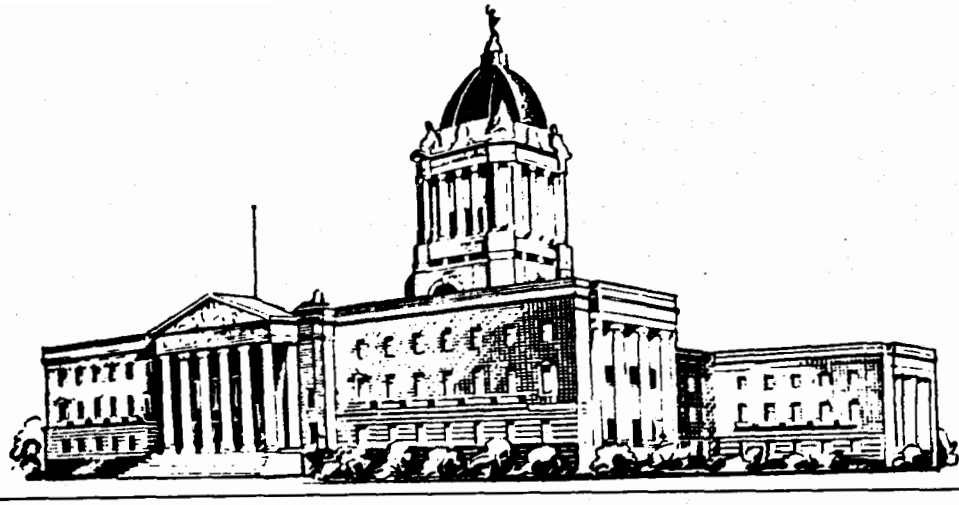
Legislative Assembly of Manitoba

HEARING OF THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. D. James Walding
Constituency of St. Vital



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TIME: 10:00 a.m.

CHAIRMAN, Mr. D. James Walding

MR. CHAIRMAN: We have a quorum gentlemen, the Committee will come to order.

Further to our decision last night, the first person appearing before the Committee this morning will be Mr. Ken Houston. Would you come forward, Sir, please.

MR. KEN HOUSTON: Mr. Chairman, members of the committee. My name is Ken Houston, I am a practising lawyer. I have practised in the City of Winnipeg for a little over 19 years. I think it's fair to say that I have done a significant amount of domestic work during that time to the point where, unlike Mr. Carr, I'm not astonished by the stories I am told by people about their marital affairs. In fact, I'm not even surprised any more.

No matter what you may think or like to think about human nature, it's clear to me there are people in our community, both men and women, in all walks and stations of life, who are capable of the most incivil conduct, the most bizarre actions that you could conceivably imagine. This, for many of them, in terms of marriage breakup, is probably the worst time in their lives and they are at their worst and you ought not reasonably to infer that you can rely on people to conduct themselves reasonably at that time because they don't. They react in hurt, in fear, and sometimes in that easy switch from love to hate. They will act vindictively. They will act to hurt the other even while hurting themselves. Besides that, I am married and I have been divorced. I hope you will draw from that that my opinions on the matter are not notional, they are not conceptual but they are based on experience. I am addressing you as a citizen, as a married citizen and as a lawyer , and I can't separate the two. So I would like you to take my remarks as coming from under both hats at the same time.

As to the law, the law may be divided generally into two areas. One, there is the statute law. That's the law that you people are responsible for. That's the law that the legislatures pass in the various jurisdictions in this country and that's the law that the Parliament of Canada passes within its jurisdiction as it affects people from coast to coast in this country. That law is conceived of as being the expression of the people because it is enacted by their representatives. And I suppose within that first part to complete it and to round it out, you have local ordinances passed by local governments.

The other part of the law is what we call the case law. That is the law developed in the courts by the judges. Developed from notions, of principles that have developed over centuries. That law is at all times subject to the statute law. The judges recognize your primacy. There seems to be some notion in this committee and in the submissions being made before it, that judges are free to decide cases as they wish — and that is not the case. Judges are bound by your laws and they have, as far as I know, always followed them where the meaning was clear no matter how idiotic the result was and no matter how unfair the result was, because the judges do not presume to have the right to override what they take to be the expression of the people in a democratic society, as enacted by their representatives.

Now there have been an awful lot of cheap shots being taken in this committee against the judiciary system. They are cheap shots because you know that the judges can't defend themselves against those shots. They are cheap shots because they are so poorly founded. As I heard the submissions here , in the hearings that I attended, the principal foundation for this cynical attitude towards the honourability and the sincerity of judges, is based on the decision of a single trial judge in the Province of Alberta in 1970 in the notorious Murdoch case. The only other example that the ladies could point to, other than those examples respecting maintenance that Mrs. Paxton spoke of last night, which I would like to refer to separately, was a reference to some unnamed English case where Lord Denning recognized the domestic skills of the lady involved. It's obvious the ladies are well researched in response to questioning. They were able to come up with any number of books on the matter. One would think that if this allegation of a prevalent attitude among prejudiced male judges had any basis in fact, that they could find at least more than two examples in Canada in the last seven years. And I don't think I have to remind you gentlemen that social attitudes in the Province of Alberta are a lot different in 1970 at least and even now than they are apparently in the Province of Manitoba. Just look at the governments they elect.

If you consider that there were 1,925 divorce petitions issued in the City of Winnipeg alone in the year 1976, if these inequities, these alleged inequities were widespread, that the ladies could give you an example closer to home, but they haven't come up with a single one. As I understood Ms. Steinbart, the trial judge in the Murdoch case had a question of fact before him which he could have decided, in her own words, "one way or the other", and because he, this chauvinistic man, didn't decide on that fact which was within his discretion, the way she would have preferred. He is, therefore, biased and prejudiced and, therefore, all of the other judges are biased and prejudiced and ought not to be trusted to exercise a judicial discretion. Ms. Steinbart is a lawyer. As such, she is an officer of the court and she has certain responsibilities. In my opinion, those remarks Ms. Steinbart are simple and clear contempt. If she were a little more seasoned; if she were not so obviously carried

away with the apparent sincerity of her own rhetoric, I can assure that as a member of the Law Society, I would have had no hesitation in reporting that to the Law Society as a matter for professional discipline because I believe that to be a most unprofessional comment. It's bad enough that she should feel entitled to make that remark; it is appalling that she and others like her, should be encouraged to make those remarks by questioning from this Committee

Quite apart from the proprieties of the matter, consider her logic. If you can get that logic, that progression that she posed before you, cast into the form of a syllogism, and get it certified by one of your professors of philosophy, I will eat it.

The spokespersons for this strident minority continuously flog the Murdoch case. In my respectful opinion and submission, gentlemen, the Murdoch case has been misrepresented, has been misquoted, from coast to coast since the Supreme Court gave its decision on the matter in 1974. You've heard a lot of opinion on what it is thought the Murdoch case was all about. I have the Murdoch case. This was a case decided in the Supreme Court of Canada, which is the highest court in the land, in 1974. In the facts of this case — and I think the facts are very important, they are always important — these people had married in 1943. Mrs. Murdoch left her husband in 1968. After she left her husband, she started one action for judicial separation, not divorce — Mrs. Murdoch wasn't one of those ladies that let's them go easy.

And this often happens. You don't hear about the ladies who don't want a divorce. They want to hang the man up for five years so they won't go for divorce in the first place, they will go for judicial separation, then, three years later when the man could sue on the basis of a three year separation, then they sue for divorce. Mrs. Murdoch did not choose to go for divorce in the first instance. She asked for a separation; she asked for custody of the infant son of the marriage; she asked for alimony; she asked for maintenance for the child and for an order giving her sole possession of the quarter section of land referred to as the family home. She started that action in December of 1968.

Well, she and her lawyer sat around for awhile. By August of 1969, they had come up with another idea. They started another action and in that action Mrs. Murdoch claimed that Mr. Murdoch was holding land in his own name in trust for her on the basis that they were equal partners and this land was the land where a ranching business was carried on. She wanted the court to declare that he was a trustee

for her for an undivided one-half interest in the land.When the matter came on, the two actions were consolidated for the purpose of trial — the courts like to save time if they can, they're overburdened as it is — the two matters came on together. Mr. Murdoch did not contest the judicial separation; he was content to have it. Mr. Murdoch got custody of his son — which permits you to draw your own inference as to the parties involved here — and the court ordered that Mr. Murdoch pay $200 a month as maintenance to Mrs. Murdoch. The court said in the case on the facts as it was presented with that Mrs. Murdoch had no interest in the ranching business on the basis of the claim that she advanced.

Mrs. Murdoch then appealed that decision to the Court of Appeal for the Province of Alberta. Now we've had one trial judge considering it and then in the Court of Appeal, I don't know how many sat but there must have a been a minimum of three, so at that point in time, four judges of the land had considered the case and the facts in the case. In the Court of Appeal, it was held that because the two actions had been tried together and because Mrs. Murdoch had continued to accept the $200 a month that the judge had ordered her husband to pay to her, she could not appeal the other portion of the judgment because with the two actions being consolidated for the purposes of trial, it was the opinion of the Court there that the judgment was inextricably interwoven, one part with the other.

Mrs. Murdoch then took that one to the Supreme Court of Canada. At that point in time, she changed ground. Now she hadn't done too well with the first delegation so she decided to take a different position — no doubt on the advice of her lawyer. The respondent's position, Mr. Murdoch's, was that the Court of Appeal in the Province of Alberta, had correctly disposed of the matter. The Supreme Court was sensitive to the apparent wrongness in terms of the result of what was happening here. I want to emphasize judges are not free to decide cases as they wish. Judges are bound to decide cases on the basis in which the claim is advanced. If you choose to court and don't frame your claim the right way and you lose, don't blame the judge, sue your lawyer.

The Supreme Court was sensitive to the matter, and rather than simply dismissing it out of hand and saying that the Court of A ppeal in Alberta had been right in saying she had no right to appeal, the Supreme Court heard the whole case on its merits so that the disposition there was after the matter had been decided or been considered in three courts of the land, including the Supreme Court.

Now in the reasons for judgment — and I submit that these are more reliable than the interpretations that you have been offered as to what happened in this particular case — it was said that Mrs. Murdoch's principal claim that Mr. Murdoch held this land in trust for her, was advanced on

the proposition that she had contributed to the purchase price of the land. The evidence of Mr. Murdoch was that she had not, that he had in fact borrowed the money from Mrs. Murdoch's mother, and that he had repaid it. Mrs. Murdoch had her mother come and testify in support of her own oral evidence that these moneys were a gift to the daughter. Now the court there was faced with conflicting evidence as between Mrs. Murdoch and her mother and Mr. Murdoch.

The trial judge said, "I accept the defendant's evidence," this is a direct quotation — it's Mr. Murdoch. "Insofar as he was concerned, the moneys that he received from time to time to assist in purchasing land or obtaining rent or purchasing cattle or used for other farm or ranch expenses, he understood to belong to Mrs. Nash — that's Mrs. Murdoch's mother — and he understood and treated the money at all times as a loan made to him."

Now Ms. Steinbart says that that really is an exercise in prejudice because the only reason — that is really what she said: "The judge could have decided that one way or the other, and because he was a man" she said, "he decided in favour of the husband." In Page 363, the reasons for the judgment of Mr. Justice Markland of the Supreme Court of Canada, whose ability to analyze evidence, I commend to you far and above that of Ms. Steinbart, it is indicated that the appellant and the respondent, Mr. and Mrs. Murdoch together, kept an expense book in which entries were made by both parties, joint management, even what you want now.

In the page for the year 1955, that's 13 years before Mrs. Murdoch thought about taking her husband to court, appears an entry of a payment of $2,000 to Mrs. Nash — that's the mother-in-law — "borrowed for land deal." In the page for the year 1956, there is an entry, "Payment — F. Nash — that's the mother-in-law — $1,000 dollars." In the page for the year 1957, there is an entry, "Borrowed from Mrs. Nash for Rent — $750.00." It wasn't because the judge was biased or prejudiced; it's because there was clear, written, corroborative evidence, in that case, to support the credibility of Mr. Murdoch. And that, gentlemen, is why the judge decided that issue of fact which was the material issue of fact in the manner in which Mrs. Murdoch had formed her claim in favour of the husband.

In the same reasons for judgment, the court says that she had alleged the partnership in the beginning and then she shifted it around; she couldn't win on that issue "Before this court the appellant's submission was made, not on the basis of a partnership but on the existence of a resulting trust." And then there is a great deal of discussion which I won't tire you with, about the technicalities and the creation of resulting constructive as opposed to implied trusts, which I know Mr. Cherniack from his own experiences, is well familiar with.

But there is an interesting comment here on Page 366 of the decision. It has to do with discussion as to the court's discretionary powers under another statute that has been extant in this province for some time and continues to be so, namely, "The Married Women's Property Act. Under the terms of that statute which is enforced today and has been for some time, any married woman has the right to apply to a court to be declared an owner in her own right of any interest in anything. And on such an application, on sufficient proof, in terms of evidence, the judge in the exercise of his discretion is entitled to make such order as he sees fit and proper. In this case, Mr. Justice Markland refers to a comment made in the case of Jackman versus Jackman 1959. The question put by the court there, faced with such an application, is, "If the presumption of joint assets is to be built up in these matrimonial cases, it seems to me that the better course would be to attain this object by legislation rather than by the exercise of an immeasureable judicial discretion under section 12 of the Married Women's Propery Act." This judge was not asking for discretionary powers to exercise according to his prejudices, he was saying it would be better that we didn't have them but if we have those powers, we are not going to exercise them in favour of joint assets unless some legislative assembly tells us that that is the way it should be as a matter of policy.

Under the terms of the Married Women's Property Act, a wife making such an application, according to her contribution to those things, financial or non-monetary of any description, is entitled to an order that she has an interest — maybe a tenth, maybe a third, maybe a half, maybe threequarters, maybe all of it — according to the justice, according to the evidence of the case, but to say there shall be a flat presumption of joint sharing of assets is a policy decision that a judge in the highest court in the land says, "I defer to the proper exercise of power by the Legislative Assembly of the various provinces." You got that invitation, gentlemen, in 1959 — 18 years ago — you're rising to it now. And while you're doing it, you're taking cheap shots at the judges. It's my understanding you've been sitting here fairly regularly in the intervening period. As between you and the judges, who has failed the ladies and why this indecent haste to do it at this time?

