Legislative Assembly of Manitoba

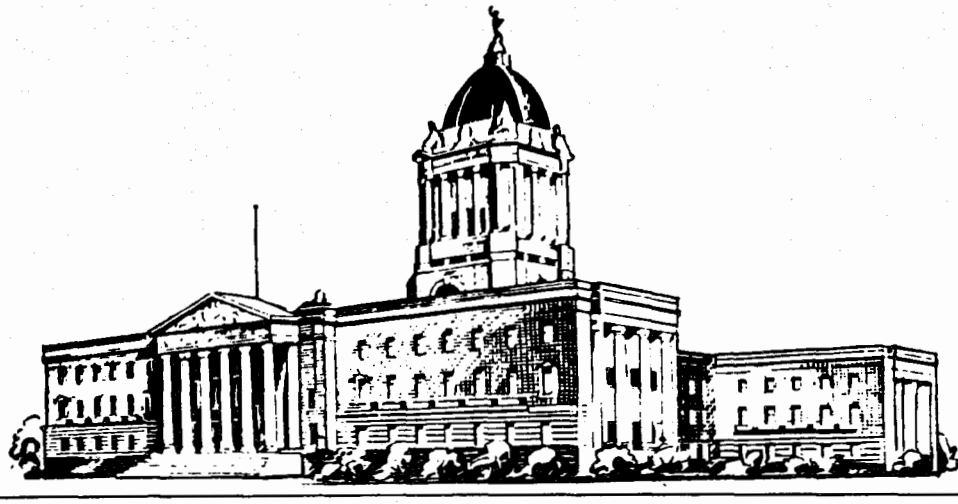
HEARING OF THE STANDING COMMITTEE

ON

STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. Warren Steen
Constituency of Crescentwood



Saturday, July 8, 1978 2:00 p.m.

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HAIRMAN, Mr. Warren Steen.

R. CHAIRMAN: Would the committee come to order, please. When we broke off at the lunch ur, Alice Steinbart was the delegate that was before the committee.
Mr. Parasiuk, do you have a question for Alice Steinbart?

R. PARASIUK: Ms. Steinbart, your brief is clear with respect to the good legislation and the bad gislation, and I understand the brief itself. However, I was frankly quite moved by the presentation the person preceding you, and that was Ms. Anderson-Johnson, regarding the lack of enforcement maintenance. I am wondering whether you, on behalf of your organization, the coalition, which ally does represent an incredible number of groups which I know are not "fronts" as have been ggested in the past, for the New Democratic Party, but indeed are a collection of independent tities, but whether you, on behalf of this coalition, have in fact presented over the last few years aterial regarding enforcement of maintenance? I think that it's a critical issue. I think that one the government Ministers has stated in the past that he voted against the New Democratic Party gislation because it didn't have enforcement of maintenance init. He now is in a position, somehow, cording to his own reasoning, to support this bad legislation which as well doesn't have anything aling with enforcement of maintenance. I think it is a glaring omission and I would like you to , if you would, indicate to us — since I'm a freshman MLA — what you in fact have presented past Legislatures regarding the whole issue of enforcement of maintenance. Would you be in position to comment on that?

S. STEINBART: Yes, the coalition has made presentations before about enforcement of aintenance orders, and it is a very important issue. There have been a number of solutions that ve been proposed, not just by the coalition, but it has been looked at by many people, not just Manitoba. I presented material to the Attorney-General with some of the possible types of solutions. e coalition, when it presented earlier, one of our positions was that maintenance orders should , first of all, registered with a central registry; secondly, the government should be responsible r paying out maintenance orders, up to a reasonable level of support; thirdly, the government ould then enforce the maintenance orders; and fourthly, if maintenance is collected beyond the asonable level of support, in other words, the full amount of the maintenance, then they should y out anything over and above the reasonable level of support. That is one of the suggestions ggestions; that's what we made. There are many alternatives to iroving enforcement of maintenance der
s. Another one I think some other people are going to recommend is just on the legislation rrently before the House where there is a section dealing with enforcement where is says a court ay" make an order for security. That can be changed to "shall". It's possible for the court to y two or three months maintenance should be paid in advance so that in the event of default, e wife would have money there that she can rely on on a month-to-month basis while she is forcing her order. This is very important that she get money on the first of the month. It's not ch point getting it two months later or three months later. You have got to have it right away. ere are many solutuions. That would be Section 25, by the way, of Bill 39, 25(1), an order under s Act "shall" require the person, instead of "may" require the person.

R. PARASIUK: I think your recommendation or your suggestions are indeed very constructive d I can't understand why they can't in fact be proceeded with. Were you approached at all by e commission reviewing family law legislation regarding the whole issue of enforcement of aintenance? Were you approached at all, or did you present any material to them on this matter, cause it seems to have died. The reason why I raise this is that I know that the previous

the New Democratic Party administration, had indicated that they were going to set up a commissi to look into the whole problem of enforcement of maintenance. Since November we have had further discussion on the issue. I understand that there might be some type of in-house committ within the Attorney-General's Department that is looking into this issue, but I wonder whether fact the special task force that the Minister set up looked into this matter and whether in fact y were contacted regarding this matter?

MS. STEINBART: No, the Review Committee did not approach people for presentations; the Revi Committee accepted presentations. They took a passive role; they did not go out inquiring. I'm su that there were people who were presenting to them about that, but the Review Committee, I thir totally discred themselves when they said in their brief, and this is a fairly accurate quote, is th the procedure for enforcement which was under the Wives' and Children's Maintenance Act shou be restored because it was "simple, effective and time-tested." And that's what the Revi Committee said. They were appointed to find the problems in the legislation. They obviously di n find enforcement of maintenance orders a problem, which is very interesting. But, yes, we have hea that there is in-house review committee which the Attorney-General is holding, only of his departme and we're concerned about that because it does not include the Corrections Department, the Minist of Corrections Mr. Sherman is not included, the way I understand it, and he is responsible for t enforcement officers at Family Court and if his department is not included that is an enormo gap.

MR. PARASIUK: Yes, Ms. Steinbart, maybe I didn't understand you, did you say that the Revi Committee said that enforcement procedures regarding maintenance are simple, straightforward a time-tested?

MS. STEINBART: They talked about the previous enforcements, the ones that we have 75 perce of all maintenance orders are not being enforced, they said that was simple, effective and time-teste yes. That was their conclusion.

MR. PARASIUK: In the light of the presentation of Ms. Anderson-Johnson obviously it does s something about the work of the Review Committee on this whole matter.

Have you been approached by the Attorney-General's Department regarding briefs or submissio on the whole question of enforcement of maintenance?

MS. STEINBART: No, he hasn't asked us but we have certainly approached him and we have giv him the information. But maybe this is a good time to ask Mr. Mercier exactly why the Correctio Department is not being included in this in-house review, because that does include the enforceme officers. That's important.

MR. PARASIUK: Well, I'm wondering, since I'm raising this, I'm wondering if the Attorney-Gene would care to comment or provide some further information on this matter of enforcement maintenance in that we are talking about — on the one hand we are talking about judgmer regarding maintenance, you know, what will be the criteria used in determining maintenan settlements, but the whole issue then is academic if the maintenance orders that are arrived aren't enforced and that was stated as a problem years ago; it still remains a problem. It is a sta cold type of reality that we face and it is frankly a very ugly reality. I am wondering why it is th we can go through these processes year after year and yet have nothing happening with respe to enforcement of maintenance. I think that that's a critical issue and I don't think this legislati should proceed unless we get something in here regarding enforcement of maintenance. That's w I would like to ask the Minister if he would comment at this stage, while you are still up here, regardi the issue of enforcement of maintenance and whether in fact he has had a chance to look at yo material regarding enforcement of maintenance, because I do think it is germane to th legislation.

MR. CHAIRMAN: To Mr. Parasiuk, the purpose of these meetings is to hear presentations fro members of the public, and for Members of the Legislature to in turn ask questions to perso making presentations. There will be lots of time later to debate the bill clause by clause, or to g information from the Attorney-General.

MR. PARASIUK: Well, Mr. Chairman, you see, if I'm asking questions of one of the people presenti material and that person says, well, we presented material to the Attorney-General regardi enforcement of maintenance and I'm not in a position right now to get any type of opinion fro the Attorney-General as to what his position on that material is, then I would respectfully ask t

)portunity to have Ms. Steinbart come back with the material that she presented to the :torney-General on enforcement of maintenance and present it to this committee so that we all :come aware of what that particular issue is, so that I, as a freshman MLA, will be in a position debate with a freshman Attorney-General the whole matter of enforcement of maintenance which as an issue of the last Legislature and is still an issue of this Legislature and is critical to this gislation.

S. STEINBART: I would be prepared to bring that material. I don't have it with me and I do ink that it really gets down to sort of the nitty-gritty as to what kinds of solutions are 'ailable.

R. CHAIRMAN: Mr. Pawley, then Mr. Cherniack.

R. PAWLEY: Ms. Steinbart, I don't whether I heard you correctly. When you presented your brief the Review Committee or Task Force on Family Law, was that not followed by the review board ıving any discussions with you pertaining to your brief?

S. STEINBART: No' the Review Committee did not approach people. They simply sat there and ey took submissions, but they didn't go out to people, or, when they got them they certainly didn't)proach people on them, no.

R. PAWLEY: But I had understood that the Review Committee reserved unto itself the right to eet with people who submitted briefs, to further analyze those briefs, discuss those briefs with ose who submitted material. Did they not ask to meet with you to discuss your briefs?

S. STEINBART: I have not heard of any instances where they approached people. They were ways being approached.

R. PAWLEY: You have not heard of any instances where they have approached people and scussed their brief with them?

S. STEINBART: No. They received submissions; they never went out actively to solicit ıything.

R. PAWLEY: Mr. Chairman, I do have to comment that I find that reprehensible.
I would like, Ms. Steinbart, if you would deal with the Canada Pension Plan which, since January Canada Pension Plan benefits have been divided equally, husband and wife, as a form of pension enefit. In your experience, has that created any problems in the field of family law, that Canada ensions Plan benefits may be divided equally, 50-50, since January 1?

S. STEINBART: It has solved problems; it hasn't created problems. What happens is that on vorce, and within three years of the divorce being granted, either spouse can apply to the pension fice for the pension of both spouses to be calculated, and they have a formula, calculated and en when the pensions become payable at age 65, the formula comes into operation so that each et an equal share of the pensions due during that marriage. In other words, there are credits built), both spouses have a credit there. The pensions are considered joint. There is no problem in at.

R. PAWLEY: You don't see any problems then that the same could be done so far as private ension plans, annuity programs, that the same sort of practice could not be followed there as esently being followed insofar as the Canada Pension Plan benefits.

S. STEINBART: Oh, all these things can be worked out. If there is the will, the desire, there e no problems, but if people do not want the equal sharing there are a lot of problems. That's e only trouble.

R. PAWLEY: So you don't perceive all these insurmountable difficulties and complications?

S. STEINBART: They're not insurmountable. There's no way they are insurmountable.

R. PAWLEY: Ms. Steinbart, as a practicing lawyer, I asked the question last night dealing with ıat I sensed to be a problem involving The Planning Act and the new found definition that the)vernment has inserted for matrimonial home, particularly, of course, my concern is in respect

to the farm home and the property immediately surrounding the farm home, which is quite at varian with the definition given to The Dower Act — 320 acres. Do you see any problem Ms. Steinb insofar as the government's determination to reduce The Dower Act definition for purposes of tl legislation to only the house and the immediate surrounding property?

MS. STEINBART: Certainly, there's a lot of problems. First of all it's not equitable' which is maj secondly, I don't know how it's going to work. It's very interesting how it will work.

If you have the situation where the wife has a half-share in a building, the farm home — r the farm buildings around because that's commercial, she doesn't have any right to the barn, the granaries, all those buildings, that's got to be excluded. So it's going to be a very limited par of the farm land if you just take that house with a very small piece of land around it. First of that has no commercial value, how are you going to determine a value on that, it's n saleable.

Secondly, I think, just under The Planning Act, you may not even be allowed to have it. There two things under The Planning Act. The Planning Act has an absolute prohibition for any lands unc two acres in the rural area, you cannot have subdivision of lands in the rural area under two acr Now, it may be that the farmyard could be very compact, and the house and the surrounding la will not be two acres, because you are having the farm buildings encroaching in on that, so there just no way that there's going to be title issuing on that. Secondly, there is the provision whe anything over 80 acres there is an automatic grant of the right to sub-divide; anything under acres, you have to have permission and that permission can be denied, it's up to the planni authorities. They are not going to be necessarily tuned in or concerned about a wife's positic if she has a half-interest in this building and small piece of land around it, it's not a saleable, i just not saleable.

MR. PAWLEY: Well, I want to certainly concur with the statement that you made that in the ru areas no longer can land be sold less than 80 acres, or any split or subdivision of title less th 80 acres, without approval of the planning authority, and that certainly includes the farm hom the farmstead. I'm just wondering, I suppose it can be suggested that a value can still be attach to the farmstead, even though it may be that it can't be split off, the title can't be split off. I wond Ms. Steinbart, if you would like to comment as to what sort of problem the courts would have trying to determine value on a farmstead that they would not know could be split or not spli

MS. STEINBART: I don't see how there could be any value placed on property that cannot sold, minimal. It's not going to be the courts problem so much as the appraiser. How is the apprais going to go in there and determine a price for this house when it can't be sold?

MR. PAWLEY: On the other hand, you are aware that were splits of such farmsteads are approv now, which are the exception rather than the general to the rule, that the value of those sp farmsteads are very very expensive indeed. You are aware of that. Are you on the opposite e of the pole?

MS. STEINBART: The actual cost of doing it?

MR. PAWLEY: Well, no, the value of a farmstead if it's split off from the rest of the farm for sa purposes, that the value is exceedingly high.

MS. STEINBART: The value of the land or the value of the house?

MR. PAWLEY: The farmstead.

MS. STEINBART: You mean the land.

MR. PAWLEY: The farmstead, the farmhouse and the immediate surrounding area around t house.

MS. STEINBART: No, it's not high. I don't quite understand your question. If the question is th the wife's half-interest in the home, the home itself, would it have a value; would it have a hi value, is that the question?

MR. PAWLEY: Well, no, the problem is this: That as you indicated it is very very difficult to obt approval. So without approval the farmstead is worth very very little and would be so valued a court of law. But in the event that that exception where this farmstead could be split off as

sult of approval by the planning authority, because of the very nature of the property that is created at its value is very very high.

S. STEINBART: No, unless they are near the city there is no demand for a house with a small rcel of land in the country, outside of the city area. You know, if it's in commuting distance, then may have a value.

R. PAWLEY: I agree with you. I am thinking of the area within 50 miles of the City of innipeg.

S. STEINBART: Yes, but further out, much further out, there is no demand. There is no lue.

R. PAWLEY: So do you see this as a very a curate or certain method of dealing with family sets insofar as the armer and the farm wife is concerned, in matrimonial disputes?

S. STEINBART: Well, if you want to hurt t,e wife, yes, I suppose it's equitable. But no, it's not, s not equi able, it leaves the woman in a bad situation. I have h ard the argument said that the ason the definition is being changed from The Dower Act and putting a new definition in ju t th the house and the surrounding land is that you wouldn't want the rural woman to have more jhts than the urban woman, that you have to be consistent because under the old Dower Act gislation the rural woman would get more.

I find that very interesting that if what concerns you is the inconsistency, then there are two ays of solving it, and this goes back to the same thing again. You either solve it by increasing e amount that the urban woman shares. In other words, you say she shares the store or whatever on that, family home, and you make it equal that way, or you do it the other way and you deny omen more. You say, "Well, we are going to take away from the farm wife her share, which she id in the past, and we're going to make it consistent with urban women and we're going to give r less." So that's your consistency. That's a very interesting way of dealing with the problem, ways deny, take away, restrict, limit, water down' destroy. That's not our version of equality. That's ot equality.

R. CHAIRMAN: Mr. Cherniack.

R. CHERNIACK: Thank you, Mr. Chairman. Ms. Steinbart, I gathered you to say that The Planning ct has an absolute prohibition on land in rural areas — a parcel — being less than two acres, id I gather also from what you said that under Bill 38 the definition is such that lends itself to i interpretation that the rights of the spouse is limited to less than two acres, it can be limited less than two acres.

S. STEINBART: It's possible, depending how large that farmyard is.

R. CHERNIACK: Are you also saying that in the event that the farmyard, as compared with a ome, confines the land area for the home to less than two acres, then it is clearly not going to e larger than two acres under The Property Act.

S. STEINBART: Well, it couldn't be, because then the judge would be giving the wife a half-interest a commercial property, and she doesn't automatically have that. No, the judge may make a decision aying that she has no interest in the farm because that's a commercial property but she has a alf-interest in the house; that's a family asset. And then you've got to limit the farm house to whatever there. You know you can't have the commercial assets on that land.

