, for section 5(1)(e). There's no need for a domestic arrangement to be defined by legislation as "duties and responsibilities." And who is to define, who is to challenge? Obviously it's going to be a husband challenging a non-earning wife her fulfillment of domestic service obligations. I think that Mr. Axworthy and Mr. Cherniack were asking questions about it and, if I understood them correctly, they each had a different idea of what Section 5(1)(e) was referring to, whether it was referring to the ongoing marriage or the separated situation and that should be clarified too.

MR. WILSON: Yes. Well, would you clear up this other one for me then. You talk about a similar standard of living after separation. Would you explain that? I envision about six people starting off and after two years they all seem to develop different types of standard of living. Is it up to the government and the courts to decide the standard of living because you generalize here and I wonder if you could give me an example?

MS. McGONIGLE: Well, I generalize for the reason that the Manitoba Action Committee is dealing with principle and what we want to see in legislation and you've been looking for two days for a definition of financial independence and we're very concerned that it not be defined as say a welfare level or whatever a woman . . . If a woman has a job, a woman of say 50 goes out a gets a job clerking in a store, that she's financially independent after many years of marriage and with a spouse who has a substantial income. That would not be fair to have a minimum definition put here and the fairest one that I know of is one in which neither spouse should suffer a greater drop in standard of living than the other and where there are small children involved, those children have a right to the standard of living of their better-off parent. How can you, you know the existing situation in which children . are living at a welfare level, whatever their fathers are doing. Now this is a situation in which the fathers are getting away without paying maintenance but even in court ordered maintenance, I've heard of a situation where a woman who pays $100 a month in child care has a $50 maintenance order and she makes $600 and he makes $800 or $1,000.00. What kind of maintenance is that? Is that equalizing things?

Now, there are other provisions here for the efforts to be made by the non-earning spouse to become financially independent, that is to reach a level of a financial independent standard of living, and you haven't heard any women, I haven't heard any of the women complaining about that. In fact, we've been looking for that and looking for an end to the life sentences on maintenance. Now, I don't know what standard you want to apply but this is our suggestion for it. A relative equality with that goal of ending it.

MR. WILSON: Yes, but you talked about one-tenth of the income the way it is now and we can all agree that it is possibly unfair. What do you consider a similar standard of living? Are you considering that the working partner . . .

MS. McGONIGLE: I'm thinking of monetarily.

MR. WILSON: . . . yes, money know, I but the working partner pays what? Fifty percent of his net income? Or 30 percent? Or 40 percent?

MS. McGONIGLE: If the non-earning spouse is totally dependent and has children to rear and training to go through to become an earning person, a self-dependent person, then why not?

MR. WILSON: How many years?

MS. McGONIGLE: I think that that's determined under the other parts of the Act that you've got the needs of the spouses and children, the financial means and earnings, the standard of living, okay, that's the section that you could bring that in. Some of these criteria do apply to financial

independence but it's circular because in section 5(1)(g) you have financially independent there so you can't use this section to define it if it's using the word.

MR. WILSON: It will have to be clarified, right. Okay.

MS. McGONIGLE: I see that as a possible solution but it would be terminating as a woman becomes independent, as she begins to earn money but I'd hate to see a dollar for dollar reduction. That makes it so discouraging as in welfare situations.

MR. WILSON: Yes. Okay.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Thank you, Mr. Chairman. Ms. McGonical, you've made certain specific points. I think they're very helpful and I think that we can benefit considerably by just being clear on those and I want to . . .

MS. McGONIGLE: Well, I try.

MR. CHERNIACK: . . . I want to try. You've made the contribution, I'd like to . . .

MS. McGONICAL: Understand it.

MR. CHERNIACK: . . . mainly because I interpret what you're saying is that you want this legislation to pass; you want it to be improved, but passed, and on that basis I am trying to make the effort. Firstly then, your point about section 2. I have reached the opinion as of this moment, subject to what's discussed from here on in , and much will be discussed, that we cannot cure problems and inequities way back.

MS. McGONICAL: Right. Okay.

MR. CHERNIACK: . . . that existed — in the past tense. I have accepted for now, and I think it was in my mind at all times that where a separation is in existence and the date of May 6th was suggested as logical, that a separation in existence as at and prior to May 6th shall not be covered by the Marital Property Act.

MS. McGONICAL: Any separation at all, not one with an agreement.

MR. CHERNIACK: That's correct.

MS. McGONICAL: I see.

MR. CHERNIACK: I think that simplifies it but I'm not saying it for the purpose of simplicity; I'm saying it for the purpose of having something effective that we could work with.

MS. McGONICAL: Right. Okay.

MR. CHERNIACK: And I would then say that any separation that takes place after May 6th is covered by the Marital Property Act, and by saying that, I think I think I eliminate the problems which you raised and which Mr. Sherman raised, both of which I think are valid problems.

MS. McGONICAL: Well, you don't eliminate them; you're going to ignore them.

MR. CHERNIACK: I'm sorry. You're right. We don't deal with them.

MS. McGONICAL: Right.

MR. CHERNIACK: You're right. I believe you're right.

MS. McGONICAL: And I think that that is obviously the simplest way to handle it. My personal concern has always been that the legislation be equitable and I personally feel that I do not want to see it make anyone worse off if we can help it; if we can see it and do anything reasonable about it, we must. This is obviously not the simplest . . .

MR. CHERNIACK: Well then , you're saying "not worse off" would apply to a separation that took place prior to May 6th. They would not be worse off but they would not be helped. I mean, the inequitable situation would not be helped but they would not be worse off than they would be dealt with in a court . . .

MS. McGONIGLE : Well, with respect to the home, they would be though. Where it is inequitable to share. . . Oh, I see, you're not applying it at all to the separation . . .

MR. CHERNIACK: I'm not applying it at all, and that's my inclination. I think some of the people who have already made presentations have agreed with that concept.

MS. McGONIGLE: That's correct and . . .

MR. CHERNIACK: And I see now that maybe . . .

MS. McGONIGLE: But maintenance can be challenged under change of circumstances, but this is change of legislation.

MR. CHERNIACK: Yes, I'm not talking about maintenance. I think that could apply to any marriage where maintenance is now taking place. The new Act would replace the old Act for variations, for maintenance.

MS. McGONIGLE: If it will take care of it. Some people think it will. I hope so.

MR. CHERNIACK: Well, we can hope so. Next on the question of the Dower Act, marital regime taking place on death. I think I can see no objection to your point that the marital regime will terminate on death and maybe optionally, either the Dower Act or termination on death. But frankly I don't understand the circumstances under which someone would rather go with a termination of marital regime than the Dower Act, because the way I read it, the Dower Act is likely to cover much more than, and certainly not less, than the sharing of assets on the marital property division.

MS. McGONIGLE: The problem is in the principle of the Dower Act which was not enacted to be an equal sharing situation. It was enacted a long time ago for protection purposes and it doesn't give any on-going right or any testamentary disposition to the non-owning spouse.

MR. CHERNIACK: I don't understand what you're saying.

MS. McGONIGLE: As I understand it, under Dower today, if the property's owned by the husband and the wife predeceasesshe never owns and never can will and never has anything to say about anything.

MR. CHERNIACK: Do you mean that the marital regime shall terminate on the death of either and that there shall be a distribution, even in favour of the ? deceased Is that what you're saying?

MS. McGONIGLE: Oh yes, that the standard marital regime applies to all marriages, isn't just brought in on separation.

MR. CHERNIACK: So you mean, that although you might like immediate vesting you will accept deferred vesting providing that on death there will be a vesting between the two parties which may mean a vesting to the deceased's estate — through the deceased's estates, right?

MS. McGONIGLE: When it comes to commercial property, yes. I think that the regime should apply to existing marriages, however they end, so that there is equal property rights. It doesn't seem to me that that happens, does it?

MR. CHERNIACK: But, Ms. McGonigle, I confess to you I didn't think of the other way. I was thinking always of a death and the protection to the survivor, and therefore I felt that under The Dower Act, regardless of its historical purpose, that The Dower Act at 50 percent would protect the survivor to an extent at least as good as the sharing of the marital regime.

MS. McGONIGLE: Does the survivor under Dower have an election or something to choose between Dower and Devolution?

MR. CHERNIACK: Devolution never takes place where there is a will, and where there is not a will, the Devolution Act itself provides an equivalent of Dower.

MS. McGONIGLE: I think the problem there is that where there is a will, then the non-owning spouse, let's say the widow hasn't got any choice as to which property becomes hers, or is hers , it can be willed according to the owner.

MR. CHERNIACK: She can elect under The Dower Act to take one-half of the total estate.

MS. McGONIGLE: Yes, but what if the will gives her more than that, but not the proper . . . . The point is that it is not hers, it is never hers except by a disposition over after someone is dead. I don't understand why Dower is superior. You can leave The Dower Act for the personal property of their spouse.

MR. CHERNIACK: Well, as I say, I could accept your proposal to provide for termination on death, knowing that in my opinion The Dower Act takes care of it. But you are now saying that you would like the effect of the sharing to take place for the benefit of the deceased's estate as well, and that is a new concept to me. I will have to think about it. So let me go on, I don't want to take more time than I have have to to do it.

On this question of contribution being non-monetary, I think I understand you and I do not see any reason why it cannot be clarified. In my opinion it was never monetary alone, but if there is doubt then I hope the note has been made and we can discuss that at the time.

Now the S5(1)(e), I really had no problem with that, and like Mr. Sherman, I will give you an example which is very unusual, but many years ago I had clients, a couple who occupied the same house but never talked to each other, they never touched each other, and they lived in the same house, one doing the domestic service work and the other bringing in some money. And because they each had pensions each had spending money, so somehow or other it worked out, even though they were separated in every sense except the geographical one. I think under those circumstances (e) might apply. As well I think it might apply where there is no separation, but on the other hand I don't see any other need to have it in, and I am saying that because possibly someone, knowing of your objection to having it in, might argue that it should be in, and I don't see the value of either having it in, nor of taking it out, assuming that a court would interpret it the way I see it.

MS. McGONIGLE: I think that it is definitely open to all kinds of interpretation, and what it means to me, what it implies is that there has got to be a domestic relationship to give rise either to the . . . . When I say a domestic relationship I mean an arrangement whereby services are performed for money, and also where you can challenge the calibre of services, and yet there is nothing there that says you can challenge the income-earning power of the other spouse, and it is just not necessary. The other criteria takes care of it.

MR. CHERNIACK: All right, I see your argument. When we come to it in Committee we will debate whether there is any point to leaving it in. I no longer see that.

MS. McGONIGLE: What it does is open the possibility and counsel will argue that, and then we will have "fault" again.

MR. CHERNIACK: Yes. And you think courts might fall into the trap of misinterpreting.

MS. McGONIGLE: Judges may ask for something on that, and the point being then that you are

required to do it.

MR. CHERNIACK: Okay. I do want to move on then, Ms. McGonical, to the financial independence of standard of living. When you say substantiate some of the standard of living for both spouses would you say continuously that if the earning spouse acquires the financial ability to increase the standard of living, then automatically the dependent spouse shall rise with him?

MS. McGONIGLE: So that there is a continuing increase?

MR. CHERNIACK: So that there is a continuing compatibility between the two standards' even though at separation there may have been a lower standard. In other words would you say that there can be an expectation for a continuing rise even though there is a separation, and the desire in the Act, and the concept is that we want financial independence to be achieved?

MS. McGONIGLE: Yes. I think that that might well be included, depending on the circumstances where, at the time of the separation perhaps, one party is unemployed or only partially employed and then there is a substantial increase and the maintenance was not adequate as to the needs.

MR. CHERNIACK: I am sorry, when you said depending on the circumstances, I have to ask you if you have any additional factors that you would recommend for 5(1)? Let's assume we have taken out (e). What else is needed to help a court decide? What other factors have been left out that ought to be there for a judge to consider? Because there you do have financial needs, responsibility for children, financial means . . . .

MS. McGONIGLE: I have not thought that others were necessary, and so it was simply a question of this "financially independent," which to me is, aside from 5(1)(e) which, without that we haven't got a fault criteria, though we have got the other criteria. We had to still define "financially independent" to make it clear. It says "The judge shall consider in 5(1)(c) the standard of living and lifestyle," but it doesn't say what he has to do with that particularly. Maybe that implies a similar standard of living.

MR. CHERNIACK: Well, it seems to me that we are going to be developing an awful lot of new law or case law on this, and by saying to the judge, "We expect you to apply these factors," we are indeed giving him discretion and yet making his decision subject to review by another court, which would not exist if it were only discretion and no factors, because an appeal court might say, "Well, the judge had discretion and he looked in the case and he made the decision, and since we don't see the people directly and the witnesses we will not change his decision because he used his discretion." Where we set out these factors we believe that an appeal court will have the right to, and will indeed look as to whether or not this judge did look at those factors. And having looked at them, then they will have a right to comment on the extent to which he was influenced by them, because we are not saying, "He may consider the following factors," we are saying, "he shall," and we did that quite deliberately so that an appeal court could look over his shoulder and comment. That being the case, do you not think that much of your concern is taken care of, and if not, what more should we write in this?