Listen to this paragraph from the judgment in the Murdoch case. "The evidence showed" — this at Page 367, Mr. Cherniack, — "The evidence showed that in addition to doing the usual work of a farm wife, the wife worked in the fields, operated farm machinery and contributed to the fund realized from the sale of grain and livestock which was used to pay for the property. She helped to build the house.

Because of her work on the farm, no hired man was employed. The husband was frequently ill and she performed the extra duties required." How many times have you heard that paragraph read and referred to in relation to . Mrs. Murdoch? It doesn't refer to Mrs. Murdoch. It refers to the lady in another case, Thompson versus Thompson, another decision of the Supreme Court which is referred to in the same page. Mrs. Murdoch's claim was not based on her non-monetary contributions. Mrs. Murdoch claimed to be trust on the basis of her allegation that she had contributed to the purchase price and that was the sole basis of her claim. And on the evidence the judge did not believe her, and he was justified in the evidence in not believing her.

Mr. Markland closes, "In my opinion, in the light of the evidence in this case, in the evidence of this case, and the findings of the trial judge thereon, it cannot be said that there was any common intention that the beneficial interest in the property and issue was not to belong solely to the respondent, Mr. Murdoch, in whom the legal estate was vested. Because when a Supreme Court of Canada dealt with the Murdoch case, the argument advanced on behalf of this poor lady was that she claimed an interest in a trust. Not under The Married Women's Property Act — she wasn't prepared to make that application — she claimed an interest in a trust. Now, gentlemen, if you claim an interest in a trust, you better be able to prove it and Mrs. Murdoch couldn't prove it because no such trust existed.

That's the case they keep referring to. . Did they give you one case in the Province of Manitoba? Did they name one other judicial decision in Canada? There was, in fact, one other that obviously . has escaped the ladies' attention that had a similar result. That was a decision Rathwell versus Rathwell that Mrs. Bowman tells me was decided in the Province of Saskatchewan, either in 1970, the same year as Murdoch had trial or in the following year. So, we've got two — two unhappy results in the last decade in the whole country that can be referred to. One reads, or believes what one reads in the paper. I should think that that's rather a remarkable record for the judges even if these were mistakes — even if — and I am not prepared to concede they were, that you can go over them with a toothcomb on this particular issue and come up with two mistakes. If I gather to be true what I read in the newspapers, it seems to me gentlemen that you make, one or other of you, I don't know which, you make that many mistakes every week across the hall. What the complainers of Murdoch don't tell you vented is that when Mrs. Murdoch finally her spleen, finally sued her husband for divorce, she accepted a lump sum payment of $60,000. Had Mrs. Murdoch in the beginning sued for separation, brought an application under the Married Woman's Property Act, that would have been available to her in 1970. To correct my record, Ms. Hirsch tells me that the Rathwell case has recently been appealed, the decision in favour of the wife and the case is now going to the Supreme Court. And if Ms. Hirsch says that's so, it's probably so.

What the complainers of Murdoch don't tell you is that the principle, in terms of result in that case, has not been followed in a single other case in Canada. What the complainers don't refer you to is, for example, the recent decision — well, it's not so recent, it was in 1974 — of Chief Justice Dewar, in this jurisdiction across the street, in the case of Kowalchuk versus Kowalchuk. Similar facts, as those alleged for Mrs. Murdoch. Farm couple, worked on a farm, she worked alongside him, just the way every farm wife does, at least is expected to do. But Mrs. Kowalchuk brought her application under the provisions of the Married Women's Property Act and Chief Justice Dewar, who has a lot more impact upon the affairs of Manitobans than the trial judge in the Murdoch case, decided that on that evidence the lady was entitled to half the property and she got it.

What they don't tell you is that what distinguishes Murdoch from all the other cases is the essential finding of fact by the trial judge as to the contribution, if any, either in terms of money or effort. What they don't tell you is that findings of fact are entirely within the discretion of a trial judge and that in each similar case these allegedly prejudiced people have determined the question in favour of the wife. Mr. Carr referred you yesterday to the trickery that the judges have to resort to because of the decision in the Murdoch case. As Mr. Carr presented that case, I would suggest to you gentlemen, whether the law is changed or not, he should rewrite his notes because Mr. Carr has completely missed the point in the Kowalchuk case. There was no resort to trickery, and if there was, how do you accept this dichotomy? How do you apparently accept that the judges are prejudiced against the ladies, when said by Ms. Steinbart, and accept as law that in order to exercise this prejudice the judges resort to trickery in order to decide the cases in favour of the ladies. I don't understand the logic of those two things put together. I do not believe they are mutually consistent, although they may be appealing taken in isolation.

What they don't tell you is that in the Kowalchuk case, Chief Justice Dewar was following the decision in Alberta, that same primitive jurisdiction, decided in 1971, that was the year after Murdoch was decided and before Murdoch had gone to the Supreme Court. When Chief Justice Dewar heard the Kowalchuk case the Murdoch case had been decided. He had those reasons before him at the

time. He didn't have to distinguish Murdoch, because he followed the Alberta Court of Appeal decision in Truman versus Truman, which can be found in the year 1971, Volume 2 Western Weekly Reports, at Page 688. This was another one of the farm situations where the husband and wife both laboured together. This lady brought her application under the provisions of the Married Women's Property Act. In that case — I'm quoting from the decision — "reference was made to the reasons for the learned trial judge." He refers to one of those unfortunate cases, marriage breakup, people have worked a long time and accumulated some assets. He says, "There was a dispute on the evidence as to how the funds were realized to provide the down payment." In my mind the version of the defendant as to the source of money being a loan, the note being guaranteed by his father is probably the more likely one and which I accept and find as a fact.

Having arrived at that conclusion it seems to me that I am bound by Thompson versus Thompson, which was a decision of the Supreme Court 1961, in his interpretation of that particular judgment, this trial judge thought that in order to succeed to an application for the passing of a proprietary interest under the Married Women's Property Act, there had to be proof of payment in money and that payment or contribution in services was not sufficient. That was his interpretation. So he says, "On that basis I can't decide in favour of the wife, even though she did all that work, because she didn't actually contribute any money." He goes on to say, "I arrive at this conclusion reluctantly because in my view the plaintiff made a very substantial contribution to the acquisition of the property and were it not for the law, which is binding upon men me," — meaning the trial judge — "I would have ordered partition and given her a share of the proceeds." That case was appealed to the Court of Appeal in the Province of Alberta, and the Court of Appeal said, "no, that's not the way it is. If you can make a contribution in money, then surely you can make a contribution in terms of services. Reference was made to the judgment of Mr. Justice Judson in the Thompson case that I have already referred you to, we were invited if you want, this presumption is a matter of policy to put it into the legislation.

Before that, referring to an English case, I believe it is perfectly true that where she does not make direct payments toward the purchase it is less easy to evaluate her share. If her payments are direct she gets a share proportioned to what she has paid. Otherwise there must be a rough and ready evaluation. I agree that this does not mean that she would, as a rule, get a half share. I think that the high sounding brocage "Equality is Equity", has been misused, and I certainly believe it's being misused before this committee. There will, of course, be cases where a half share is a reasonable estimation, but there will be many others where a fair, a fair estimate might be a tenth, or a quarter, or sometimes even more than a half. And they found in that case that the lady had contributed, not in terms of money but in terms of contribution, and on that basis they said that she was entitled to a declaration and that she was entitled to half the property.

The courts asked you if you wanted presumption of joint assets to do it a long long time ago. If the ladies want equity, if they want justice, the judges haven't let them down. If they want their fair share the law is sufficient if it be property used to get them their fair share at this time. If they want more than that, then you gentlemen are going to have to give it to them and you're going to have to legislate it in clear and uncertain terms. Because, if in the name of equality, you would impose an arbitrary rule without qualification, without exception, without the possibility of imposing a discretion, particularly where the very people who are arguing for it concede that the application of this rule without discretion will cause hardship, the judges aren't going to do it. If you pass the law, they will have no choice. If they want equity, they can get it. A simple message on that point. And the law has been sufficient to them as it has been, in my estimation, to any other citizen claiming any other right in this country. That's one of the great things about the law. And it's one of the things that we, who serve it, and think we understand it, admire about the law. It's ability to develop, it's ability to respond to social change. I concede to you gentlemen that it responds slowly, that / I think, is in the ordinary nature of social change. You can legislate all the social change you want and make it come into force in terms of law overnight but you can't change the way people think overnight. You can't change attitudes overnight. These are things that have to develop and as they develop, the case law according to those principles that have bound people in civilized society under common law has always been sufficient and it can continue to be sufficient.

As I've told you, the judges have always recognized your primacy in these areas. If you pass such a law, they will apply it. In exchange for that consideration towards your place, your proper place in the scheme of things, I would have thought that you would have shown them the simple courtesy — or even the decency — of allowing them at least the same benefit of doubt that we accord to alleged criminals in this country. I'm not suggesting that the judicial system is perfect. I believe that man is imperfect and because I believe that, I believe that anything conceived of by man is necessarily imperfect. I concede that some judges are better than others, that I believe that of everybody, but I

don't blame it on the judges. They weren't born to the job. It's the politicians who appoint them and if some of the judges aren't up to snuff, it's because they weren't appointed for the right reasons. They were appointed for the wrong reasons.

You heard Mrs. Paxton last night talk about her experiences respecting maintenance in the Family Court. You asked her what she thought about the direction given in the The Maintenance Act as to how maintenance should be established. She told you because she's had experience. She says, "Well that's the way they're supposed to do it now." She's right. I know that, as a lawyer; Mrs. Paxton knows that. Presumably the judges know that. Don't you know that? Do you think that what you're legislating in that statute is news? These are the principles upon which maintenance is supposed to be established but Mrs. Paxton says, " I don't understand how they come to those decisions." Well, gentlemen, I don't either.

Mr. Carr said senior counsel in this City, if they have a choice, don't go to the Family Court, they go across the street to Broadway. The reason is, we prefer the judges on Broadway to the people you have appointed in Tuxedo. The reason is, that on Broadway, with the federal appointments there is some reasonable anticipation of certainty; some reasonable anticipation of consistency in decisions of the court. I tell you frankly that among some of us, the Family Court division in Tuxedo is referred to as "The Zoo." That's the reason we don't go there. We didn't appoint Tony Pilutik — you did. And you did that after the Law Society told you not to, or at least recommended that you not do so. That's my information, Mr. Cherniack. If you could abandon your own biases, gentlemen, your own prejudices, and start consulting with the professions on the delivery of our respective services, I think you would come to realize that the notion of professionalism involves doing whatever one can do to improve the services that are being delivered. They are not, in the main, political.

We've canvassed the judges' participation in this chronicle and it said — or implied here — that we can't trust the judges, because they're biased, because they're prejudiced. Well, if we can't trust the judges to do it, then we're going to have to trust the politicians ; and what is there in recent history that causes you to presume that anybody in this society is prepared to believe and accept that a politician is more honourably motivated in the exercise of his judgments than a judge sworn to duty and appointed to a job for life. A judge hasn't got anything to gain by his decisions; he doesn't get any raises no matter what he decides. He gets the same pay. He's got a job for life as long as he doesn't conduct himself in a terrible way. He has no motivation, there's no profit for him, compared to you fellows who have to run for your political butts every four or five years. It seems to me that the confidence of ordinary people is much better placed in the hands of judges deciding cases on the basis of their particular circumstances than leaving it to you.

If you are entitled to draw the inferences that you draw from rather flimsy tissue of evidence that has been presented, what are the inferences that can reasonably be drawn from your own participation in these proceedings? It has been historically accepted that governments do not enact matters of great significance, major significance, matters of principle, without mandates. I don't have to remind you that in the past governments across this country, when the opinion polls indicated that the time was propitious, had contrived to find issues upon which they needed a mandate that are a lot less significant than this legislation.

Mr. Cherniack is reported in the press to have said, "This is one of the most significant pieces of legislation" — and I am talking about Bill 61 myself right now, "to pass this House since 1962." If that be so, gentlemen, where's your authority? I have examined everything that looks like a political platform in the last election, for all parties represented in this House and I can't find a single thing in them to indicate that if elected we could expect this legislation. You've got proclamations in there about social equality, primacy of the family as the basic social unit, I didn't see anything in there about retroactive joint sharing of assets. I didn't see anything in there to justify this massive assault upon the private affairs of many many married Manitobans who don't happen to share this philosophy. I didn't see anything in there to justify this offence to the sensitivities and the notions of some people who have, in effect, created this kind of marriage, not because you told them they had to but because they've done it out of mutual faith and reciprocal inter-dependence which is the best way to do it. I tell you now, gentlemen, as a matter of law, if any of you were in business out in the marketplace trying to make an honest living, and your platforms were considered your advertising and this bill was the product, you'd all be prosecuted in the criminal courts for misrepresentation.

Some of the things I wanted to say have already been said. The second seemingly unworthy aspect of your participation in this matter is the indecent haste with which this thing is being induced. You haven't had a single meeting — I don't think you've had a single submission — that hasn't presented you with another problem and you ought to expect those problems because when you impose this kind of a regime — and that's the best part about the Act, the name regime, it conjures up all the connotations of that term — when you impose that upon the affairs of every married

Manitoban, you are interrupting a whole lot of relationships, because the family does not only have relationships one with the other but they have relationships with all kinds of third parties, and are inter-dependent relationships, they're the children's relationship, the parents' relationship, not to mention all those outside of the family. Obviously this bill is not even going to be allowed a normal gestation period and yet we witnessed even before birth a flood of amendments after the bill had received approval in principle and before it reached Committee. Some of us who were interested were trying to keep on top of this thing. I think it is reasonable to infer that there was undue haste in the conception of the bill because if the bill was properly conceived in the first place, why would the very mover find it necessary to come up with some 50-odd pages of amendments even before it got to Committee and after it had been approved of in principle. We were trying to keep on top of it. On Monday of this week, we got I think 19 pages of amendments while the Committee sat.

You have heard the representation from the Law Society. I think you keep referring to it as the Law Society brief. I'd like to remind you, gentlemen, that there's about 800 members —(Interjection)— The Bar Association? And what you heard from is a sub-committee of that and I think there were less than 40 people at the meeting. They are not to be taken, in my respectful submission, as representative of the thinking of all the lawyers in the province, certainly not for myself.