R. CHERNIACK: But are you making the categorical statement that the bill we have before us an force a situation which will be in non-compliance with The Planning Act?

S. STEINBART: It could happen.

R. CHEIACK: But, aside from theory, it will happen in such a case where the outbuildings hem the home to make the parcel less than two acres.

S. STEINBART: That's right, that's where it would happen.

R. CHERNIACK: And therefore I think you are suggesting that if the government wanted to carry

out their bill they would have to take care, either in The Planning Act or in this bill, of some wa of what appears to you to be a contradiction.

MS. STEINBART: That's right.

MR. CHERNIACK: So it's not just a question of intent, it's a question of practical aspect of dealir with what they want to do. So that's important, Mr. Chairman. I really didn't realize that.

Ms. Steinbart, since as you learned just a srt moment ago you have no right to ask th Attorney-General to answer you . . .

MS. STEINBART: Not here, anyway.

MR. CHERNIACK: Well, not here and not in any . . . Well, I don't know anywhere where you hav a right to do it, even though you have declared war towards the end of your brief.

Nevertheless, you have quoted the Attorney-General on Page 2 of your brief, in relation to ta implications. When he introduced the bill on second reading he spoke of the problem of ta implications. What you are saying on Page 2 is that he told you — and you say privately but it not private any more, is it, now that it has been published — that he still feels there will be or tax implication. Are you saying that that's the only tax implication that you have been made awai of that may be a problem?

MS. STEINBART: Yes, and we asked him that specifically. We said, "Is that the only one?" An he seemed to think that was. Maybe he has found others since, but he told us no.

MR. CHERNIACK: You are giving us more information about his opinion than we have had a yet.

Now, the principle of two principal residences: I want to hear from you whether you agree thi it is a tax dodge, the two principal residences, that the only time a person, a family, a couple, woul want to have two separate principal residences — one for the husband and one for the wife - is to take advantage of the existing Tax Act, which does not confine the principal residence as bein one for the two people married and living together.

MS. STEINBART: Yes, that's the reason there would be a split there; it's a tax advantage.

MR. CHERNIACK: Are you aware of any reason why a married couple liVing together should wai to have two principal residences if not to take advantage of the taxation law of the Governmei of Canada?

MS. STEINBART: That's the only advantage that I know of. I can't see of any other reason.

MR. CHERNIACK: So that the loss of the tax benefit is only a loss of a tax benefit and you cann read any marital reason to deplore the fact that people may lose a tax benefit by the enactmei of this legislation.

MS. STEINBART: No, there's no other reason other than a tax benefit.

MR. CHERNIACK: And did the Attorney-General give you any reason of any moral or ethical c logical standard other than the advantage of a tax loophole?

MS. STEINBART: No, he was only dealing with it as a tax advantage.

MR. CHERNIACK: All right then. On the same page you also dealt with his contention to you relatin to the — that's in the last paragraph on Page 2 — with the right of the owner — well, let's sa of the husband, as you say — to do whatever he wants with the family assets without any sa from the wife. You made that point, that she has no right, that there is not protection, and tha the . . . of breaking up the marriage to get her share is not acceptable to you. You then say th Attorney-General has pointed to Section 6, Subsections (2) and (3) which give the wife the rigl to use and enjoy the property, and to (6), (7), and (8) dealing with disposition, excessive gift, an sale for less than fair market value. Are you saying that that was the only protection that was pointe out to you that would be available to a spouse to in some way guarantee that the family ass will be available for the benefit of the two of them, rather than the one?

MS. STEINBART: The Attorney-General pointed out that is the protection. I don't think he use

ıe word, "that is the only protection." I can't think of any other right now.$

R. CHERNIACK: Well, I suppose The Dower Act would give her a right to the home.

S. STEINBART: That's right. But we were talking about this Act, or this Bill 38, and The Dower ct is quite separate.

R. CHERNIACK: Well, even leaning on The Dower Act for assistance, that would only protect e home itself, wouldn't it?

S. STEINBART: That's correct; it does not protect the family assets.

R. CHERNIACK: And only the home which comes under the definition of The Dower Act, the ɔmestead under The Dower Act?

S. STEINBART: That's correct.

R. CHERNIACK: Which I believe would exclude an apartment in an apartement block, or . .

S. STEINBART: It would include maybe just the apartment, but not the whole block.

R. CHERNIACK: Does it?

S.STEINBART: That's right.

R. CHERNIACK: Does The Dower Act?

S. STEINBART: Yes. The way I understand it, it would include the apartment, but not the whole ock.

R. CHERNIACK: Well, maybe they changed The Dower Act since I looked at it.
Then, say a family-operated, momma-poppa grocery store with living residence behind it — if ıe Dower Act didn't protect that then you don't know of any protection?

S. STEINBART: I think it protects the residence behind, but not the store. In other words, you ıve this strange little split.

R. CHERNIACK: But the other family assets, you don't know of any kind of protection, and the ıly thing you say the Attorney-General pointed out to you was that she has the right to use it ; long as it's owned, I assume, and the right to do something about it in the event that there ıs dissipation. Is there anything in the Act to protect the wife in the event that the husband does deed dissipate? In other words, suppose he does sell a family asset for less than it's worth, what ghts does the wife have to the use of that asset, once he has made the sale?

S. STEINBART: She has no rights to use, and I'm not sure even the dissipation section is going cover that. If he sells it for less than value, that doesn't necessarily mean dissipation. There's very narrow definition of dissipation.

R. CHERNIACK: Well, suppose it meant dissipation. Can she get it back into the family under is bill?

S. STEINBART: If it was considered to be dissipation, no, she can't get it back. All she can do have that taken into the accounting, if there is a separation, and it must be done within two ıars of that dissipation. So, if it happened four years ago and she lived with it, and then they ıparate, that's loss to her. She has really no rights there. That's only maybe rights.

R. CHERNIACK: I am prepared to concede to you publicly that I suspect that you know the aspects . our legislation on this bill more than I do, so I would ask you to confirm my recollection, which a bit dated, that under our bill — that's the Statute Book Bill, which is still on the statutes, which is bill proposes to repeal — that in the event of an excessive gift, there is an opportunity to claim e actual gift back into the family from the donee of the gift. Is there something like that in this ll?

MS. STEINBART: I think I'd have to check. I remember that there was a provision where that cou be traced. Dissipated assets could not, but excessive gifts could be traced. Now, I can't rememb whether it's in Bill 38 or not.

MR. CHERNIACK: Well, I look at 6(7) and it says, "Where there is an excessive gift, the valu of the asset or the excess portion shall be added to the inventory," but that really doesn't brir it back into the family ownership, does it?

MS. STEINBART: Yes, you're right there.

MR. CHERNIACK: But there is 6(9), R Recovery from ecipient. The onus would be on the perso alleging the gift, I presume, to try and get it back in.

MS. STEINBART: Yes, but that only applies to an excessive gift; it doesn't apply to dissipatic and it doesn't apply to transfer for inadequate consideration, so those can't be traced.

MR. CHERNIACK: Yes, I see. All right then. Let's move on to — I have a note on Page 6 dealir with equal sharing. In your argument with the Attorney-General about Section 12, factors (a) to (you made an important distinction between Sections 13(1) and (2), pointing out that you can't ha equal sharing and equal sharing considered in each of the two sections, that one has to be considere to be equal with some variation, and the other, therefore, to you, means unequal. Are you awa of Mr. Mercier's contention, which I referred to last night — I think you were here — that the conce of equal sharing of commercial assets, as I interpret it, is one that he would expect that the cou would rule that it was not entitled to exercise broad discretion to divide assets in accordance wi what the judge thinks is fair and equitable, but rather, that it has to be a clear case where inequi would result, that the power should be exercised; that clearly, the individual judge should be governe by the principle that there would have to be clearly inequity that would result from an unequ division.

That is what I interpret what Mr. Mercier said. And when he was asked if he would be prepare to say so, as much as say so, in the bill rather than what is there, he id did not say that he woul He said: "I think I explained already that in a case already decided which does not have a presumptic of equal sharing of commercial assets, that that is the very interpretation that he has been give to it." Now, apparently, it would appear from this that Mr. Mercier believes that a judge would tal that into consideration and would consider that under 13(2) he should not make anything unequ unless he believes that equal sharing would create a clear inequity. Would you think that it wou assist the better interpretation of the bill to have those words clearly set out in the section, rath than what we have now?

MS. STEINBART: Assist? It would be absolutely vital because you're not going to get it any oth way. I know that Mr. Mercier is always saying that there's a presumption of equality, but the rul of construction of law are simply not going to have that brought into effect when it comes commercial assets.

The Rules of Construction are such that Section 12 and Section n 13 (2), must be read togethe and the judges in interpreting these sections are not going to be looking at Hansard, nor at wh Mr. Mercier wants, nor at what anybody else here wants, because that's clearly against the Rul of Construction. What the judge must look at are the words in this Act and only those words. Ar in looking at it and interpreting it, the judge is going to read 13(1) as well and the judge is goir to say, well, clearly, this Legislature intended that there be a difference between family assets ar commercial assets and that there is a clear difference. Any judge who would make a decision givir equal sharing and not look at factors (a) to (j) and any other circumstances, ! think, would mal a wrong decision and that should be appealed.

MR. CHERNIACK: Ms. Steinbart, you are looking at this as a lawyer with a background experience. We have the benefit on this side of that podium to think of this as legislators and there is any doubt, we as legislators could dispel the doubt by saying so, saying precisely wh we mean and not be that much concerned about how a judge will interpret what we think we mea or what he thinks we mean.

So I'm asking you precisely what we could do to persuade the Attorney-General to say wh he wants to say without relying on what a court might do to confirm what he wants to say. Th being the case, and since you, I believe, know what it is that he says he wants to accomplish her and accepting the fact as you and I must that he doesn't agree with us that there should be much more rigid restraint on the judge to exercise discretion in the case of family assets and h

elieves, and I assume his caucus believes, that that same doesn't apply in commercial — accepting e fact that we can't win, you and I, what can we do to assist him to . . . recognizing their decision make that distinction, to just make sure that the court doesn't have broader discretion than they ink he should have, would you say that there is no benefit to their policy to spell out all these) to (j) in 13(2)? Accepting the fact that they are not going to go for what you want or I want, iat would you say they ought to be doing in 13(2) to say what they say they want, and that is at only in case of clear inequity should there be any variation from equal distribution of commercial sets?

S. STEINBART: Well, if Mr. Mercier wants a presumption of equal sharing and if does want equal aring he had better put a preamble in there because he is not going to get it otherwise.

R. CHERNIACK: But, Ms. Steinbart, he does say that there shall be equal sharing, under 12: ach have the right to have their assets divided equally between them. He is not going to change at. Maybe we can persuade him to change 13(2).

S. STEINBART: Wouldn't that be nice.

R. CHERNIACK: I'm very serious, Ms. Steinbart. I am speaking to you as a lawyer and I want ur assistance in how to change this to conform with what he says he wants, and that is that court will only change a clear, equal division in case of a clear inequity. That being the case, ow could we assist him in changing 13(2)?

S. STEINBART: Well, as I said, a preamble, or the other alternative course is to combine (2) id (1) together and have the commercial assets and family assets treated the same. I can't see ny other way.

R. CHERNIACK: Ms. Steinbart, I don't think I'll press this much further because you're not helping e at all, because you are saying, well, they should be treated the same. I agree they should be, it they won't treat it the same. As the majority of this committee have made it clear, they won't eat them the same. So I want to, recognizing the fact that they won't, to try and see whether ere is any validity on their part with their argument to have all of 13(2) as it is. My impression ould be — and that's what I want your reaction to — eliminate all of (a) to (j) and just say, otwithstanding the right to an equal division, a court, upon the application of either of two spouses, ay order that with respect to commercial assets, the division be made in such as other than equal s the court may in the Order direct, if the court is satisfied that an equal division would create clear inequity, period.

Would that, do you think, make it easier for you to argue in court that the court really should ot step very far beyond the principle of equality unless it is really unfair? Would that give you, ur point of view, a stronger case than all the rest of this?

S. STEINBART: That would certainly make a big difference. I notice you are reading Mr. Mercier's mments when he says clearly inequitable. "Clearly" is not in the bill. If you wanted to make it ear, then you put that word in there because the judges are not going to be reading your statement. ney're just not; they just don't exist. '

R. CHEIACK: Well, just for your information, I am quoting his quotation from the judge in the lverstein case in Ontario, who used that very expression, that the court should exercise its power nly where equal sharing will in clear cases create inequity. These are not Mr. Mercier's words as uch as they are words that he quoted with approbation — is that the word — from the Ontario dge. That's why, I think you agree, that if he said so, it would make it unnecessary to have all is debate about what a judge is likely to say.

S. STEINBART: It would make a big difference.

R. CHERNIACK: Well, we'll give him a chance to discuss that. Thank you, Mr. Chairman.

R. CHAIRMAN: Mr. Parasiuk.

R. PASIUK: Mr. Chairman, I would just like to confirm that Ms. Steinbart will return before the mmittee ends to submit answers to my questions regarding enforcement of maintenance. She id she is prepared to do so; she said she has the material at home. I think it is a very important em in that MLAs of all political parties have said that this is critical to family law legislation. Mr.

Sherman has said it is critical to family law legislation. Mr. Jenkins, in my party, has said it is criti to family law legislation. I agree with both of them.

I would like to know more about it and I would like Ms. Steinbart to come back before t committee to present more detailed material on it because, as I said, it is somewhat unanimo in the House that this is a critical issue in family law legislation. So I would just like to confi that Ms. Steinbart can return before the committee ends its review of this legislation to prese us detailed material on enforcement of maintenance. Is that understood?

MR. CHAIRMAN: To Mr. Parasiuk, it is my understanding, and unless the majority of the committ overrules me, that everybody has an opportunity to appear before this committee once, and wh we will do is we will go through the list of names that have been given to us and then ask f others who may be interested in appearing. I have never ever in my days around here, heard whe we have allowed persons a second or a third opportunity.

Mr. Parasiuk.

MR. PARASIUK: Mr. Chairman, I think that we would put a time limit on the presentation. An ite exists which, as I said, members of all parties say is critical. I have asked Ms. Steinbart sor questions on it. She says she has the material at home which I think would provide some mo detailed information regarding this matter. I thought we could do it by agreement. If we can't it by agreement, I would like to move that Ms. Steinbart do return and present material enforcement of maintenance. I have asked a question specifically on this issue and I have do so having read material by Mr. Sherman, having read material by Mr. Jenkins, having noticed th the Task Force didn't look into this matter, and therefore I think it is critical, I think it is criti to family law legislation and I move that Ms. Steinbart be allowed to come back and answer r questions on enforcement of maintenance.

MR. CHAIRMAN: Mr. Jorgenson.

MR. JORGENSON: I think we would be establishing a precedent that is in great departure fro what has been the normal course in these committees. Once that precedent has been establishe then there is no end to the number of times that a person can return to this committee. It wou simply frustrate the entire work of the committee, or people could frustrate the work of the committe and I would oppose it. I note that Ms. Steinbart represents a group of women who have yet appear, a Manitoba action on the Committee of Status of Women, the Canadian Congress of Wome the Women's Liberation the Provincial Council of Women, the Provincial Organizatons of Busine and Professional Women's Clubs, Manitoba Association of Social Workers, Women's Institute Registered Nurses, Public Employees, Federation of Labour, Manitoba Association of Women in t Law. She purports to speak for all those organizations, which have yet to appear. With the ingenu that my honourable friend has displayed from time to time, surely, the question that he wants seeks, or the answers that he wants or seeks, can be obtained through co-operation by Ms. Steinba and members of the organizations that she represents. It should require no great ingenuity to that.

MS. STEINBART: I understand that Mr. Mercier has the material, maybe he can make it availab and we can deal with it.

MR. PAWLEY: Mr. Chairman, I don't see where it would be a precedent if the committee itse voted in support of asking Ms. Steinbart to return if what is done is done within the paramete of this committee, and if the committee felt that it would be helpful to request Ms. Steinbart return with the material, and have an opportunity also to pursue that material further with M Steinbart, then I don't see, Mr. Chairman, how that could be any departure from precedent. I seem to recall there have been other instances where new information has been revealed duri the course of a submission, and members have reserved the right to further question a submitte insofar as that material is concerned further, and surely what is done is within the hands of th committee, and if this committee decides to examine material further, which is certainly mater that we all concur is of the utmost importance, then surely, Mr. Chairman, there would be nothi untoward in asking Ms. Steinbart to return to provide us with the information she has presente to the Attorney-General.

If the review committee had done its job properly, then this might not be necessary, but it appea that very little is being done to deal with this entire question of enforcement of maintenan orders.

MR. MERCIER: Mr. Chairman, I am attempting to have the material located right now, and probab

efore the end of the questions it'll be available.