MS. McGONIGLE: Manitoba Action Committee and the Coalition are quite happy with the Section 5(1) as it stands, with the exception of (e), which I have never seen suggested before, you know, to bring into the court the examination of the actual domestic arrangement.

Now the question has been raised many many times in the last two days: What is financially independent? And a suggestion has been called for, and that is what my answer is. Since it isn't clear to everybody what financially independent means, I am suggesting to you that it means as near as possible an equal standard of living for the two spouses as one can come to, and it would depend on the . . . .

MR. CHERNIACK: Okay, I accept that. Now would you mind clarifying what you mean when you say a person should not be forced into menial employment to supplement maintenance? You may have heard me ask earlier whether it is not fair to ask a dependent spouse to do whatever — let's say she, because usually it is — whatever she can to acquire income which would be a contribution to that standard of living that you and I would agree would be the proper one. Now what is wrong, why call it menial if that is the best that she is able to do considering her background, being tied to a household, her inability to earn a higher income? Is the word menial bad, or is it the income that comes with it?

MS. McGONIGLE: I think that what I am suggesting is that in a situation of a longstanding marriage, 30 or 40 years, and there are some years left before the two are retired, and a standard of living is to be maintained, it does not make sense to me that the 55-year-old woman or something should be expected to go out and clean other people's houses to earn a living.

MR. CHERNIACK: I agree with you. Don't you think that 5(1) covers that?

MS. McGONIGLE: It may.

MR. CHERNIACK: I mean all of it, all the factors, including the length of time the marriage has subsisted, the ability . . . .

MS. McGONIGLE: My statement applied to the definition of financially independent.

MR. CHERNIACK: I see. All right. I guess we will have to do some work on it. No, that's fine. Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I don't want to go much longer, but I want to make sure that I fully understand the position of your organization on this question of the retroactivity. As I understand it, you accept the proposed amendment that we heard tonight, that those who are separated would no longer come under the standard marital regime. Is that a correct statement, that you are prepared to accept that amendment that the Attorney-General made this evening in Section 2(2)?

MS. McGONIGLE: Yes, in other words, the legislation won't nullify current agreements and it doesn't apply at all to separation. Yes, in my submission here I have suggested that there should be a challenge, but our suggestions are based on the notion of having this apply equitably, and if we create more problems with an amendment and an exception than we cure, then we really can't do that. What I was saying before was that we don't want to abandon people to inequity.

MR. AXWORTHY: That was the point I was coming to. I heard an exchange between you and Mr. Cherniack and he said he had reached the stage where he is prepared to take the issue of separation and say that the Act should not apply, and I thought I heard you agreeing with him, and I was curious about that because you previously had said you don't want to abandon those who are separated and have had previous agreements. Now which is the more accurate portrayal?

MS. McGONIGLE: The more accurate is what I said on Page 3, Paragraph 2, which is that I believe separation agreements should be challengeable and separation orders challengeable on the basis of this for the reasons that I have expressed.

MR. AXWORTHY: I see. Now you mean challengeable in the courts so that there could be some form of discretion applied by the courts to assets that are owned, and that there would be some settlement based upon that. Is that a correct interpretation?

MS. McGONIGLE: Yes, with that proviso that the splitting applies for the duration of the marriage. Now, I know that makes things more complicated, but sometimes I see it as necessary to see that existing, separated spouses are treated equitably too. Challengeable might also have a value in that it would create a negotiating position for a spouse to create a better agreement.

MR. AXWORTHY: Okay. That same idea — that the assessment of assets under separation — would you carry it over and apply it to existing marriages for assets that are acquired up to the point of the proclamation of the Act, rather than going back in the six years and trying to assess each one, that there should be the same discussion applied in making equal value on it?

MS. McGONIGLE: Say that again?

MR. AXWORTHY: Would you take the same principle that you just applied to separation, and apply it to existing marriages?

MS. McGONIGLE: Oh, you mean put a limit on how far back you are going to go?

MR. AXWORTHY: Well, or say that the property sharing is based upon assets now held, and that there would only be a basis of discretion on previous assets, so we wouldn't get into all these problems we have heard tonight about dissipations and everything else. That would be agreeable . . . ?

MS. McGONIGLE: If you are asking if there should be just existing assets, I think so. I think that's what is the conclusion we came . . . Oh, you mean going back through to reopen? On that dissipation, I think the reason I see that there is to prevent deliberate avoidance of sharing, which people who are anticipating separating will engage in, and I think that while they have control of the assets they are going to find some way to make them exempt, and I think that that really does have to be there, although they may have to find a definition for dissipation that narrows it to that.

MR. AXWORTHY: Yes. It's just not the dissipation I'm concerned about, it's that whole question of trying to trace back beyond the fact into time, from the date of proclamation, and the different evaluation of values on different assets, and that we are simply saying that the property sharing should take place on those assets which are tangible now, and that there would be some discretion applied to those that were retroactive in effect.

MS. McGONIGLE: From the date of proclamation into the future, how are we going to deal with property?

MR. AXWORTHY: Yes, that would be 50-50 shared.

MS. McGONIGLE: I would have thought that family assets, since both parties have a right from the date of proclamation into the future, both parties have rights to that at the time of breaking up. It's the assets that exist in their possession that would be considered. The commercial question is the difference. I would think that sounds logical that it not . . . There's a situation though, something in the Act about a person being able to challenge the other party's disposition of an asset.

MR. AXWORTHY: Okay. Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Johnston, Sturgeon Creek.

MR. F. JOHNSTON: Ms. McGonigle on this Maintenance, I want to be brief. If one of the spouses, say the lady, leaves the husband and there's an order for separation, she has the right to maintenance in the standard of living that she has been accustomed to, which is what I believe you have been

talking about.

MS. McGONIGLE: No. I didn't mean in the standard to which you are accustomed. I don't think it's possible after separation, except in very wealthy circumstances, to maintain a standard of living for two people that separated that have lived together. —(Interjection)— I'll just go ahead. I must have misunderstood you. It seemed to me there was some discussion around the table and the standard they were accustomed to or . . .

MS. McGONIGLE: No. A similar standard of living for each spouse is a guideline that I would consider applicable to the definition of financial independence.

MR. F. JOHNSTON: Because, I was wondering, do you think we could get in quite a tangled mess financially with people when we come to Section 12(3), if the spouse, if the girl left the guy and the guy decided three or four months later to cohabitate or live common-law but is not married to the other person "has the obligation during cohabitation to provide reasonably for the support and maintenance and education of any child." I find that in this situation there is going to have to be an awful spread around of money in some way, shape or form.

MS. McGONIGLE: Yes, that is a problem that exists in law today and I don't know that we can solve the fact that men do this.

MR. F. JOHNSTON: Well, can we solve the fact that women do it, too.

MS. McGONIGLE: Well, they are the ones who can't get the maintenance if they are married to the guy who is doing it.

MR. F. JOHNSTON: Well, I know some girls with pretty good jobs. In fact, I know some girls that are lawyers that have pretty good jobs.

MS. McGONIGLE: Don't ask me why.

MR. F. JOHNSTON: But I must say that I misunderstood you or somebody else when we were talking about the same standard of living. So, that's fine if you didn't mean that.

MS. McGONIGLE: I did mean a similar standard of living. The wife and husband who are separated, neither should have a reduction in standard of living greater than the other.

MR. F. JOHNSTON: Greater than the other.

MS. McGONIGLE: With regard to the factors in Section 5(1) and the goal of financial independence of each spouse that the standards of living could be guidelined to go with financial independence.

MR. F. JOHNSTON: Okay.

MS. McGONIGLE: That doesn't mean that somebody has to be maintained at the level to which they were accustomed together because that will be considerably greater in most cases.

MR. F. JOHNSTON: Okay.

MR. CHAIRMAN: Mr. Adam.

MR. ADAM: Thank you, Mr. Chairman. Ms. McGonigle, just on a matter of clarification on that point that you raised as to the guidelines of financial independence on separation. I believe you gave an example that the wife was earning $600, and that the husband, who was away separated now, was suddenly earning $1,000.00.

MS. McGONIGLE: Well, whatever, yes.

MR. ADAM: What would happen, I just want to clarify in my mind, if the converse was the case. Let's suppose that there was approximately $600 or thereabouts on separation but suddenly the reverse happened and he was no longer earning $600, but he was now earning $400.00? What would the situation be there in your mind? What should happen?

MS. McGONIGLE: Well, I believe that in the Act that is considered. You're talking about either a change in circumstances or what the judge shall consider and that is part of it; his means and her means and their needs.

MR. ADAM: Not the maintenance but the financial independence, as I understand it. I believe that is what you are referring to; when you become independent of one . another on separation, and you're earning your way and he is earning his way and his goes up. I believe you would like to have that more equalized. Do I understand that correctly?

MS. McGONIGLE: I'm not sure about whether the standard goes up and up and up, that each spouse catches up. But it certainly shouldn't be such a wide gap that it is inequitable. I'm just suggesting a guideline that rather than look at something like a minimum wage, or a welfare level, let's look at financial independence as incorporating a similar standard of living, you know.

MR. ADAM: Well, my understanding is that once you are independent you are on your own. You're doing your best to improve your standard of living and so is the other spouse. But if something happens to reverse that situation, you know, I'm just wondering where you contradict.

MS. McGONIGLE: Well, change of circumstances is in the Act. I don't know what section it is but a change of circumstance has always altered the maintenance situation.

MR. ADAM: Thank you.

MR. CHAIRMAN: Is that all, Mr. Adam? If there are no further questions, thank you, Ms. McGONIGLE.

MS. McGoni Thank you.

MR. CHAIRMAN: Monsignor Larabee, please. Come forward.

LARABEE: I used to think that church law was quite complicated but since I have come here to attend these committee meetings, it is certainly not nearly as complicated as this.

The Bishops of Manitoba are not going to make any really specific recommendations to this Committee. Their concern, of course, goes really before a situation arises which is in the centre of most . of the discussion that is taking place. They would like to see, of course, much more marriage education programs available, especially in the case of teenage marriages, to enable the young people to be fully aware of what they are getting into when they get married, and not have to face the terrible situation to have a separation or have a divorce.

The church also likes to make clear that marriage is a public affair and even though a man and woman get married in a very small church or in a room, it still has social implications which are far-reaching and far beyond the room in which they are. And I think this is lacking in our society today. The church is doing as much as it can to try and prepare people for marriage but the state, I think, also has an obligation. Considering all these laws that we are hearing about now, it certainly is extremely complicated. I wonder how many people who do get married are aware of these terrible complications and implications of the marriage they are becoming involved in.

So certainly some form of counselling backed by the state certainly would be of great help. Like it says here, "A married couple has a right to the support of society and how is this to be accomplished. One, by drawing attention to whatever can weaken or undermine marriage stability and thereby weaken society itself."

So every marriage, then, affects society as a whole and the duty of the state, it seems to me, as much as possible is to try and prevent as many breakdowns as possible, for the betterment of the state and of the individuals, of course, by advocating measures that will support a healthy family life and contribute to the authentic development of all the members of the family unit. So this can come about, as I've said, by some form of marriage education — premarital education, that is.

As one reads the proposed legislation, one wonders about its underlined philosophy. What vision of marriage is conveyed to the people. Is it not possible — not to say desirable — that good legislation should educate the people about the values the government places on it and that witness very strongly to its priorities. It seems to me that the way the legislation is given, or the way it's enshrined in the words, it should portray or reflect the philosophy of the government.

We reaffirm our conviction that the family must always be a community of love, a teacher of values, and the foundation of society. We affirm also that marriage is both a vitally important social contract and a sacred covenant of love between husband and wife. As such, it calls for a permanent commitment to one another for life and a level of communication which includes the whole person of each partner — emotional, intellectual, physical and spiritual.

The laws of our province will continue to dictate the physical, moral and spiritual caliber of families and individuals and we believe that our politicians must hear from, and be exposed to those who truly believe in the nurturing and support of value of the family in society.

MR. CHAIRMAN: Thank you for your presentation. Mr. Adam.

MR. ADAM: Thank you, Mr. Chairman. Msgr. Larabee, it would appear, as far as I am concerned as a legislator, that it is quite difficult to legislate how people will live together and what relationship they develop together. The two bills that we are looking at this evening are, in my opinion, mainly disposition of assets and maintenance. But I understand your concern and I have read the brief that was presented by the Catholic ladies, and their concern appears to be that we do not have sufficient legislation on reconciliation. I believe that would be your prime concern. Am I correct in that?

MSGR. LARABEE: That's correct, yes.

MR. ADAM: Then do you feel that our legislation here is not adequate yet?

MSGR. LARABEE: Well, in that regard, I don't think it is especially adequate there on the matter of conciliation.

MR. ADAM: Perhaps as the Catholic ladies have suggested such as the law that exists in California.

MSGR. LARABEE: Yes' a Conciliation Court.

MR. ADAM: Yes. Do you think that that would be desirable legislation for our province?

MSGR. LARABEE: It certainly would help a lot. I think it would improve a great deal.