In the result, what you've done with this thing, even if you pull it now, you have created confusion, apprehension in the affairs of people in this province that cannot get settled until some kind of bill is enacted and until it has had judicial interpretation which will be at least a year. The fact that the first raft of amendments produced on Monday were withdrawn and a whole new raft brought up in their place only hours so far as we could find out before this Committee first started to meet and to hear submissions and if there is any puzzlement, Mr. Pawley, the information we got, we got it on the Wednesday; at least I got it. —(Interjection)— The first set.

MR. PAWLEY: Which set? I'd like to see the set that was withdrawn. —(Interjection)— But I would like to see them. —(Interjection)— Yes I am. There's only one set for each bill , Mr. Houston.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Mr. Chairman, I think that there may be some clarification in this. The set of amendments was distributed . . .

MR. HOUSTON: I have them now.

MR. F. JOHNSTON: . . . either Monday or Tuesday to several people in the law profession but the set of amendments was not distributed to the Legislature until Wednesday afternoon. That may be the confusion.

MR. PAWLEY: Is Mr. Houston advising me that he received the set of amendments before they were distributed in the House, personally, that he received a set of amendments?

MR. HOUSTON: Well I don't know when they were distributed in the House but I've got two sets of amendments to The Marital Property Act.

MR. PAWLEY: But are you telling me that you received a set of amendments before I have received them?

MR. HOUSTON: I don't know because I don't know when you received them.

MR. PAWLEY: Are you telling me that you received a set on Monday which was withdrawn and another set distributed on Wednesday?

MR. HOUSTON: It's my understanding, it's my recollection since it seems to be of such significance. It's my recollection . . .

MR. PAWLEY: It is significant.

MR. HOUSTON: Well if you let me finish. It's my recollection that this document came to my possession on Monday of this week.

MR. PAWLEY: Could I see it please?

MR. HOUSTON: Yes.

MR. PAWLEY: You have another one that was received on Monday?

MR. HOUSTON: No. This is what I referred to, sir, as the second set that I got Wednesday.

MR. PAWLEY: Who did you receive the set from on Monday?

MR. HOUSTON: Mr. Rich.

MR. PAWLEY: Okay, you can carry on.

MR. HOUSTON: It was my recollection I got them Monday but the ladies here who have been active with Mr. Rich indicate it was on Tuesday.

MR. PAWLEY: The legislative draftsman tells me that somebody else typed this. This is not our typing. We'll have to look into that. You can carry on.

MR. HOUSTON: Are you suggesting that my partner gave me a fraudulent document?

MR. PAWLEY: What I am suggesting to you, Mr. Houston, that that set was never presented to me prior to your receiving it and therefore it was not withdrawn by me as alleged by you.

MR. HOUSTON: I see.

MR. PAWLEY: That's the pertinent fact.

MR. HOUSTON: I see. Well since for the purpose of my argument the manner of the drafting and the haste with which it was done is significant . . .

MR. PAWLEY: If I could just interrupt for a moment. You appear to have received amendments before the Minister responsible for the bill received the amendments to approve.

MR. HOUSTON: Yes, all right. And following that down, I am not so naive, Mr. Minister, as to assume that you personally draw the amendments, that you have had a chance to consult with Mr. Silver. Are you saying that these were not in fact amendments drawn by the legislative counsel. The first set?

MR. PAWLEY: Mr. Houston, the draft that you obviously received were amendments that were in the process of preparation. There were changes made, of course, to what you have received in some way or other. But that was a draft, it was not a set of amendments distributed to members of this House which was later withdrawn and a subsequent set presented. That's an altogether different thing than what you are . . .

MR. HOUSTON: That clears the air then.

MR. PAWLEY: Pardon?

MR. HOUSTON: That clears the air as between you and I.

MR. PAWLEY: In every bill before this House there are often many, many drafts prepared before the final bill is distributed to members of the House. How you come to receive them I don't know.

MR. HOUSTON: Well in any event, all I am suggesting is that the fact that they do exist, they have been drawn on a day-to-day basis, indicates what I am saying.

MR. PAWLEY: That's not unusual.

MR. HOUSTON: With a bill of this significance, I would suggest that it was. However that is not anything other than what I should comment on.

As I read the debates in the Assembly on this thing there was some suggestion that it needed more study and you've had some indications of all the problems that this particular bill is going to cause. As I recall the statement, "Well we don't really need to do that because we've got the recommendation of the Law Reform Commission and we can rely on that." I don't think that's a fair statement. It's easy to say but the fact of the matter is that you've gone quite beyond what the Law Reform Commission recommended.

The Law Reform Commission recommended opting out. The Law Reform Commission is very qualified as I recall on the terms of retroactivity. It's easy enough to make that representation because you know that the members of the Law Reform Commission can't comment on the matter now either. If they are bound by the proprieties of the circumstances not to come here and not to say, "Look, you are not relying on our report because you've gone beyond it." That I think is unfair.

Well gentlemen, given all of this, as between a judge, and I guess you've gathered by now that my prime concern about this bill is its arbitrariness. And as between a judge sworn to honour, appointed for life with nothing to gain in the manner of his decisions, and any of you, any of you, I prefer and would rather rely on the decision and discretion of a judge, a discretion that is exercised in accordance with concepts of equity, of justice which had evolved over centuries responding to social change, developing alongside the system of parliamentary democracy they have become a model to the world, drawing upon the wisdom of every age and applying that discretion to the particular facts of every case. But you, gentlemen, you and your colossal conceit, would throw all of that away, put it all aside and apply one rule without exception. God himself needed

MR. HOUSTON: As to the bills themselves, I confess I am not trying to keep up with the amendments in particular and you have had representation on them, in any event. I wish to address myself solely to their conceptual notions.

A long, long time ago St. Paul, whose place in history is more assured than any of yours . . .

A MEMBER: And yours?

MR. HOUSTON: Yes, that's true. Only I don't have the presumption to believe otherwise. He said that it was better to marry than burn in hell. Well if that be the case, gentlemen, this bill surely is the devil's work for it seems to me that you've taken away the choice. This bill imposes a contingent liability upon the affairs of every household in the Province of Manitoba, every married household. I don't want to muddy your biases, confuse your prejudices or attempt to dissuade you in any way from the idealism of your notions. But let's get to the nitty of it. I have told you that the ladies can get all the equity, all the equality they want under the law as it presently stands. You had a marvelous example of that, a lovely lady last night, Mrs. Paxton. The problems that this bill will create are not with people with a lot of money. We never had any difficulty making equitable settlements with wives when their husbands had a lot of money. It's commonplace to make maintenance settlements now for

substantial people where the wives are getting $30,000, $40,000 as a year maintenance, to maintain them in the standard that they had enjoyed before. Where the problems are going to arise, are in those hard cases where there isn't enough money to go around; where half is not enough.

I wish I were a lady just for a few moments so I couldn't have any biased motive imputed to me in this regard. But I've never had much difficulty acting for a lady and I would think that I have acted for as many women as men. I've never had much difficulty getting half when the lady had contributed anything to the household or to the acquisition of assets. The idea was to get it all if we could. What this bill will do is cause hardship to the most deserving women and result in a windfall to the most undeserving in terms of contribution.

Now the ladies don't like to hear about the notional alcoholic. There's a lot more alcoholics than there are Murdochs I can assure you. And there are a lot more other cases where, on the breakup of the marriage, it would be unfair for the lady to get only half.

It is commonplace across the street in the exercise of this biased discretion by male judges for judges to order that on dissolution of marriage marriage, the husband shall convey his interest in the family home to the wife so that she's got it all. He does that by a technique. The husband gets some opinion as to the value of the house. Say the house was worth $60,000.00. All right. So you say the husband shall pay to the wife the sum of $30,000 as a lump sum which he may satisfy by conveying his interest in the house, and then he is ordered — well you can order monthly maintenance and whatever, the idea being that if the lady has children, she should stay in the house with those children as long as she has to. I don't have what you would call a real estate practice, I probably get involved in maybe a hundred house deals a year and I can't remember the last married couple that came into my office and bought a house that wasn't in both names except when it was part of a deliberate scheme for estate planning purposes.

If you take the case of a lady where they say . . . of the pay cheque. There are many cases where the pay cheque is the only asset and if you are going to pursue the concept of this bill, then you will have to legislate that pay cheques should be jointly issued, that every man who's got a job gets a cheque that is going to have to be payable to him and to his wife. Because if you want to serve the ladies in this way, you are going to really have to tell the men what it's all about and what is amounted to. If you go ahead and legislate that every working man in this province has got to have the pay cheque made to him and to his wife, if you've got the guts to do.

Think of all the cases where the guy has been hiding out five or six bucks a week. Think of all the cases where the lady thinks he makes a $112 a week and he really makes a $120 but he has been stashing $8 in his back pocket for beer and bowling. No doubt in many cases the lady knows he does it and she plays her own little game. But they get along, they are doing okay. Now you are saying you're going to put it in a law so the ladies can have a right, a right to demand. You're going to create a whole lot more problems than you're going to solve. I suppose you'll have to do the same thing with working wives so if she gets a cheque it will be payable to herself and her husband. What about the nominal alcoholic husband? Should he have the right to share in that cheque? Can't you leave it to people to arrange at least this much of their own affairs? Is there no limit to what you will impose upon the conduct of people in this province? Take the lady whose husband earns a modest income, a working man, not so modest anymore, who's got a family and we all know in this day and age it's a very tough thing for people to raise a family, pay the expenses, pay the rent, pay the insurance, pay the mortgage, talk about cars — everybody doesn't even have a car — feed children, educate and clothe them, the lady who lives in that situation is a very hard working lady. When the spring cleaning has to get done, she doesn't phone somebody up to come and do it. When Monday comes along, Quinton's don't come and pick up the laundry, she goes downstairs and does it. When the windows get dirty, she goes out and washes them. When the kids need clothing, she does what she can to keep sure there is some progression. She doesn't throw clothes away, she passes them down. And given the current fad for worn out jeans she is getting a bit of an assist in that area. This lady has a very tough row to hoe and no doubt the value of her contribution to that household is at least equal to what the husband's is.

There have been some figures flogged around here as to the value of the contribution of a woman to a household. Somebody suggested between $8,000 and, I think, $17,000 or something, and offered you $13,000 as an average. Well, two things occur to me on that. It seems to me that $13,000 is something over the average wage in the Province of Manitoba. So if the average Manitoban is not making that much money, who is going to pay the wife for the value of her services.

The second notion that appears to me on that is that if I approached my wife and told her to put a dollar value on her services and if she took all of her services into account, I don't think that all of us together have got enough money to pay for them. That's because these things aren't supposed to have dollar values, they don't translate into dollar value. Marriage is not a partnership within the

meaning of The Partnership Act. Marriage, to most of us, is not a civil contract alone, it is far more than that. It is clear that that is what it is to a lot of young people and some older people. If that is what they want, let them have it, but let me live my own life. Don't make me and my wife have to sign a legal document to get out of a regime we do not accept and do not impose that obligation upon the people of this province because all you are doing is imposing upon the great majority, by law, what they already do.

I have given you the example of the hard working wife and the husband with the modest income. The only asset they have is the house. She may go out and work. Many women are going out to work these days to supplement the family income, out of need or either because the income is not sufficient to satisfy the things they want out of life. Maybe the husband is not contributing as much as the wife. Why should the wife only get half? The only problem as far as the women are concerned is where she should get more than half.

On the other end of the pole is the man with a substantial income. All of the things that the first lady does, his wife is not called upon to do. She doesn't do the laundry, she doesn't do the window washing, clothing is not a problem. She has as much money as she needs for any purpose, she gets trips, she gets holidays, she can afford to pay babysitters to get away from the children, she can go to the hairdresser; she as often as she wants contributes very little in terms of money to the marriage and yet when the marriage breaks up, the husband is still obliged to maintain her according to the standard that she had enjoyed during the marriage if he can afford to do it, if he has the money with which to do it. So, to those ladies this Act will be a windfall.

To take a typical case of a businessman, without naming him, this is an actual deal. A man has a business in the Province of Manitoba, the business is worth $1.5 million, he has built that business up over a period of twenty years. The $1.5 million is not cash sitting in a bank, it is bricks, mortar, machines, inventory, accounts receivable, all those things that go to make up a business. His income is in the order of $85,000 a year on that good business. He is now negotiating a separation agreement with his wife, where she has no claim to his business, and he is paying her $40,000 a year, which is not a bag of cheese. And if he didn't pay her that, she would take him to court and a judge would order him to pay something in that order. There is no fixed amount, it is discretionary, but that would be a ball park figure. Under the Act that you have now got, this man has to give her half his business, the forty grand isn't enough, because you don't want any exceptions.

Do you gentlemen really think, are you so naive as to believe that men in that position are going to suffer this bill? They won't, they'll go, they'll leave. They will leave the province. I know you don't care, if they don't think the right way you don't want them living here. Well, I care, because when they leave, your expenses don't go down five cents. These people aren't working in the Civil Service, they are not university professors, they are drawing nothing from the public trough. But they are contributors and when they go, the rest of us have got to pay that much more to keep you people in business.

I suppose I ought not to refer to the first set of amendments that I received, but this bill is a clear invitation to anybody in that circumstance to go. Now I know nobody can feel sorry for a guy who has got $1.5 million tied up in a business, but what about the people he employs.

I understand the Federal Government will now give you $30,000 to create one job. I can tell you, gentlemen, that in the ten or so days since this bill hit the fan, without soliciting it, I know of six businessmen in the City of Winnipeg who are now preparing to leave. It doesn't matter. The six of them probably employ 1,000 people between them. They won't live with this kind of bill.

Why do you think there are no husbands' groups here? Because the husbands don't care. That is the way it is in most households. The Gallup poll published a report two weeks ago that said, of the people canvassed, 70-odd — no, a little less than 70 percent believed that assets accumulated during marriage should be shared equally. This isn't something that you fellows just dreamed up, that's the way most ordinary civilized people run their affairs in this province and they have done it without benefit of your guidance or your impositions.

The second worst aspect of that bill is the retroactivity. It is commonly interpreted on any statute, by the courts at least, that nothing is ever taken to be retroactive in effect unless it specifically said so. There is no problem on that interpretation here, because you are going to specifically say so. But that is an ordinary rule of statutory interpretation because the courts, in their wisdom, have come to realize that when you start imposing legislation retroactively upon the affairs of people, you are going to cause a whole lot of problems. And you've seen the nature of the problems you are going to cause.