IR. PAWLEY: Mr. Chairman, that's good so far as it goes. The Attorney-General's implying that might be available from his files to committee members, but it might be, in view of the fact that ls. Steinbart is the author of that material, that we would like to discuss it with her.

IR. CHAIAN: Mr. Johnston.

IR. JOHNSTON: During the hearings we've had so far, last night, this morning and this afternoon, ıere have been points brought out. I have noted from Ms. Brown's report last night, there were ıree specific items which concerned her in the legislation.

Another one that has been brought up several times is the enforcement of maintenance orders. he other one being the technical differences between this Act and The Planning Act.

Mr. Chairman, the fact that these points have been brought to our attentions on many occasions, a request from the people making presentations, that this committee and the Legislature look t these problems. Now, to have Mr. Pawley make a long speech about what he didn't like about ıe commisssion is one thing, but it has been brought to our attention on several occasions, and m sure it'll be brought to our attention many more times, and the people are asking us to look t this, they are asking us to take a look at the material that Ms. Steinbart has presented to the ttorney-General. The Attorney-General has offered to give it to us so we can study it, and I see o reason for a special presentation on enforcement of maintenance when it's been brought to our ttention many times, this is a problem that we should look at.

IR. SPIVAK: Mr. Chairman, the person who is the witness has the conduct of their own presentation nd they have the responsibility to bring forward the issues and the points that they want to bring ›rward. Ms. Steinbart is very much aware of the issues involved and has presented a major brief. he may have additional information to be offered. I don't think it's necessary for us to go through ıis harangue, or this charade. I think very simply if she has something more to offer, it can be ut in written form for the members of the committee, and let us get on and proceed with the thers who have presentations to make.

IR PARASIUK: Mr. Chairman, I believe that if someone who is expert in the area, and who has one a lot work in it, says that she's willing to answer questions arising from material that she has ı a written form. . . I've made the motion; if the members on the government majority wish to ote it down, that's their particular prerogative. I'd like the question called.

IR. CHAIRMAN: Mr. Cherniack, before we put the question.

IR. CHERNIACK: Mr. Chairman, since Mr. Parasiuk has described himself as a freshman, then should indicate to him that it would appear likely, from what we have heard said by the Conservative ıajority representatives that his motion will not pass. Mr. Chairman, since we are now in the stage f.questioning Ms. Steinbart, I think that really what we wanted to know was how she could elaborate n the points she's already made dealing with enforcement, and it seems to me that there would e some validity . . .

IR. CHAIRMAN: I'm sorry to interrupt you, Mr. Cherniack, Mr. Parasiuk has put a motion forward ıat . . .

IR. CHERNIACK: Mr. Chairman, I'm speaking on his motion.

IR. CHAIRMAN: I think we must — well, I thought you were going to go back to uestioning.

IR. CHERNIACK: No, no, no. I'm speaking on his motion. I'm sorry, maybe my introduction is little lengthy, I'm sorry.

IR. CHAIRMAN: My apology then, I . . .

IR. CHERNIACK: I speak on his motion because I want to suggest that Ms. Steinbart has made er presentatiom, period. We are now in the question period with her. It seems to me that rather ıan invite her to come back to make another presentation on enforcement, it would be a benefit ›r us to have an opportunity to read her material, and then continue to question her in relation › the material dealing with enforcement, and the Attorney-General has implied that he is going

to make that material available to us. I would very much like to have it over the weekend, ar I would like an opportunity at a later stage in the meeting, Monday or whenever, to ask Ms. Steinba to come back only — not to make a presentation, but to come back in order to elaborate on a doubts, that we may have about the material which the Attorney-General would have given to u That would be in accord to what Mr. Johnston said, that we would have the material, we will re the material, but since she has come and volunteered of her time and effort and her expertise tell us about it, that we should avail ourselves of the opportunity to ask her back and confine h to answering questions only, and to answering them only on the question of enforcement. That th would not be establishing a new precedent or creating any difficulty in relation to the proceedin of this committee, all it would be, as we did last night, postponing one person to speak until th morning, that we would ask Ms. Steinbart to stand down until we've had the material, had a opportunity to read the material and then call her back to question her on that aspect.

I would ask Mr. Parasiuk if he would agree to varying his motion along the lines I've said

MR. PARASIUK: I agree to it.

MR. JORGENSON: Mr. Chairman, I think we'll make that decision when the time comes to mal it. I'm not going to suggest that we will not hear Ms. Steinbart again, but at the end of all of tl hearings that we've had, we'll make that decision then. I'm not opposed to it. I'm not opposed the suggestion that when all the other representations have been heard, and there are a lot of peop that have spent a great deal of work and a great deal of time preparing representations. I thin in all fairness to them, we should hear them before Ms. Steinbart returns, and if that's agreeabl I have no objections to that.

MS. STEINBART: I might add that I was recalled once before . . .

MR. CHAIRMAN: No, we're on a point of order, I'm sorry that only members of the coittee ca be involved in this discussion. Mr. Parasiuk.

MR. PARASIUK: Mr. Chairman, I'd be perfectly amenable to changing my motions to the effe that Mr. Cherniack indicated, that is at the end of the committee hearings, when everyone else h made their presentation. If Ms. Steinbart is willing, we would like to have her come back f questioning of material which we will have had a chance to look at. That's the motion I make, ar I think in making that modified motion I agree with the House Leader. I think that the purpose this committee meeting is to hear all the presentations of people who are interested in this subje in Manitoba, not to be on some type of pressure-cooker timetable or some type of endurance te but to look at the issues rationally, to ask people questions if in fact we feel that questions a deserving, and I think that that's a process that we all agree to and in that spirit, Mr. Chairma I modify my motion to that effect.

MR. CHAIRMAN: So that I'm clear on it, is your motion that after all persons have been hea that Ms. Steinbart would be invited back to answer questions related to the said material.

MR. PARASIUK: Right.

MR. CHAIRMAN: Okay. Do you want me to put the question to the members of the committ or not? Agreed? (Agreed)

MR. PARASIUK: Can I ask some other questions?

MR. CHAIRMAN: Yes. Mr. Parasiuk.

MR. PARASIUK: I won't ask any more questions on the maintenance because I would like to lo at the material more closely.

Ms. Steinbart, when I first looked at this material last December when Law Amendmen Committee met to review the Conservative legislation to repeal — or sorry, to suspend — or ho indefinite the proclamation of the New Democratic Party legislation regarding family law, I can across material from supposed learned people that the New Democratic Party legislation was a dog breakfast. Now, having looked at that legislation and having looked at this legislation myself, ar I'm quite certain you've had a chance to look at both pieces of legislation yourself, I'm wonderi whether in fact you could give us your learned opinion of whether the Conservative legislation not a dog's breakfast but in fact is a breeder's breakfast.

IR. CHAIRMAN: Mr. Spivak.

IR. SPIVAK: Ms. Steinbart, I wonder, if I go back to the first page of your brief, dealing with ıe watering down or eliminating three of the five principles of equality, you say in No. 3, Commercial ssets will not be shared equally. The wife will receive less than one-half. Now, that is not what proposed, that is your interpretation of what will happen. And what you are essentially doing in our presentation is you are now talking about how the judges are going to exercise their judgment ith respect to discretion. Is that not a fact? What you are really dealing with is not what the law ill be, but the interpretation that the judges will give to that law, and how they are going to exercise ıeir discretion, and what you're really doing is talking about the way in which the judges have in ıct exercised a discretion under a law that was not the same as the law that is going to be the w if this Act is passed.

IS. STEINBART: No. What you say is, that I'm not saying what the law is, well it is the law. You ave to look at all the law. You look at the rules of construction. That's part of our law, too. The ıdges are going to have to find a difference between 13(1) and 13(2) and it has nothing to do ith their bias. Even with the best rule in the world — just supposing they are not biased, okay, ıey cannot, even if they wanted to, they cannot find equal sharing just because of the way it is et up, the way of the wording, they have to find a difference.

IR. SPIVAK: In other words you're saying that the legislative wording means that they cannot nd equal sharing.

IS. STEINBART: It means that they must find a difference and the difference . . .

IR. SPIVAK: No, no, on the . . .

IS. STEINBART: Yes, all right, put it your way, as simple as you want it. They will not be able ı find equal sharing except in rare cases. There may be a few cases.

IR. SPIVAK: Can you name the instances in which the presumptions have been made and an nus provision is put forward that the judges have really found in the majority against the presumption nd in favour of the onus in other matters of law? Not with respect to marital, in other matters f law, in partnership and in other matters, can you tell me those situations in which the presumption put in law and an onus provision is put forward that the judges in fact interpreted in the majority gainst the presumption and in favour of those who have the onus?

IS. STEINBART: Mr. Spivak, in fact what you have here is not just a presumption, it is a clear ıessage to the judges that there is a difference between these two types of assets and the difference going to be between equal sharing and unequal sharing. It has nothing to do with the presumption. here is more to it than a presumption. You are writing this legislation in such a way that a judge annot find equal sharing.m$

IR. SPIVAK: Well that's, again, an impression on your part. It's not something you can prove by ay of precedent, it's what you believe it to be, but the fact is that the judges interpret the law s it is now. The judges interpret the law as it is now and if a presumption is put forward and n onus provision, they may very well take an interpretation that's different, and should take an ıterpretation that's different, and again I say to you in those cases in law where a presumption placed forward in law and an onus provision is put forward, you have to tell me in those ircumstances where the judges have in fact found against a presumption and in favour of the person ho has the onus in the majority of cases, and I don't think you can.

IS. STEINBART: If it was only a presumption, then it would be different but it's more than a resumption. The way this law is written is more than a presumption. You have two separate sections. you had just one section, if you had just broad judicial discretion right across the board, that ıight be different. But you have narrow judicial discretion and you have broad judicial discretion nd the judge is going to have to find the difference between them and the difference is going ı be between equal sharing and unequal sharing.

IR. SPIVAK: Well, I want to just move on to one other thing, and I think it's necessary because think Mr. Justice O'Sullivan's name has been thrown out in vain here with respect to the case f Fedon-Fedon, where the quotation "husband loves money, assets and property more than anything lse . . . "

MS. STEINBART: That was Mr. Justice Deniset.

MR. SPIVAK: Yes, it was not Mr. Justice O'Sullivan, and the suggestion yesterday was that it wa in fact him. For the record, I think that's important. It was the trial judge.

As a matter of fact, I think it's important to note what he says, and I want to see whether yo agree with this, because I think if you do then we will lead on to the next thing. In his judgmer he said, "Despite recent legislative proposals to go back to a system where the parties to a marriag were not free to deal with their property as if they were single, the law in Manitoba today remair what it has been since the late 19th century. A wife has a right to own her property exactly a if she were not a wife; the husband has the same right' subject only to the restraints and alienatio contained in The Dower Act with respect to a homestead, husband and wife are entirely liberate under the existing law. Either may own or dispose of property as freely as any other citizen."

Now that's as he interpreted the law. Do you agree that that is the law today?

MS. STEINBART: That's the Irene Murdoch law; yes, that's the law.

MR. SPIVAK: Well, that's the law. The question of interpretation is another question. Now, he goe on — this is prior to the statement but I want to put this into the record as well. "With respec I am of the opinion in considering the wife's claim to a beneficial interest in the property standin in the name of the husband, the learned trial judge took an approach that was not open to hin It seemed to me that he attempted to apply to the facts of the case a sort of palm tree justic It was not his function to decide whether or not to give effect to any property interest proved t be belonging to the wife, nor to confer on her any property interest not proved to belong to he It is not the law that a judge has a discretion to divide up property in accordance with what h thinks to be fair and just, as between the parties."

Do you not believe that in stating that he was stating the law as it exists today?

MS. STEINBART: I have never disputed that was the law today.

MR. SPIVAK: Well, then that's fine. Then I am saying to you that the arguments that have bee brought forward by yourself and others with respect to the judges and the way in which they interpr the law is facetious because in effect in reality they will interpret the law as to what it actually i and if the presumption is that there is equal 50-50 sharing and there is equal sharing and in additio there is an onus provision on the person who is claiming not to have 50-50 sharing, then I sugge to you that the law will be interpreted as the judges have interpreted it so far, as the law is state and they will in turn apply it in that way.

Now, judgments will vary and you know that as well as I do, and some judges will interpret thing differently than the other. And I can't in any way foretell what every judge will do, but in the mai —(Interjection)— Well, I know, but that's true of the court system no matter what happens an unless Mr. Pawley wants to change the court system that's a different system.

MS. STEINBART: How about changing the law?

MR. SPIVAK: But I'm saying to you that insofar as the arguments are concerned with respect t presumption, that at the present time although it may not fit the wording that many of you woul like, and although it may give an element of discretion that you object to, that the arguments tha you're presenting with respect to presumption and the way in which you interpret by citing case in which the law is not a presumption, are not valid and that in effect in reality you are suggestin something because inherently what you really want is 50-50 sharing without any discretion, witho any interpretation. That's what you really would like, and the government of the day has provide a presumption which I suggest to you is much stronger than the case that you're presenting.

In effect, you are trying to indicate this as a weakness in the legislation in the hope that it w ultimately change. Now, there may very well be some effects to the legislative language that ma have to be changed. I am not suggesting that that's not something to be considered, or to be debate or argued, but I am saying that the argument with respect to what has happened in the past, th argument even with the Fedon and Fedon case is not valid with respect to what will happen, becaus the judge in this case has specifically stated, as the other judge in the Court of Appeal said, tha what the law is, is the law is, as it existed before, there were legislative changes, they have n been introduced. When the law is changed, the court will interpret the law as it has bee legislated.

MS. STEINBART: Mr. Spivak, you have missed my point. There are two points that I want to mak

ere. First of all — and I will make it again — that there is more than a presumption. You have wo sections, 13(1) and 132), and that overrides the presumption because you have a distinction etween the two.

The second thing that we're saying is quite apart from this old Irene Murdoch law which did ot give a presumption of equality, you have the right to look at the judges and the judge's comment, nd that is why Fedon and Fedon was quoted to you, not to show that the judges are sexists or /hatever, but to show this is the kind of a statement a judge, looking at your law, is going to make, hat this man so loved money that he cannot share it, and that is the point that we're trying to et to you. It's not the law, it's the judge. That kind of a comment, and it falls right into your legislation he way you have it worded.

And quite apart from that, the other thing is, I don't agree that there's nothing in the present aw that would not allow for equal sharing, they have found that there's no presumption of equality, here is that avenue of constructive trust, it has been suggested, the judges have refused to use . It can be used, but they refuse to. So, that's a comment on the judges themselves.

MR. SPIVAK: But in effect, what you really are doing, is commenting on the judges, your not ommenting on the legislation, you're commenting on the judges.

MS. STEINBART: We're commenting on your legislation and we're commenting on the judges, and /e tell the two together, is going to equal an equality.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Ms. Steinbart, would you, if you had to highlight one issue as being the major ne, would you be of the view that the discretion in 13(2) is your major concern?

MS. STEINBART: I don't know whether we can put it down into one little thing. No, there's four najor concerns, 13(2) is one, yes. Enforcement of maintenance is another one, fault is another one, nd the last one is that there should be equally sharing of the assets during the marriage, the family ome and the family assets. Those are our four major concerns. I don't think we can pick and choose etween them.

MR. MERCIER: In your view at least this is an important issue, the discretion in section 13(2). Mr. herniack quoted me from Hansard in discussing this particular decision, and a judgment in Ontario /hich does not have a presumption of equal sharing of commercial assets. He referred to the omments of the judge, or where I referred to the comments of the judge. In spite of that, do you till feel that section 13(2) can be misinterpreted?

MS. STEINBART: I don't think it's going to be misinterpreted. You want it to be interpreted as eing equal sharing, but the judge. . . I think you're tying the judge's hands. You're making it mpossible for a judge to find that kind of interpretation, simply because there's 13(1) and there's 3(2), and there must be a distinction between the two.

MR. MERCIER: So, you're suggesting by virtue of the rules of construction that you referred to, here could be a misinterpretation?

MS. STEINBART: I think there has to be, not a misinterpretation, I don't they'll misinterpret it, here has to be a finding that there'll be unequal sharing. I know that that's not what you want, ut I don't think the judges can find anything other than that.

MR. MERCIER: And that would be the main basis of your concern of the legislation in 13(2)?

MS. STEINBART: Yes. You're tying the judge's hands.

MR. MERCIER: Thank you.

MR. CHAIRMAN: Thank you, Ms. Steinbart. Our next . . .

MS. STEINBART: I'd like to make one other comment. I know that Mr. Mercier has said that he vants to take public comments and he wants to hear what the public has to say, and I think it's very good thing that you ask questions. The people here are very knowledgeable, very dedicated nd if you want to know what's going on it's very important that you ask questions of them. Thank ou.

MR. CHAIRMAN: Mrs. Bernice Sisler. Mr. Corrin.