MR. ADAM: Thank you very much, Mr. Chairman.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Thank you, Mr. Chairman, through you to Msgr. Larabee. Father Larabee, first of all, I want to commend you as being the only religious organization that has made a presentation to us so far in this session. I would like to ask you if you have any particular field in the legislation that is before us that you would like to see a greater activity on the part of the various religious organizations?

MSGR. LARABEE: I don't quite understand what your question there is.

MR. GRAHAM: Well, Mr. Chairman, at the present time we appear to be, as legislators, trying to dot the "i's" and cross the "t's" in all the various fields of intimate personal relationships that exist in a marital endeavour. Is there some field of this that you think that probably the legislation should not be involved and that the various religious organizations should be playing their part, rather than the legislation on behalf of the state?

MSGR. LARABEE: I think the desirability of places whereby they can get premarital education is very important. I think perhaps the church could work together on that to see to it that couples who do get married receive all the possible indoctrination they can. I think it's extremely important that that be done and I think that the more that is done, I'm sure that will reduce a great deal the number of breakdowns that we witness today in our society.

MR. GRAHAM: Another question, then. Do you think the state is probably moving too far into the field of personal relationships in this respect?

MSGR. LARABEE: Well, no, I don't think so. The church really does not propose to tell the legislators what to do. They just want to make sure that their principles are respected and understood. Living in a pluralistic society like we do, it's extremely delicate and then very complicated to try and lay down a law that would appeal to all the people that we have in our society.

MR. GRAHAM: I have no further questions, Mr. Chairman.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman. Monsignor, my questioning is somewhat along the lines of Mr. Adam's and arises out of your basic contention that there should be much more done to support and strengthen marriage before we get into the types of situations that are being addressed in the bills in front of the Committee and the public at the present time.

You mention, in response to Mr. Adam, that you thought the concept of the Conciliation Court, for example, had some considerable features to recommend it. I'd just like to ask you if you could expand in that area, not on the subject of the Conciliation Court, but whether you believe that there are more things that could be done and should be done after marriage to reinforce and salvage deteriorating marriages, apart from the concept of the Conciliation Court to which you have referred? Have you been able to come up with any ideas that would be helpful to Manitoba generally?

MSGR. LARABEE: Well, I don't think so really. Just apart from the fact that to try, as much as possible to assist them and to give them counselling and help. I have nothing specific to say.

MR. SHERMAN: You suggested that the kinds of things that are necessary should be state-supported. How do you envisage the application of that kind of a philosophy that the state would provide the funding but not the direction?

MSGR. LARABEE: Well, I was thinking more of the church considering mostly the spiritual aspects of marriage and taking care of that aspect of it, and the state would be responsible for giving this part of it. For instance, making young couples aware of their financial problems that might arise and the legal aspects of it all, and so on. This is more this side of it. And the church would take care of the spiritual implications.

MR. GRAHAM: Would you care to comment on the main theme of the proposed legislation, as such. I recognize that your presentation to the committee — and it's a valuable one — has to do with a different aspect of the overall question. But do you have any views on the main theme of the legislation as such? Are you concerned with any inequities that you might feel could arise from some of the features of this legislation or are you satisfied, from your knowledge of it, that it would achieve essentially, you know, a desirable equity without imposing too many new inequities?

MSGR. LARABEE: I think on the whole there are many good things about it. There are things, I think, like the no-fault concept which is something that the church would rather not agree with, I don't think, and the unilateral opting out, I think, is something else.

MR. SHERMAN: The question of opting out. I just w want to get your position on that straight in my own mind. The legislation as it's framed at the present time advocates a mutual or bilateral opting out. Are you saying that the church's position feels that . . .

MSGR. LARABEE: I thought it was the unilateral opting out that was being proposed. . Am I wrong on that?

MR. SHERMAN: No, it's mutual opting. . .

MSGR. LARABEE: I misunderstood, I'm sorry.

MR. SHERMAN: Well, what would the church's position be?

MSGR. LARABEE: I think that bilateral is acceptable.

MR. SHERMAN: The church would favour the concept of bilateral rather than unilateral . What - has been considered here is a sixmonth period for opting out after the legislation takes effect . If unilateral opting out would be acceptable to the people whom we represent in this Legislature, it still would not mean that the universal law from that date forward would permit unilateral opting out; would be limited to a six-month period after the law took effect. Would that in any way affect the church's position. . .

MSGR. LARABEE: I don't think so.

MR. SHERMAN: I think that's the extent of my questions, Mr. Chairman.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: Well, the Member for Fort Garry has asked a number of questions that I was going to ask. However, I did have two other thoughts. One failing government involvement in premarital education which the churches now seem to be heavily involved in, do you feel that possibly the printing of a pamphlet that is attached to the marriage license with the warnings of possible bad side effects — I know it's a love situation at the time of marriage — would that suffice if we couldn't afford to get government involved?

MSGR. LARABEE: Well, I guess it would be better than nothing , but I don't think it's very satisfactory. I wonder how many people would be bothered reading the pamphlet, but anything that's done that would enhance and help would be certainly of value.

MR. WILSON: In other words, anything is better than nothing. I wondered if you would care to comment on — the church doesn't seem to have any voice against the current fad, if I can use the expression, $8.00 Bishops and $3.00 Ministers which seem to be available through the mails — they haven't taken a position — these people can marry people if they can get a provincial license. I wondered if there was any thought of strengthening your opposition to that. In other words, you're talking about the churches being involved now in education and yet we're allowing people to marry people who simply can mail away for a certificate to the United States.

MSGR. LARABEE: There's something radically wrong there.

MR. CHAIRMAN: Do you feel that is really relevant to the bills before us, Mr. Wilson.

MR. WILSON: It's for my information.

MR. CHAIRMAN: Mr. Toupin.

MR. TOUPIN: Mr. Chairman, I take it, Monseigneur Larabee, that we're dealing with what I would consider to be the whole person. Your concern will be with the part of the person that is not always tangible. Would I take it that you're advocating more preparation necessarily to marriages?

MSGR. LARABEE: That's right.

MR. TOUPIN: That there be if at all possible some type of a partnership between different religions and different levels of government and whenever possible that those concepts of partnership be reflected in legislation.

MSGR. LARABEE: I think that's a very good idea.

MR. TOUPIN: But apart from that, do I take it equally that you'd want the Crown, the different levels to go beyond what can be reflected in legislation and deal with a better recognition of responsibility at the school level, etc?

MSGR. LARABEE: I think certainly they could do more there, yes.

MR. TOUPIN: I know it's not necessarily relevant — I still respect the questions of Mr. Wilson in regard to your presentation, and I appreciate your presentation — regard to what can be done pertaining to what is not necessarily tangible in the three bills before us and exactly what could be done to attempt to rectify certain points according to your presentation, could you attempt to tell us what could be done in a more tangible way, either related to the bills or closely tied to the bills.

MSGR. LARABEE: I wasn't prepared to go into all that. I can't answer that, I don't think, properly tonight. The point I wanted to make was that I think that we do need more premarital instructions, both from the church and I think from the state. I think that's really important, but as to how that is going to be done, I really haven't thought that all out completely.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I'd like to suggest again, and clarify in my own mind the position of the church in this respect. Is it fair to say that it's your statement that this particular bill we have before us, that by creating a more equal partnership in the marriage in itself can help strengthen the marriage — is that a correct assertion?

MSGR. LARABEE: Yes, that's true.

MR. AXWORTHY: So the passage of this bill and the principles within it can in fact themselves be a help in creating a stronger commitment to the marriage.

MSGR. LARABEE: Well, certainly, we'd endorse that wholeheartedly.

MR. AXWORTHY: You would endorse that completely. One other question then, when you advocate a greater degree of education, would you follow the laws in existence in some of our jurisdictions which either require two things: one, that the age of consent for marriage be raised; and secondly, that there be a certain time period between the application for a marriage license and the actual time that the marriage takes place, that there is time for that counselling and education to take place. Would those be two measures that. . .

MSGR. LARABEE: Very good, very good.

MR. AXWORTHY: Those would be two useful things. Okay. Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, I apologize for getting into the act again, but there was a question I would like to put to Father Larabee. We find in the legislation at the present time that before two people can opt out of any marriage arrangement that they have to have independent legal advice. Would you go so far as to recommend that before any separation occurs that they should have independent religious advice.

MSGR. LARABEE: Well, I think it would be certainly very desirable. I don't know how you could enforce that but it would certainly be a good thing. I think by and large a lot of people do approach their minister or priest when marriage trouble comes up; they do approach their priest I think as a matter of course.

MR. GRAHAM: One other question, Mr. Chairman. In your study of these two bills, do you see a possibility that there may be a greater tendency for people to go rushing to their lawyer for advice rather than going to their religious advisers?

MSGR. LARABEE: I don't see why.

MR. CHAIRMAN: Are there any further questions? Mr. Toupin.

MR. TOUPIN: Mr. Chairman, if I may, could I ask you, Monseigneur Larabee, to add a few comments pertaining to your opposition to the no-fault system.

MSGR. LARABEE: I think it leads to a bit of irresponsibility. You can't have a situation where there is no fault, because obviously there has to be fault. If there's no fault then what's the problem. I can't appreciate this no-fault concept.

MR. TOUPIN: Mr. Chairman, could I ask Monseigneur Larabee, as an example, if a couple are no longer in love without specifying fault, that to me would be an adequate reason for wanting to separate and null the marriage. Now that doesn't mean that there should be proof of fault in court. Would you agree with that?

MSGR. LARABEE: Yes, I'd agree with that; that would be acceptable.

MR. CHAIRMAN: Mr. Henderson.

MR. HENDERSON: Mr. Chairman, I'd like to ask Mr. Larabee, I think it's the same question as what Mr. Axworthy was asking. Do you really feel that this type of legislation here where they can go to lawyers and opt out of the marriage and get settlements on this basis, really strengthens marriage and that it will not lead to more divorces and separations?

MSGR. LARABEE: I don't see why it should. The questions you're discussing here are questions that happen once the marriage is broken. The church wants to go before that, anticipate this problem.

MR. HENDERSON: I understand how the church wants to move, but do you not feel that legislation like this where they can get settlements like this, that it would probably cause them to go to their lawyer much sooner rather than try to make their marriage work out.

MSGR. LARABEE: I don't think so. I think people by and large would like to see their marriage last would do everything they can to try and keep it. But it's a fact that you have to face, that marriages do break down, and once they do break down of course then we must try and find a satisfactory solution, one which is agreeable to both parties.

MR. HENDERSON: If legislation such as this goes through, do you possibly see more marriage by contracts in the future? Would you not see it as such? Well, just a straight business arrangement in many cases — the rules laid out, they'd get married on that basis.

MSGR. LARABEE: Are you referring to common-law relationships?

MR. HENDERSON: Well yes, you could pretty near say that. .

A MEMBER: A premarital contract.

MR. HENDERSON: Yes, a premarital contract, that's what I mean.

MSGR. LARABEE: I wouldn't say that.

MR. HENDERSON: The other question is, how do the churches recognize marriage by a premarriage contract like that?

MSGR. LARABEE: A common-law relationship you mean? The church doesn't really recognize them. They're there can't ignore them. They're present, but the church certainly doesn't approve of them and doesn't sanction them in any way.

MR. HENDERSON: Do you know if there's any churches that don't recognize them?

MSGR. LARABEE: I don't know.

MR. CHAIRMAN: Are there any further questions? Mr. Jenkins.

MR. JENKINS: Through you, Mr. Chairman, to Monseignor Larabee. I really think that the question — and I don't want to put words into the mouth of the Member for Pembina, Mr. Henderson — but it's a known fact that in Europe there is a standard marriage contract drawn up with church sanction before marriage and it is recognized. Is that not a fact?

MSGR. LARABEE: In some countries, yes. A civil marriage takes place first and then they have the religious marriage after.

MR. JENKINS: That's right, and that's recognized by the church.

MSGR. LARABEE: Yes, that's right.

MR. CHAIRMAN: Are there any further questions? If not, thank you, Monseignor. Bishop Hacault please.

A MEMBER: He's not present.

MR. CHAIRMAN: Thank you. Robert Carr.

MR. GOODWIN: Mr. Chairman, my name is Goodwin. I'm the President of the Manitoba Bar Association. Mr. Carr has been kind enough to defer to myself and to Mrs. Myrna Bowman who is going to be presenting the formal brief on behalf of the Bar Association and its Family Law Section. My function here tonight then is a very limited one and that is basically to introduce Mrs. Bowman who, as I say, will present a brief.

I wanted to make two statements if I might; the first is a general statement and the second one is a specific statement. First, generally, I'd say that the Bar Association is not here to debate tonight the basic principle that marriage is a form of partnership between the spouses and that there should be some equitable sharing of assets acquired during the duration of the partnership. We're here rather because of our concerns with some of the particulars suggested in the implementation of this principle, and I think those will be discussed with you by Mrs. Bowman in due course.