If you believe in retroactivity, why do you need a date? Why are you worrying about whether it should be May 6th, January 1st, or whenever? If you believe the principle is valid, why isn't it valid for everybody as long as they are alive because it is only death, as somebody pointed out here, that can

finally rescue somebody from your management. Why do you want to create two classes of citizens? If this notion is right, if it is so right that you people have to legislate it now, why isn't it just as valid for somebody that got separated, or even divorced, a year ago? Why are you not prepared to accept the discretion of the judges in the future but you are prepared to let rest those cases they have decided in the past? Where is your consistency? Your dilemma is because you have to find a date and your dilemma is because you want to make it retroactive. Well if you do want to make it retroactive, then show us your conviction and forget about a date. And you tell everybody in the Province of Manitoba that no matter how they have arranged their affairs in the past, they can be reorganized by the terms of this statute.

As to your maintenance bill, I've already told you that if you want to make it stick — the lady who said there is no use having a right unless you can enforce it — if you want to make it stick, you've got to make the cheque jointly payable — again if you've got the guts of that conviction — because some ladies have told you that it doesn't help unless we can get our hands physically on the money. Now, do you honestly believe that happens in a whole lot of households in terms of overall? Do you really think that because there exists a few, maybe 100, maybe 1,000, households in the Province of Manitoba where that situation exists, that it ought to be imposed upon every other household in the Province of Manitoba?

You are not prepared to rely on the discretion of the judge in terms of dividing assets, but you are in terms of maintenance. You want the ladies to be able to go to court and ask a judge to set what ought to be a reasonable allowance for their own purposes in The Maintenance Act. You have got a provision in there that every married lady is entitled to periodic allowance for her own personal use. Well, to be realistic, I would expect that the average married Manitoban lady who is married to a man earning less than $15,000 a year and has a couple of kiddies to maintain, would count herself lucky if she got $20.00 or $25.00 a week, maybe a month, for her own personal use. At those levels, which is the ordinary level, $5.00 makes a difference. You've heard it from Mrs. Paxton; $2.50 can make a difference. That's important, important money to them.

So conjure up this situation. The lady is getting $10.00 a week, she thinks $12.50 would be more reasonable. We're talking about $2.50. And the people can't settle it between themselves. Under this Act she has the right to make an application to the Court of Queen's Bench, to have a judge in that court rule on whether she should get $10.00 or $12.50.

When you pass this kind of legislation, gentlemen, you don't solve problems, you create them.

Since the amendment to The Divorce Act there has been a flood, probably a justifiable flood. Before the amendments to The Divorce Act there was one judge sitting one day a week, on Tuesdays, in the Province of Manitoba in this particular district, and he heard all the divorce cases there were. One judge, one day. When the grounds were extended and we had a great many more, you have come to the point now where the time of the whole court, the whole Court of Queen's Bench and every judge in it, is used to approximately 60 percent of the total in marital cases. And you want to add to that burden! by applications over $1.00, $2.00, $3.00! I mean there can't be any limit because it is not the amount of money, it's the principle of it. And if you a reasonable weekly or monthly allowance for all the ladies and let us know what it is? But isn't it a fact that you would assume that the wealthier man will give his wife more because that's reasonable. And the curious thing here is that the only time your Act refers to reasonable is in connection with the exercise of a discretion. You don't find the term reasonable on the division of assets.

I can't think of anything else I want to say. I am opposed to this bill in principle as being unnecessary. I have a proposal for you. You may achieve all the things you want, you may achieve all of the equity, all of the equality; you may even make a declaration if the ladies feel they have to have it, and you should do that in response to the invitation given to you many years ago by a judge in the Supreme Court of Canada: Amend the Married Women's Property Act. If you are not prepared to rely upon the manner in which the judge will exercise his discretion, you can spell it out. I have already given you the authority where the judges have said it doesn't have to be money, it can be contribution in terms of effort, non-monetary contribution. You can tell him how he should do it. And . if you want to have a presumption of joint assets as a matter of policy with respect to assets accumulated during the marriage, you need only say so in that one Act. I am not a draughtsman, I am not in a position to offer you the wording of what I am suggesting of the top of my head, that all you've got to do is add to the section that gives the lady the right to apply for such order as the court may deem fit and just in the circumstances, and it shall be presumed unless proven to the contrary that all assets accumulated during the marriage were acquired by the joint efforts of the parties, and then you wouldn't have this great mess that you have brought down upon yourselves and all of us. Thank you for your attention.

MR. CHAIRMAN: There may be some questions, Mr. Houston. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I would like to thank Mr. Houston for a very extensive,

forthright, helpful presentation he made. I must say that it was even more helpful to me that he was not shy or reticent or hesitant about stating his opinion. Indeed I almost welcome the fact that he has the same colossal conceit that some of us have in being so sure of the certainty of what we're saying and not taking a cheap shot in the absence of Mr. Houston. But the other comment I would like to make is an invitation to Mr. Houston to read the record of what he said about the zoo.

MR. HOUSTON: To which?

MR. CHERNIACK: The zoo, in Tuxedo was it? And to the judges of that court and see whether he doesn't think that maybe what he said should be looked at by Law Society people.

MR. HOUSTON: I will undertake to, if you will give me the transcript, I myself will deliver it to the Secretary of the Law Society.

MR. CHERNIACK: Well, it's not what . . .

MR. HOUSTON: No problem , Mr. Cherniack, I'll see that they see it.

MR. CHERNIACK: Mr. Houston, I'm suggesting whether you would not think that it ought to be sent. Whether it's sent or not is of less consequence to me as to whether it ought to be sent in the light of what you said about another lady who took cheap shots.

MR. HOUSTON: No, I think there's a clear distinction.

MR. CHERNIACK: All right. I didn't know what you meant about regime. I looked it up and I still don't understand what you meant about it but that's only *en passant*. I'm wondering, Mr. Houston, whether as a lawyer you received a copy of the Law Reform Commission's working paper that was issued in January 1975.

MR. HOUSTON: I probably received it, but I haven't read it.

MR. CHERNIACK: You've not read it.

MR. HOUSTON: I haven't studied it.

MR. CHERNIACK: Oh. Because they have a two-page list of people who responded and I couldn't find your name there except that at the foot they say, "Some correspondents signed themselves with designations such as abandoned wife or otherwise anonymous. I assume you were not one of those.

MR. HOUSTON: I was not one of those. No.

MR. CHERNIACK: No. But when you speak of the indecent haste, you do recognize that in your own hands was a document two and one-half years ago which set out many of the principles that you are today attacking so vehemently.

MR. HOUSTON: What did you want me to do with it? Enact it? That's within your power, not mine.

MR. CHERNIACK: No but it would have been very helpful had you responded to it so that your point of view, which you hold so firmly, would have been considered. Because by next . . .

MR. HOUSTON: Well, before you get into that, the whole premise of my comments was that the law is presently sufficient. As far as I'm concerned this legislation is unnecessary.

MR. CHERNIACK: I appreciate that, Mr. Houston, but again you're talking about indecent haste and my next question, which I think is already answered, was whether you took the trouble to appear before the Law Reform Commission itself when it had very extensive hearings.

MR. HOUSTON: No I didn't.

MR. CHERNIACK: I must also, again in a question but since I know the answer, point out that you never did appear before the Commission of the Legislature, which met between sessions, considering all this.

MR. HOUSTON: That's also true.

MR. CHERNIACK: So that really we, the legislators, have not had the benefit of your opinion at all until today, even though for two and a half years it has been a matter of public debate.

MR. HOUSTON: The only opinion, sir, that I have offered you, I have offered you on the basis of decided judicial decisions which are as available to you and your counsel as they are to me.

MR. CHERNIACK: Well, then, let's go on, Mr. Houston, to talk about the Murdoch case and unlike you, I am not familiar with that case except you have helped considerably to make me familiar. Therefore, I was not one that said that the Murdoch case is the case on which I rely for whatever contribution I can make in this debate. I really believe that the Murdoch case was used rightly, wrongly, or mischievously to bring to the attention of society and various people what was thought to be an injustice. I don't consider the Murdoch case as an injustice but I honestly do, and you may have shaken me a little today, to think that there has been an injustice throughout the years in the failure to recognize the contribution of both spouses to a marriage. So I look at the Married Women's Property Act, which I haven't looked at for quite a while, Mr. Houston, so I have to grope, but are you referring to Section 8(1) which says, "In any question between husband and wife as to the title or posession of property." Is that the . . ?

MR. HOUSTON: I don't know it by the number, Mr. Cherniack.

MR. CHERNIACK: I would like your help, Mr. Houston, in determining on what basis a wife has a

right to share in property accumulated during the marriage under the Married Women's Property Act.

MR. HOUSTON: On the basis that she has contributed either in money or effort. That was the clear principle in the Kowalchuk case.

MR. CHERNIACK: Right. I'd therefore harken back to an example you gave of a man who built a business over 20 years of work and that business consists of inventory and receivable, you know. Would his wife, who did not enter, presumably, enter onto the premises of that business, would she be entitled under the Married Women's Property Act, and under that section which I believe is the only one I found, but in any event under the Act, to claim a share or interest in that concern?

MR. HOUSTON: Not in that specific asset, but as I understand, and read the authorities, the lady would have the right to come before the court and say, "I have contributed to the acquisition of all the family assets." As I read to you from one of the cases in the Supreme Court of Canada, what that contribution might be in terms of fairness might be 10 percent, it might a third, it might be more. And that is something I would rather leave to the discretion. Because as you know, Mr. Cherniack, in discussions you and I have had in other areas, I do prefer the exercise of discretion to particular cases, because I don't think anybody is smart enough to make a rule that will apply equitably in all circumstances.

MR. CHERNIACK: In your interpretation of the cases that you have studied, does the court recognize the value of the household contribution such as you have described, in acquisition of assets that are completely away from the household and completely away from the family farm or the grocery store we've heard reference to where they both work. Is that the way the cases have recognized that contribution?

MR. HOUSTON: The difficulty in trying to analyze cases is they don't always give you the interpretations that you might like. Judges like to say that each case is authority only for what it says in relation to that particular case. I frankly am not aware of a case where the judge has said that domestic contributions, in terms of the things that I'm particular of, are the kind of contribution that is taken into account in the acquisition of an asset. Now I don't know of any such case where that is actually set. But I am confident, in my own experience, that that is taken into account. I have indicated to you that the courts do, the judges do within the parameters of their power, within the exercise of their discretion, which is not untrammeled or unfettered, do respond to social change.

If you took a case in 1910 before a judge in the Court of Queen's Bench in the Province of Manitoba and argued that the lady was entitled to something because of her efforts as a housewife, I'm quite certain that the judge would have given you no consideration because that did not reflect the thinking of the times. It does, however, start to reflect the thinking of the times today. There is this notion. There is this idea which is becoming more and more popular and more and more acceptable. The judges are not going to respond in a moment to the first glimmering of such a change in social attitude. But once that change becomes apparent, I have no doubt in my mind, none whatsoever, because the judges have my trust and confidence that they will take that into account because they interpret their function to serve the society and to reflect its attitude most specifically, as I've told you , in the area of those things that you people, as the people's elected representatives, legislate. That's the law, that's what the people want, that's what they get.

MR. CHERNIACK: But you do agree that it runs behind the general recognition of society.

MR. HOUSTON: Yes, I concede that.

MR. CHERNIACK: And, indeed, you pointed out that 19 years ago a judge said, "If you really think there should be equal sharing, you'd better say so because we won't."

MR. HOUSTON: That's right.

MR. CHERNIACK: And I agree with that. And yet, if legislators in their wisdom are prepared to say so, then you call it a colossal conceit.

MR. HOUSTON: No. I asked you to respond to the invitation and I've given you the case reference. The invitation was that if there is to be a presumption of shared assets, then you're going to have to decide that and state that as policy because in the absence of a presumption — two points on that. First, being a presumption, it is rebuttable. You say, in this family we presume that all the assets were acquired jointly and ought to be divided jointly, unless you can prove to the contrary. So I take the husband and I say, this man has got a million and half dollar business, his wife never stepped in the door, she had nothing to do with it, she spent her mornings at the hairdresser and her afternoons at the golf club and we're going to give her $40,000 a year in maintenance and that's enough. And I expect the judge would agree with me.

MR. CHERNIACK: Are you now prepared to put a $40,000 value on what she is going to do or has done? Is the 40,000 related to his income and the standard of living to which she became accustomed or is it in payment of the contribution and services to the household that she has done up to now?

MR. HOUSTON: It's a payment of maintenance that has regard (a) for her reasonable needs,

having regard to the standard that she enjoyed during the marriage and (b) to his ability to pay.

MR. CHERNIACK: Right. It has nothing whatsoever to do with the accumulation of assets. And yet would you not recognize that to many men the fact that there wives — or to many individuals, men — that his wife looks good and goes to the golf course and does the things that he wants her to do in order to set that standard of living which he wants and in which a wife is an important asset in relation to his social needs, his business associations and the general life that he wants. Would he not want her to play that role?

MR. HOUSTON: Yes, and he pays for it. While she's doing it and after the separation. Even if on the terms of your legislation, even if the man has not done a thing wrong during the marriage. All she has to do is say, "That's it, Charlie, I'm tired of you, I'm walking out. And six months from now, you get ready to give me half your business." I don't think that's fair.

MR. CHERNIACK: Two points you raise. Firstly, you said he pays for it. How is he paying for it?

MR. HOUSTON: During the marriage.

MR. CHERNIACK: By enabling her, permitting her to go and get her hair done, go to the golf course. I thought that we had just agreed that this might be something that he wants her to do as her contribution.

MR. HOUSTON: Yes, I agree with that.

MR. CHERNIACK: But you're saying that he is paying her in that way.

MR. HOUSTON: I didn't say that at all. I said he pays for it during the marriage.

MR. CHERNIACK: He pays for her being able to do it, but if, in doing it, and establising that standard of living, he is at the same time able to augment the acquisition of assets, you don't recognize her right to share in that asset.

MR. HOUSTON: Well, to use your example, Mr. Cherniack. Would the husband then be able to say that because you are such a good golfer on the course and kept winning all the time, you offended all my clients and I lost business. You get into an area where you can't even begin to question the complications.

MR. CHERNIACK: Would you not say that generally speaking a husband whose wife embarrasses him would say so to her.

MR. HOUSTON: Would what?

MR. CHERNIACK: Would say so to her, would tell her, stop embarrassing me in the eyes of society or otherwise.