MR. CORRIN: Mr. Chairman, before you go on to Mrs. Sisler, I did actually have a question t . . . pose to the last

MR. CHAIRMAN: Ms. Steinbart, would you come back to the podium.

MR. CORRIN: Sorry to bring you back, Ms. Steinbart, I know you've had a very long arduous orde before us but it will soon be at an end.

I have become concerned about one provision that has not been discussed in any detail, althoug I do believe it has been mentioned on one or two peripheral occasions, and that is the questio of the The Devolution of Estates Act and its application, of course, in the case of intestacies. I'm concerned because it appears to me that as a result of the change in the legislation pertainin to the disposition in the sharing of family assets, as a result of the apparent fact that there w no longer be any immediate vesting of family assets, such as the family residence home. I a concerned about the plight of the poor widow who may find herself in a position where her husban has not recognized the intent of their marriage, which may well be a joint endeavour, but has n recognized that in the conventional way by executing a will, where, although he may well hav intended to confer, for instance, title to a house that was for some reason, some peculiar reaso held by him and wasn't held in a joint estate. He didn't get around to doing that perhaps becaus of premature death or other circumstances, but it wasn't done.

I'm concerned, because it would appear to me that the wife's rights, although she would st retain her former life estate, the right that had been conferred upon her by the former legislatio I would be concerned that that in itself may not be sufficient. Under our legislation, under the form government's legislation, there would have of course been an automatic assumption of presumptio of vesting and the problem would have been easily circumvented.

My reading of Bill 41, which is The Act to amend Various Acts relating to Marital Propert including The Devolution of Estates Act, is such that it leads me to believe that this right woul no longer be endowed upon the widow as a result of these amendments and these changes. Perha I am wrong, I don't want to attribute intentions to the government or the Attorney-General , b it is my general opinion that the Attorney-General and other members of his government were the wish to recognize the wife's equality and to recognize the wife's right to joint ownership of th sort of asset in the event that something of this untoward nature should occur, an untime death.

I suppose I just want to know whether you feel that this should be rectified, whether this shou be the subject of a legislative amendment to be dealt with during the course of these committe hearings, that would in fact protect the wife's interests; that since we don't appear to be headi towards immediate vesting, would at least somehow protect the wife's right to obtain a full esta should the husband die in those sorts of circumstances. Do you think that that's important an it should be recognized? I know it is half a loaf; I know it is not what I would have but I thi it is within the spirit of the legislation. I really do believe it is within the intent of the . legislator the Government, and I'm wondering whether you can ratify and concur that it is your opini representing these representative bodies, that such a revision should be effected?

MS. STEINBART: What section were you looking at? It's Bill 41' is it not?

MR. CORRIN: Well, in Bill 41, if you look to Section (2), there are revisions pertaining to Th Devolution of Estates Act, dealing specifically with Section 6 of The Devolution of Estates Act. Th wife is of course entitled to . . .

MS. STEINBART: The first 50,000. . .

MR. CORRIN: $50,000 and one-half of the residue remaining after deducting that $50,000, b nowhere, as far as I can see, is the wife guaranteed the right to the family home.

MS. STEINBART: That's in The Dower Act.

MR. CORRIN: As I understand it, The Dower Act gives her a life estate.

MS. STEINBART: That's right. There is no right to own.

MR. CORRIN: I'm concerned about the practice, I suppose it's very hard in certain circumstanc

) dispose of a life estate and property. It's not the sort of asset that lends itself to ready disposition.

IS. STEINBART: Nobody wants to buy a life estate

IR. CORRIN: Well, that's been my experience, although some lawyers, I think, would disagree. would ask you whether or not you feel that that could be rectified by some sort of revision of he Devolution of Estates Act that would provide for an immediate vesting, or The Dower Act — m not Legislative Counsel and Legislative Counsel would attend to this, but somewhere, a revision iat would provide for an immediate vesting so that the wife's right to the family home was recognized, otwithstanding. . . You see, what would happen now, as far as I can see it, ironically the one way ie wife apparently could gain her rights is if just before her husband is deceased, they executed separation agreement. I know that seems somewhat facetious but it almost appears to be the ase. Obviously in the case of sudden death that may not be possible, nor as a matter of public olicy is it desirable.

What would you think about a revision that would enable the wife to gain access to the ssets?

IS. STEINBART: We would be all in favour of such a revision. In fact, what happens here is that the house is worth more than $50,000, the wife will have a right to live in the house, but she iay not have a right to own it on death. That is something I don't think that you would want to upport. I'm sure that you would want, on the event of the death of the husband, that the wife 'ould have the whole house and that doesn't necessarily follow in these amendments. The way ie Act from last year was written, is that there would have been a joint tenancy during the marriage nd, of course, on death there would be an automatic right to inherit the whole house. So the wife 'ould get the whole house, or vice versa. I can't see what obstacle there would be for you not 'anting it there. I can't see why you would not want to protect the wife so that she would own ie house, not just have a right to live there. Of course we would like to have owership of the house uring the marriage and it's difficult to understand why people don't want to share that.

IR. CHAIRMAN: Thank you very kindly, Ms. Steinbart.

The next person on my list is Bernice Sísler.

IS. BERNICE SISLER: Mr. Chairman, I wonder if the committee would agree to my changing places 'ith Mr. Murray Smith at this point, for him to take my place and for me to take his, which I believe ; number 23. (Agreed)

IR. CHAIRMAN: That's fine.

IS. SISLER: Thank you.

IR. MURRAY SMITH: Mr. Chairman and members, my name is Murray Smith. I'm appearing as n individual expressing my personal views.

This is the only major public debate in which I have been involved but as Janet Paxton put it iis morning, once these issues get into your head and your heart they don't let you go, so if this ; indeed to be an annual event, you can expect me back along with the others.

My experience during the last few years is that in fact family law is a kind of classic fusion of ie personal things and the public things, the philosophical things and the social things, so that touches very many of us in very diverse ways. It draws different things out of our understandings nd our experiences.

Just over a year ago, my wife and I marked our 25th wedding anniversary by celebrating the assage of two family law bills in our Legislative Assembly. June 17 was a landmark in the evelopment of marital law in this country. Those present that night felt it a real occasion.

What has happened since? Some of the events speak for themselves and they are all too familiar. he new government suspended those laws and referred them to a Review Committee. That ommittee reported and the government drafted new bills. Other events are less obvious but to iy mind equally important. During the year, family law has become more a party political issue. he earlier Acts were supported by a coalition with very broad membership — you have just heard lice Steinbart — and in the Assely, The Marital Property Act was supported by all the New emocrats, by the Liberals and by Messrs. Craik, Spivak, Steen, Sherman and Wilson. The new ills are opposed by that same broad coalition and are much more narrowly associated with the resent government. I regret this; I think it is a loss to our province.

During this year, family law has become more a women's issue — n the pressure of debate,

some of us may forget how equality and reciprocity benefit men too — and I regret that trend Dependency hurts both partners; equality strengthens both.

Finally, a third trend that I think we all recognize, hower we may feel about the present bills family law issues have become much deeper, deeper than ever before for those committed to reform have become wider in press coverage and in public awareness. The articles which have been ir Winnipeg dailies, the article which appeared in Chatelaine Magazine' are ample evidence of a publi interest and not just in our province. The presentations which this committee has heard last nigh and today are ample evidence of the input which people feel in their hearts on these issues. I sugges to this committee that in that deeper awareness and greater public consciousness lies an assuranc that full reform will come.

Last December, many of us said there was no need to suspend the original Acts to remov any alleged "uncertainty and ambiguity." Now it is clear there was indeed no need to suspend Th Family Maintenance Act. The changes in it could have been achieved by amendment, but it is equall clear, Mr. Chairman, that this government had a real need to suspend The Marital Property Act This has been so changed that only complete re-writing could achieve what this government wanted The equal sharing which the Attorney-General instructed the Review Committee to retain, and whicl they acknowledge in their report, is still there in name, but for commercial assets it is there onl as a starting point, a starting point for every possible court argument to vary it.

Mr. Chairman, I fully support the position of the Coalition in Family Law. I don't speak for an of the many organizations which are committed to their position, but as an individual, I suppor everything which you have just heard from Alice Steinbart.

There are indeed many good things in these bills and I wouldn't want to downplay them. The say each spouse should support the other and both should support the children. I like the suggestio you heard this morning that that could be re-worded to say that each had an equal responsibilit to support the children. These bills apply to all marriages and to almost all assets acquired in them They provide equal sharing of family assets though, unhappily, only upon separation. They provid mutual opting out.

But there are major changes needed and I itemize five. I suggest that these bills should stat in preambles the principles of equality between spouses and marriage as an interdependen partnership of shared responsibilities. These phrases are substantially from a definition of Equit in Marriage, a short paper by the Federal Advisory Council on the Status of Women, which I woul like to table for your use.

Secondly, conduct should not be a factor in determining maintenance.

Third, there should be better provision for enforcement. I am not going to speak further on tha issue but it isn't because I don't consider it equally important; I feel that you are going to hea quite sufficiently and quite clearly on the issue of the enforcement of maintenance without my addin anything.

Fourth, there should be immediate equal sharing of family assets and these should include savings pension and insurance rights, and most investments.

Fifth, there should be only limited judicial discretion to vary equal sharing of commercia assets.

I would like to pick out sections, in order, from The Family Maintenance Act. As you might guess I'll start with Section 2(2), on Conduct. The bill should fully reflect Mr. Mercier's initial statemen in the Legislature and I recognize that it was the Attorney-General's initial statement, but it wa a beautiful one and I would like to preserve it. He said that to assess the amount of maintenanc on the basis of fault is neither just, fair, equitable, nor reasonable. On that basis, Section 2(2) shoul be simply removed. The argument that this section is acceptable because it will apply only in extrem cases is unconvincing. No one knows whether a given case is extreme until a court decicdes sc and it will often be in one spouse's interest to prove it is. Under previous law, my wife might wan to prove that I was unfaithful. Now she has to prove I'm a monster of some sort in order that and my behaviour will be covered under Section 2(2). And as several people have told the committee it is certainly clear — to my mind it is indisputable — that this clause will operate in an asymmetrica way. It will operate in a sexist way; it will operate in a biassed way; it will be used to reduc maintenance; it will not be used to increase maintenance. I don't believe it should be used to d either but it seems to me an added failing in the section, that it will work in a discriminator fashion.

If this section must remain, and I get the impression it has some support from the governmer side, there should be an explicit statement that conduct can enter only under this section and onl in this defined way. Mr. Mercier has said that in the Legislature. He has also written it to severa people, including me, saying that the question of conduct can arise only under Section 2(2) an under no other section of The Maintenance Act. If that is the intention, and I take his word tha it is the intention, then it should be very simple to write it into the Act so that nobody could doub let alone misunderstand. You see, I am afraid, in particular, that conduct may otherwise reappea

under Section 5(1) and I suggest, and this is partly in response to a question that Mr. Cherniack put last night, that Section 1 could be reworded so that in the introductory sentence it read that: The court shall consider the listed factors and no others. That would not only exclude the possibility of conduct being brought in under 5(1), but excludes some other unexpected factors which might be brought in under the general introductory phrase.

Section 7(3). This deals with separation by mutual agreement being subject to consideration by the court at a later date. I do understand the point that people who make an agreement by mutual consent are expected to write into that agreement any appropriate provisions for a review under changing circumstances, but it seems to me that when Section 7(3) identifies two circumstances under which a court review and court order would be available, that there might be a third section saying: Where the circumstances of the spouses have significantly changed since the date of the agreement. This would avoid couples having to write that into their individual agreements achieved by mutual consent.

I would like to move to Sections 8(3) and 8(4) on Reconciliation. I appreciated very much the points that were made yesterday about the Conciliation Courts and it seems to me there is a lot of fruitful material there for this committee. But, looking just at the sections as they are in The Family Maintenance Act, these seem to permit repeated adjournments for the possibility of reconciliation. Surely this should not be possible. Surely one adjournment to permit an opportunity for reconciliation is all that could ever be necessary or desirable and these clauses could say so. What I am concerned about there is that if the spouses are in disagreement about whether a reconciliation is a live possibility, one of them, before the judge, may be devoting his or her energies to proving that reconciliation is at least worth considering, and the other, in order to prove that reconciliation is beyond conception, will be hurling abuse at the spouse and really we are just reintroducing the whole issue of fault in order to prove that the judge should not adjourn the proceedings. In order to permit an opportunity for reconciliation, one spouse would be blackening the other one to show that the judge would be imprudent in such an adjournment. I don't see how it can help conciliation to debate in a court whether it is worth trying it.

I would like to move to some sections of The Marital Property Act. Two of the items in Section 1 on the definition of assets — these of course are items (b) and (d) defining family and commercial assets.

In this bill, family assets now include some bank accounts. They should also, in my opinion, include savings, pension and insurance rights, and all investments except those in a business venture. Couples save and invest together. They acquire pension and insurance rights by paying for them from current family income,just as they pay for a car or for thefurniture in their living room. Why should family assets that are presently sitting in a bank account remain family assets when they are used to buy a sofa, but become commercial assets when they are used to buy a Manitoba Savings Bond? What on earth is "commercial," and I think the word itself is grossly misleading. What on earth is commercial about money that a couple saves for the higher education of their children, or money that they put into a Registered Retirement Savings Plan, or, by irony, in a Registered Home Ownership Savings Plan? You know, the marital home is defined as a family asset, but money which you put into an RHOSP, as I read it, is a commercial asset. I can't see any logic in that at all.

The Canada Pension Plan now provides for splitting those pension rights — the CPP pension rights — upon separation. That provides an excellent precedent for us to include all pension rights in family assets to ensure that they are shared equally.

Mr. Chairman, I argued this same point about pension rights a year ago, when the only difference I made was that the sharing would be deferred instead of immediate. Now, the issue is whether the sharing will be equal or very unlikely to be equal. So the issue is very much more important, what things are put into the category of family and what things are put into the category of commercial assets seems to me a very fruitful area for this committee to consider amendments.

In this I hope for the Attorney-General's support, and I'm going to quote what the Attorney-General said on May 29 in introducing legislation. He said "It is probably correct that most people's assets are composed of only family assets as defined in this legislation." I think if family assets included pensions, savings, insurance rights and investments other than those in business ventures, that the Attorney-General's statement would be correct, and I seek to make that statement correct. If we don't reallocate assets in some such way, a very strange truck will drive through the hole provided by Section 13(2). Again, this was graphically stated this morning by Janet Paxton — it may not contain the old refrigerator or the broken-down stove or the washer, but it will contain savings and investments. It will contain the ready cash and the future security. It may be only a very small vehicle. Maybe in fact it won't be a truck; maybe it will just be a motor bike, but it will have all the goodies in it, and that's the important thing.

I would like to move to Section 1(e) and repeat the point that the marital home should be defined in the same familiar way that it has had in The Dower Act. Reducing the rural marital home to

a postage stamp seems to me a real putdown for the farm couple and I can't understand why th flak hasn't been louder and heavier from that quarter.

Moving to (f), agreements should require independent legal advice, not just as a safeguard fo the interests of the parties, but so that they will be better understood and be more effective a legal documents.

I feel very hostile about Section 6(1). Section 6(1) really provides for the separation of ownershi and management during the marriage, something to which I am fundamentally opposed. The sectio destroys any implication that marriage is a shared enterprise, let alone one which is shared equall It seems almost to lean over backward to tell anybody reading the bill not to be concerned tha this bill might have some effect upon you, you know, be reassured this bill is not going to chang things for you. This legislation should change things, and such reassurances, it seems to me, ar wholly out of place. This clause should be deleted and replaced by one providing for shared ownershi during marriage.

Section 11, the one dealing with foreign assets, I suggest that this read: "Shall" be taken int consideration. Why should a cottage in Kenora be treated differently from one in the Whiteshe in computing a couple's assets. I don't see that it makes any difference which side of a provincia border you are on. Surely the value of the property can be taken into consideration in eithe case.

Now, proceed to Section 12. From what I have already said, you will know that I think ther should be immediate equal sharing of family assets, and if you can't agree to immediate equal sharin of all family assets, surely the marital home. Such immediate sharing during the marriage is essentia for the security, the status, and the self-concept of the non-owning spouse. I thought that the analog that Ruth Browne gave you last evening was an excellent one, the teenager who has to ask, wh has to seek special consideration. Neither spouse should be in this position during the marriage Family law must support equality within the marriage and not come into effect only in the ever of a separation. Deferred sharing will make people seek in separation the equality they should hav had all along. It seems to me a positive inducement to go out looking for an agreement. Why shoul we promote fair sharing only after the marriage has broken down?

I would like to deal with Section 13(1) and (2) together. The clause for family assets is acceptable though I would prefer to drop off the last few words, as was suggested to you last night by Mon Bronn.