I wanted to though, address a few comments on a specific item which was raised last night by Mr. Spivak and by Mr. Cherniack, and that is the question of the deduction of tax liabilities in the calculation of the values of the assets to be considered in the accounting. An apparently simple solution is illustrative of the sort of concerns and problems that will arise out of the legislation. For example, problems as I see, that you have to make certain basic assumptions. You have to make an assumption that the tax rates at the time of the disposition, will they be higher or lower than at the point in time when the accounting takes place? You also have to assume the marginal tax rate of the owner at the time of the disposition. For example, will the owner have any other income which might increase his marginal tax rate? Will the asset value be greater or lesser than its value at the time of the accounting? You also have to make some assumptions about the averaging provisions of the Income Tax Act. Will general averaging apply, as it does automatically in certain circumstances? Will the proceeds received on the eventual disposition of the asset qualify for the purchase of an Income Averaging Annuity? Will in fact, if they do so qualify, an Income Averaging Annuity be purchased? If it is purchased, over what period of time will it be taken — one year, two years, ten years, lifetime? These are the sorts of problems which can arise out of what is basically an equitable solution but which will have to be examined in great detail, if as and when the bill is implemented. With that sort of specific comments on the taxation aspect, I ask Mrs. Bowman to present the brief on behalf of the Bar Association.

MR. CHAIRMAN: Order please. You are aware, that I'm sure the Chair has a very long list of persons wishing to speak. Mrs. Bowman is on the list, but are number of other persons before her. Now if you and Mr. Carr wish to change places, the Chair has no objection, but I feel that others on the list should wait in their proper turn.

MR. GOODWIN: Well, Mrs. Bowman is in fact presenting the brief on behalf of the Bar Association, Mr. Chairman. It says Family Law Subsection, but it is the Bar Association's brief, having been approved by the Executive of the Bar Association.

MR. CHAIRMAN: The Chair will be guided by the Committee.

MR. CHERNIACK: Well that means that Ray Taylor, Mrs. Goodwin and Margaret Johnson and Terry Gray would have to step aside for them.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Mr. Chairman, speaking to your statement, Mr. Carr and Mrs. Bowman together would be giving their brief.

MR. GOODWIN: No, if I may, Sir, Mrs. Bowman and myself are presenting the Bar Association brief and Mr. Carr deferred to us, exchanged places with us.

MR. CHAIRMAN: I have yourself and Mrs. Bowman down as two separate names.

MR. GOODWIN: I appreciate that. That was an error, Mr. Chairman. It has always been intended that Mrs. Bowman and I would appear together on behalf of the Bar Association.

MR. CHERNIACK: And Mr. Carr has deferred. So, Mr. Chairman, I think as a Committee we're going to hear them all. It doesn't matter in what order. I just hope that the people who are being set aside in order to make this possible won't be offended by it. If they are, I wish they'd speak up so that we would know that we are offending them. Other than that, it shouldn't matter to us whom we hear, and don't see any objection why we shouldn't hear them. I don't know why Mr. Carr should not have just stepped aside and let the next people speak if he wasn't prepared to, but if there's any particular importance or advantage in having the Goodwin-Bowman group heard now rather than tomorrow — if they're going to be away or something like that — I for one don't care.

MR. GOODWIN: If I may, Sir, on that point, Mrs. Bowman is due to have a trial tomorrow and that is why there was an arrangement between the two persons to exchange positions.

MR. CHERNIACK: Well, that's what this is. Mr. Carr has deferred. Two for one is what you have.

MRS. BOWMAN: Mr. Chairman, I'm quite prepared to come back tomorrow night if that's more

convenient, but I cannot be here during the day. That was the only problem that I have.

MR. CHERNIACK: Mr. Chairman, I really don't. . . Seriously, we're spending a lot of time on this. I'd be happy to hear Mrs. Bowman. I only hope that the people that are being set aside for her to be heard are not offended, but I don't hear any screams of distress — oh, I think I see some.

MR. MURRAY SMITH: Mr. Chairman, if Mrs. Bowman is coming up soon, it would be helpful to me to know how long the presentation might be. If it's a ten-minute presentation, that's one thing; if it's a 90-minute presentation, that's something else.

MR. CHAIRMAN: Would you come forward please so that we will all hear your remarks properly?

MS. TERRY GRAY: My name is Terry Gray. I'm one of the ones who is being considered for deferral. I am in the position of having my small daughter here and we won't be able to stay till midnight. My remarks would take less than four minutes at the most, so I do think in this situation I would be quite upset at having my place in line deferred.

MR. CHAIRMAN: Thank you. Mr. Henderson.

MR. HENDERSON: Mr. Chairman, Mr. Goodwin mentioned before he started that Mr. Carr had deferred and he said that Mrs. Bowman was with him and she would be presenting her part of it. I think when we heard Mr. Goodwin that we consented to the switch and I think we should hear Mrs. Bowman now.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, why don't we agree — I don't know if Mr. Smith would agree — but I think Mrs. Gray who has a young child — four minutes — why don't we hear her and then go to Mrs. Bowman if there are no other objections. We're going to be here until 12 o'clock anyway and that would be seem to be a reasonable compromise. I don't know whether Mr. Smith has any objections to that being done, but Mrs. Gray said that her's was short and she has a small child with her.

MR. CHAIRMAN: Can I indicate to Mr. Smith that he would be the next on the list after the present arrangement has been sorted out — after the Bar Association's brief.

MR. SMITH: Could I repeat my question? Has anybody any notion what the next presentation will be?

MR. PAWLEY: Mr. Chairman, could I suggest another accomodation? Could we agree as members of Committee to hear Mrs. Gray first and then Mrs. Bowman, and then hear Mr. Smith's also tonight. I think that will probably complete our evening's work. I would be surprised if we had time for any further briefs, because I think that would take us right up to 12 o'clock. If we could make that commitment, to hear those three briefs and start with Mrs. Gray because of the young child being with her.

MR. CHAIRMAN: Is it agreed? (Agreed)

MR. CHERNIACK: I wanted to ask Mr. Goodwin a question.

MR. GOODWIN: Yes sir.

MR. CHERNIACK: Mr. Goodwin has told us all of the implications in netting out after tax recognition. Now that's very helpful. Do you have any suggestion to make?

MR. GOODWIN: No, Sir. I really don't. I just thought of the problem.

MR. CHERNIACK: But now that we know that there are many assumptions that will have to be made, can you not, as a guide to us, tell us how you think we ought to deal with that problem?

MR. GOODWIN: The ultimate solution of course is to negotiate with the Federal Government, the appropriate agreement.

MR. CHERNIACK: That is of course being done.

MR. GOODWIN: That's right, and I suspect that it's the classic dilemma situation that you will not be able to resolve without their concurrence in this area. You will have to live with the inequities, such as they may be. My only point in making the illustration — I didn't comment on all of the problems because there are many problems, but just a few of the ones that came out of what appeared to be a simple equitable solution to the other problem last night, was that it in itself is not a solution and it raises some problems as I'm sure other solutions will do as well.

MR. CHERNIACK: But, failing any better advice from you I'd be inclined to go ahead with what we discussed yesterday and net it out. Would you agree that that is the thing to do, to create a rough form of equity?

MR. GOODWIN: Well, I think one always searches for perfection, Sir, perhaps that would have to be done, yes.

MR. CHERNIACK: Yes, thank you very much.

MR. CHAIRMAN: Thank you. I would then call on Terry Gray please.

MS. TERRY GRAY: Thank you very much. I'll really only limit myself to a few remarks on behalf of the Voice of Women in support of the two bills. We wish to commend the Government of Manitoba for framing Bill 60 and 61 and for recognizing one of the most serious social problems of our time that is the position of single parents who are required to assume total responsibility for their children in the face of the inadequacies of the present law. We've noted earlier on in these hearings that while 75 percent of all maintenance orders are uncollected and unenforced, the courts are busy prosecuting

parking meter violators.

The Family Maintenance and Marital Properties Act is a strong indicator of this government's concern that children should not become victims of poverty through the irresponsible behaviour of one member of the family after marriage breakdown. It also indicates a concern and consideration on the part of this government for the present unequal opportunities in finding jobs for men and for women and the salary distinction between salaries for men and women when it comes to considering maintenance for the children. We considered that maintenance under this bill should be guaranteed and supported by either the courts or a central regulatory body. We feel that under no circumstances would the intentions of this bill be served if new clauses were introduced committing a unilateral opting out.

This legislation, we feel, is based on the principle that family property and income must be shared. And this is the principle here, in order to guarantee the rights of each family member. Those who opt out of this plan out of self-interest or of self-protection contribute to the continuing dependency of one or more of the family members on one wage earner, and this can often lead ultimately to dependency on welfare or substantially difficult struggle for survival once the relationship is dissolved.

We think the law should apply to existing marriages on a no-fault basis. We recognize that this legislation is in some areas awkward in its wording and would be subject to interpretation of individual family court judges, but nonetheless the Voice of Women believes that passage of the present bills is necessary now in order to prevent the continuation and the widespread injustices that we've been hearing about during these hearings.

And after the amount of study and preparation that has gone into the preparation of these bills, we do believe that this program is long overdue and that its early passage will in fact establish very strong progressive Human Rights Legislation in Manitoba and is a credit to this government. Thank you.

MR. CHAIRMAN: Are there any questions? Mr. Graham.

MR. GRAHAM: Mr. Chairman, through you to Mrs. Gray.

MS. GRAY: Ms. Gray.

MR. GRAHAM: Miss Gray, I'm sorry.

MS. GRAY: Ms.

MR. GRAHAM: Ms. Gray. You mentioned the fact that 75 percent of all maintenance orders are unenforceable. Is that really unenforceable or does it mean that they are in some phase of being tardy or partially incomplete?

MS. GRAY: This is the figure that was quoted earlier on today; this is roughly the percentage of maintenance orders that remain uncollected, that are unsolved, have not met the conditions of the court.

MR. GRAHAM: Does that mean that they are not completely unsolved or partially unsolved?

MS. GRAY: I have to mention to the meeting, if you'll excuse me, that the Voice of Women has looked at this situation only in terms of principle and not in terms of specifics; that we have been asked in the past to support the Manitoba Action Coalition for Family Law of Reform and it's in that spirit that we appear here this evening to express our support for the principles of these two bills. So, it would be very difficult for me on behalf of the Voice of Women to answer specific questions.

MR. GRAHAM: Well, thank you very much. The only reason I raised the question is because I have heard that figure repeated on numerous occasions here, and I was just wondering to what degree — 75 percent to me seemed to be a pretty large figure; if there was no attempt made at enforcement on three quarters of the cases, then we are in real serious difficulty.

MS. GRAY: That's why these bills are important. I agree with you, it is a serious situation, and it is for this reason that we applaud the government's action in this area which is so sensitive in the area of human rights; it is necessary, and it is a serious problem. And it is not necessarily a problem that can reflect a middle-class situation. It's a situation related directly to poverty and directly to women and children, and this is again why the Voice of Women is so concerned about it.

MR. GRAHAM: A second question. Have you done any study at all in the field of those unenforceable maintenance orders?

MS. GRAY: No.

MR. GRAHAM: Then you wouldn't know the reason why there was no enforcement. Was it because there were no finances available?

MS. GRAY: No. Then you are getting into specific cases again, where there is an infinity of reasons why. They are very common reasons, that I think everyone is acquainted with. Members of the family usually skip the province or find various ways of evading. That's one aspect. The central aspect is that there isn't strong enough legislation to enforce these orders and I think that's why we are here.

MR. GRAHAM: We have also heard recommendations from other groups which I believe

indicated that if the order was unenforceable through the courts, that perhaps the state should pick up that maintenance order. Is your group in favour of that?

MS. GRAY: There have been some good suggestions here today. Our organization hasn't studied that aspect of it, so that I could only speak personally. I would think that a central registry was one suggestion that I heard earlier on today, which would appear to be an effective suggestion or an effective solution. There are solutions to these problems. Again, I can only restate that our organization supports the bills in principle for the reasons I've said. As for administrative solutions, I think you will find many very good strong excellent suggestions from the lawyers that you have heard over the past day or so who could suggest them more effectively than I could.

MR. GRAHAM: Thank you very much, Mr. Chairman.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I would like to ask Ms. Gray a question about the opting out provisions and the position of her organization with respect to the unilateral opting out. I think there has possibly been a kind of a foreshortened consideration and understanding given to the term "unilateral opting out," and I admit that I'm probably as much at fault as anybody for that, Mr. Chairman. We've discussed it as though it were a final and a finite type of a decision, unilateral opting out that would be made by one partner in complete independence of both the other partner and everybody else. In fact, the recommendation of the Law Reform Commission, as you are aware Ms. Gray, is that unilateral opting out would still be subject to judgment at the judicial level, because judicial discretion would apply in terms of equal sharing of property.

The Commission's recommendation says, if I may just remind honourable members of the Committee, that any sharing. . . Page 131 of the Manitoba Law Reform Commission Report, Part I and II, dealing with the question of opting out and unilateral opting out, the Law Reform Commission says in sub-paragraph (d) at the bottom of Page 131, "Upon termination otherwise than by death of the standard marital regime of a couple to whom Recommendation (c) applied — and Recommendation (c) has to do with the unilateral opting out — " their shareable estate should be determined with the proclamation date being substituted for the date of the solemnization of the marriage and any sharing of the value of the property previously acquired during the marriage should be in the court's discretion in awarding an equalizing payment."