MR. HOUSTON: Yes, I believe he would. I believe in my experience it doesn't always do you a great deal of good.

MR. CHERNIACK: True. By the same token, if this wife is busy in the community working for her church group or the United Way or whatever, that's an asset to him too is it not?

MR. HOUSTON: Well we believe working for the church has its own reward.

MR. CHERNIACK: Oh. Well, that's well put and I accept that. If it's an admonition, I accept it as such. Then wives should stick to the secular things like United Way, and Red Cross and all those . . .

MR. HOUSTON: Well I'm prepared to discuss the "bejesus" with you, Mr. Cherniack.

MR. CHERNIACK: That's all right. Now, you said that having committed no fault she has the right to go out and say, "I want half of that asset." Are you a supporter of the concept that fault shall determine the distribution of the assets and/or the maintenance?

MR. HOUSTON: No. To that extent I support the Bar Association brief, if that's what it was, and the notions in part of what Mr. Carr said the other day. I don't believe that to the extent the lady can be said to have contributed, that fault in the breakup of the marriage should have anything to do with division of assets. I do believe, however, that fault should be a relevant consideration in settling the amounts of maintenance. Because the right to maintenance assumes the marriage relationship. You've had some ladies here say that well, she really ought not to have any claim for maintenance. Well that's not realistic because in many marriages that break up the lady is just simply not able to maintain herself and may never be able to become able to maintain herself. But if she wants to make a continuing demand after the breakup of the marriage, after the cessation of all domestic arrangements between them and to make a continuing demand upon the husband to contribute, arising solely from the initial marriage relationship, then it seems to me that if the wife was responsible for discontinuing the arrangement, that ought to be reflected in what she is entitled to call upon the man to pay in terms of maintenance but not in assets.

MR. CHERNIACK: Would you not agree, then, that the Maintenance Bill that we have before us, rejects the concept that the wife, such as you describe, would have a right for continuous support and says, no, that all she is entitled to have is that amount which is necessary until she is given the opportunity and has taken advantage of the opportunity to become independent.

MR. HOUSTON: That's the notion of the bill, but in my respectful submission, that is the law

today. When a judge settles maintenance, and it's well established in the case authority, he is supposed to take into account the wife's income earning potential. He is supposed to do that even now, but it's a very difficult thing to do. Can you tell me how you're going to legislate that after three years, if she isn't financially independent, she's going to be cut off? Can you tell me how on a day-to-day basis you're going to make that woman go out and realize her potential with one single section in your statute? I don't think you can.

MR. CHERNIACK: You say it's based on her earning potential. The concept that we are trying to develop is that she should be aided in achieving her potential by support during educational periods, by assistance during that time which is required. Now, you're saying it's difficult. Would you say that a person who does nothing whatsoever to attempt to achieve that potential, would continue to draw maintenance under that Act?

MR. HOUSTON: That's the way it is now and that's the way it will continue to be, notwithstanding your Act.

MR. CHERNIACK: Would you not say that's because of concepts of society and the consideration that judges give to the decision they make?

MR. HOUSTON: No, I believe it's the concept given by the individual involved who says, out of meanness or spite, there's no way I'm going to go to work. And I've heard this out of the mouths of ladies, "I'll bleed that bastard," and I've heard just as bad responses from husbands in relation to their wives.

MR. CHERNIACK: Right. Would you not say . . .

MR. HOUSTON: Could I finish my comment?

MR. CHERNIACK: Of course.

MR. HOUSTON: Mrs. Paxton is your representative wife. She's the kind of person that doesn't need your legislation. She's the kind of person that went and made it on her own and I like to think that Mrs. Paxton is the typical Manitoban. What you are doing here is imposing upon all of us legislation for the benefit of untypical Manitobans.

MR. CHERNIACK: Well, Mr. Houston, I want to agree with you. I'd like to think that Mrs. Paxton is the typical Manitoban and therefore has recognized the problems which she had and the problems which so many others have, that she comes here and encourages the passing of legislation which she, as a typical Manitoban, thinks is important for the people with whom she rubs elbows and who are not the rich people you are talking about but who are the vast majority of people in society. We agree.

MR. HOUSTON: Well, there are two aspects to that. So far as the reference to the rich, I have already indicated that they really have nothing to fear; the rich wives will profit. I am more concerned with the effect upon the woman in the very low and modest income position. Secondly, as to Mrs. Paxton, again I shall have to call on my own conceit, while I like the lady, while I think she's the kind of lady that people ought to be, I don't think she really understands the bill.

MR. CHERNIACK: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Toupin.

MR. TOUPIN: Mr. Chairman, I guess this is common in human beings. I find Maître Houston to be a bit inconsistent in his allegations but I guess we all live through that in life. In the sense that he accuses us of taking cheap shots at judges — I don't believe I have ever done that in life — but I think he has in his presentation today, possibly not the judges at the level that he believes that some members of this Committee have taken, in regard to federally appointed judges, but he has certainly left on the record an inference in regard to provincially appointed judges. I believe, Mr. Houston, that you leave on the record that you would prefer having laws and the determination of cases decided by the courts instead of elected politicians, no matter what political party they are from. I happen to believe the reverse. Whether we have to gain or not, and whether we are cheap politicians or not, we are elected and we can be thrown out of office. I want that on the record.

You seem to be inconsistent in your recommendation, Mr. Houston, in asking us to amend a statute. If I can recall it, The Marital Property Act, which is a statute that we did not receive a mandate, according to your words, to amend at the last election or in 1969, and yet you don't want us to amend that statute. You say that we have no mandate to touch the three statutes that we're talking about today, and yet you'd recommend that we amend The Marital Properties Act. That, to me, seems to be inconsistent.

You make reference, Mr. Houston, in regard to drafts of Acts, and one particular Act before us, and having received a rough draft are you aware that in most cases bills before this House, and any House, that you have anywhere from five, six, ten drafts. I have just presented a bill in the House a few days ago that had seven drafts. We're accused of not consulting with people, and yet when we do

we're insulted for it. Thank you.

MR. HOUSTON: Could I respond to that? I don't know that I recall all of it so I can break it down into its constituent parts. I think it's still a democratic society, Mr. Toupin, and it's my right, my democratic right, to come before this Committee as a citizen and make any reasonable comment — short of scandal — subject only to the laws of liable. I'm entitled to my inferences as well as you. There seems to be some notion of reversal. I'm not here to serve you; you're supposed to be here to serve me and the rest of us in this community. As to the convoluted connection of your comments, the comment on your lack of mandate did not imply any lack of power. There's no doubt you've got the power; you've been entrusted with it. My comment was on the legitimate exercise of that power, and as between we, we, the governed, all of us and you, the governors, you had a great many notions floating about in these days, about the abuses of power as opposed to the legitimate exercise of it. My comment in that regard, sir, was directed to one part of my submission.

The second part of my submission relating not to the Marital Woman's Property Act, it's the Married Women's Property Act, was a suggestion as to how you could achieve this result — which you have the power to impose — how you could achieve it far more simply; how you could achieve it in terms that people can understand so that people do not have to come before this Committee and say, "We don't know what the law is. We can't understand it." I offered you a simple suggestion on how you might accomplish that result and let the people know what you were doing and why you were doing it. I am not taking cheap shots, and I don't think I said anything about cheap shots, at politicians. But I did point to the record and suggest that one could reasonably infer that your motivation in these matters was political' far more than one could infer from the record of the judges choosing between the two of you, that their record indicated bias and prejudice, and if I have to add to the record of presumptive proof, I don't think there's a person that reads the newspapers in the Province of Manitoba that doesn't know that you're soon going to be running for another election. Thank you.

MR. TOUPIN: Mr. Houston, you make a reference to husbands not caring — I believe I am quoting you correctly — husbands don't care, when you talked about those making presentations to this Committee in regard to a contemplated law in this province, and yet you made reference to, I believe, six businesses wanting to leave the province because of this bill or one of the three bills before us. I've noticed over the years that I have been in government, and trying to do a good job whether I am or not in your humble opinion, that when businesses do have concerns they come and discuss it with me or with my colleagues. Why are they not here today?

MR. HOUSTON: They have a choice. Most of us don't have the choice to go, Mr. Toupin. You fellows always talk about the stay-option. We don't have the go-option. We can't take our clients with us and go. People in business are in a different position. They can move their residence; that's all they have to do; they can leave the business here. All they have got to do under your bill is move their residence; pay their taxes to a different province. That's all they've got to do. And the awesome aspects of this bill to people in business are such that they are seriously contemplating it.

How many situations do you think of where the businessman has dealings with the bank and the bank has been relying on the fact that the man owns the business , and they've been getting all the guarantees, all their assurances from the man, but now they know that he doesn't own the business and now they have to worry about whether or not he owns the business. They say, "All of a sudden, half of the security we thought we had for the money that we're advancing isn't there, so you've got to get your wife down here to sign the guarantee, the personal guarantee that he's on the hook for." Mrs. Paxton talked about the lady that wakes up in the morning worrying about the bills. Don't you think the men do that too? What if the wife says, "No, I'm not going; I'm not going on the hook? Why should I?" And any lawyer that that wife consulted would tell her she ought not to do it — any lawyer — because it would be against her financial interest to do so, unless notionally she felt, "I have a marriage, this is the way we operate, I'll go and sign it." But you're saying you're not prepared to rely on people doing that; you want to spell out the rights of what they can and what they cannot do. I don't think that a man who can move, if he's got any substance, is going to suffer the risk of what you obviously are going to bring down in some form.

MR. TOUPIN: Mr. Chairman, Mr. Houston, don't you believe though that , or if, you know, any of the six individuals individual businesses you're talking about, wanted to see this province develop under this administration, or any further administration, would take the pains that you've taken in the last few days to assist at some of these meetings and make a presentation, to see that this law that they're so much against is not enacted? I know I would, and I have over the years before I've been in government.

MR. HOUSTON: Well, maybe this bill is the straw that wasn't needed to break the camel's back.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman. Mr. Houston, personally I appreciated your forthright presentation this morning but just let me put this to you. You are prepared to concede the imperfections of man and you are prepared to concede the right to be imperfect to the judiciary, would you concede the same right to the mere politician?

MR. HOUSTON: Certainly. More than that.

MR. SHERMAN: You're a stout defender of the judiciary system and a stout believer in it and that's good. I happen to be a stout believer in the parliamentary system. Would you concede that there perhaps was some merit in passage of these bills on second reading? You were critical of the fact that the bills were given passage on second reading — reluctant passage by some of us, I might say — but that was done in order to get the bills into the public arena to provide us, and public, the with the opportunity to hear your kind of presentation. Would you concede that there was some merit in the Legislature taking that position?

MR. HOUSTON: I was not aware, Mr. Sherman, of the reservations that were made in the House until the other day. It had been my understanding that this bill had passed second reading, in , and principle that not one member of the Legislature voted against it. I don't happen to believe that all 57 members of the Legislature believe in the spirit of this bill and if it is fair to say that all the judges are prejudiced, I have to assume that there is at least one other prejudiced man among the 57 of you. For that reason I was critical of those who are judged to be my political representatives. It was after they had brought to my attention that the bill was approved in principle with serious caveats and reservations and, for that reason I don't have any objection to the manner in which the bill came before this Committee because, as I understand it, the reservations had to do principally with the absence of discretion and the affect of retroactivity, and those are my two gut objections to this bill.

MR. SHERMAN: Well, I appreciate that clarification. Would you agree with me — I can't obviously speak for anyone other than myself — that the principle that I am faced with here as a legislator, is that marriage is an equal partnership? We can isolate a principle in the legislation proposed before us, that that is the principle and it was necessary to get that principle through second reading and then to examine the bills in the way that we're examining them and isolating their defects where they may exist.

MR. HOUSTON: Well, if that's your notion, why don't you amend the The Partnership Act and just, by definition , say that partnerships shall include a marriage. I happen to believe that marriage is much more than a partnership and I am sensitive and offended for myself by the reference, the continuous reference, that the best comparison for a marriage is a commercial partnership. That's not my notion and I don't believe a good many Manitobans believe it either.

MR. SHEAN: Well, could I ask you what you see as the principle of the bills, taken in total, before us?

MR. HOUSTON: The principle? I can't find something that I would call a principle in either bill.

MR. SHERMAN: Well, given that quandary which may have faced all of us, we proceeded from the principle that I have suggested to you, and that is not that marriage is a commercial partnership but that marriage is an equal partnership. Now we are into that process that is desirable, and I can assure you that the bills have not passed this Legislature, they have not passed this House, they are here because we want to hear the kind of submission that you and many others have taken the time and trouble to make. In your opinion, Mr. Houston, can these bills be repaired, given the necessary time? Or do you think that that would be a fruitless and indeed an unrealistic exercise?

MR. HOUSTON: Well, I recognize that I, myself, am perhaps too old-fashioned for this society. I have had, in the past, to accept the inevitability of notions that I personally don't accept, but one has to accept that inevitability because that's the system. It would appear that a great many other people do not share my opinion. If I accept the notion that there ought to be a presumption, I am not prepared to accept as a valid principle, socially, legally, or even morally, that the existence of marriage can be translated into material terms, and that if you assume partnership between two people in a social arrangement it means the same thing as a partnership between two people out for one purpose, to accumulate assets. People go into business in partnership to make money. People do not marry to accumulate assets. They are two completely different concepts; they are two entirely different relationships. They cannot be qualitatively compared one with the other. If you are prepared to say that given the social notions of today, given the expression of opinion of an ever-increasing number of people, that the wife's contribution to a household does translate to the accumulation of assets by the husband. If you feel that is a valid notion and you want to legislate, as long as you legislate that as being a presumption that can be avoided in terms or cases where it causes hardship, or in cases where it results in an unjustified windfall, then you can correct it. What I am saying is that I think that in terms of what you are trying to accomplish, had you addressed yourselves sufficiently before you introduced the bill, because the damage in terms of confusion and apprehension is

already here, you might better have done the job. I am not a draftsman, I do not pretend to be one and I don't claim that I could have done it so I am certainly not critical of anybody else who tried.

MR. SHERMAN: You made reference, Mr. Houston, to social change and the fact that by its nature it is a slow process. I am concerned about the question of social awareness where this legislation is concerned. I would like your opinion as to whether you think — and you come in contact with this field obviously on a frequent basis as I am sure various members of this Committee do. In your opinion, is there sufficient public awareness of what is taking place at this present time?