The second clause, the one on commercial assets, 13(2), you have just discussed at some length In my view, it makes mockery of the initial statement of equal sharing. In my view, it opens ever door to every reason for varying from 50-50, and varying almost always in favour of the ownin spouse. It is like the insurance policy which pays generous benefits, unless your accident happen at home, or at work, or on the roads, or at sea, or in the air. It is those exceptions which ar going to kill us under 13(2).

My layperson's prediction is that litigation will multiply as the owning spouse seeks more tha 50 percent. The owning spouse must take the initiative — I recognize that point — but I think tha the owning spouse will often do so. The non-owning spouse is going to be on the defensive, ofte 8ithout either the resources or the confidence to contest the action. Spousal intimidation by threa of court action may be very effective for an insecure partner, the one who doesn't feel confider of his or her rights in court, who doesn't have the financial resources to employ counsel, may conced much of the 50 percent rather than risk losing it all.

At this point I would like to digress a little bit to expand upon a word which has been use a great deal. It has been used by Mr. Spivak and Mr. Mercier in particular, and that word i "presumption." I suggest to you that this symbolic pattern represents a presumption of equal sharin in marriage. The difficulty is that the word "presumption" is used in so many different ways. Fc example, I used to presume that when this Legislature passed a major Act it would remain in forc for more than a month. When this government suspended last years Acts in order to clean ther up, some of us presumed the changes would be only for clarity and consistency. There were other more perceptive, and they presumed that some group, some part of Manitoba's society, felt a stron need to protect their assets. There are facetious uses of the word — for instance: "I washed th car this morning, and I watered the lawn, so I presume it will rain." There are naive presumptions "The court has awarded this woman adequate maintenance, so I presume her financial difficultie are now over." You've heard what a naive presption that is in Manitoba, and elsewhere. And I gues there are some reasonable presumptions. If the new Marital Property Act allows wide judicia discretion for commercial assets, I presume the courts will be very busy exercising it.

Now, I'm going to return to my little model. I suggest that you consider this to be Section 1 — this is the presumption, and we're going to try and build on it. This is a presumption of equa sharing of the assets acquired during the marriage. Now, there are two important ingredients i how well you can build on something: one is how sturdy it is, and the other is what you try t put on it. Now, if you look at 13(1), the load which is imposed on it by way of discretion is a narro

oad — it's like a little angora kitten walking around on this — and it won't, in my view, create ıajor problems. I would rather that the kitten wasn't there, but it doesn't frighten me too much. ut when you look at 13(2) and you read off all those items, first of all you get a St. Bernard and ıen a Newfoundland and then a cougar and a grizzly bear and a camel — and when you get down ɔ the last one, that catch-all which says that just in case we forgot anything, you've got an elephant. nd as if that catch-all at the end of the list weren't enough, we can always be referred back to ıe initial statement which says that the lawyers or the court can bring in anything else that they ant to load up on this fragile little presumption of equal sharing. They can bring in two elephants, r they can bring in a bulldozer, or they can bring in a climbing crane — they can bring in almost nything they wish, and my suggestion is that this little platform, the presumption of equal sharing ;n't going to last very long under 13(2).

I think there are two ways — and here I'm going to offer some concrete suggestions — there re two ways in which we can improve the balance between the fragility of this presumption and ıe massive load that's going to be imposed on it under 13(2). One, of course, is to strengthen ıe presumption; the other is to cut down on the herd of elephants. To strengthen the presumption, ou could put into the initial statement something which doubled or tripled its thickness. Just as n example, my prefence — I'd like it to read, "If the court is satisfied that the division of those ssets in equal shares would be grossly unfair or unconscionable having regard to any extraordinary nancial or other circumstances . . .". And if that sounds familiar, it's because it's the wording for iscretion on family assets, and of course, I do believe that commercial assets should be treated ı exactly the same way. However, it's been made very clear in the last hour, even if it weren't efore, that the hope of melding commercial and family assets into a single category is a very faint ope. So, I suggest a second possibility which may commend itself to the committee, and that is, they they change the opening part of 13(2) to read " . . . would be grossly unfair or unconscionable aving regard to the following circumstances and no others," and then delete the last item in the st, that, it seems to me, would strengthen the presumption of equality which members like Mr. ;pivak and Mr. Mercier have been quite properly stressing to us. It would say that it isn't just a uestion of it being inequitable. For 13(2) to apply, it would have to be grossly unfair or nconscionable. I think in view of the comments that we've heard, both in the Legislature and here, ıat that's a viable possibility.

There's one other section that I'd like to draw your attention to, and that's item (i) in 13(2). Item) appears intended to benefit the non-earning spouse — this is the bit which refers to the way ı which the assumption of duties at home freeze up the earning spouse to add to his or her ommeicial assets — it appears to benefit the non-earning spouse, but it really goes only halfway, ells half the story. When one spouse stays at home, this may well increase the other's ability to cquire commercial assets, but it also reduces the first spouse's ability to do so. So you're adding n one side and subtracting on the other, and I think both should be specified. What the at-home pouse forgoes is just as valuable as what the other acquires. And of course, this is just as true ɔr job skills, experience and seniority as it is for cash or real property. It's a little like the situation f the young person who is choosing between employment and continued education. The obvious nancial burden is the cost of fees, books and living expenses while pursuing higher education, ut the forgone income is the other half of the equation. Really, Mr. Chairman, I'd prefer not to ave this list of circumstances in 13(2) at all, but if we must have it, let's include the major effects f role acceptance. Considering all the discussion about who works in what business — and I don't eally go for those discussions, but they seem to be relevant — it's surprising to find no reference ı this section to the direct contributions to the family enterprise. I don't think sharing should depend - as it recently did in that Ontario case that's been quoted so often — on documenting such irect input. I don't believe that the right to half the assets should depend upon whether you were articipating in the enterprise. But if all those other things are in, then surely that is relevant.

Mr. Chairman, it's in a way sad that we should be here to say — and I say for myself only, ut I think you've heard it from others — that these bills are a step backward from what were assed a year ago. I hope the committee will seize this opportunity to make them a source of pride ɔr all Manitobans and return them to the Assembly in better condition than they reached you.

Thank you very much.

IR. CHAIRMAN: Thank you, Mr. Smith, and thank you for staying within the 30 minutes. You just id it. Any questions?

IR. SMITH: There's a problem in that, Mr. Chairman. The first time I was down I spoke for about ıree; the second time I was down I spoke for about 10; the third time maybe for 15. So if this an annual affair, we're going to be in trouble.

IR. CHAIRMAN: Mr. Pawley, do you have a question for Mr. Smith?

MR. PAWLEY: Yes, just one question. In connection with Bill 38, 1(d)(2), in which family asset defined, referring to the money in the savings account, chequing account or current account, banl trust company, credit union or other financial institution, where the account is ordinarily used fc shelter or transportation or for household, education, recreation, social or . . ., what if the wor "retirement" was added to that? Would, in your view, Mr. Smith, that sufficiently cover retiremer plans, pension plans, etc., if there was a definition, the definition was slightly changed to tha effect?

MR. SMITH: It sounds to me as if that could cover Registered Retirement Savings Plans becaus they are usually referred to as accounts. They might cover RHOSPs as well.

MR. PAWLEY: I gather from your brief that though you would like to see the — certainly the equ division, as members of the opposition would, that in your view the retirement plans, the pensio plans, and other plans of that general nature really are the most important and fundamental are that unquestionably should be divided equally when you have a termination of marriage?

MR. SMITH: Absolutely. To me they are essential family assets. I'll quote my own example. I'v been employed for 25 years. I have very substantial pension rights which are in my name becaus I have been the employee, but my wife and I consider that those pension rights are a joint asse and they will be treated as such in every circumstance. Now, to me it is entirely incidental tha I happen to have been the employee and the cheques have come with my name on them, and th contributions to the pension fund have been made by me and by my employer. The asset, as see it, is an asset shared by the family in the same way as the home or the car or anything els I don't see it's peculiarly mine at all.

MR. PAWLEY: And of course the precedent has been firmly established now with the Canad Pension Plan, the equal division there, termination of marriage as of January 1st this year. So would seem only consistent to extend that to all other retirement annuities.

MR. SMITH: Nor am I impressed by any arguments that this creates a lot of technical problem It's been suggested to me that this involves in some way splitting the pension plan, and puttin half of it in the hands of each spouse, but it is an accounting procedure. It can split assets, c you can counter-balance for an asset of one type by using an asset of another type. Splitting valu is not splitting the pension plan any more than splitting the value of the house is sawing it i half.

MR. PAWLEY: Well there appears to be no mathematic or mechanical problem insofar as a Canad Pension benefit split, as I have heard, anyway.

MR. SMITH: I don't see how there can be for other pension plans, because the present value c pension rights is every day being computed for estate purposes, for current asset purposes. An if it can be done for those it can surely be done for family sharing or for a separation agreemen And I think there's another point about pension rights which we need to remind ourselves o Sometimes in these discussions it sounds as if we're talking about couples who have very substanti assets, large investments or substantial property. The great majority of Manitobans have only mode assets, and the two biggest assets in most Manitoba couples are the home, if they own the hom and the pension rights, if they have pension rights. I suggest that there are many people for whoi the pension rights are the biggest single asset, and to put them in commercial, where there w be, I contend, very serious question about them being shared equally, rather than in family, whe the presumption is likely to be much more effective, I think it is denying the sharing of the family biggest single lump of security. And why that should go to one rather than to both is simply beyon me. When people talk about commercial things, I understand them to be talking about major far enterprises, or business enterprises, or a law practice, or a medical practice. I don't understan them to be talking about pension rights or insurance rights or a few savings bonds that are tucke away in the deposit box at the bank; those aren't commercial things, those are family assets, i common parlance.

MR. CHAIRMAN: Any other questions? If not, thank you, Mr. Smith.

MR. SMITH: Thank , you, Mr. Chairman.

MR. CHAIRMAN: Mr. Jorgenson.

R. JORGENSON: Mr. Chairman, before we call the next witness, I wonder if I may make an nouncement. In consultation with my colleagues, I should advise you that it requires unanimous nsent to do this. We decided that the House will meet, as was planned, 10:00 o'clock Monday orning, but simultaneous with the meeting of the House, that we will also hold hearings here after e question period. So you can anticipate that around 10:30 or so the committee will be meeting here for those who wish to make their representations in the morning.

We'll be sitting also Monday afternoon and Monday evening. The House will be sitting at the me time so if you require some diversion you'll be able to watch the circus in the other place. should caution you that does require unanimous consent, and although I have the. . . Perhaps r. Pawley can speak for his colleagues.

R.CHAIRMAN: Mr. Pawley.

R. PAWLEY: Mr. Chairman, I believe we have agreement on this side with one understanding at we would request that when we have — we were intending to meet opposition members on onday to deal with possible amendments to this legislation, so we require time to prepare nendments to the legislation that we can present and all that I would ask on behalf of our group efore we unequivocally consent to this, is that it be understood that we would not go immediately to section by section discussion of the bill upon completion of the brief. We need some time as opposition caucus to meet and to prepare our amendments.

R. JORGENSON: I'm sure my honourable friend can be accommodated without any fficulty.

R. MERCIER: Mr. Chairman, just for the record then, inasmuch as there was some comment nderstand yesterday, when I was not here because of being required to attend a provincial meeting aling with the Federal Government's consitutional proposals, I want to say for the record that will not be here on Monday morning, because I will be attending a funeral of a very close friend our family.

Mr. Chairman, I would go further and say the briefs were presented on Friday evening by all those persons who appeared, which I've had an opportunity to review. There are a number of embers of staff of my department who are here to take notes, and all comments will be made own to me later that day, so I don't think anyone should feel that I will not be made aware of y comments that are made by any delegations who present briefs on Munday morning.

R. JORGENSON: Mr. Chairman, if there is anyone here who does not have any objection to making presentation Monday morning in the absence of the Attorney-General, perhaps we could have me indication now and then know for sure whether we'll meeting Monday morning or not. There's e there at least, and perhaps there will be others.

In the interests of expediting as much as possible the work of the Committee, I suggest that meet here. We have at least one person, and I'm sure there'll be others before the committee eets Monday morning, who'll be prepared to make a presentation. In view of the fact, it's about hour and a half on Monday morning, two or three is all that we would require in order to occupy e full morning.

R. CHERNIACK: Mr. Chairman, I didn't know the decision had been arrived at. The concern I ve, is that there are a number of. . . and firstly, I like the idea that we proceed because there e many matters of a routine nature in the House which I don't feel all of us have to be present in the House and I think that we should do what we can to facilitate the work of this committee, hich I think is the most important on our general agenda. But what I had in mind, Mr. Chairman, as that I gather that we will have an opportunity to review the Order Paper with the House Leader, we can indicate, and for myself I want to indicate those bills in which I have an interest, so at I am assured that they will be laid over to let us say Tuesday, or such time when I could participate the House, bearing in mind that there may be a short matter where I could just leave this committee, st in order to participate in debate there so that there may be an occasion when, like the torney-General, I'd want to be excused for a short period of time, but I would like that option be mine rather than just that way.

The other point, Mr. Chairman, since we've interrupted the proceedings for this discussion, I'd e to be assured that we are off this evening.

R. JORGENSON: Oh, yes, no, there's no intention of sitting beyond 5:30 this evening.

MR. CHAIRMAN: Is it agreed?

MR. JORGENSON: One other point I should like to make. A representative of the Women's Institut approached me last night and indicated that they had someone coming in from Miniota to preser a brief on behalf of the Women's Institute, and I took the liberty and perhaps I was presumptuou in doing so, in attempting to accommodate them at a time that is convenient for them, which woul be Monday afternoon some time.

MR. CHERNIACK: Absolutely. Not at all presumptuous.

MR. CHAIRMAN: Do we have the full agreement of the meers of the committee on Mr. Jorgenson' timings? (Agreed)

The next person on the list is representing the Manitoba Division of the Canadian Union of Publi Employees, Maureen Morrison.

MS. MORRISON: My name is Maureen Morrison, and I'm speaking on behalf of the Manitob Division of the Canadian Union of Public Employees which represents over 14,000 public sectc workers in the province of Manitoba. The purpose of this presentation is to express the concer of our members regarding the changes to the family law legislation as proposed in Bills 38 an 39.

The Manitoba Division, in accordance with a Canadian Labour Congress policy statemen "reaffirms that all human beings are born free, equal in dignity and equal before the law, and declare that all efforts must be made to provide every worker, without distinction on grounds of sex, wit equality of opportunity and treatment in all social, cultural, economic civic and political fields." W feel that marriage and the family, as social, economic and legal institutions must reflect this equalit The status of women in the family is a reflection of the status of women in sociy.

In the past, women have obtained their economic status and share of the society's wealth throug their legal relationship to a man. To redefine our family law as a relationship between legal equa necessarily means the acknowledgement of women as persons rather than as chattel. Bills 38 an 39 reject the concept of marriage as an equal partnership and therefore they must be viewed a retrogressive.

The two basic underlying principles of the original Marital Property Act and The Famil Maintenance Act, which incorporated the ideas of equality and justice, were: (1) Marriage as a equal partnership to which both spouses contribute financially or otherwise; and (2) famil maintenance based on need, not fault.

Bills 38 and 39 contradict both these principles by allowing for increased judicial discretion rathe than legislating equal sharing of all assets and by re-introducing the concept of fault in maintenanc orders.

We will deal with the implications of the new Marital Property Act first. We commend th government on its decision to retain mutual opting out and to legislate equal sharing of family asset However, we are very concerned about the widening of the use of judicial discretion with regar to division of commercial assets upon marriage breakdown. All assets must be shared equally the contribution of the non-earning spouse is to be recognized as an economic contribution to th family unit. If the principle of marriage as an equal partnership is accepted, then both spouses hav a right to an equal share in all assets acquired during the marriage and should not have to appe to the courts to grant them this equal share as a favour. The inclusion of 10 factors that a judg must consider when deciding upon division of commercial assets, plus an all-encompassing directiv to include "any circumstances the court deems relevant," makes the presumption of equal sharin almost meaningless. Consideration of these factors gives weight to the claim of the spouse wh directly contributed to the building up of the commercial assets, while almost ignoring the economi contribution made by the spouse at home. With all due respect to the Court, it is an acknowledge fact that members of the judiciary bring with them an ingrained bias which is often directed to th disadvantage of women. In countries such as Great Britain and New Zealand, where judicial discretio is relied upon, the disposition of assets on the average has gone two-thirds to the man and one-thir to the woman.

The Attorney-General has stated that the question of commercial assets would not be of concer to most Manitobas, but this is not the case as Bill 38 defines commercial assets to include insuranc policies, pension plans, certain savings accounts, as well as businesses, farms, etc. This means tha a large number of people would be directly affected.

We would like to quote from the Review Committee Report's recommendation of Myrna Bowma with regard to judicial discretion. "To extend the discretion significantly would do violence to th spirit of the Act and the public commitment of the government to the basic principles of equ sharing."