In other words, the Law Reform Commission in suggesting in its majority opinion — and I concede that there is a separate recommendation — but in its majority opinion, that there was much to be said in favour of the unilateral opting out concept, that it was not to be a measure that could be undertaken without regard for equalized sharing of property. But judicial discretion would apply at that point to make sure that there was an award of an equalizing payment in this area. So my question — if you'll permit me, Mr. Adam —(Interjection)— Well so have many other questions. The subject at hand is the position of the Status of Women on the question of unilateral opting out as it was proposed by the Manitoba Law Reform Commission. When you say that you are opposed to unilateral opting out, are you opposed to it as an isolated kind of action or are you opposed to the Manitoba Law Reform Commissions' recommendation?

MS. GRAY: Again, speaking in the context of my organization, I can only say that we felt that the opportunity to unilaterally opt out of what in principle is to be an equitable sharing partnership, would defeat the purposes of the bill.

MR. SHERMAN: I'm sorry, would you just repeat the last part of your statement, that the principle of a judicial discretion for an equalizing payment. . .

MS. GRAY: It was too simple I think.

MR. SHERMAN: No doubt it was — that the principle of an equalizing payment would defeat the purposes of the bill?

MS. GRAY: The principle, again speaking in the context of the organization that I represent, it was expressed that the principle of unilaterally opting out would defeat the purpose of the bill, which was that marriage is based on a joint, equal partnership which precludes any unilateral decision. That problem has been taken care of, as I understand it, in the bill, by providing for joint opting out of, under advice of lawyers, and for this reason we find the unilateral clause unacceptable.

MR. SHERMAN: So what you are telling me here is that it's the principle of the equal question, not the equalizing payment?

MS. GRAY: Quite right, yes.

MR. SHERMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: No further questions. Thank you, Ms. Gray.

MS. GRAY: Thank you.

MR. CHAIRMAN: Perhaps I should indicate to those who have been waiting so patiently, that it has been the inclination of the Committee not to sit beyond midnight. The Committee is scheduled to meet again tomorrow morning at 10 o'clock. Perhaps I could indicate the next few persons on the list, and anyone not wishing to wait may leave. Following the Manitoba Bar Association's presentation is Murray Smith, and then Ray Taylor, Mrs. Goodwin, Margaret Johnson, and Robert Carr. Anita

Turnbull is after that. We now call on Mr. Goodwin and Mrs. Bowman please.

MRS. BOWMAN: Thank you, Mr. Chairman. I am here, as Mr. Goodwin indicated, as Chairman of the Family Law Section of the Bar Association. That section consists of some 25 to 30 practising lawyers whose professional practice is focused in the area of family law. We have been discussing the Law Reform Commission Report for over a year now, and the resolutions which have been put before you by the Clerk are as a result of those discussions over a long period of time, together with such examination as we were able to make of the legislation which was recently provided.

I want you to consider everything that we will be presenting to you in the context that we have not been able, by reason of the time factor, to give this legislation the kind of detailed fine-tooth combing that legislation of this magnitude should have. There is no other legislation that has come before the Legislature, I think in my lifetime at least, of the magnitude of this legislation. It makes CFI and the Hydro transactions look like kid stuff.

One of the people who appeared on a previous hearing before the Law Reform Commission said that this is the largest single property transfer since the Hudson's Bay Company was granted rights to the northern half of the continent in 1615. That is not an exaggeration and it's not necessarily a bad thing, but it sure is a big thing.

The section, as I said, looked at Bill 61, first of all, in the light of the studies that we had made of the Law Reform Commission Report. There are five specific resolutions or principles which we have adopted, which are before you, with respect to the property bill.

First of all, the section supports the deferred equal sharing of the value of all assets acquired during marital cohabitation. We suggest the date of valuation of the assets should be the date of the delivery of the notice or the commencement of proceedings for the valuation and accounting.

We support the proposal that there should be immediate joint ownership of the family home purchased in contemplation of, or subsequent to, the marriage. We are however opposed to immediate vesting of joint ownership in all family assets as set out in Bill 61, and the proposal that we have adopted with respect to retroactivity is basically the proposal recommended by the majority of the Law Reform Commission, which will provide for unilateral opting out with the right of the person against whom that is exercised to apply at the termination of the marriage for a share in the ousted assets, that share to be determined by the court on the basis of the contribution of the spouses to the marriage. And the contribution to the marriage — not to the acquisition of the assets, you know — would include any or all of the following: physical contribution, financial contribution, or the common intention of the parties as evidenced by their conduct and acts. Any assets acquired subsequent to the coming into force of the Act and the increase in value of the assets previously acquired would be shared equally unless there had an agreement to opt out.

We feel that the same provision with respect to opting out should be available to married couples moving into Manitoba from another jurisdiction.

The last point in respect to this bill is that we are opposed to any provision of Bill 61 which would invalidate or reopen pre or post nuptial agreements or separation agreements entered into before the Act came into force.

And finally, we do not agree with the provisions as originally presented in Section 23 and 24, which would have made people liable retroactively for accepted gifts or dissipation of assets prior to the legislation. That, I take it, has been remedied by the amendments to the Act.

I would like to deal with the areas separately. First of all, with respect to the family assets and the immediate joint ownership thereof, as the matter was stated in the original bill, the potential complications, particularly with respect to third parties, were horrendous. The amendments which we received yesterday have diminished those problems, but they have certainly not eliminated them. There remain other problems with that concept and I think that you should remain aware of some of them.

First of all, as is the difficulty with any scheme of joint ownership and management, there is no provision in the Act or elsewhere for the problems that arise when the parties cannot agree as to the use or disposition of the assets. There is no mechanism, short of an application to the court or an accounting, in which instance, of course, the parties will in any event receive their share of the value if that should become necessary under the general scheme of deferred sharing. So that the joint ownership is really of no significant value in that respect.

The problems, of course, if you were to include income in a family asset I think have already been dealt with at some length and I consider them insurmountable.

The result of the fact that you have these difficulties with third parties, of course, is going to work a hardship in some instances on persons who have, for example, a wife who has been deserted by her spouse. He may have gone off to another province. She may not know where he is, even. That's not an uncommon situation. That women is not able, under this Act, to dispose of an asset such as an automobile or piece of household furniture, which is a family asset, without her spouses consent, unless she goes and applies for a court order.

Now, the first version of the Act specifically forbade her to do that. The second version says that if

she does it, it's a wrongfull act and she is accountable for half the value. In fact that may mean that although she may sell the car in order to provide food for her children whom her husband has deserted, when the bum shows up again she has got to fork over half the money that she received for the car, even though it has already been spent for household purposes. If the wife wants to borrow on the car or on the furniture, again she is not going to be able to do that.

Now I recognize that the amendments say that the third party is not liable unless he has notice that the asset is a family asset and the other spouse does not consent. However, in dealing with any kind of financial instiution, or commercial vendor, car dealer, anyone of that sort, one of the first things they are going to ask you in making a transaction, particularly one involving any credit at all, is about your marital status, the circumstances of your employment, and that sort of thing. And it is clearly going to come to the attention of those individuals that you are indeed a married person and it may well be evident from the nature of the asset that it is probably a family asset. So that those people will not wish to deal with one spouse without the consent of the other.

Again I say, particularly a deserted woman, may have considerable difficulty as a result of that provision and be compelled to go and make a court order in order to deal with things that now she can deal with without any particular problem.

The kind of situation that I described, of course, is going to prevail not simply for a deserted wife, but wherever one party simply takes off without coming to a complete resolution of the family problems. And that occurs quite frequently. We also foresee problems that will occur when an asset is disposed of without consent by a partner and not wishing to take the remedy of suing your spouse while you're still living with him, you simply seethe in silence for a number of years and then ten years, fifteen years, down the road when you come to a separation, these kinds of arguments will again be raised, and there will be great disputes over who sold what and what they did with the proceeds and whether they really did divide them or they didn't.

The difficulties, I think, are far in excess of any benefits that could possibly arise. The legislation incidentally, as has been pointed out before, does not provide for an equal sharing of the unregistered debts which may have been incurred for the purchase or acquisition of the joint assets, which are going to now become joint for the first time. That is a defect that could be remedied, of course, but it is certainly a serious one at this point.

I sugg,.st to you that so far as the position of the dependent wife in the home is concerned, this legislation is going to be of very little value to her at all. If she is in the position of being subject to a dominant spouse, he is going to continue to deal with the property as he has done in the past, and her remedy is going to be to take legal action in order to terminate the regime, rather than to sue him. The actual provisions of the Act really give her theoretical rights but nothing that she can practically enforce until and unless she is ready to terminate the regime, at which point she would, in any event, be entitled to one-half of all that had been accumulated at that point.

So I suggest to you the benefits are illusory and that in fact they amount more to a pacifier or soother for the people who feel this is a theoretical victory, than to any real benefit. The disadvantages, I suggest, are the inconvenience, the added expense which is necessarily involved when credit granters and other financial institutions are going to require further documentation and signatures which they don't now necessarily require of people making transactions regarding automobiles, boats, and other kinds of ordinary assets.

The only significant benefit, in fact, that I can see to this provision is that it will indeed mean added income for lawyers. Now that is a benefit in some views, it is a detriment in others. I do have to say that I think you have done quite enough for us in the other aspects of the bill and we don't want to be greedy. I think that we could well do without the extra income that will be generated by this proposal.

Now going on to the really major factor, which is the question of retroactivity and the problems that are raised by that and the various solutions that have been proposed. I must say that the provisions of Section 22, as read together with Section 28, are completely beyond my comprehension. I cannot understand how they could possibly be expected to operate together. Section 22 says that you are out of the regime if you are separated by a court order, or a petition filed for divorce before the Act comes into effect. —(Interjection)— Well, I don't know that it has been changed yet. Well, the recommended change, I think, is not an improvement but I'll come to that later, if I may.

In any event, I'm dealing with the amendments as they were up until yesterday evening, which is the last version that I have and that is as I have suggested. And then when you look at Section 28, even though you are separated by a court order, you are back into the regime again unless your order deals with the shareable assets, which almost no separation orders do, or you have an agreement dealing with it. And then only to the extent that the assets in this Act are in fact dealt with by the agreement. And as was pointed out earlier, I think by Ms. Allen, that means in effect that almost every separation agreement is going to be silent on some aspects of the standard marital regime, not surprisingly since they were drafted before the standard marital regime was around. Very few agreements deal with commercial assets, which is of course the major area which is going to be

opened up by the provisions of Section 28.

As it now stands, it will permit a spouse to retain the assets acquired under an agreement and ask for an accounting as to the balance of the assets which were not dealt with in the agreement. Now, even though a commercial asset may not have been dealt with in the agreement because there was no need to deal with it, it may have been taken into account in the bargaining between the parties. I don't know of a single separation agreement that I have ever seen that dealt with the rights to, for example, the husband's pension fund at work. Why would anybody put that in? No need to do it at all. So that kind of an asset has not been dealt with in any agreement, and a wife who may have for example, and commonly does, receive the whole of the equity in the house is going to again be able to come back and ask for half of the Widget Factory, or half of the pension fund, whatever was left out. Clearly that is an unequitable and unreasonable solution. Whereas this poor soul who has got, under Section 22, a court order that merely says her husband is not allowed to come and beat her up anymore, is not going to get anything at all.

The two sections simply cannot be intended to work together. Again, in Section 28, it provides that a written or oral agreement made prior to May 6th, will be acknowledged and honoured. But anyone who has had the bad judgement to enter into an agreement after May 6th, written, witnessed by lawyers, entered into after careful thought, is out of luck unless it is subsequently confirmed according whatever the terms of this Act come out to be by the time it has been finally passed and when it is proclaimed. This leaves people in a totally impossible position between May 6th and the coming into force of the legislation. They will not be able to determine for sure whether they have an agreement or they have not.

The retroactivity issue, I think, has to be looked at in terms of the purpose of the legislation , and none of us, I think, who have appeared here would argue with the principle that it is to create a just and equitable distribution of the property acquired during the marriage. The system, however, that has been adopted of general deferred sharing is, in fact, that kind of a scheme. It is a legislated contract for those people who have not chosen to get another contract. It's a sound concept, and for those who marry in the future and those who wish to adopt it, it is going to do the job, with a few technical changes, but basically it's a sound scheme.