MR. HOUSTON: I have no way of knowing. I couldn't answer that question on any basis.

MR. SHERMAN: Do you find among the people with whom you come in contact in your profession, both as a professional and just as an acquaintance, that really the knowledge of what we are faced with here is limited in the opinions of many of them to this particular legislative arena, rather than to the public at large? Could you offer any opinion on that?

MR. HOUSTON: I would hope, Mr. Sherman, that you would not personally and no member of this Committee would take offence at my personal opinion, the observation that what goes on in the Legislative Assembly in terms of day to day debate is not considered really relevant to a great many people in terms of their day to day lives and they do not concern themselves until they know the result.

MR. SHERMAN: And then it is often too late. I want to ask you one question, Mr. Houston, on the subject of retroactivity. You were asking for consistency in the legislation, specifically with reference to the approach to retroactivity. Consistency is simple enough to achieve. All you have to do is say the same thing and you can be consistent. Buy how do you achieve justice in this area? What would be your recommendations with respect to the concept of retroactivity?

MR. HOUSTON: Well, justice is a notion. One cannot arrive at a notion of justice until you define your premises. If you are saying that justice implies or requires a sharing of assets accumulated during the marriage, I should think that should apply to everybody. And if you say that that is justice today, then some lady who didn't get half last year was unjustly treated by your definition. And why should she suffer by a notion that you have now postulated for the benefit of everybody else?

What I am suggesting is, if you want to be just — and justice in my notion demands one thing and justice does not exist unless you have that one thing and that is equal application. You cannot have justice applied discriminately because then it is not justice by definition. So, if you want to say this is just and you want to say that it is retroactive then you had better go all the way back.

MR. SHERMAN: Well so far I think our dilemma, or at least mine has been, on the subject of retroactivity, that you are going to have inequities either way, either way. If you have retroactivity you are going to have some people who have reasonable settlements and reasonable rewards for the work they have done in their marriages and in their homes injured by the erring other party coming back and making the claim now. If you don't have retroactivity, you have the opposite inequity. And this is the dilemma we're caught in.

MR. HOUSTON: It is not really a dilemma if you reverse the coin and proceed in the other direction. If you are assuming that prior arrangements that didn't involve equal sharing of assets were reasonable and just and therefore should be left alone, why can't you concede that similar arrangements can be made in the future without your bill.

MR. SHERMAN: Okay. Thanks very much, Mr. Chairman.

MR. CHAIRMAN: Mr. Jenkins.

MR. JENKINS: Thank you, Mr. Chairman. Through you to Mr. Houston, I just want to get a couple of matters cleared up in my own mind. You stated at the beginning of your brief that cheap shots were being taken at the judiciary. I want to ask you if you have read the proceedings of the Committee since it met all last winter and now, and if you know of any case of any member of this Committee? — (Interjection)— Never mind, Mr. Johnston, I am asking Mr. Houston and I want him to clarify this in my mind. Maybe you understood what he said but I didn't. I want to know if you feel that any members of this Committee have taken cheap shots at the judiciary. I can assure you that I have just as much respect for the judiciary as you have. Can you name any member of this Committee who has been taking cheap shots at the judiciary?

MR. HOUSTON: The comment that I made, Mr. Jenkins, was that people making submissions before this Committee were taking cheap shots at the judiciary and that they were being encouraged to do so by questioning from the Committee. That is my comment.

MR. JENKINS: Well, Mr. Houston, we are not here to tell people what to say to us. I mean, if people want to take cheap shots, they are not here under oath, we are not subpoening them.

MR. HOUSTON: They should be stopped.

MR. JENKINS: Well, you talk about democracy, these people have a right to their opinions too. Now you made another statement . . .

MR. HOUSTON: I'll just answer your last comment, Mr. Jenkins. The notion of democracy, as I understand it, involves the conducting of proceedings in a parliamentary manner. The public press indicates something of the level of debate to which the Assembly has degenerated; I would have hoped that it wouldn't apply in these hearings.

MR. JENKINS: All right, fine and dandy. You made another statement, Mr. Houston. You said that if we were out in the real world, making an honest living — and I emphasize "honest" — an honest living, that we would have been sued or prosectued for operating under false pretences. Are you inferring then that members of this Committee and members of the Legislative Assembly are earning a dishonest living?

MR. HOUSTON: Not at all, it's a ridiculous interpretation.

MR. JENKINS: Well that's a pretty damned ridiculous statement you made.

MR. JENKINS: Well you are best able to judge the interpretation, sir. It is not what I said, it is how you interpret it.

MR. JENKINS: It is how you inferred it. That's all the questions Mr. Chairman.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Houston, I think that you would agree that judicial discretion is a matter which is very much before this Committee in reference to family law. Would you?

MR. HOUSTON: Yes.

MR. PAWLEY: And the degree or extent of judicial discretion is very important to the members of this Committee insofar as weighing this legislation. It seems to me that the submissions that we've received, that you may have interpreted cheap shots, were generally reflecting upon their impression, rightly or wrongly, — I am not here to argue that at this point — but were reflecting upon experiences or observations insofar as judicial discretion was concerned.

MR. HOUSTON: I don't know the extent of their observations; I don't know the extent of their experience; I certainly have witnessed the apparent sincerity of their belief. But when somebody says in clear and on certain terms before this Committee, or anywhere else, that a judge who has a discretion to decide a fact and could have decided that fact "one way or the other", to quote the lady, the fact that he decided it one way indicates . . . No, that he only decided it that way because he was biased and prejudiced, I call that a cheap shot.

MR. PAWLEY: I would like to just take you through the question of social attitudes and development and the change in the law in order to reflect those changes. You made a number of references to the courts, the tenure of office, you referred to politicians having to obtain re-election every four years, and you indicated some greater security, in your view, in the measurement of . . . And please stop me if I am misinterpreting you.

MR. HOUSTON: Then I will have to stop you, because I was comparing the inferences that were being drawn and the basis for them, so far as the judge's role in this particular issue, to the inferences that could reasonably be drawn from your role in the same issue. Comparing the two.

MR. PAWLEY: You indicated that the judges don't move on the first glimmer of a change in public opinion, that there is a process, a waiting period. Am I correct?

MR. HOUSTON: Yes.

MR. PAWLEY: I suppose the publicly elected person is in somewhat the same type of situation generally, is he not?

MR. HOUSTON: Should be.

MR. PAWLEY: Yes, he ought to be. Now, in my own situation as a member of the Legislature, unlike the judiciary, I have to attempt to measure public opinion and the extent to which that public opinion has changed as I will have to face an electorate. To that extent I cannot be either too far ahead or too far behind public opinion. You made reference to a judicial decision 1910 and said that would not occur now. I agree with you. But on the other hand, as a publicly elected official I can't wait a generation for a change in law to be reflected because I am responsible to an electorate. Do you agree with that general assumption?

MR. HOUSTON: Yes.

MR. PAWLEY: As a result of that it's incumbent upon me, and which I have done in my individual case, have spoken from many platforms in regard to need for change in family law. It has not been something sudden or hastily developed as I believe you inferred, but for the last two or three years. And let me say that my own thinking has undergone considerable change as a result of that testing out opinion and views from public platforms and speaking to average people dealing with problems pertaining to family law.

Now, do you not feel then it is incumbent, if a publicly elected official has arrived at a certain position as a result of his testing of public opinion, he may be right, he may be wrong, to attempt then to legislate after a process of reasonable hearings and study and analysis by professional people that

have delved and looked into this area, even though it might reduce the role of judicial discretion, or eliminate judicial discretion?

MR. HOUSTON: Is that it?

MR. PAWLEY: I would just like your comment.

MR. HOUSTON: First of all, so far as reducing the role, this legislation is going to create a lot more litigation than it is going to avoid. You in your position not only as a politican, sir, but as a Minister, you have got two responsibilities. You have got one as a Minister occupying public office in which, obviously, it is expected that you will do those things that you have particularized. You have, as far as I can see, a duty to yourself as well, and that is to get yourself re-elected if you can and that is part of the process. I can't compartmentalize the two, and I can't fault you or anybody else on this Committee as long as you are serving that purpose.

My only purpose in drawing the distinction was that it is difficult for us on the outside to distinguish the political motivation from the imagined wisdom of the legislation. And because I don't happen to feel this is wise legislation, then I have to assume for my own purposes that it is a political response as opposed to an administrative response. I don't think it is necessary to impose this regime upon every Manitoban and I have not, I have not participated in all of the things that you have. I haven't had all the briefs that you have had, I haven't had a chance, I have other things to do — I am sure you have too — haven't had a chance to consider all those things , but on the basis of my experience and for the purposes of my submission as an individual speaking only for myself, I say it's too wide, it's too broad and is unnecessary.

MR. PAWLEY: Let me then just proceed a little further. I think in the marriages of most of us around this table, at least speaking from my own marriage — I suppose I can't infer about anybody else's marriage — we have lived under the assumption that everything that we have is joint. We don't divide, we don't consider one item to belong to one spouse and another item to the other spouse. We don't attempt to make any accounting but there is real community of property, if you want to take the demands of the ladies' groups that we haven't gone far enough, but that is the practice. I assume that that is the practice of 90 percent of the married couples in Manitoba, that they recognize an equality in their marriage relationship. I assume that that is the case. Would you agree with that?

MR. HOUSTON: Yes, that was part of the burden of my opening remarks I believe.

MR. PAWLEY: If I could just for a moment then move over to The Devolution of Estates Act. It attempts to prescribe what is felt to be a fair — and I think is outdated presently — a fair distribution of assets in the event of death, and if somebody wishes to contract out of that type of arrangement then they prepare a will. Well I suggest to you the type of law that we are proposing here is already reflected in 90 percent of the marriages in Manitoba and if a couple don't wish to prescribe to this law, the simplest and easiest thing for them to do is to simply contract out. I may be wrong and you may be right, Mr. Houston, if you infer otherwise , but I suspect that my 10 percent figure is a way too generous, it is more like 1 or 2 percent that would say, "No, we're going to contract out, we don't feel that this law that you are imposing reflects our type of marriage relationship." Probably 2, 3 percent will do that. But they have the right to do that under our proposed legislation.

MR. HOUSTON: Well, I have to assume that on the basis of all the evidence that you have been able to accumulate, that your statistics are fairly accurate. I would have thought frankly that it was something less. But if you are proceeding on the assumption that 90 percent of the married people in the province are already operating this way . . .

MR. PAWLEY: They don't need this.

MR. HOUSTON: They don't need it. Okay. If you say that only one or two percent intend to go and opt out of the thing, it seems to me that you are mixing up two things. If 90 from a 100 leaves 10, 90 don't need this, ten do on your figures. If that's the case, why take the needs of the minority and impose them on the majority? The objection I have is the opting out. You can't compare a will in relation to The Devolution of Estates Act, to opting out under this agreement or this statute, because an individual can make a will . Under the notion that you've got, contrary to what the Law Reform Commission recommended, you require bilateral opting out. And that to me is offensive for the sake of this small minority , that all the people who have dealt in mutual trust without accountings up to till now are going to have to go to a lawyer and say, "Look, we're going to contract out of this thing." If you want to serve the 10 percent set this thing up as a machinery if you like, and instead of forcing the 90 percent to opt out, make it available to the 10 percent when they get married to opt in if they choose to do so.

MR. PAWLEY: My suggestion is that 90 percent already work pretty well according to this law, the general concept of this law. Another 2 or 3 percent, for probably very good reasons, second marriages principally later in life, would not want to relate to this law, they will mutually contract out. I

suggest there is another small percentage, however, that this type of legislation is required, that to leave it to whim would result in situations that have brought about, if I can say so, the type of Gallup poll result that you referred to earlier. People were questioned and I remember that poll result, 72 percent said equal division, 22 percent, they said depending upon circumstances and a small percentage were undecided. I don't think that public opinion, or that develops unless there have been a number of unfortunate situations that have provoked. I think it goes beyond the single case that you referred to, cases that we don't hear about. I hear about some of them and, of course, I only hear one side, that reflect the development of this general public mood that there is something outdated and archaic in our present family laws.

MR. HOUSTON: I don't question the fact that it is a developing notion. I have conceded the figures from the poll to be representative that, in fact, people do order their affairs this way. But it seems to me, Mr. Minister, that there is a massive difference in a family arrangement, in a husband and wife arrangement, for they do these things because they want to or they do it out of respect for the other individual, out of affection for their relationship, out of some ugly notion as to what marriage is all about. And for having done so they earn the mutual respect of each other. With your legislation nobody is entitled to any credit for doing any of that. Nobody earns any brownie point for doing any of that because all he is doing or all she is doing is exactly what you have laid down in this bill to be their civil obligation to do. In a word I recognize those obligations to marriage which have been assumed voluntarily by people participating in the contract to be something entirely different in quality to civil obligations laid down by the Legislative Assembly of the Province of Manitoba.

MR. PAWLEY: You see, Mr. Houston, I put to you that this law reflects . . . and I agree that marriage is much more than a civil contract. It reflects love, and I say to you, equality within that relationship, and I think that our law reflects the type of marriage relationship which you have described so well, that to have a law which recognizes — and of course you don't agree with this — but recognizes unequal situations , it doesn't properly reflect the . . . Pardon?

MR. HOUSTON: How does it recognize unequal situations?

MR. PAWLEY: Of course, this is the type of discussion that we've have been having in connection with the division of marital property.

MR. HOUSTON: Well if you want absolute equality, Mr. Minister, every time there is a divorcetake half the property, throw it into a pool and divide it equally between all the ladies. Then you'll have equality if that's what you're looking for.

MR. PAWLEY: I just wonder, you know, and I don't want to appear to be badgering Mr. Houston on this, making too big of an issue on it but I am a little concerned, particularly when he did make reference to Ms. Steinbart in what he thought was reflecting on the judiciary. If he feels that he ought to himself expand on his remark to the Family Court comparing it to a zoo was he referring to the administrative arrangements of the Family Court? The way it's left, there's an inference that he is referring to the actual judges that are presiding on the Family Court.