We are also concerned about the proposal to defer sharing of assets until the breakup of a marriage, as opposed to the original Act's provision for instantaneous sharing of family assets. Such deferred sharing is contrary to the idea of equal ownership. With immediate community of property in family assets, the non-earning partner could achieve security and status by being recognized as an equal partner and not as a dependent.

The change in The Family Maintenance Act, Bill 39, to include some form of fault in the determination of maintenance support is also of concern to us. It is not clear how "conduct amounting to a gross repudiation of the marriage relationship" will be defined. It is our opinion that spousal maintenance be granted on the basis of economic need only, and that fault be completely eliminated as a factor in determining such support. Consideration of fault, even in a limited way, makes it even more difficult for women to get adequate maintenance.

The whole question of maintenance is almost a theoretical one since about 75 percent of all maintenance orders are not enforced. We note that there is no provision in this bill, nor was there in the previous Family Maintenance Act, for adequate machinery for enforcement of maintenance orders. Maintenance could be paid by the state and the responsibility for collecting it could rest with the Court. This is happening to some extent now, but with only three enforcement officers for the whole province it can in no way be considered adequate or viable. The Provincial Government should also work with the Federal Government to set up mechanisms for inter-provincial reciprocity of enforcement of maintenance orders and international reciprocity.c

In conclusion, we have stated our concerns with respect to the proposed changes to the family law legislation and again we urge the committee to recommend the limited use of judicial discretion in the division of commercial assets and the complete elimination of fault as a factor in determining maintenance. Also, we again stress the importance of the inclusion of viable machinery for the enforcement of maintenance orders in the legislation. It is our desire that equality and justice for all Manitobans be reaffirmed through family law legislation which is truly equitable.

Thank you.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Yes. Thank you. Ms. Morrison. You made reference to tbe lack of enforcement procedure, not only in this legislation, but in the previous legislation. Where you aware that it was the intention of the previous government to establish a commission or a committee, and an announcement had been made publicly to that effect to thoroughly investigate different approaches and techniques of improving the collection and the enforcement of maintenance orders?

MS. MORRISON: Yes, I was aware that that was the intent of the previous government but I think it's very important, and it's really sad that nothing has been included in this legislation to deal with problem.

MR. PAWLEY: You would like to see a commission or a Task Force do a thorough analysis of ways and means by which improvement could be made in this entire area of collection enforcement of the maintenance orders?

MS. MORRISON: From what I've heard in this committee hearings, I think there's a lot of information that's already been researched and I'm sure that such a commission wouldn't take too much time to come up with solutions that would be viable.

MR. PAWLEY: Thank you. 8MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Are you aware that the previous governmment did not set up such a Task Force or commission, and that I requested my department to thoroughly review this matter and make some recommendations to me, which I expect very shortly?

MS. MORRISON: I'm aware of it now, you just told me.

MR. MERCIER: Are you aware that in Great Britain there is no presumption of equal sharing in their legislation?

MS. MORRISON: That was something that I was wondering, but I didn't know that until just now.

MR. MERCIER: Thank you very much for presenting the brief.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Thanks, Mr. Chairman. I want to direct questions to Ms. Morrison based c my assumption, which I think is an educated one, having had the honour to act for her union, th she speaks as a represenative of the people who rely mostly on the pay cheque for their livelihoc and for their accumulation of assets, and therefore there are some direct questions I want to rela to that.

Firstly, I assume that your membership consists of very large proportions of both men and wome and married women at that; is that a correct assumption? MS. MORRISON: Well, I think 45 perce of our members in Manitoba are women.

MR. CHERNIACK: All right, then, since I assume that many of your union members are membe of pension plans, would you state unequivocably what your feeling is as to whether that pensic plan is an asset of the family or a commercial asset.

MS. MORRISON: That's one area that is of great concern particularly because, as you said, th would be one of the few assets that a family would have, and I think it's really important that pension plan should be considered a family asset and therefore the legislation would allow that would be shared equally and not be included under commercial assets, where who knows what w happen to it. As you say, that most of our members would be wage earners; they are not in hig income brackets and pensions would be one of the few assets that they would have that they cou use as long-term security, and to have that included in commercial assets is just, well, it's ha for me to understand why that would be so.

MR. CHERNIACK: Well, another point along the same line, under the proposed bill the definitic of family asset describes an asset which is used for shelter or transportation, or household educational, recreational, social or aesthetic purposes, including the home and money in a savin account, chequing account, etc. Would you agree with me that in the case of the vast majority your members the pay cheque, itself, is probably the most important of the assets that should b described under family asset? In other words, what is there more important than the pay cheq to give to you and to be used for shelter, transportation, household needs, etc.?

MS. MORRISON: For most of the members that I am representing, the pay cheque would be th only real family asset, I mean, aside from the house.

MR. CHERNIACK: Well, that being the case and, again, because your membership are employees, do you see any objection that there would be, amongst the people you represent, having their employers be required to give information to the spouse during the marriage of wh their earnings are?

MS. MORRISON: No, I see absolutely no objection from our members. I think it's unrealistic think that **- well, a spouse can apply through a court order to get that information, but it unrealistic to think that a large number of people would even know where to beg to go to get a court order and the technicalities involved in that, whereas under th previous legislation it was legislated that that information could be had by anybo upon request.**

MR. CHERNIACK: Well, let's go further with that. Do you conceive that a marriage which is worki well or not well, but working, would be damaged by the fact that one spouse acquires and wan to have the information as to the earnings of the family? Do you see any hardship created in th marriage relationship because one spouse says I want to know how much you are earning?

MS. MORRISON: I can't see any way that hardship would be . . . I mean if a marriage is suppos to be an equal partnership then both spouses should have equal access to that information. I not sure how family assets are deferred, and they won't be shared equally until marriage breaks so I am not even sure why this part was still left in the legislation where you have the right to th information but you don't really have the right to make any decisions about how the money is spe if you don't have equal ownership until the marriage is broken up.

MR. CHERNIACK: Well, I think the point you make is pretty well not going to be accepted by t majority of this committee, but, dealing again with the pay cheque and relying on some experien that I have had in my law practice, I see many marriages that are getting along for better or worse where the wage earner — the husband — has refused to give information to the wife

ıe earnings and refused to consult, and nevertheless it has been managing. Now, there have been ccasions where the wife having learned of the earnings of the husband, has asserted the opportunity ɔ discuss other spending habits of the marriage without actually damaging the marriage. And the ɜar, I believe, in the minds of some who don't want to have that information made available to ıe spouse is that the mere fact that they have a right to do it and can get the information would ctually have the same effect as driving them into court, the way this bill drives them into court, ɔ just get that one piece of information. And I'd like to know whether you think that that's a valid rgument, that they might as well be in court anyway if there are going to have to insist on their ght to know.

IS. MORRISON: Well, no, I think that having to go through the courts would make it more of hardship and there would be more hostility between the spouses if you have to apply through court order to get that information than if the information was your right under the law.

IR. CHERNIACK: Thank you, Mr. Chairman.

IR. CHAIRMAN: Mr. Mercier.

IR. MERCIER: With respect to these pensions, Ms. Morrison, are you very familiar with the kinds f pensions your members have in general?

IS. MORRISON: No, I'm not.

IR. MERCIER: Would it be true to say — and if you can't answer it, fine — that most of the ensions that your members would have would be locked in and the benefits wouldn't be payable, enerally, until age 65 or retirement?

IS. MORRISON: I'm sorry; I can't answer that question.

IR. CHAIRMAN: Mr. Pawley.

IR. PAWLEY: Yes, I would like to just, further to the question that Mr. Mercier had posed to you little earlier, ask you if you are aware that the previous government had, after dealing with similar gislation to this last June, announced intention to form a committee and had in fact prepared ɜ terms of reference and had approached some people to see if they would be interested in serving ɪ the committee and had not proceeded due to the fact that the former government was defeated st October?

S. MORRISON: Well I assumed that's why it wasn't carried out.

R. PAWLEY: Now, could I ask you if you would prefer that type of committee to one which would mply involve an in-house study within the Department of the Attorney-General as to the present ·ocedures that are used?

S. MORRISON: I think it's obvious from sitting in on the hearings that there are a large number people of the public who are very well versed on the subject of maintenance and that could nd their assistance in coming up with solutions that would make enforcement viable. So I would ·efer that it would be a committee that would ask for public submissions and deal with people ıo are expert in the field.

R. PAWLEY: Thank you.

R. CHAIRMAN: Mr. Parasiuk.

R. PARASI: Thank you, Mr. Chairman. I just have one question and it arises from Page 2 of ıur brief where you indicate that 75 percent of all maintenance orders are not enforced, which really quite an astounding number. I am wondering if you have information as to what the dollar agnitude of this is. How much money is outstanding on a yearly basis in Manitoba because aintenance orders are not enforced; do you have any idea?

S. MORRISON: No, I'm sorry, I don't.

R. PARASIUK: You don't, eh? Okay, I'll take this up with the Attorney-General later when we

can ask him questions on it. I assume he will have the information because he has had his in-hous committee doing work on this, so I assume he will be able to answer that question. Than you.

MR. CHAIRMAN: Any further questions? Hearing none, thank you very kindly. The next one o my list is the Provincial Council of Women of Manitoba, Jean Carson.

MS. JEAN CARSON: Mr. Chairman, Jill Oliver is going out of town on Monday and she woul like to take my place if that is agreeable to the Committee.

MR. CHAIRMAN: You will take her spot?

MS. CARSON: Yes, I think it's 57. I may never come back. Thank God.

MR. CHAIRMAN: No, No. 50.

MS. JILL OLIVER: I think that was No. 50, Jean; it's not quite that bad.

I'd like to thank the Committee for allowing me to speak now.

My name is Jill Oliver. I am speaking on behalf of the NDP Status of Women Committee.

I would like to say to the committee that we are able to give some limited support only to th family law legislation, as it presently exists. It is a slight improvement on the existing dog's breakfa of law relating to the family as an economic unit and the manner in which assets are dealt wit Certainly it is a consolidation of the law as it exists today. We would hope, however, that no or will delude themselves into believing that this legislation presumes the concept of marriage as partnership. Not only has this government removed the joint ownership of marital assets, includir the marital home, but has made these assets the subject of judicial discretion for which there no apparent definition.

You have gone even further and made commercial assets the subject of wide discretion. In bo instances the assets are shareable only upon marriage breakdown. What you are saying, in effec is that marriage is a partnership only at the point of the marriage breakdown and, furthermor the extent of the partnership interest is to be determined by the court.

I would add, by the way, that I am speaking to this legislation as a package, rather than the separate Acts. I do not believe that they can be viewed in isolation from each other, but on as a package.

I must applaud the government for retaining the right for each spouse to obtain financi information regarding the other, but that has little effect if that spouse has no inherent right share the other's financial income as a full partner.

The law has always required a man to provide his wife with the basic necessities of life, b there is little effort made to enforce that. She has never had the legal right to share fully in h income or the family asset purchased by him, yet our economic system is primarily based on tl notion of the man as the breadwinner for the family, who is paid a wage commensurate with tl assumption that he has a family to support. In effect, a man is paid moneys on behalf of his wif with no guarantee that she will ever receive any of it. Perhaps we should rethink the words of tl marriage ceremony from those that state, and I quote, "With all my worldly goods I thee endow to "I endow thee with whatever I choose to give." In no other situation that I know of is one adı paid moneys on behalf of another adult with no guarantee that it actually be received by her

We are happy that Bill 39 promotes the notion that both husbands and wives share equ responsiblity towards each other, their own support and that of their children. Unfortunately, y have burdened the wife with these added legal responsibilities without giving her the legal econom strength she needs to bear and accept those added responsibilities. You give each spouse the leg right to receive a reasonable sum for clothing and other personal expenses, as in Section 3 of E 39, but that is vastly different from having an inherent right to presumably half the income th is supposedly paid to the breadwinner on her behalf. It is a continuation of the paroch master-servant relationship.

You have also reintroduced the fault principle into the right of maintenance to be paid to a nee spouse. Who is to benefit? A wife who needs the maintenance income, at least until she is at to support herself, may have it denied her if she is found at some fault. A wife at fault is frequen one who has had a sexual relationship with another man. A man who has had a sexual relationsl is not usually required to pay his wife any more money, however. In fact, if he has taken on anotl woman and her family while in desertion of his wife, the courts tend to lessen the maintenan payment to the deserted wife on the grounds that he now has another family to support. In ma instances, the courts have reduced maintenance payments to wives because the husband has fritter his money away and is now in debt, and cannot afford to pay money to his wife and childrer

now this first-hand, unfortunately, because I have acted both for a wife who has suffered from er husband's squandering, and, I might say, I have also acted for husbands who have squandered ıeir money away.

If there were an equal sharing of commercial and family assets, a spouse can at least assure erself that should the other spouse not keep up his support obligations, she at least has some ssets upon which she can draw at such needy times. There has been a great deal of criticism f the notion that non-earning spouses share equally in the commercial assets. The greatest criticism, f course, has come from business people who feel that the assets they have acquired belong to ıem alone. They are only too happy to share the marital assets, and in fact they are willing to llow a wife to take away half of the marital assets, which for many of them is a small part of their ›tal, while they remain in full possession of not only their commercial assets, but also the ability › continue to earn more.

It is a continuation of the unequal recognition of the different roles of men and women in our ɔciety, that the only real economic contribution is made by those people who actually earn money, ithout any recognition of the economic contribution made by the person who remains in the home. personally would prefer to advise all wives to go out and earn their own living, rather than remain ı uncertain dependence upon their husbands by staying in the home. This is an insult to the important ork done by those who do raise children, who do look after their home in order to enable a man › earn his living, and that for his family. At least a financial contribution will be given greater ɛcognition. Of course, it must also be noted that wives who do go to work outside the home also ɔ the majority of work inside the home when she comes home from her job, but since it isn't ɥually recognized anyway, we can say that that is their lot as women.

You have retained some good aspects of the previous legislation; the mutual opting-out provision, ›r example, and also the retroactivity, and I thank you for that. Unfortunately, by not recognizing ıe marriage as a parternship, you are still keeping women in economic bondage. For those unable › support themselves through the need to care for young children, or lack of job training, they gally have title to nothing during the term of the marriage. Most are afraid to leave a poor marriage ɛcause they have nowhere to go; nothing they own to take with them, and nothing to support ıem when they do leave. Many husbands still object to their wives working outside the home and ake it impossible for them to do so. I would also note, and I think this has been mentioned earlier, ıd that is, by not recognizing the equal or the joint ownership of assets during the marriage, that ıere is no right of survivorship, of course, upon death, and that in those cases the wife still has › assert her rights to the assets.

On the other hand, for those women who are aware that they are entitled to half of the assets ɔon marriage breakdown, and do decide to leave, they have to go through a lengthy court process order to have the share determined. In the meantime, she, and probably her children, have to ake do as best they can until her rights are decided. The husband, however, assuming he is the leholder of the assets, could legally remove all the assets in his name from the home, whic is so in his name. She may continue to live in an empty home, fight for some furniture, and fight r the share of the value of the home: this is your justice.

The attitude that maintenance is a reward is inherent in the retention of the fault principle and es in the face of the stated right to share. It continues the notion that a dependent and good fe will be rewarded, while a dependent and bad wife will be punished. Why not have the question maintenance based upon need only? One can only assume that this legislation was designed r the benefit of lawyers and those spouses who can afford to fight the longest.

I would add that I believe this proposed legislation to be a betrayal by this elected government the people of Manitoba who voted for them, in the belief that the family law would not be changed essence, only in form. What has actually occurred, of course, is that the heart and guts of the evious legislation has been removed. We are left with the form only, not with any real ›ntent.

I would just like to mention, perhaps for the benefit of the committee members here, a few specific ıses in which the operation of the law as it now stands is portrayed, and I don't think it's going make it very much different when this new legislation goes through. In the first instance, a husband ɨt his wife shortly after learning she was pregnant, and then he tried to bring a suit for divorce ı the grounds of her alleged cruelty. This was later dropped when the husband's lawyer found at there was no basis to the allegation. The husband worked intermittently and the wife supported ɨrself until the baby was born. She has been on maternity leave since. I brought an action on ɨr behalf for maintenance for the child only, but the wife eventually dropped it because she knew at it would be a continual hassle to obtain any maintenance, at least for the child. She knew she ›uld never get it for herself.

In the second instance, a man left his wife and two children for another woman and her three ildren, with whom he set up a household. When the wife filed for divorce, the husband contested ɛ application for maintenance for the children only on the grounds that he was now supporting

another family, and had also contracted considerable debts. Our application for increase maintenance from that incorporated in a previous order was denied, although the judge admitte that she not only needed the extra money but was entitled to it because of her decreased earning — she had been laid off from her previous higher earning job — and the increased cost of livin she was, however, awarded the same amount of maintenance that she had been awarded the previou year..