Now marriage is a partnership, true, and in many cases people intend that it will be an equal partnership. But that is not the way it has always been in the past. Partnerships have been unequal and that is probably one of the reasons why we are all here tonight. But if the parties contemplating marriage now find that they have a basic disagreement about what kind of contract, what kind of division , equal or unequal , they want to have, they have the option of not marrying if they can't resolve that difference. Those of us who are now married, of course, no longer have that option. People married for years have planned their affairs and many of them do, in fact, plan their affairs and some of them even consult lawyers and make sure that they know what the law is, and they've made their plans on the basis of that law. Now you are changing this for them. You are not asking their opinion about it; you are simply rearranging these affairs without their consent. Many do understand, as I said, for example, that their pension fund or their business is theirs, and now all of a sudden it is not going to be theirs. Now that may well be just in many cases. The suggestion that the regime not apply to people who are now separated solves the problem for those people in one way but I think it works an injustice in the other. But for those people who are still together, they may still be together because they do have plans that they feel give them sufficient security that they are prepared to put up with what is, in many ways, an unsatisfactory marriage. But you are taking the props out from under them, particularly where they are presently on bad terms and there is no possibility for them to obtain an agreement with their spouse on anything, even what day of the week it is, much less on a variation of the standard marital regime.

Now, you are creating, in this legislation, machinery designed to produce justice and correct existing injustices. That's what it will do, as I say, in many cases. But let's look and see how this machine is going to work when it's applied retroactively to people who perhaps are not in average circumstances.

Take, for example, a wife who has a house in her own name, with no separation agreement. The house was transferred during the course of the marriage because of an inprovident gambling husband. Perhaps he was a drinker. I heard someone say yesterday, "I'm sick of hearing about the alcoholic husband." Well, I'm sick of it, too, but believe me, they are not a vanishing breed; they are still around.

All right, he transferred the property to her perhaps as a condition — in fact, in the particular case I'm thinking of, as a particular condition of the marriage continuing, because that was the security that this lady had for her family and for her future. The husband had debts; he was going to have more. So she received the equity that then was in the house. They continued to live together and she has improved the house and continued to increase the equity.

Now, the result of even the amended statute, which I think might have been intended to take care of this, amongst other things, the result is that the husband can now give notice for an accounting,

although he doesn't get the automatic interest in the joint home that was given to him prior to the amendments, he still will have an accounting of all of the assets acquired during the cohabitation, including the house, including its contents, and including the pension fund which this lady who ' happens to be a schoolteacher, has built up over a number of years. Of course she is entitled to an equal share of his assets, which consist of nothing at all.

Now I suggest to you that, in that case, the imposition of the standard marital regime on this lady is an injustice, and it would be an injustice whether her husband were still living in the house or whether he were not.

Another example. A husband has a business or professional practice acquired since the marriage. The wife has inherited gifted wealth of very significant value. It is exempt. They have no agreement regarding their property. In fact I am thinking of one particular couple who are now separated. I know of another who are about to be separated. Now on termination of this regime, the wife, who has been supported in luxury throughout her married life, which the husband was well able to do and ought to have done, has contributed nothing to the acquisition of the assets, will share half of his assets and keep all of hers. Had those people known what you were going to do to them prior to their marriage, prior to the acquisition of the assets, they would surely have made a contract. They might have contracted that they would share both the inherited health and whatever he built up in the business. They might have contracted that they would each share what they independently had, that they would not share anything, rather. They could have had a variation of those kinds of agreements, but they would have done something about it. When they were on good terms and prior to their marriage, they would never have wanted to get into this kind of an unjust situation, but you are putting them there and one of them at least has no escape.

Now other examples occur, and these come readily to my mind out of my own years of practice and any other lawyer I think would be able to provide you with other and perhaps better examples. Even where there are agreements, almost all of them, as I said, will omit specific provisions of the standard marital regime, and yet that will permit the reopening of only a part of the contract or a part of the arrangement between the parties. The assets dealt with in the agreement will remain where they are. The different assets that are not dealt with will then have to be divided.

Now another example comes to my mind, and again this is a situation I have seen. The husband a couple of years ago acquired an asset of substantial value, a commercial asset, and it was worth about $20,000.00. Having a lucid and decent interval, he said to his wife, "This year I am going to buy you something in your name." So he purchased something of approximately equal value — vacant land, as it happened — which was in her name alone. That was a gift to her in law. The Act will now come into force, and when they subsequently split, the wife will keep her asset which was gifted to her by her husband, and she will say, "That was very kind of you, and now I will have half of yours." Now surely that is not really what either of them intended at the time they acquired the assets. It is an unjust result, but if they are not on good terms, or his wife is not inclined to make any agreement at this point, or is advised not to by a lawyer who would probably be quite likely to give her that advice, then there is no remedy for that man.

We also dealt with a situation which will arise as the amendment now stands where the husband or one party has gifted less than one-half interest, a third or a quarter, or 49 percent, to the other party. That is not, under the present wording of the amendment, credited to him as a division of the asset or even a partial division. It has to be half or nothing.

The whole operation, the whole problem, I think, that arises with this Act other than the technical and minor problems arises from the retroactive qualities in this Act, and if you could get around that, you would not have these difficulties. The significant amendments, I think, that have been made yesterday have been an attempt to deal with the injustices that necessarily arise from the retroactivity, and that is the recommendation, I think the primary recommendation, of the Bar Association and the family law section wish to make with respect to the property bill, and that is that you must deal in a much more effective and flexible way with the situations of people who are already married, whether they are now separated or whether they are still together. It will not be a fair and equitable scheme for people who are not of average and ordinary circumstnces circumstances. It is designed for those people and it will in fact work well for them. It gives them a freedom of choice, if they are not already married, to opt out or not get married. It gives them the freedom of choice if they can agree to change the situation now' but those who cannot get an agreement are completely trapped by this legislation.

Now someone said yesterday that this bill is a good bill, it is just for most people, and it is just too darn bad if some people suffer from an injustice as a result of it. Well, I suggest to you that the purpose of the legislation is to create justice and not to redistribute injustice, and that is what I think the retroactivity provisions as they are now will do.

The comment, I think, is a rather callous one. I don't think that this Legislature or you as individual legislators want to pass legislation that is going to create an injustice if you can possibly avoid it, and I think you can possibly avoid it. To say that you must do the greatest good for the greatest number,

and hang the rest, which is really the philosophy behind that submission I referred to, I think is unacceptable in a democratic society. As a person may be known by the company she keeps, so a legislator and a government and a governmental system will be known, not simply by what they do for the majority, but by the scrupulous care with which they regard the legitimate interests of the minorities. And you must combine those two qualities in legislation that is going to be good legislation.

Now the suggestion that was in the Law Reform Commission Report with the amendment we have put to you, I suggest, will in fact solve the problem of retroactivity in a reasonable and flexible way. People who are in atypical, not average, circumstances, are entitled to expect that when you are meddling in their affairs, you are going to do so in a manner that takes into account their interests and treats them fairly. And until you deal more effectively with the retroactive provisions of this Act, you will not have accomplished that purpose.

Now I am not going to suggest to you that the Act should permit unrestricted unilateral opting out. That is not the proposal that we made, and in fact I don't want to insult either Mr. Pawley or Mr. Cherniack, but your suggestion to exempt everyone who is now separated is too conservative.

MR. CHERNIACK: That's not insulting . . . .

MRS. BOWMAN: All right. Well, in any event I think that it is too conservative. A person who is presently separated, but who has not finalized their arrangements with the other spouse, should not necessarily be exempted from this Act. The unilateral opting out with the provision to come to court if you feel that that is not a fair arrangement for you is one, I think, that can apply to people who are separated and people who are still together. To say that someone who has last month been driven out of her home by the cruelty of her husband should thereby become exempt from sharing in assets previously acquired surely is not going to produce any more just result than what you have already got. So you have to have flexibility, and you have to look at each case of a person who is aggrieved by this legislation on an individual basis.

That necessarily means that there is a certain amount of discretion, but I think you need not concern yourself that the kind of discretion that is recommended in our submission is going to result in any further Murdoch cases. The court there, I think, is maligned, in part unjustly, because they were restricted by the law and the law in trust as it was then applied by that particular judge was applied to that case. The application of a discretion in the manner that we have recommended is a much much broader discretion to consider the property in light of the contribution to the marriage as a whole of the two spouses, and that is a much different situation than the court was dealing with in the Murdoch case, not that I would want to make any excuses for the Murdoch case.

But I don't think that that kind of situation could ever arise under the proposal. In fact I know that it could not arise under the proposal that we are making to you. In fact what we are saying is that the propertied spouse will not be allowed to keep everything for himself at his own option. He will simply be given the opportunity to demonstrate to the court why it is not fair in that particular case that the entire amount that has been accumulated prior to the legislation coming into force should be shared equally. If in fact the bill were amended in that way, people would have in fact almost a year to be informed on this legislation because the legislation cannot come into force until January at the earliest, and it will be a six-month period following that wherein I hope that this legislation will be given wide publicity. During that period people would have the opportunity to opt out, and if those people have the opportunity and fail to take advantage of it, then I suggest that they have no one but themselves to blame for the injustice, and not the Legislature. You will give them the opportunity to obtain justice. If they fail to take advantage of it, that will be their misfortune and their responsibility. If you can remove this unrestricted retroactivity which is presently in the bill and acknowledge all agreements which have been entered into prior to the coming into force of the legisaltion, then I think you will have a bill that is sound in concept and will command the respect and the endorsement of the legal profession as well as the rest of the community.

I would like to conclude my remarks on that bill by repeating again that there are undoubtedly numerous technical and drafting errors and omissions which, had we a longer period of time to look at the legislation, we would be able to present to you in detail, so do not take it that the bill is otherwise perfect. It is simply that we haven't had the opportunity to determine the imperfections.

Now that is the comment that I wanted to make with respect to the property bill. The maintenance bill is also dealt with in the written submission I have given you in considerably greater detail. First of all there are three resolutions or proposals that were adopted by the family law section with respect to this bill, and I will discuss them each in order.

First of all we believe that the Act should clearly state without any equivocations that any spouse is entitled as a right to an order of non-cohabitation and non-harassment upon the sole grounds that the applicant no longer wishes to cohabit with his or her spouse. That is no-fault separation, no arguments. If you ask for it, you are entitled to get it.

Secondly where a spouse seeks other relief in addition, or if not in addition, independently of a separation, that is maintenance, custody, possession of the family home, etc., that there will be

included among the factors to be considered in determining what other relief will be granted, the relative responsibility of both spouses for the separation or for the refusal or neglect to provide support.

We had preferred the criteria for determination of maintenance which was set out in the majority recommendations of the Manitoba Law Reform Commission, in substitution for those that are set out in Bill 60, but the major difference, I suggest to you, is the one relating to the relative responsibility of the spouses for the separation which is not included in Bill 60.

The final resolution that we had with respect to Bill 60 was that there are so many points on which this bill requires extensive amendments and clarifications on matters both substantive and technical which we have set out in a six-page commentary accompanying the submission, that we believe the bill as it stands is both unsatisfactory and inadequate. So strongly do we take that view that we urge that unless all those substantial clarifications and technical amendments can be made before the bill is passed, that it should in fact be withdrawn at this stage, redrafted and reintroduced at the next session of the Legislature, hopefully with a little more notice to the public.

Now I want to deal with those comments, and then with a few —only a few, you will be glad to know— items from the commentary. I think that the recommendation with respect to a no-fault separation order *per se* is clear enough, and I won't comment further upon that, other than to say that if one spouse doesn't want to live with the other, no power on earth is going to compel them, and consequently if that person wishes to live separately and not be harassed by their spouse, it seems to us they are entitled to live in peace at a different place without having to prove any other element than that they wish to live separately.

Now the second point, which is the inclusion of the relative responsibility for the separation as a factor to be taken into account is in conflict, I think, with most of the other briefs which you have heard. You could term it' if you wish, the fault concept, although in fact it is not worded in that way and it doesn't necessarily have to be interpreted quite that way. I am not afraid of that word myself. We believe that to ignore that factor is to fly in the face of common sense. When you look at the factors to be taken into account in determining maintenance under this Act, you will find that the court has a great many factors to take into account, financial circumstances, the length of the marriage, the capabilities of the parties, the number of children and where they came from, and the domestic arrangement as the bill now stands, and so . forth. The only thing that you are not taking into account is what brought them there in the first place. Isn't that rather foolish? When you look at where the maintenance obligation originates, it originates in the original commitment of marriage, where the parties agree to support each other either financially, in various ways, emotionally, and so on. They make a commitment to which each party is going to contribute.

Now the details of those commitments will vary from one marriage to another quite widely, but whatever that understanding or arrangement that they have with respect to the marriage, it is a mutual one, and at the time that they separate, one of those parties is saying, "I am no longer willing to be bound by that commitment that I made. I am not going to contribute whatever it is that I have been contributing to this marriage." Now, if that is the dependent spouse who is saying that, and there is maintenance to be awarded, and potentially under this bill it is the same kind of long-term maintenance, it can be and it will be in some cases as we have always known, then you are saying to that spouse who is the breadwinner, "Your spouse doesn't want to be committed to the obligations of marriage any longer, but you, sir, are not going to get out." One party to the contract is still bound but the other party isn't, and it may be a lifelong sentence, depending on the kind of circumstances you have.

Now there is no other kind of contract that you can get into where one party can leave it and the other party is forever bound by the obligations. You can't even get out of it by going bankrupt. The only way out is death, and of course there may be some provisions of The Dower Act that will get you even there, but I am not concerned about those at the moment.