MR. HOUSTON: Well, it's not limited to the judges, but I am not going to back off my first comment that decisions down in that area are unpredictable, are inconsistent and do not, in my experience, reflect a reasonable interpretation of what I understand to be the standards of establishing maintenance. That's my opinion. You had it from Mrs. Paxton. If you doubt my suggestions, doubt my motivation or principle, accept Mrs. Paxton's. She can't understand it either. She knows what the law is, she knows that the judges are supposed to follow those concepts but it doesn't appear to her that they do. Now for whatever purposes, it doesn't appear to me either that I can reasonably anticipate that kind of decision which I would like to get. And for that reason I do prefer — and Mr. Carr said he didn't know the reason why, I am telling you the reason why — I prefer to go to Broadway than to go to Tuxedo. The reference to the zoo probably arises from the fact that it is in close proximity to Assiniboine Park. But the fact of the matter is if you go down to that place — and you want to talk about the administrative aspects of it — if you go down to that place on the Traffic Court nights, you'd think it was the hockey arena. The people are lined up, jammed into the corridors. You may have to sit there till eleven o'clock at night to be heard; they're overloaded, that's another aspect of it. I don't want you to interpret from my remarks a direct, exclusive criticism of the judges. What I told you is: given a choice between going to Tuxedo and going to Broadway, I go to Broadway. And it's not because of the parking because you haven't given us enough parking places to get close to the building.

MR. CHAIRMAN: Perhaps I can get an indication from the members of the Committee as to how they wish to proceed. It's our usual time of adjournment for the lunch hour and I /still have four more members on the list. What is your will and pleasure?

MR. HOUSTON: I will not be able to return if you want to ask any more questions.

MEMBERS: Carry on.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Mr. Houston, you refer to the lady receiving $40,000 because the husband has a million and a half dollar business. In most cases where there is that type of payment being made to ladies, that would be carried on pretty well forever as long as that business remains a million and-a-half dollar businesss and earning money. Would you assume that that is right based on your experience?

MR. HOUSTON: Generally speaking. It's a great discouragement.

MR. F. JOHNSTON: In the other side of the fence, where there is a separation and there is the 50 percent or maintenance being paid, you could see where there is not a lot of money involved, this legislation requests that the lady get back into circulation as soon as possible and she should start to earn her own living and as has been said at this Committee many times, she may be forced to take a menial job and that income may might not be enough so there would still be a supplement to bring her up to a certain standard. In other words, it seems unfair that the place where there is a lot of money involved is much fairer to the ladies than where there is not a lot of money involved. I get from your presentation that we are doing things here that are going to be harmful to the working area of people in the $15,000, $20,000 a year area.

MR. HOUSTON: That's right. I can add to that, sir. In fact as I understood the submission on behalf of some the advocates of the bill who felt it was in their terms, "an excellent piece of legislation," they recognize that such hardships would occur but said that that is just the p rice you have to pay, a kind of bloodless attitude.

MR. F. JOHNSTON: But that price doesn't have to be paid where there's a lot of money involved or usually doesn't.

MR. HOUSTON: That's right; it works in reverse.

MR. F. JOHNSTON: You mention that the businesses would be moved to Calgary or let's say any other province where this legislation doesn't exist. —(Interjection)— Residence. Would you suggest that a man would be almost forced to move if he wanted to maintain the ability to pay that $40,000 or even help his children if there were some, because if he doesn't, that business could be sold and there's no more possible way of income. He really has to do it to help to continue to pay.

MR. HOUSTON: You mean in the event of the legislation?

MR. F. JOHNSTON: In the event of the legislation.

MR. HOUSTON: No. In the event of the legislation, then I would assume that because the lady would get half the business, she would get a lot less maintenance. But the business would fold up. You can't pay out half a business over two years, three years, whatever you want to say, that you've taken 20 years to build up. The only choice, the only rational choice the man has is to sell the business.

MR. F. JOHNSTON: That's really what I think I was getting at. The only way he could continue to have the business there to help support the woman is to change residency because he is in a position of having to sell out. You said the business is bricks and mortar and etc. and there is no hard cash to pay this out and you don't do it easily. I agree with that. He just may have to do it to maintain his ability to support the wife that he is separated from.

MR. HOUSTON: Well he would have two choices: stay or go.

MR. F. JOHNSTON: I have one more question. When you referred to the change in the law — and I believe that the Attorney-General was saying that we do have an obligation to change the law, and we have had a lot of hearings on this particular subject — I would say that our obligation is when we change the law — and this is what we have in front of us now, not reports, nothing of that nature. We have the law and we should be here making sure that we don't change it in such a way that it will be harmful to some people. Did I take that from your submission?

MR. HOUSTON: I would say that, yes. Even if I didn't say it before, I'll certainly say it now. for divorce and the judge said, "Well, Mr. Brown, I have decided to give your wife $500 a month." Mr. Brown said, "Well, that's super, I'll throw in a few bucks myself from time to time."

do you believe that there should be total equality between the two partners in a marriage in all its ramifactions?

MR. HOUSTON: No.

MR. AXWORTHY: You don't.

MR. HOUSTON: No. Equality over all but equality as applied to specific areas, no.

MR. AXWORTHY: So that really the starting point of you criticism of this then is the basisc criticism of this then is a basic denial of that principle of equality in the marriage.

MR. HOUSTON: Not at all. Equality is a lovely and easy thing to say but equality by itself does not necessarily assume justice and does not always reflect the actual facts of the case.

MR. AXWORTHY: But if there is an unequal status of one partner or the other, then that is one of

the primary reasons why there is injustice because one partner does not have the means of securing their equal rights.

MR. HOUSTON: Well, I suppose persons could have absolute equality in terms of say division of assets, to take an example. Are you suggesting that because they've got that equality and because they have also equality in the sense that each party is entitled to share immediately 50 percent of on all the income that's coming in, all right, you've covered material equality but that's all you've covered. If I haven't made my point yet, what I am trying to suggest is that the institution of marriage involves much more than a division of marital assets.

MR. AXWORTHY: Well, I agree with you, Mr. Houston, but is it not true that the division of those assets is a tangible way of offering the ability to manage what goes on in the marriage in a way that when one decides what to do about a home or property, that the ability for both partners to be able to make decisions on that is a clear expression of equality then, if in fact the right does not exist to manage such assets?

MR. HOUSTON: Well, to take the example posed by Mr. Cherniack. The man's a very successful businessman and he wants an ornament to represent him at the golf club so he marries a lovely lady and he spends a whole lot of money dressing her up and he sends her out there because she is a great person socially eh? But she doesn't know a goddamn thing . . . excuse me, she doesn't know anything about business.

MR. AXWORTHY: Yes, I understood the first part of it.

MR. HOUSTON: Should she be entitled to tell him how to run his business? That's what your bill said. That she criticizes the manner in which he runs his business; she can go to court and have a receiver appointed because he's dissipating commercial assets?. That's what your bills says. That's inequality.

MR. AXWORTHY: The thing I am raising though is that is it not those kinds of situations where men have tended to treat women too often as ornaments that they have set up a self-fulfilling prophecy that that's the way they act and therefore they haven't been able to achieve a higher degree of competence and ability within their partnership and marriage to act.

MR. HOUSTON: That may be the way a great many married women act but I happen to know of a great many married women who, given the developing standards of today, are not content for themselves to do that sort of thing, that are going to universities, they are going to business courses, they are opening businesses, doing all kinds of things to realize upon the promise of the position that they are supposed to enjoy in this society and I think that's something for them to decide and the vehicle is there and they are able to do it if they want to.

MR. PAWLEY: Mr. Chairman, excuse me, could I just interrupt just for a moment, Mr. Axworthy. I am wondering if we would not be wise to, rather than to adjourn and return after an hour and a half, to simply carry on and order hamburg and coffee to be brought to our caucus rooms and then adjourn for only a half-hour period so that we can carry on and then we can adjourn earlier this afternoon rather than . . . to me, if we adjourn at one o'clock and then return at 2:30 or 3 o'clock, then it's hardly any point in returning.

MR. HOUSTON: I would not be returning after any adjournment.

MR. PAWLEY: Well it would take at least a half-hour to have the material brought up anyway.

MR. CHERNIACK: I think that's a good suggestion. We would stay with Mr. Houston right through until we have completed his attendance but then what Mr. Pawley is suggesting is that we order now so that we have it after that. I think that's a good idea. Might I say while we're talking about this, that . . .

MR. HOUSTON: What about the people in the back? Maybe they're having a Big Mac attack?

MR. PAWLEY: Possibly they could seize the opportunity to order as well and have whatever brought in for themselves if they wish because the members' lounge is open and there is other accommodation that there would be no problem, I think for everybody to make their own individual choice.

MR. CHAIRMAN: Sure. Those who are concerned, Mr. Rich is the next on the list and he would be first up after we adjourn. Maybe we should give him sufficient notice.

MR. PAWLEY: I felt Mr. Rich out on it and he says that he would just love to have a pizza brought in for him.

MR. RICH: I'm not a pizza man but a hamburger is fine.

MR. CHAIRMAN: Perhaps we can then proceed. Mr. Axworthy.

MR. AXWORTHY: Well, Mr. Chairman, now that we've adjudicated our menu for the afternoon, I would like to see if I could pick up the thread, wherever that thread was. The position I'm trying to get at is that the question of equality in the marriage as it is represented in the division of assets, is the one that would and could lead to a wider range of equality in those other intangible social personal

relationships that you think are important. Would you not concede that that is one of the ways in which the state of inequality that has existed for women is one way of rectifying it?

MR. HOUSTON: It's one of the ways.

MR. AXWORTHY: It is a way of doing it then.

MR. HOUSTON: But it won't accomplish it.

MR. AXWORTHY: Well, let's look at the evidence to see. If you say that it is one of the ways of doing it, I was interested in your comments that you felt that as far as the courts were concerned, there was full equality and yet I was surprised when I went back and looked at some records that a number of judges, including Supreme Court judges, have said such does not exist. Almost every Law Reform Commission, the Canadian Law Reform Commission that was headed by Chief Justice Hart, who I think is a noted jurist and several others, has said that major legislation should be introduced to rectify these inequalities and to rectify them now. This was not politically motivated activity. I don't think anyone on these Law Reform Commissions is . . . they may all be unsuccessful politicians and then they become jurists, but the fact is that there seems to be a fairly sufficient and significant body of evidence coming out of the legal commissions and judicial benches themselves that they want specific measures taken by provincial legislatures to create a higher degree of equality. Now, how does that correspond with your statement that you figure all the qualities that we have, we have now.

MR. HOUSTON: Of course, I'm not advocating the legislation. It seems to me that legislation goes quite beyond what the Commission recommended to you.

MR. AXWORTHY: Well, okay, that . . .

MR. HOUSTON: If you want to rely on them.

MR. AXWORTHY: . . . yes, I am prepared to . . . that's another issue but I did want to deal with the issue that I thought you were saying, and that is that nothing needs to be done now. If nothing needs to be done because all equality has been provided, then it would seem to be me all the weight of this evidence is to be discounted. Now, would you concede that something should be done without questioning what should be done but that something needs to be done to establish those principles of equality and give them proper legal means.

MR. HOUSTON: For the reasons I have already indicated, I don't think that anything needs to be done in the terms of division of marital assets except the statement you feel that the massive investigative opinion that you've received allows that today it's a socially accepted principle that assets acquired during a marriage should be jointly shared, you may declare that as a presumption. And I think that's all you have to do.

MR. AXWORTHY: Well, okay, Mr. Houston. I would like to pick up on that because if we can go from the need to establish a greater range of equality to the methods of achieving it, your system or recommendation is that we simply build in . . . I think, your recommendation was for the Married Properties Act, a set of presumptions that guide judges in the disposition of that property. Is that a fair . . .

MR. HOUSTON: It would be a statement of a presumption with an onus of proof on the party who didn't accept it to disprove it.

MR. AXWORTHY: Well, okay, taking that position which I think . . . and by the way, I would say in parenthesis (that I was a little disturbed at some of your offhand remarks about the capacity of politicians) when as a matter of fact many of the same questions you raised were raised in debate in this Legislature only a week ago.

MR. HOUSTON: I don't know why each and every one of you are so defensive about any comment I made about a politician.

MR. AXWORTHY: Well, because, Mr. Houston, you were attacking us, that's why, and that's why we're reacting to it.

MR. HOUSTON: What I was trying to do was . . . Well, all right, if that's the way you interpret it.

MR. AXWORTHY: Well, I think that it was a fair interpretation.

But I would go back then to the Law Commission Report, the Canadian Law Commission Report, which says that potential disadvantage of a discretionary system lies in its lack of certainty or predictability, which is the very thing that you are complaining about the Family Court for not doing. Now, how do you reconcile the . . . and I again would have to take this opinion as at least being equal to your own as a comment on the way things were.

MR. HOUSTON: I don't agree with it. I prefer the other because the absolute imposition of a rule will give you predictability, there's no doubt about that, but it's conceded it will cause hardships and it will cause hardships in the hardest cases and that can be avoided and ought to be avoided and I don't thinkk think, if I had to take on balance, that the pursuit of notional equality is such a lovely thing that it should be bought at the expense of people who are going to have to labour under the hardships that

it will impose.

MR. AXWORTHY: Well, do I take it / from that that you do not believe, in a general way, of any notion of fixed legal rights for people?

MR. HOUSTON: ot at all.

MR. AXWORTHY: Well, that's what you just said, that we shouldn't have any fixed legal rights to determine equality and that while I agree with your sentiment in fact that when you have fixed legal rights there must be means of remedial work and some flexibility, that lack of fixed legal rights can lead to perpetuation of inequalities or whatever those legal rights you are trying to correct.

MR. HOUSTON: Has the Canadian Bill of Rights been adopted and enacted in this Legislature?

MR. AXWORTHY: o.

MR. HOUSTON: Well, until such time as that Bill of Rights that serves the notions of all citizens is adopted in this Legislature, I think that your pursuit of equality is rather selective.

MR. AXWORTHY: Well, I would suggest though, Mr. Houston, that there are a number of statutes that have been passed in this Legislature in times past and in recent times which set out different kinds of legal rights for people, whether it's in the area of human rights or whether it's in the area of income rights or whatever it may be because we are trying to rectify a whole range of specific problems or inequities in this society and that we're not dealing with it in global ways, we are dealing it with it in specific ways.

MR. HOUSTON: And all I'm suggesting that is in attempting to resolve a problem, you are creating more.

MR. AXWORTHY: Well, let's go back. To say though thatthe problem does exist and we now have two bills, three bills actually, to try to correct it based upon a notion of fixed legal rights, so really what the point of dispute comes down to when all is said and done is, can we apply some area of discussion to ensure that those fixed legal rights themselves don't become so arbitrary that they create impositions that are unnecessary and unjust.