In the third case, I acted for a husband who was in arrears on his maintenance to his wife ar child. She worked at the minimum wage and was also undergoing treatment for cancer. He ha been laid off from his job but had made no apparent effort to find another. He was also receivir considerable UIC payments which he spent entirely on himself. The judge did reduce the amou of maintenance, due to my very good arguments, I might add, and as far as I know' as his counse has still not paid the full maintenance nor the arrears. The last I heard was that he had given h wife a beating for which she had lost several days' work. Needless to say, I no longer act f him.

I acted for another husband in a similar situation, who literally frittered and drank away all h earnings, and they were considerable, and who had paid his wife no maintenance for the suppo of their son and had made no payments on the loan for a car she took in return for her transferri her interest in the home to the husband. Again, I no longer act for him, I might add.

The fifth instance is a current case I am acting on. This is a case of a farm woman who h been married to a man for nearly 30 years. She bore nine children and worked on the land alongsi her husband. The marriage began breaking down about 16 years ago. She stayed because of t children and because she had nowhere else to go. At her husband's urging, she went out to g a job and contributed financially to the family, because her husband gave her no money for essenti expenses such as clothes, and in many cases, food. Her family is now grown and she has goo grounds for a divorce. Unfortunately, she has no legal right to any part of the home, title of whi is in her husband's name alone, and to all of tbe land except one small parcel which is in th joint names. She had great difficulty in understanding why she had no legal entitlement to the far or the homestead, beyond the small acreage which was held jointly in her name. Since her husba prefers not to work the land or to get a job — he lives on the rental from the land — she receiv no maintenance from him either. She is still working as a waitress in a hotel restaurant.

There has also been a great deal of comment regarding enforcement, and I would just like perhaps add a couple of ideas to what has been said before, and for the benefit of the committe I feel that there could and should be a provision in The Family Maintenance Act that all orde be payable through the Family Court, unless there is a specific opting-out by the recipient spous As it is now, such payment through the Family Court has to be requested and in some case particularly if a person doesn't have legal representation — they don't think to ask for it — a in some cases, their lawyers forget about it, too. Or they think, "Well, you know, it probably wo be any problem; he'll keep paying." Well, unfortunately, too often that just isn't the case, and a result, many orders either go unenforced entirely because there is no provision for enforcem or the person has to go through extra legal steps to ensure that there is some enforcement.

I would also suggest that enforcement could be tightened up now by requiring the court to ta action against a delinquent husband within say, a week, or two weeks of the cheque not bei received by the court. If the husband is unable to pay the maintenance for some reason, there sho be a mechanism whereby the payments could be made by the enforcement agency while it pursu the husband or give him time to pay.

Thank you very much. That is my submission.

MR. CHAIRMAN: . . . delegate? Seeing none, I thank you kindly.

The next one, "Women and the Law," is Val Duke. I'll ask again; is there a Ms. Val Du available?

MS. DUKE: Here I am. I thought there was someone else before me. I have copies of r brief.

MS. DUKE: My name is Val Duke, and I am presenting this brief on behalf of Manitoba Associati of Women and the Law.

The Manitoba Association of Women and the Law has as its objective sexual equality bef the law. We thank you for this opportunity to comment on the proposed new family laws. We ha made a careful study of Bill 38, The Marital Property Act, and Bill 39, The Family Maintenance A and we are frankly disappointed. These bills say that marriage is an equal partnership only i fails. This principle is unacceptable to us because we believe that marriage is an equal partners from its inception. Generally, Women and the Law advocates four main principles. They a immediate sharing of family assets, deferred sharing of commercial assets, severely restricted judi

liscretion, and no-fault maintenance. Of all these, only equal sharing on separation is mentioned ı the bills, and even that is undercut by allowing fairly wide judicial discretion. We strongly object ɔ such discretion, to the re-introduction of fault and to the fact that there is no provision for sharing uring the marriage. How can the government prefer to uphold the institution of marriage and then raft a bill in which separation is the only way for an untitled spouse to receive their fair share? his seems to encourage marital discord rather than harmony.

In order to be more specific, I would like to go over each bill separately and comment on specific ections. I will start with Bill 38, The Marital Property Act.

Women and the Law would like to suggest that there be a preamble written for this Act endorsing ıe principle of equality; that is, that marriage is an equal partnership and work done inside the ome is equal to work done outside the home.

Looking at the definitions, we note that the definitions of commercial and family assets have een changed. In the old Act, a family asset was a shareable asset that was not commercial, and ll bank accounts were commercial assets. In the new Act, the definition of a family asset includes ome bank accounts and we would like to compliment the Conservatives for including them as family ssets. Just for interest sake, though, we would like to add an observation. The Honourable Mr. lercier has said that very few Manitobans have commercial assets, but we feel that since insurance olicies and pension plans are considered commercial assets, a majority of Manitobans do have ommercial assets. We do not advocate changing the definition. We only wish to emphasize that 'e endorse equal sharing of such commercial assets on separation or death.

We take exception to Section 1(e), the definition of the marital home. The family law reform ıovement began as a response to a decision in a case involving farm lands, which has come to e considered unjust by a large part of the Canadian population. I am referring to Murdoch. This ill is supposed to be a response to that reform movement. It is therefore incomprehensible to us ıat the government would draft a bill which further reduces the share that a farm wife is entitled ɔ receive. The definition states, "where the property that includes the family residence is normally sed for a purpose other than residential only, it includes only the portion of the property that may ɛasonably be regarded as necessary to the use and enjoyment of the residence." We interpret ıis to mean that a marital home on a farm would include about the same amount of land as a ty home. This is both unfair and a reduction of the amount of property usually included in a farm ɔmestead. The definition of a homestead in The Dower Act includes the surrounding 320 acres. ill 38, in Section 24(1), specifically acknowledges the rights given by The Dower Act, yet it is consistent with The Dower Act in Section 1(e). We therefore suggest that Section 1(e) be reworded ɔ as to be consistent with The Dower Act definition of a farm homestead.

We are pleased to see that Section 2 makes the Act retroactive and that the government did ɔt follow the Review Committee's suggestion for unilateral opting out. We're glad you seem to ɡree that unilateral opting out is definitely an injustice, whereas mutual opting out is eminently ir.

Section 4(2) is good but it doesn't go quite far enough. Other family assets acquired in ɔntemplation of marriage should be included also, not just the marital home. We're thinking here the fairly common situation where a couple will purchase some or all of the furniture before the edding.

In Section 4(3), we feel that there would be more certainty if the word "actual" were inserted ɛfore the word "appreciation" in Subsection (a), and before "depreciation" in Subsection (b). In ɔme instances, assets are assigned an artificial book value and depreciated quickly for tax purposes. 'e feel that allowing a book value to be used in an accounting on separation would be ıfair.

Section 4(4) gives the court the power to order a non-title holding spouse to share a negative ılue. If this bill gave instantaneous sharing, then the untitled spouse would have management rights ıd we would agree to the sharing of a negative value. However, making a person share a negative ılue when they have had no say in the creation of that debt, is obviously unfair.

I am sure you can predict from what I have already said, what our response to Section 6(1) likely to be. That section states that the Act does not vest any title to, or interest in any asset one spouse in the other spouse. We cannot agree with this. MAWL always has, and still does, lvocate immediate sharing of family assets. When the present government repealed the previous arital Property Act, they professed to do so in order to correct drafting errors only. The previous ːt allowed for immediate sharing of family assets. Removing that provision cannot, by any stretch the imagination, be termed a correction of a drafting error. It is radical surgery. The medics have ddenly become brain surgeons and worse yet, they have performed a lobotomy.

Let me try to reassure you about community of property. We know that many people think that ɜtantaneous sharing would be unworkable, but there are many jurisdictions in the United States d Europe where community property has been in effect for a long time, and it works. If it works those jurisdictions, then why not here? Community property is not a new or a radical concept.

California, for example, has had community property laws since 1846. We all know the fantasti population growth of California, so it is pretty obvious that community property laws do not dete people or drive them away. We have also heard concern expressed that instant sharing would mak two signatures necessary on all documents. U.S. jurisdictions have used various procedures t overcome that difficulty. One method would be to state the two signatures are only necessary o real property transactions. They also, in some states, use the principles of agency law to overcom those problems.

We are sure that a reasonable system could be worked out for Manitoba also. Instantaneou sharing of family assets would effectively prevent many cases of injustice and dissipation of asse by one spouse. It has a positive effect on a marriage because it makes it necessary for spouse to discuss the family finances, thus making both partners knowledgeable. Community property als gives the non-title holding spouse a sense of security and confidence which can only serve t strengthen a marriage.

While speaking to some Conservative members, I was told of a situation which had occurre in Manitoba within the last six months. Apparently there was a farmer who was married and ha eight children, five of whom are still at home. He held an auction of some farm equipment an made $60,000 from it, which he then put into a safety deposit box. He had a joint account wit his wife, which contained $2,000.00. A month or so later, he took the $60,000, loaded his camp truck, and took off with another woman. The wife does not have enough money to make the mortgag payments on the farm and hubby can't be found. Now, if that wife had had some say in thing she could have insisted thtat the auction money go into the joint account. She at least would hav had a legal claim to half of that money. This is an example of how community property could foresta an unjust situation.

As far as tax considerations are concerned, we have been assured by the Federal Governme that The Tax Act will be amended to accommodate progressive family laws. Remember also, the is always the possibility of mutual opting out for those persons who wish to keep property separa for tax reasons.

Subsections (2) and (3) of Section 6 are also a disappointment to us. Last year's Act ga immediate sharing of family assets. The present bill takes away immediate sharing and gives us and enjoyment instead. We can think of situations where a legal right to use and enjoyment mig help, such as when one spouse locks the other out of the house, or refuses to allow the use the car, but compared to a legal title, it is rather unsatisfactory. What is really disturbing is th the removal of equal sharing during marriage was a deliberate act on the part of the drafters. can't be an accident. If you truly believe that marriage is an equal partnership between two person then you must support equal sharing of family assets during the marriage. To advocate deferre sharing of family assets is to say that you do not believe the partners are equal.

Proceeding on to Section 10(2), we reiterate our position as regards negative values. We d not like the provision for a court order when no management rights have been given.

For Section 11 dealing with assets outside Manitoba, we recommend that the word "may" b replaced with the word "shall". The reason for this is because "may" is permissive whereas "shal is compulsive, and we would like it to be compulsory that the value of assets outside Manitob be includes in an accounting.

We compliment the government for putting a presumption of equal sharing in Section 12. W only regret that the presumption is undermined elsewhere in the Act. The section lists circumstanc where sharing should occur. We would suggest that one more circumstance be added, and th is, "on the death of one spouse." Our reasons for wanting this are because The Dower Act do not give an equal share in the marital home, only a life tenancy, nor does The Dower Act specifica include commercial assets as part of the deceased's estate. Death of one spouse is after all a for of separation. By not including death, the bill effectively encourages separation before death. Sure it was not in the minds of the legislators to put couples who stay married "until death do us par in a worse position than those who separate, but that is what has happened here.

Section 13(1) is an example of how the presumption of equal sharing is undermined. We fe the section gives the court the device to circumvent equal sharing. The section could be improv if it ended with "extraordinary financial or other circumstances." Allowing the court to make excepti for assets of extraordinary nature or value would mean that a valuable art collection bought wi family savings could be excepted purely because of its value. Obviously that would be unjust.

Section 13(2) dealing with commercial assets gives an extremely wide discretion to a judge. allows variation of equal sharing if it would be "inequitable having regarding to any circumstances You will note that the term "grossly inequitable" is not used and any circumstance may be considere This opens the door to practically any excuse for a variation. For example, a court could deci that a wife who had worked in the family business throughout the marriage, should get a small share because she took maternity leave a few times. We cannot endorse Section 13(2) at all. Wi judicial discretion makes the law uncertain, and that is undesirable. It leads to many cases bei

igated that would not be necessary were the law more certain. In other words, greater certainty the law means less conflict between spouses who are already estranged. We feel good legislation ıould smooth the legal process, not make it more complicated. Past experience in other jurisdictions ıch as England and Australia has shown that judicial discretion gives at best a one-third interest the wife. Granted, there is not a presumption of equal sharing in English Law, and having a esution in Manitoba may help the situation, but we feel the present wording of the presumption not strong enough. Manitoba judges are not presently of a frame of mind supporting equal sharing, we think they need clear direction.

An example of the frame of mind of Manitoba judges — here it comes — may be seen in Fedon ıd Fedon. I am going to tell you all about it again, just to make sure you haven't missed anything. ıe circumstances of the case are as follows. The couple were married for 16 years and had four ıildren. For the first several years the wife worked outside the home and took a minimum amount time off to have those four children. All of her salary was used for family purposes. The husband orked also and between them they saved enough to start a business. Thereafter, the wife worked the business with the husband and it eventually became a success. The judge states, "That success as due in no small measure to Mrs. Fedon's conscientious and devoted attention to the business." ridence showed she worked almost the same hours as the husband but still managed to care r the children. Despite this, Mrs. Fedon was not given an equal share. The reason given is wryly nusing and leaves one with a sense of stunned disbelief. I quote, "The husband loves money, ısets and property more than anything in the world. To take any assets away from him would ıdoubtedly provoke a great deal of emotions in him." All assets in the husband's name were left him. This included the family home and the business. The wife was allowed a monthly maintenance ıyment of $100.00 for herself, plus a lump sum payment of $65,000.00. The net worth of the assets ıs determined to be $180,000, so Mrs. Fedon got just over one-third. That is lumping what you ıll family assets and commercial assets together, she still ended up with one-third.

It should also be noted that the Fedon case was decided after the Supreme Court of Canada ıcision in Rathwell. We are aware that many persons outside the legal system hailed the Rathwell ıse as decisive in making the principle of constructive trust applicable to marriages, but ıfortunately that is not so. Even though Rathwell was a Supieme Court decision, and therefore ıding on the Manitoba judges, it was not unanimous — the decision in Rathwell was not unanimous so the Manitoba judges had no difficulty getting around it, and they certainly took that opportunity get around it.

Another complaint that we have with Section 13(2) is that half of the circumstances enumerated r consideration have already been covered by other sections of the bill and are therefore ınecessary. Specifically, Subsection (b) is covered by Section 14(1)(a). Subsection (c) is covered Section 5(1). Subsections (d) and (e) are covered by Section 15. Subsection (f) is covered by ıction 4(1)(a). As for the other subsections, we think Subsection (a) has merit and should be retained ıewhere in the bill. We definitely feel that Subsection (g) should be removed, since inheritances ıd gifts are expressly excluded from sharing by Section 7 and therefore should not be considered. would be unfair to make a man with an inheritance give up a larger share of the commercial set or to make a woman with an inheritance take less than an equal share. Subsection (h) is general that it is difficult to interpret. We are unsure of its meaning, but suspect that it might ow such things as an interest in a partnership to be exet. In Subsection (i), the recognition of e effect of the assution of domestic responsibilities on a commercial asset is commendable, but ain it doesn't go far enough. It does not presume equality, nor does it recognize work done outside e home or the loss of income potential suffered by a spouse who stays home. An example of e former is the situation where a wife works outside the home and uses her salary to support e family so that the husband can use his salary to acquire commercial assets.

We have concluded that the main concern behind Subsection (j) is the preservation of commercial ısets. Let me say that we have never advocated the forced sale of assets. A long-term payment ın avoids sale and is a much more equitable solution than the giving of unequal shares to avoid ısale.

We are well aware that farmlands have appreciated greatly in the last few years and therefore ısent a particular problem. I will not enunciate it at this time. If you were here last night, you ard it from Mona Brown. We have suggested a formula to handle such a situation to the Minister Agriculture.

Generally, we feel that Section 16 adequately provides for the preservation of assets and that equitable solution could be arrived at for any situation that may arise.

That completes our comments on Bill 38. I will now comment on Bill 39, The Family Maintenance t.

The Manitoba Association of Women and the Law has always been against the consideration fault in determining maintenance. We are of the opinion that it is more logical and reasonable determine maintenance on the basis of need and ability to pay. Remember that there is an onus

to become financially independent, so in most cases, payments will not be a life-long commitmer If we are unsuccessful in convincing you, the legislators, that fault should be removed, we can on hope that the English interpretation of gross and unconscionable conduct will be followed. Mr. Merci has said that that was what was in the drafter's mind. In English Case Law, simple adultery is n gross and unconscionable conduct.

We support the obligation to become financial independent that is set out in Section 4. We no that there is no definition given, but we agree with that also. Financial independence is not somethir that can be generally defined. It will vary according to the situation.

We urge a change in the wording of Section 5. Instead of saying a court can consider circumstances, we would like it to say, "A court shall consider the following circumstances and r others." We do not want this section to be used as a loophole to widen fault considerations.