Now it flies in the face, I suggest to you, of the ordinary perceptions of people as to what is reasonable and just that that kind of long-term commitment may be required of someone who has not only done nothing to deserve it, but has in fact perhaps been badly hurt himself or herself by the decision of the other spouse to leave the marriage. So that when you are looking at all these other criteria for maintenance, it seems senseless not to look at what brought the people there in the first place, not necessarily to say that you have to weigh the responsibilities on a very fine scale, but surely there are factors to be taken into account. And if you don't do that, let me suggest to you, and you will probably think it is a ridiculous example, but it may be a little more forceful for being that way, but let me suppose that a young woman comes into the Family Court one day and she says, "I want a separation and maintenance order." And the judge listens to what she has to say and he listens to all about her financial circumstances and she's a young woman, only been married about six months, her husband is able to pay, wife hasn't had any previous employment, she was married right out of school, but on the other hand they have only been married six months and the judge will consider that amongst the other factors and he may well say, "Well, no, no, no, I don't see any reason to give you an

order." "But," she says, "I want one and he has done bad things."

"Well," says the judge, "has he given you your personal allowance?"

"Yes, he's done that."

"Has he supported you? Has he done whatever is to be done under the domestic arrangement?"

"Well, yes, he's done that."

"Well," he says, "then I don't see any reason why you should have a separation."

And she says, "He may give me the personal allowance, but he beats the bejesus out of me every Sunday and on statutory holidays. It is just impossible. He beats me up every week."

"No," says the judge, "we don't hear about fault here. We don't want to hear your dirty linen. You know you have only been married six months. You will have to come back when you have suffered a little longer."

Now, that's ridiculous, isn't it? It is. So that even though the other factors might mitigate against granting an order, if there is a case of gross irresponsibility or abuse of a party, surely the court should know about that.

Again, you can have a husband who comes in where a wife is asking for maintenance and she may have been married for a number of years and decided that she wants a separation and she would perhaps like to go to law school, which is going to take her six or eight years, and on the financial circumstances it may not be unreasonable that the husband should support her. But then the husband will say, "Just hang on here a minute. I don't want to support her for six years. I didn't want her to go in the first place but she was carrying on an affair with the postman and she wouldn't stop. And she said if I didn't like it, she would just go."

"No, no," says the judge. "We don't hear about fault. Never mind that. We are not interested in that kind of dirty linen. You just pay up like a champ there, and when she is finished law school, you come back and we will reduce the order for you."

Now surely to goodness it is just nonsense to say that what brought the parties to the point of separation is totally irrelevant. It may be irrelevant. There may not be any significant fault, but surely if there is some kind of irresponsibility or abuse that is a factor the court should be aware of and take into account.

Now I know that you have heard arguments on the fault principle previously, so I am not going to elaborate on that point any further other than to say that if you adopt a principle that does not take that into account, the behaviour of the parties during the marriage, you are in conflict, of course, with the principles established under The Divorce Act which do take into account the conduct of the parties, and you are certainly not going to be making a law that will strike the average person as fair. Whether that is going to promote the prompt payment of maintenance I rather doubt.

Now I would like to deal first of all with the organization of the sections of the bill, Sections 5 and 8, and this is not merely so much a technical matter, it is a matter of being totally unable to discover what on earth your rights and remedies are under this Act. The rights and remedies during cohabitation are all muddled in with the rights and remedies that will accrue upon a separation occurring, and I think that is a source of considerable difficulty and I think that some of the exchanges I heard this evening demonstrate that pretty clearly.

I suggest to you that those remedies and rights that you intend to apply during cohabitation should be in one area of the bill, and those considerations that arise on separation should be separately dealt with and I have suggested to you a brief way of doing that.

A further section would provide that there would be a remedy for people who weren't given their rights of disclosure and so forth.

Now I suggest to you also that you might consider and you ought to consider, in line with the suggestions I made, a specific section that says that a person is entitled to a separation order as a right if they don't want anything further and that you don't have to consider all these other matters if all they want is peace and quiet. And then the other factors, whichever you might wish to include, will be in relation to the corollary relief that might be ordered.

Now the public comments that we have had from the Attorney-General suggest that this is intended to be a no-fault bill, and it is, I submit to you, in its present form, not a no-fault bill, and one of the reasons that will take it out of that category is the allusion to the domestic arrangement, which I think has been discussed by a couple of previous speakers.

I have no doubt whatever in my mind that as this statute is now worded, it wouldn't take a very good lawyer to be able to haul into the separation hearing any and all grievances, real or imagined, that either of the parties had accumulated during the period of the marriage. I can demonstrate to you how I would do that, if you really want to know, but the hour is late so I won't. But this is virtually the unanimous opinion, I think, of all the practising lawyers who have looked at this section, that that allusion to domestic arrangement will in fact give the opportunity to people to air the grievances and the faults that they allege against the other party, to their fullest extent.

Now I have suggested to you that we are not asking and we don't recommend a no-fault statute. But if you are going to have that, let's know what you are going to have. Let's be clear about it. No-

fault separation means that no matter how irresponsible, how poorly a spouse behaves, if that spouse is in a financially dependent position and the other spouse can afford to pay, then she or he is entitled to maintenance, without regard to why they separated or what kind of bad conduct there was on the part of one, or good conduct on the part of the other. Now if that's what you want, let's have it clear so that everybody understands that.

Now the other point with respect to clarity relates to the fact that this bill is totally discretionary as it is presently worded, in that Section 7 permits the spouse to apply for relief. Section 8 says that the judge is going to consider all these various factors and then he may make an order, but then again perhaps he won't. And we don't know under what circumstances he is intended to grant or refuse an order, and that is a serious defect in a statute, particularly this kind of a statute which is used by so many people every week and every month in this province.

I would suggest to you that this is one of the places where you have provided lawyers with a significant financial benefit in that as the Act now stands, we have got lots and lots of room for costly and lengthy litigation, and I think that, as I said earlier, these sections that I have referred seem almost designed to conceal from you what your legal rights are, rather than to reveal them. Now that, I think, is a very primary, very serious problem, and it is one that has to be dealt with if this is going to be workable legislation.

Now there is an area with respect to children and I noticed, I think it was Mr. Enns who was concerned about children particularly yesterday, that I would like to draw to your attention, and that is that there are a number of children dealt with under this Act, but there is a category of child who is not dealt with here, and I think that it is an omission that should be remedied, and that is a child to whom one of the spouses stands *in loco parentis,* which is one of those Latin phrases we love so well, meaning a child to whom you stand in the place of a parent.

There are a number of these cases which arise, and I have dealt with a number where, for example, grandparents take over the custody and upbringing of a grandchild. The child may come to them at a very early age and because it is a family matter there is no legal proceeding taken. The child simply lives with his grandparents for a number of years. If and when those grandparents split up, the one which has the child, which is probably going to be the grandmother in most cases, is left to support that child without any assistance from the grandfather.

Now if in fact the husband in that situation, and the wife as well, of course, has placed himself voluntarily in the position of a father to that child, then I suggest to you that that obligation of maintenance should continue. It is available in The Divorce Act and it is used in some cases. It is not a big category of cases, but in those cases to which it does apply, it can have a very serious financial effect, because those are the very cases of course where the woman having custody of this child is very likely to be an older woman and may well be one of those whose earning capacities are very limited. So I suggest that you consider adding a provision for children of that description.

In Section 1(b) of the Act there is another omission — or it may not be an omission, it may be done intentionally — which I think can have a very serious effect, and that is the jurisdiction is given under the Act to judges of the Family Court, Court of Queen's Bench, and the County Court. There is no jurisdiction given to provincial judges of the criminal division, and there is no jurisdiction given, as was the case previously, to magistrates. Now that doesn't matter very much in the city, and it doesn't matter very much in the larger towns, but there are places in this province which are pretty remote and where there are no magistrates or judges available on any regular basis. I am thinking of a place, for example, like Gods Lake Narrows, where a criminal division judge may come in once a month or every six weeks to deal with criminal matters. He has had, up until this point, jurisdiction to deal with matters under The Wives' and Children's Maintenance Act. As this Act is now worded he will no longer have jurisdiction to deal with those people, and they never see a Queen's Bench, County Court or Family Court judge in those areas. Now it would be nice if we had a system where specialist judges were available even in the most remote areas, but that day hasn't come yet, and until it does this bill will leave an abandoned mother or child in those remote areas without any legal remedy, unless and until they can leave that community and come out to a larger city or town which may be totally undesirable for them in their situation.

I would like to deal next with Section 4, which is the financial independence section, and I will reiterate what two or three other people have said. That is that financial independence must be defined if this bill is going to make any kind of sense to us if it is not going to be interpreted in widely differing ways in the courts. We have suggested in the brief that there are at least four ways that you could define financial independence. You could define it at the minimum wage level. You could relate it to some other objective standards, such as the average industrial wage. You could relate it to what the parties, the woman in most cases, would have earned, had she not married and stayed home with a family, stayed out of the work force, or you could make it commensurate with the standard of living to which she was accustomed during the cohabitation, or that her husband presently enjoys. There are, no doubt, other standards of financial independence that you might look at, but those are four that came readily to our minds. Whatever the standard is, we think that it ought to be stated in the

legislation so that all of these various courts and judges will know what you intend. Do you think that if a man is earning $40,000 a year and his wife is earning $10,000 a year, she is financially independent, or she isn't? Now, I don't know how you expect the courts to understand what you mean unless you tell them what you have in mind. If in fact you have in mind retaining the standard that says that the husband must support his wife in the style to which she was accustomed as closely as possible, then in fact you are advocating and legislating the continuance of long-term maintenance in a great many cases. I think that is not the general intention that I have perceived from listening to the discussions, but I think that will be the effect.

Section 7(2) deals with the cases in which a court may make an order, despite the presence of an agreement between the parties, and I suggest to you that as Section 7(2) is worded, it is too broad. It permits the court to intervene when there is any significant change in the circumstances of either party. Now bear in mind that the whole agreement is not being set aside, only the maintenance portion of it is being meddled with. Now when a separation agreement is negotiated between parties, it deals with a number of things. And when the bargaining process goes on, people give a little and they get a little, depending on what their priorities are.

In some cases, for example, a woman may be quite prepared to take lesser maintenance than she might obtain in court because she does not want to have a battle over the custody of the children. A husband may be prepared to halve their property or make other arrangements more generous than might otherwise be required in order to retain joint custody of the children, or to have access on terms that are more advantageous to him than he thinks he could get otherwise. There are lots of other things, horse trading that goes on in these agreements, and the parties make their bargains.

This section leaves it open to a spouse on a change of circumstances which, whether it is significant or not, depends, of course on how the judge looks at it, but it could be simply a relatively modest increase in the husband's income. It leaves it open to the wife to keep all the good things that she got in the agreement and come along and ask for more maintenance.

Now I don't think that that is a really fair arrangement. The present Section 16 of The Wives' and Children's Maintenance Act is considerably more restricted in the way it permits a court to look at maintenance issues after there is an agreement, and the family law section suggests that that is an approach which we prefer. The maintenance of children can be looked at by the court if the circumstances render it unjust, in any event on an application under The Child Welfare Act, and we suggest that that will take care of any cases of gross injustice that could arise.

Now in Section 11, which deals with the maintenance rights of an unmarried cohabitant, we are considerably concerned about the lack of specificity in that section, in that there is no minimum time period during which the parties must have lived together as husband and wife, and I suggest, by the way, that the word "cohabited" would be better in that in the law, I think, it implies a longer term or more permanent kind of relationship than living together as husband and wife, which I take it can be a very short-term arrangement indeed as the cases have decided. However, whichever word you use, we suggest that there should be a minimum time period. Under the present Act the parties must have lived together for at least a year and had a child. You cannot these days assume that because they have the child, they lived together for more than a week, so that I think that that would be a valuable provision. Also, and even more important, I think, there should be a time limit within which the application must be made after the cohabitation ceases or the husband or the man ceases to maintain the dependent party. I suggest to you that a lot of men around who are incurring a great deal of liability in a serial sort of way, and I suggest to you that it would be very valuable to ensure that the liability is brought to his attention within a specific time.

As the Act is presently worded, for example, a woman may have lived with a man ten years ago, been financially independent, or not even financially independent, she may have been dependent on somebody else in the meantime, and now she and her child may come along and claim relief under this Act, because they have indeed lived together and cohabited and there is a child. And there is no limitation upon when she may come to court and apply.

We suggest that the one year limitation in the present section of The Wives' and Children's Maintenance Act is a reasonable one, but whatever period of time you choose, we would like a time limit inserted.

We have made comments on Part II which deals with children and their maintenance, and we feel that this section is poorly thought out, and that it duplicates in some areas, but does not cover all of the same grounds that The Child Welfare Act does. We would prefer to see this section omitted and the provision for child maintenance included with the spousal maintenance in the previous section until such time as you can take a look at those two Acts together and co-ordinate them and put it all in one place or all in the other. It is not desirable that you should have the right, as you would have under this legislation, to apply with certain criteria set out under the one Act, whereas under the other Act, the criteria might well be different and the procedures might well be different.