MR. HOUSTON: Can you? Certainly you can. Why can't you?

MR. AXWORTHY: Well then, that's the point I want to come down to, that within the intent and construction of these bills, where are the areas within which some discussion may be applicable so as to avoid the arbitrariness of a totally fixed legal right system?

MR. HOUSTON: Well, it gets right back to your opening statements, on the division of property. I don't think that that should be arbitrarily divided equally. I think it should be divided according to the circumstances of the individual case. If you want to make your declaration, make it as a form of presumption, so the ladies will have it declared that it is presumed that anything acquired during the marriage is half theirs. There's nothing stopping you. All I'm saying is, leave a discretion, leave an area to get out from the hardship that this rule will admittedly impose.

MR. AXWORTHY: Okay, but I go along with that recommendation of leaving some ability. Would you agree with the . . . I believe it was in the exchange with Mrs. Bowman and Mr. Cherniack last evening, it said that the onus in which a discretion could be applied would be upon on the person whose property was being divided.

MR. HOUSTON: No, the onus would be applied upon the person who claimed the presumption ought not to be applied. It would be what we call a rebuttable presumption.

MR. AXWORTHY: Well, whatever legal term, would you agree with that notion then that Mrs. Bowman seemed to agree with last night that if there was an area of discretion allowed in the courts, in those areas, that that would be sufficient to allow the application.

MR. HOUSTON: I'm sorry, I can't follow that.

MR. AXWORTHY: Well, last evening when we were talking about the same question of how to gain some degree of flexibility against the fixed right, there was — and I believe it was an exchange between Mr. Cherniack and Mrs. Bowman — the notion that rebuttable presumption, if it was introduced into the Act, would be sufficient protection. Do you agree with that?

MR. HOUSTON: Yes, on that aspect.

MR. AXWORTHY: On that aspect of it.

MR. HOUSTON: So that if that's all you want, The Married Women's Property Act , then the amendment of it is sufficient to your purpose.

MR. AXWORTHY: Well, that would be something — not having read that Act, I would have to go back and see — but the fact is that the mechanism would still remain the same and that maybe other aspects of this Act that have been incorporated with the addition of that notion might then be suffice to appease some of your concerns. Is that correct?

MR. HOUSTON: It's not to appease my concerns. It's to offer you an alternative solution to what you are attempting. Now what it will do is offer the judge a clear and specific direction as to how he is to exercise his discretion.

MR. AXWORTHY: But that could be incorporated under the arrangements of this Act.

MR. HOUSTON: Yes.

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

MR. CHERNIACK: Mr. Chairman, well maybe at this stage on a matter of privilege on behalf of Mrs. Bowman, may I? It's just that the validity of the proposition as put by Mr. Axworthy and discussed with Mr. Houston is on question but she and I would like to clarify that what we were talking about was the discretion of the court applies only to retroactive whereas I believe that Mr. Houston is talking about ongoing and future —(Interjection)— Well, she wanted to make sure, as did I, that she was not interpreted as supporting the concept for other than retroactive.

MR. HOUSTON: And I do not presume to speak for Mrs. Bowman.

MR. CHAIRMAN: Mr. Dillen.

MR. DILLEN: Mr. Chairman, through you to Mr. Houston, I want to say that I support the position that you take on the question of retroactivity except to say that I think it also should apply in a number of other areas particularly in the case of Workmens Compensation and if the new Act on Occupational Health and Safety is going to be introduced I would also hope that you would convince the people in the government who speak for you that the retroactivity should also apply in those areas. I will be looking forward to the day when that will be the case.

MR. HOUSTON: Mr. Dillen, before you go any further, sir, I didn't suggest that it ought to be that way. I don't like the principle of retroactivity going back one day but if you are going to put it back in this case, you'd best do it all the way.

MR. DILLEN: You made a statement that marriage was never entered into — I believe you said for purposes of financial security.

MR. HOUSTON: No, I said marriage as opposed to a partnership was not a business arrangement for the purpose of acquiring assets or making profits. Or something to that effect.

MR. DILLEN: The way I've got it written here was "for reasons of financial security." And I wantto let your mind wander back a little bit to early European, early British and early American history. The children of the school system in Manitoba and other areas of Canada and the United States — North America — have been bombarded almost with the attitudes of the nobility in marriage arrangements which had the effect of, mainly for the purpose of prevention of hostilities between one country and another or one group of holdings and another, or for the purpose of economic alliances, the consolidation of land holdings and for political and financial purposes. That has been the history of those who have had assets and who have had land holdings, or the history of the nobility. Don't you agree with that?

MR. HOUSTON: Yes, but I don't think the marriage of any Manitoban is going to affect the ownership of either the Province of Lombardy or the . . . Ports.

MR. DILLEN: But that has been the case, you agree? What I am trying to establish, Mr. Houston, is that we have developed a psychological acceptance in our educational system of the premise that marriages are for the purpose of some form of financial security.

MR. HOUSTON: Well, if you have developed it, I haven't contributed to it. You have also developed, in your educational system, for historical reasons, that schools should close for the months of July and August. That was so the children could help on the farm. They are not doing that now but the schools are still closed for July and August.

MR. DILLEN: If you trace back the history of Manitoba, you know, with that kind of a psychological attitude I can recall to this day, my mother advising my sisters that they should make the best possible marriage arrangements that they can and to marry somebody of means. It wasn't necessary for them to get an education, that the person of means would be able to provide for them.

MR. HOUSTON: What do you think your sisters' chances would be under this bill?

MR. DILLEN: Well, I'm not passing the law for the purpose of benefiting my sisters. The point I'm trying to get to is that the people who marry for reasons other than financial security probably will never come in contact with this law.

MR. HOUSTON: I can't comment on that.

MR. DILLEN: It appears from all of the representations that I have heard so far that we're really concerned about, in the application of this law, to those people who will be dividing an accumulation of assets. Let me try to describe . . . Who gets the Jaguar, who gets the Cadillac, who gets the summer cottage, who gets the yacht, who gets the contents of the safety deposit box, the land holdings, the apartment blocks, the house, etc.

But in many cases — I'm trying to describe in other areas of northern Manitoba, or of the province — there is really not that preoccupation with the acquisition of holdings and when people separate, when the liabilities are satisfied by the assets, whatever they've got in two suitcases is probably all that remains. And they go each their separate way. They never have to appear in a court.

MR. HOUSTON: Do you want me to comment on that?

MR. DILLEN: Yes.

MR. HOUSTON: Well, I'm not really concerned with those people that you would refer to as the aristocracy in the present society, that have a Jaguar and a cottage in Kenora, and all of that. I really didn't address myself to the people who can put the accumulated efforts of their lives into two suitcases. I'm talking about the working people who do accumulate some kind of assets by their thrift, by their diligence, and by their work. And usually this is the house; usually it's a house. I'm saying that under the terms of this law the equal division of that house will not, in many cases, accurately reflect the future needs or the past contributions of either party to the marriage.

MR. CHAIRMAN: Mr. Brown.

MR. BROWN: Thank you, Mr. Chairman. Well, we have had Mr. Houston here for a long time, so I'll just ask one question. Do you feel that the passage of these bills will cause marriage breakups rather than strengthening them?

MR. HOUSTON: They will breed suspicion and mutual distrust and I don't see that that's going to help the marriage.

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you, Mr. Houston.

MR. HOUSTON: Thank you.

MR. CHAIRMAN: Is it the intention of the Committee to ask Mr. Rich to begin his presentation? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, may I intercede on behalf of Mrs. Hilton, who is next after Mr. Rich, and who told me she only had five minutes worth. I suggest that if she and Mr. Rich would agree to switch around then I don't think that the Committee would object to it. Can we give her five minutes or should we tell her to come back in half an hour?

MRS. HILTON: I only need two minutes.

MR. CHERNIACK: Two minutes.

MR. CHAIRMAN: Do proceed Mrs. Hilton, please.

MRS. HILTON: My name is Betty Hilton and I'm speaking on behalf of the men and women of the Manitoba Teachers' Society and as the last speaker spoke about 800 members, I'd like to say that I'm speaking for 12,000. I'm not speaking for every one of them obviously because we don't all agree but in principle I think most of us do. I'm not here to present a brief, either; I'm just here to remind the Committee that the Manitoba teachers endorse the stand presented by the Family Coalition.

We wish to reiterate that maintenance provisions are still inadequate. We see the strain put on society in general and teachers in particular when there is a lack of money in a home. Let me give you a couple of concrete examples. One of the schools in my division is near a low rental housing development. Unable to maintain the former home due to marriage breakup, mothers and children change the area of their residence and their standard of living. The changes that appear in many children's behaviour patterns, as reported from the former schools, and what is now being exhibited in the new school is traumatic. The strain that this puts on the teachers and support system, in the way of psychiatric services and social worker, is almost beyond coping. Also, the child's security is in constant jeopardy for these conditions cause parents to be continually moving and looking for better places to bring up their children.

One kindergarten teacher in another suburban school in our division — and this is not Core I want you to understand; this is St. Vital. We are out in what we consider a "good area" — has told me she has had 17 transfers this year. Seventeen and the year isn't over yet. Her class size is 23; 17 out of 23. Have you any idea of the adverse effects this kind of mobility has on children? Who pays for it? The child, and in the end society. In the end society always pays.

We therefore reiterate there must be some provisions for collecting maintenance. We also feel that salaries must be considered shared assets. We wonder how many families have assets beyond a salary and a house and a car that you're still paying for. The suggestion that unilateral opting out may be considered is unacceptable.

I would like to remind the men here that, you know, we women are working. I heard our former speaker keep talking about these bills as if they are only for women. You know they're not; they are for men too. Some women — and I am one of them — make above average salaries and, you know, if we have the position of being able to save our salary while a man keeps us, and keeps the home running, we may have built up quite a lot of equity. So, you know, it isn't only for us.

I wish to commend Mr. Pawley and the government on these bills and I recommend strongly, with my society, that the government quickly pass these bills with what you consider appropriate amendments. Thank you, and thanks Mr. Rich.

MR. CHAIRMAN: There may be some questions. Are there any questions? Mr. Sherman.

MR. SHERMAN: Thanks, Mr. Chairman. I'd just like to ask Ms. Hilton, with respect to the unilateral opting out reference that she made, whether she has had a chance to see or hear Mrs. Bowman's explanatory presentation on what the Law Reform Commission meant by unilateral opting out, what she has re-entitled "Invoking Judicial Discretion," and whether that would in any way affect your thinking on that concept?

MRS. HILTON: I have to admit I haven't heard it. I'm sorry I was here last night and left and I didn't hear Mrs. Bowman. I would expect that you people, as lawyers and as our legislators, would take the best of all ideas presented to you being aware of what the people really think. I think that you have to be aware of what the people out here are thinking and we have tried to tell you. All of us have tried to tell you, different segments, and women make up half. And since some people seem to feel this is only for women that should give some impact to half, anyway. But I would hope that you, as legislators, will take the best and do the amendments. No, I'm sorry, I haven't got that.

MR. SHERMAN: Well, Ms. Hilton, I don't agree that we have approached the legislation as though it were only for women. But even if we did, which I don't accept , but even if we did, would you not agree that there are two kinds of women who will be affected. There are those who have been hard done by in their marriages and there are those who have done hard by the other party. So that a consideration like the one advanced by the Law Reform Commission and now described by Mrs. Bowman as invoking judicial discretion could work just as much in favour of a woman who has been hard done by as many of the delegations appearing before us seem to think it's only going to be operative for men.

MRS. HILTON: I'm not prepared to answer until I really read this. I'm sorry.

MR. SHERMAN: Well, could I just refer it to you for consideration because I would be interested . . . .

MRS. HILTON: I'll take it back to my committee.

MR. SHERMAN: I'd be interested in your committee's thinking about it. I think what the attempt, generally herein, among some of the amendments that have been proposed, some of the suggestions that have been made by delegations before us and certainly in recommendations of the Law Reform Commission, is to not only achieve protection for the woman who perhaps has had a bad and a damaging time but also to make sure that she has the right to protection against recourse that would be provided her husband, under the law as it is presently drafted. And the reverse also would apply.

MRS. HILTON: Yes. Well, as I say, I'll read it and I will take it back. Okay?

MR. SHERMAN: Thank you.

MRS. HILTON: Thank you.

MR. CHAIRMAN: Mr. Jenkins.

MR. JENKINS: Mr. Chairman, through you to Mrs. Hilton, your figures of turnover in school systems in the suburban area really disturbed me. As a former member of the Winnipeg School Division Number One, and representing one of the wards with the Core area in it, I know that some of our schools when I was on the board in that area had a 300 percent turnover per year. I didn't realize it was as high, and this figure you gave us today is roughly around 70 percent turnover, in what we consider to be a more average-into-middle-income area. Would this be true of other suburban school districts?

MRS. HILTON: Well, it depends. Now, you see the school I was referring to has a large population that lives in apartments and we find that when people are in a one-parent situation, when the family breaks up, they generally move into apartments. And then situations mean that they can't stay there or they find that the school isn't to their liking, or they move again. I think there is a great deal of mobility when you have family breakup. In the first part, anyway.

In my school, which is not near an apartment area, it is a one-dwelling housing situation, I have had one leave in the classroom that I go into to relieve the teacher and that one was because the dad was going to Switzerland. So, you know, it's just where you have low-rental housing and apartment areas. But where you have them, you do find a tremendous turnover and I do feel that it's probably because of lack of money. You know, 75 percent of maintenance orders aren't paid. It's pretty hard to live on. Most women do try to go out and work and then there is, of course, the babysitting situation. Who looks after the children while mom works? And so they will move to a place where it is more convenient.

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you, Mrs. Hilton.

MR. HOUSTON: Mr. Chairman, may I have your patience for just a few seconds?

MR. CHAIRMAN: Yes, Mr. Houston.

MR. HOUSTON: I hasten to correct myself. I made a remark this morning on the basis of an understanding, on information that I had received. I'm told that that information or that understanding is wrong. I am wrong and I was wrong when I told you that the Law Society had recommended against the appointment of a particular judge. That was not what happened and I hasten to correct myself, and I took the precaution of advising the people at the press table— in case they should leave — that that was an error and that, even if they had left, I would be withdrawing that statement before the Committee. Thank you very much.

MR. CHAIRMAN: Thank you for clearing up that point. The Committee will adjourn and stand adjourned until 2:00 p.m.