We agree that financial information should be available to a spouse and Section 6 does provic for that, but unfortunately it only applies to the other spouse. In order to obtain such informatic from an employer, partner or principal, a spouse would have to go through the complicated procedu of getting a court order. We would suggest that two subsections be added, one to enable employer etc., to give financial information, and the other to provide for a court order is necessitated I non-co-operation. Section 8(1)(g) could then be deleted.

In Section 7(3), we feel that there should be another subsection added also. We think variatic should be allowed in - extreme circumstances such as illness or disability.om

In Section 8, we would change the wording to read, "A court shall make an order," rather tha "may" because shall is an imperative word. As I have already said, Subsection (g) could be delete if our suggested changes are made to Section 6.

We compliment the government for stating in Section 12 that parents have a mutual obligati to support their children. If we expect to share assets equally, we must expect to share responsibiliti equally also. Of course we also feel we are sharing these responsibilities equally already.

Section 17 states that a proceeding under the Act shall follow the practice and procedure the court in which it is taken. We feel that it is very important that this section also include a clau giving the Provincial Judges Court, Family Division, the power to set its own procedures. This wou allow the Family Court is set a shortened procedure that could still include important and use procedures such as examination for discovery.

In Section 21, we are concerned that allowing an application by "any person affected by t order" is too broad. It could mean, for example, that the Director of Child Welfare could ask f a review of a maintenance order. We suggest the application be restricted to either party.

We foresee a possible problem with an appeal directly to the Court of Appeal in all cases provided for in Section 24(1). Unless the procedures of Family Court are changed, an appeal frc there to the Court of Appeal would go without an exam for discovery. The parties in that case wou be flying blind. Therefore, we suggest that if the form chosen under Section 16 is Family Cou any appeal should go to the County Court by way of a trial *de nova.*

The final comment we have to make concerns Section 25(1). We would like to see the wc "may" changed to "shall". This would allow for stricter enforcement orders. The Conservatives we very critical for the lack of strong enforcement procedures in the old Family Maintenance Act. M Sherman has publicly stated that enforcement procedures in the present bill are too weak and ne strengthening. We agree.

In closing, I would like to thank the committee for listening to our submission. It was given a spirit of helping and we sincerely hope that it will be of help to this committee.

MR. CHAIRMAN: . . . questions?

MS. DUKE: Yes.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Thank you. Ms. Duke, I am looking at Page 12, your second last paragraph, wh you make a comment regarding strengthening enforcement procedures. You indicate that the wc "may" should be changed to "shall" in Section 25(1). Is this suggestion just a step or is it consider sufficient by your group?

MS. DUKE: No, it is not considered sufficient. It is just a first step. It would mean that everybc would have to make some sort of deposit so that one or two or three month's worth of maintenar were covered if the man defaulted.

MR. PARASIUK: But you certainly don't consider it enough to deal with the problem of 75 perc of the maintenance orders not being enforced, which is the information that we received from ot

iefs?

S. DUKE: No.

R. PASIUK: It would strike me that that's a much larger problem that would probably require uch more action than is indicated in this particular brief.

S. DUKE: Yes, that's right. I'm afraid I'm not that familiar with the process for collecting aintenance. I'm a student lawyer; I haven't gotten out into the world yet. But that was just a ggestion — while somebody is chasing the defaulter, that would give the recipient some money hold on until the defaulter was found.

R. PARASIUK: Thank you.

R. CHAIRMAN: Mr. Mercier.

R. MERCIER: Ms. Duke, how many members of your association are there?

S. DUKE: The Manitoba caucus has 36 members.

R. MERCIER: Is that composed both of practising lawyers and students?

S. DUKE: That's right, and some lay people.

R. MERCIER: You refer to Section 17 on Page 11 of your brief. I might just point out that there another bill in which we are amending The Provincial Judges Act to allow the Provincial Courts establish their own rules and procedure and it was felt that . . .

S. DUKE: That was our concern, that they would be able to do that. I understand there is some rt of a case going for consideration where a judge did try and set his own procedure in Family urt and he is being challenged on it.

R. MERCIER: We felt it should be in The Provincial Judges Act rather than this Act. With respect to your suggestion with respect to Section 25(1) which now says an order may require person against whom it is made to deposit a specified amount in court, would you not agree it there are persons who simply do not have sufficient resources available to make a deposit court, and that that is the reason why it is "may" and that it has to be left up to the judge determine the circumstances of the particular case, and if there are moneys available, then he uld require a deposit into court? But you can't make it mandatory because not everyone has fficient assets to do that.

S. DUKE: I was under the impression that if a person didn't have any money, they wouldn't have put up money but they would have to give their own personal bond, like their own personal surance, which would make them legally responsible and they would go to jail if they couldn't it.

R. MERCIER: I won't pursue it, but there are many cases where there sily are not sufficient sets.

S. DUKE: I personally have a bond that I can't remove my children from the province without ex-husband's say so. I haven't had to pay any money on that but I know very well that if I it, I would either have to come up with that money quickly or go to jail. It deters me from running not that I was going to in the first place, but it would. It certainly would give me second thoughts, uldn't it?

. MERCIER: Did you look at the legislation in England?

. DUKE: The specific bill in England?

. MERCIER Yes.

. DUKE: No, I didn't.

MR. MERCIER: You wouldn't be aware that there is no presumption of equal sharing, then?

MS. DUKE: Yes, I am aware of that. I said that in my brief.

MR. MERCIER: I'm glad that someone has looked at it, then and is prepared to admit it.

MS. DUKE: I even suggested that it might help for us to have a presumption here, but I'm n totally convinced, because of the wide judicial discretion given in 13(2), that it is going to chan the judge's mind from the way that they are thinking now, and Fedon is an example of how th are thinking now.

MR. MERCIER: What do you mean, from the way they are thinking?

MS. DUKE: They had the chance, because of Rathwell, to find a constructive trust for Mrs. Fedo She definitely worked in the business. They could have done it, but they didn't do it; they cho not to. So that kind of dampens my faith a little.

MR. MERCIER: Do you not think that the inclusion of a presumption of equal sharing is a significa change in the law?

MS. DUKE: Yes, it is a significant change, but then it is also undermined again later on. You se for the family assets, the amount of discretion allowed for family assets is quite acceptable to as long as you take out that nature of value consideration, extraordinary nature of value. That seer to be a bit of a way out. But the amount of discretion allowed in 13(2) is so wide that any excu at all could be made to change it, so that even if you are starting in the middle, you are givi them such a great opportunity to go the other way that I'm afraid that they will take that. You c bet that the lawyers representing husbands or owners, titleholders — let's put it that way — a going to go in and argue that it should go the other way and not be equal.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Yes. I'd like to ask Ms. Duke, on Page 7 in the reference to England and Austral where you point out that in England there is not a presumption of equal sharing in English la I wonder if you could advise us as to what the situation is in Australia, due to the fact th . . .

MS. DUKE: I believe Australia is the same as New Zealand, that has changed their presumptic and we haven't got any reported cases yet from New Zealand, so we don't know what's happeni there.

MR. PAWLEY: Then I would like to ask you, in view of what the Attorney-General posed to y about presumption, his presumption being a significant step forward, would you relate that signific step in contrast to last year's legislation, which was passed by the previous government, whi provided for equal sharing and very limited discretion?

MS. DUKE: Well, I tried to make the point in my brief, maybe it was missed, but we do consic that this legislation here is a step backward from last year's legislation.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Well, Mr. Chairman. Ms. Duke, you've already answered my question that are really dealing with a law that's being proposed that is a step backward from the law wh is now on the Statute Books of Manitoba, which remains unpruclaimed because of the Conservat Government's decision. So let's clarify for the Attorney-General that where he thinks we are stepp forward beyond England, we are stepping well back from Manitoba. So, having dealt with that, like to move to Page 6.

One point you mention about including in Section 12 of The Proparty Act, the death of a spou as being a factor for distribution. Could you just explore for me — I'm not trying to make a poi I just want to explore it — the effect of The Dower Act which, it seems to me, gives more th this Act does. Do correct me if I'm wrong.

MS. DUKE: No, no. The Dower Act gives no legal title to the marital home, it only gives the survi a right to live in it until they die. That means, if they go in a nursing home, they can't sell.

ıu've got a lady, her husband died, she's got a right to live in this house, then she gets sick and ıs to go to a nursing home. All she can do with that house is rent it out to somebody, and you're ɜll aware what happens if you have renters in a house, with nobody to watch over them. It's liable become a wreck, and by the time it finally does get into the estate when she dies it's not going be worth much. And she has no right to sell it.

R. CHERNIACK: I appreciate your point, but The Dower Act also protects the surviving spouse r one-half of the estate, and what is proposed is for a minimum of $50,000.00.

S. DUKE: Yes.

R. CHERNIACK: And it covers one-half of the total estate, both assets acquired prior to the arriage and subsequent to the separation. I kind of assume that The Dower Act covers more than is Property Act does except that the point you make relating to the marital home, I think, has lidity. Am I wrong there; am I missing something else? I did overlook the fact that the home does ıt belong to the surviving spouse under The Dower Act; I didn't quite remember that feature when ɜsked the question.

S. DUKE: Well, we also felt that The Dower Act doesn't specifically include commercial assets the estate, so they might get left out also.

R. CHERNIACK: Now, it seems to me The Dower Act does cover half of the total estate, and ɜt therefore that would include commercial assets. You're thinking of The Dower Act in relation homestead, and I'm thinking of The Dower Act as the guaranteed minimum.

S. DUKE: Yes.

R. CHERNIACK: But under the legislation which is now on the Statute Books, from which we ɜ running backwards, that would provide for the marital assets being jointly owned and in addition that, The Dower Act would give half the estate, so that actually, under the present law that was ssed last year, the survivor would acquire more than half of the total, having already acquired lf of certain assets and being entitled to a minimum of half of the balance.

S. DUKE: That was under last year's Act?

R. CHERNIACK: Yes.

S. DUKE: Yes, that would have been the effect.

R. CHERNIACK: Yes. All right. Now, I want to look at Section 25(1) which you discussed with ɜ Attorney-General, and when he asked, what about a case of a person who doesn't have money, u said, "Well, he could post a bond." And that's under the Act now, that either they be required put up deposit money or post a bond with or without sureties. And I'm wondering whether, to ɜe care of the possibility that that person having a bond may not care much about just a bond hout sureties, whether it would strengthen your argument if you said, "Well, let them post security, t just surety, but security." Like a chattel mortgage on the car, or a mortgage on the house, here is that available, but whatever assets there are owned by the paying spouse. There could another subsection added, I suppose, saying that the court may also require security to be posted t shall make an order.

S. DUKE: Yes.

R. CHERNIACK: Well, would you agree that that is a possibility, that . . . ?

S.DUKE: Yes, that would be another alternative to the person who doesn't have money.

R. CHERNIACK: You and Mr. Mercier had not explored that aspect of the possibility. And that n would give more validity to the fact that the court shall make an order and therefore shall k into all the other possibilities of ensuring payments.

S. DUKE: Mm'hmmm. People who have to give their word to the court tend to stick to it a little more than just having to give it to some ex-wife who they don't think much of any more.

MR. CHERNIACK: No. But of course the danger would be that somebody who gives his word the court and doesn't pay may just end up in jail, and that doesn't help the situation at all. B if there is security available, then that might be possible. The only question is . . .

MS. DUKE: Yes, that would be better.

MR. CHERNIACK: . . . I presume that if there is a bond given to the court, then it would be t responsibility of the Attorney-General's department to get after the person who defaults. Mayl that would be a problem, that they don't want to get involved in enforcing the order.

MS. DUKE: Yes.

MR. CHAIRMAN: Any further questions to Ms. Duke? If not, thank you kindly.
Mr. Jorgenson, do you feel that we should try and squeeze one more in between 5:30, or c it 5:30?

MR. JORGENSON: Unless we have a three-minute brief, I suggest the Committee ris —(Interjection)— All right. If you want to present it now, fine.

MR. CHAIRMAN: Yes. Ellen Kruger, then.

MS. KRUGER: My name is Ellen Kruger. I'm speaking on behalf of a Woman's Place, a resour and information centre that has been operating in Winnipeg for the past seven years, has membership of about 300 people and which is a member of the Coalition on Family Law. An asi is, as I was coming in this morning, there was a young married couple, or about-to-be-married coup having their wedding pictures taken on the step, and continually during the afternoon we have hea honks of wedding cars beeping around, and it's very ironic that people are still getting married wh here we are fighting it out upstairs. Here sit the people of Manitoba, once again petitioning membe of the Legislature for equality in marriage.

These sessions have been going on since before the turn of the century, as far as I can s it, yet in 1978 we still don't have legal recognition that marriage is a social and an econon partnership. We begin to wonder if public hearings are only a sham anyways. Why would we thi that? Well, these sessions were set for an evening when it was known the Attorney-General wo not be present. Summer weekends are probably the most inconvenient time for the public to atte especially on 48 hours notice. The Attorney-General is speaking of these bills as if they will be l unchanged even after public hearings. For years, virtually all briefs presented at these hearings ha been supportive of the Coalition's views, yet this legislation certainly has not reflected those vie If there are groups and individuals who do not agree with the Coalition's views, why have they ne appeared before these Committees? Worse still, why are they being listened to by the drafters this legislation?

For centuries, Canadians have married, repeating the phrases "For richer, for poorer," and, "W all my worldly wealth I thee endow." Women believed that marriage was an equal partnership was only through the widely-publicized cases of Irene Murdoch and, more positively, of He Rathwell, that most Canadian women learned the truth about family laws, hence we have a natio movement for reform.

Last spring, we finally saw legislation that embodied the concept of equal sharing. How, in justice, can this government claim that equal sharing is the fundamental principle of the propos legislation, but only on dissolution of the marriage? That means, whoever bought an item has cont over it during the marriage. The marriage oath phrase will have to read, "With half my worldly asse I thee endow. If we break up, see me in the court about your share of the rest." We must ha a guarantee of joint management of family assets during marriage.

On a more positive note, we were pleased to see that the government has not allowed unilate opting out. Opting out can only equitably be done by mutual agreement with independent legal advi Mr. Mercier has said that in Section 12 there is "the presumption of equal sharing of all asse both family and commercial." It is good to note that "money in a bank account used for fan purposes" is now included as a family asset. However, life insurance, pensions, savings bonds, RRSPs are considered commercial assets on which we have no guarantee of a 50-50 split beca of judicial discretion. In deciding how commercial assets will be divided, the concept of equal shar will never be assured when judges consider 10 very broad factors as reasonable justification vary the equal sharing. From past experience women have learned that the judicial discretior often subject to the very human biases of judges, and they have not been dealt v equitably.

To be just, family laws must allow very little judicial discretion, allowing such wide discreti

viously are an open invitation to litigation. The person in the most powerful position is encouraged go to court, and the less powerful one, without the financial resources to fight the case, will lose t.

Under the proposed legislation, not only will a woman not own her family property during the arriage, but also, she will not have access to information about her spouse's salary without going court. Last year the Conservatives were criticizing the NDP legislation because they said it would ad to too much litigation. Now, they have introduced these two clauses I have just mentioned, hich obviously will increase litigation as well as create an unfair situation. Last year's criticisms longer have any credibility whatsoever.

The element of fault has again been introduced in the consideration of maintenance orders. It ys, "A court may, in determining the amount of support and maintenance, have regard to a course conduct that is so unconscionable as to constitute an obvious and gross repudiation of the arriage relationship." What is gross repudiation? Since judges are human, what constitutes gross oudiation may vary from judge to judge. When judicial decisions vary and can be swayed by mpetent lawyers, we cannot be assured of equitable decisions. Maintenance should be based on ed and ability to pay, not fault. Proving fault is too subjective and too destructive to the partners olved.

Last fall, the Conservatives stated that one of the main factors in their opposition to the NDP islation was the fact that no adequate system of collecting maintenance orders had been included the legislation. Yet, in these new bills, they have totally ignored the necessity for seeing that intenance orders are paid. It has been suggested that maintenance orders be paid through a vernment agency and forwarded to the recipient. This agency would then be responsible for chasing er delinquent spouses. We realize that there are some problems with this concept, but they are tainly not insurmountable. As it is, taxpayers pay support through welfare when support payments not forthcoming. Surely, some of this amount could be recovered if maintenance payments could collected by the government. Certainly, the resources available to the government are greater an those of the individual.

In summary, we were promised that the basic presumption that assets acquired during marriage ould be shared equally during marriage would be preserved by this government. In fact, we see t sharing of family assets is deferred to marital breakdown; the discretion allowed in the sharing commerical assets is so broad as to virtually eliminate the 50-50 sharing; fault has been introduced determining maintenance orders; there has been no adequate provision for the collection of intenance orders.

We urge the government to reconsider the legislation and to provide for immediate sharing of nily assets; the same limited judicial discretion for commercial assets as had been set forth in ard to family assets; the elimination of fault, and adequate maintenance collection procedures. ank you.

. CHAIRMAN: Are there any questions to the delegate? Hearing none, thank you very dly.

Committee rise.