I would also draw to your attention that although you may have the obligation to support a child described under Section 12(2), which is "a child of the other spouse while the child is in the custody

of the spouses or either of them and until it attains the age of eighteen years" — you may be obliged to maintain that child. You may have lived with it for a good many years since it was an infant, but there is no provision in this Act or any other Act whereby, though you are paying for it, you may be entitled to either apply for custody or to have access. And there are cases where second marriages break down after ten or twelve years, the child has known no other breaks down after 10 or 12 years and the child has known no other father. Surely that man who is fixed with the legal liability for maintenance ought to have the right to apply for access.

Now, the next section that I wanted to deal with is actually a section that is not there and that is the problem — the Act makes no provision for consent orders to be made. There is, on Page 5 of the Commentary, a suggestion as to the way in which that might be dealt with. It is a matter of great importance. It is not just one of our little lawyers' technicalities. Even now, with the present wording of the Wives' and Children's Maintenance Act and counterproblems where you have reached a written agreement with the parties and they both are willing to have certain parts of it incorporated into a court order so that maintenance can be enforced so that the police may be enlisted to enforce the non-harassment provisions. Some judges of that court presently take the view that where there is an agreement, they will not make an order. If you leave the Act as it presently stands, then you are going necessarily to take the view that they can't make the order even if they want to.

Now, surely one of the purposes of this legislation is to enable people to settle their differences and to facilitate those settlements where possible, rather than to make life more difficult for them. The Family Court is a statutory court. If you don't give them the jurisdiction specifically they don't have it. It's very important to many people to have a section in this Act providing specifically that a court order can be made on consent, containing whatever terms the parties have agreed upon which are within the courts jurisdiction to order.î

There are numerous other points in this commentary which deal with technical matters. Some of them are of considerable importance. I hope they will be given consideration but those are the main ones that I wanted to discuss with you.

Now, although it's not included in the brief and it's not authorized by the section because we didn't know you would be dealing with this bill, I do want to bring to your attention one problem that I forsee with the amendments to the Devolution of Estates Act. Well, actually two: one is the fact that the Devolution of Estates Act and The Dower Act, I think, are not the complete answer to the division of assets on death, unless you do something about the provision whereby if you have left your spouse end live seperate and apart, you may have forfeited your dower rights, and also the provision that if you have settled the amount which is not adequate in todays terms,sufficient to produce $6000 income, then your spouse may not be entitled under the Dower Act to share in your estate.

Those provisions, I think, are not consistent with the intention of the property bills and if you intend to substitute the new provisions of the Dower Act for any division on death under The Property Act, I think another look should be taken at those.

Now, with respect to the substance of the amendment, that is the $50,000 plus half the balance to the surviving spouse, I would suggest to you that there is nothing wrong in principle with that but there are a few people that you are leaving out here; those are the dependent children of a previous marriage. Now, it's not that many estates that are going to leave $50,000 plus the family home, and very much more besides. There are many cases now where of course there are dependent children surviving who are the children of the widow or widower, and she will obviously look after them with whatever she receives from the estate. But in these days when there are so many second and third marriages, there are many instances of a younger man dying and leaving children of a previous marriage who are still dependent. Well, you may think that they can apply under The Testators Family Maintenance Act for relief, and so they can, but not so as to diminish the widow's share under The Dower Act. Consequently, those children and the small estates will be shut-out altogether from any provision being made for them. I am not concerned particularly about adult children but I do think that you should take a look at that and perhaps amend The Testators Family Maintenance Act in respect of the application on behalf of a dependent child so that kind of an injustice will not inadvertently be created.

Those are the comments that I wanted to make to you and if you have any questions. I will deal with them.

MR. CHAIRMAN: Mr. Cherniack, you have a question?

MR. CHERNIACKâ: Well, Mr. Chairman, may I preface this by saying that I am rather pleased that the representatives of the legal profession have indicated their willingness to give of their time and attention, and expertise to help us in framing even better laws, and also the fact that they make it very clearly evident that they don't want to have business manufactured for them, as is sometimes suggested by some of my colleagues in the Legislature.

Having said that, Mr. Chairman, I would like to draw your attention to the hour and suggest that Mrs. Bowman has to be in court tomorrow and she should have a fresh mind. I think maybe we should

invite her to come back.

MRS. BOWMAN: I would be glad to come back tomorrow evening if that would be convenient.

MR. CHERNIACK: I'm sure we will be here, on the basis of the rate we are going. I'd like to suggest that we ought to . . . Mind you, Mr. Smith has been waiting patiently. Maybe he should be awakened and told to go home. But I do think it only fair to him, since he had the impression that he would be heard today, I for one would be willing to wait if he wishes to speak at this time. That's only my suggestion. I don't know what other members think.

MR. PAWLEY: I would suggest that Mr. Smith be given a choice either to, you know, if he wishes to give his brief now or if he can be here tomorrow night that he could follow Mrs. Bowman, whichever he prefers.

MR. MURRAY SMITH: Unfortunately, it is difficult for me to be here either tomorrow night or tomorrow evening.

MR. PAWLEY: Well, what about now?

MR. SMITH: Now suits me fine.

MR. PAWLEY: That was our commitment earlier.

MR. CHAIRMAN: Come forward.

MR. SMITH: Mr. Chairman, I don't know how the luck of the draw will affect me. I'm not sure whether I'm the late movie or the local news.

I have copies of this submission if they could be circulated. I would like to emphasize that I speak as a lay person and I do not presume to deal with the details of the Act. But I think that the lay persons view of this legislation is indeed relevant to the work of this committee.

Mr. Chairman, congratulations to the Government of Manitoba for introducing Bill 60 and 61, and congratulations to the Legislature for unanimously approving them in principle and referring them to this committee for further consideration and public discussion.

These two bills are indeed a significant achievement owing much to diverse inputs. The Honourable Saul Cherniack has been reported as calling them the most important legislation in fifteen years. CBC news has labelled them the most progressive family law in the country. I share those views.

Once again this province is showing Canada that we can wrestle with difficult questions and generate solutions which will prove thoroughly acceptable to Manitobans and good models for other provinces to follow.

In these bills we have the confident voice of people with positive measures to increase fairness and openness, and who accept that after very lengthy study and discussion we know enough to act now.

In the Legislature and at these hearings there are many suggestions for amendment, some to take the provisions a bit farther in certain respects, but many to reduce their clarity, power and vision. No doubt, some changes will be made but I urge there be none which dilute the basic assertion that marriage is a partnership of equals; of two persons who accept equal responsibilities and enjoy equal rights.

It is probable the bills can be improved but let there be no doubt that as they stand right now, they provide far better family law than we have ever experienced. Let us not jeopardize that promise by partisan debate or excessive caution but let us rather see it as an opportunity to be grasped with confidence and turned into reality for ourselves and for our children. If ever law can help how men and women see themselves, their work, and their relationships, these bills can do so.

Mr. Chairman, there are cries that Bills 60 and 61 respond excessively to women's needs. If this appears so, is it not because present law is woefully unfair to the spouse who earns less, or not at all, because present law says that whoever earns cash keeps it but all other contributions are for the common good.

Let anyone who doubts the value of these bills look again at the appalling present law and at the current pressures to water down the proposed changes. Is not much of that pressure from people who in their hearts are really satisfied with things as they are, who see the proposed changes as the loss of status, authority and property? This should be recognized as the defensive reaction of those who see no need to share, and have no real wish to do so, and who, in any event, consider sharing as giving up what is rightfully theirs.

I'm sorry if that sounds harsh. I feel I can say it because I have found the same impulses in myself and in most people of my acquaintance. So I feel sure it is present in many others.

Mr. Chairman, when an MLA is quoted as urging a male audience to hurry down to this Committee to defend themselves, one can only conclude that this legislation is needed even more than we thought.

In contrast with the present one-sided system, these bills will create a very even-handed one which will benefit both men and women. I would emphasize that point. I think the benefits for men are often slighted but they are very real in this bill, particularly in Bill 60. Bill 60 embodies this most directly in Section 2, "Spouses have a mutual obligation to contribute reasonably to each others

support and maintenance." And in Section 12(1), "Each parent of a child has the obligation, subject to The Child Welfare Act, to provide reasonably for the child's support, maintenance and education, whether or not the child is in that parents custody until the child attains the full age of 18 years."

I believe that those two statements are fundamental to the purpose of the bill and they constitute fundamental changes in the way in which we look at ourselves and our obligations in marriage.

Maybe these will help those who have proudly or reluctantly accepted the role of breadwinner and decision-maker see that the mutual obligations are stronger and healthier than protection and dependence. Why think a shared burden is lighter except when it comprises earning cash or caring for children? Bill 60 can help those contributions of support and maintenance to be made as spouses themselves choose, rather than at the dictate of outworn assumptions. Perhaps the argument from equity can be joined with the urgings of love that, as Nana Mouskouri sings, "I want to be just as good a friend to you as you are to me."

May I now offer some reaction on specific points. I still believe in full community of property and joint management. None of the arguments I have heard has shifted me on that. So I am very pleased that Bill 61 provides for immediate sharing of some assets but why not include, as family assets, the family farm or business which is a joint effort. Surely such an enterprise often exemplifies economic partnership in the most direct and practical form.

Can there be a clear understanding that family assets include pension rights, insurance, savings plans, and those investments which are for personal rather than commercial purposes? I stress this point of full community during marriage because I think that it is still inconsistent to bring sharing into full effect only at the time of separation. The logic for that remains based upon the assumption that there ought to be equal sharing during marriage.

(2) I am delighted that opting out of the standard regime will require mutual consent in every instance. Anything else would merely continue the imbalance which prompted the legislation. Pre-existing marriage contracts embody such consent so should indeed remain valid.

I was much struck by the points that Linda Taylor presented that other legislation had been retroactive and if it worked in those cases I see no reason why it cannot work consistently here.

I come now to a point which I can't express too strongly. To me it is astonishing that money income is considered different from all other forms of income. The home spouses create is shared as it is created, why not their cash incomes as they are earned? What is so special about paychecks that they are not assets? In the ordinary language of the great majority of Manitobans they are the most important assets in their partnerships. How strange it would seem to most couples to learn they will share the home they don't own, the cottage they never considered, and the investments they never made, but not share the cash income received every payday.

(4) It is a welcome major step that fault will no longer be a factor in the award of maintenance and that there will be some stronger provisions to ensure that maintenance which is awarded is actually paid. I don't consider them anything like strong enough. I really urge you to consider further the suggestion that the payment of maintenance be assured and that the state establish an agency to guarantee to the recipient the regular payment of the decided maintenance.

I would like to pick up Mr. Sherman's example of the couple that separate having for years had an unequal and unsatisfactory relationship and say that, having gone through this particular argument a number of times, the only solution which provides me with any reassurance is to say that if a couple continue to live together and they do not negotiate an agreement other than equal sharing, then they are accepting the consequences of that situation and the separation merely puts into effect what they have already understood.

I would also like to pick up the point which has been questioned several times about what it means to be financially independent. I am not sure that it is necessary to provide a definition for this. We are assuming, in the drafting of the bill, that a court can take a lot of factors into consideration and determine what is appropriate maintenance to be paid by one spouse to another. I see no difference in principle between saying that the maintenance should be $200 a month, $100 a month, $50 a month, or zero. And it seems to me if you can decide whether $200 or $50 is appropriate, you can also decide that zero is appropriate and that constitutes a decision that the previously dependent spouse is now independent.

I would also like, Mr. Chairman, to support many of the points that were made by the Catholic Women's League and by the Catholic Bishops that these bills do not — and as I understand were not intended — to provide all the support which might be appropriate for marriages. I think it is indeed important that the state and other agencies provide as much support for the health of marriages as possible, and although it may sound presumptuous I would like to quote a few lines which I presented to this committee some months ago because they still reflect my thinking.

"Perhaps with our thinking improved we can now devote more attention to marriage and how the law can strengthen and enrich marriage by providing guidelines for equity and interdependence therein. Perhaps we can now be as positive about supporting marital health, and relieving marital illness, as we are about fairness should the illness prove terminal. Perhaps we can think of better

preparation for marriage and better counselling within it. Perhaps this preparation and counselling can stress the creative power of mutual support and decision-making and help break the vicious acts as a powerful provider and demure dependent."

Finally, Mr. Chairman, I would like to comment that there have been Cassandra warnings that this legislation will make married life a nightmare of petty regulations and spiteful spousal accounting. I don't believe this for a minute.

In comparison with the present law, reflecting as it does the best thinking and the biases and the myths of cavemen, Greek and Roman patriarchs, feudal barons, and Victorian industrialists, these bills are models of clarity and simplicity, proving again that one sound principle is worth a dozen unconsidered traditions.

Now that we have substantial agreement on principle, for heaven's sake let us put it into effective law this session. Thank you.

MR. CHAIRMAN: There may be some questions, Mr. Smith.

MR. SMITH: I'm happy if the Committee can stay.

MR. CHAIRMAN: Hearing none, thank you.

MR. SMITH: Thank you, Mr. Chairman.

MR. CHAIRMAN: Committee rise and report. Committee will reconvene at 10:00 a.m. . tomorrow morning. Committee rise.