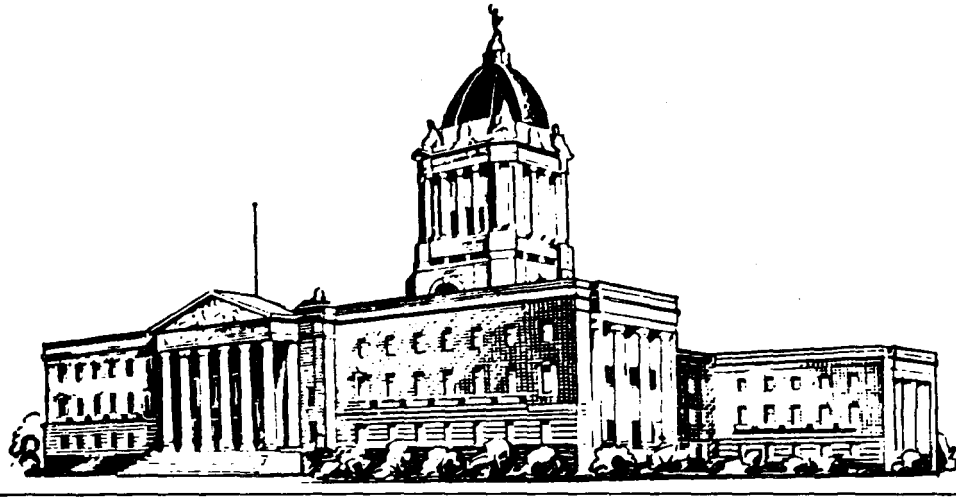
Legislative Assembly of Manitoba

HEARING OF THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. D. James Walding
Constituency of St. Vital



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TIME: 8:00 p.m.

CHAIRMAN, Mr. D. James Walding.

MR. CHAIRMAN: The Committee will come to order. The next name on my list is Mary Jo Quarry, would you come forward please.

MARY JO QUARRY: Most of the points that I originally intended to raise have been dealt with by nearly every other speaker. I won't go into providing yet another support for mutual opting out and immediate sharing of assets. However, I'd like to provide the Committee with some new information regarding joint management or equal management, pardon me, a lot of information which has been tossed around.

When I first started being interested in this topic was when the Law Reform Commission put out its first working paper. I had heard some vague discussions about how different property systems operated. I went to the hearings that the Law Reform Commission held after its working paper was released and heard a number of groups make submissions calling for immediate equal sharing of assets and heard Law Reform Commissioners tell these people that this is an impossible system; it cannot work. Where it does work in the States they're having no end of problems with it and we can't sort of fit it into a Canadian context.

I asked one of the Commissioners afterwards whether in fact the States that had this sort of equal management statute had found that they had come up with ways to deal with the these problems. And he said, "Well, yeah, we're thinking we ought to look at how that operates in the States but we haven't gotten around to it yet." Well, I sort of agreed that it was a good idea that perhaps they do this. At that point in, what? Fall, 1975, the B.C. Law Reform Commissions Report, which called for precisely the sort of system that many other groups have been calling for before this Committee, had been out for six or seven months.

I subsequently did a good deal of research into how these regimes operated in the States. Eight states in the United States have had variations of community property systems for up to 120 years, which means that about 40 million people in the United States, one-fifth of the population have been operating under this system. Now, up until the last seven or eight years those systems had what they called "husband managed" statutes which meant that although assets acquired during the marriage were assumed to be shared by husband and wife the husband was entitled to do the management and decision making.

Since 1967, all but one of those States have changed over to an equal management system under which generally speaking all assets acquired during marriage with the usual exceptions are managed equally by husband or wife. This includes, contrary to what a couple of people have alleged, wages, salary, whether earned by either partner.

Having heard Mr. Paulley ask Myrna Bowman the other night whether wages were included in sharing and having heard her say, "No, she didn't think so and she was sure that she would have known if it did." I went back to my notes and looked through my articles again, and I hadn't done this before because it hadn't occurred to me that anyone could have any doubts that wages would be included.

I subsequently talked yesterday to the Dean of Law at the University of Washington, in Washington State, who is Dr. Harry Cross who is responsible for most of the journal publications on how community property operates. He said, as I had imagined, "Of course wages are shared." He seemed surprised that anyone could think that there was any system in which they couldn't be, that as of 1972 when their statute came into operation contracting out had been available but only mutually. He asked, "Well, how could you have contracting out if you don't have two people involved in the contract?" And he said, that they had seen no rise in cases of litigation or types of litigation since the coming into being of the Statute.

This morning Miss Halparin said she was quite sure that wages were not shared under the California system because she had talked with California residents and also she had talked to a practicing lawyer and they had told her this. Immediately after which I got on the phone again and talked to a professor in Family Law at the University of California Law School who said, "Certainly wages aie shared. Certainly contracting out is available if done mutually" — they've had their system by the way since January '75 — "that he didn't think there had been any change or rise in litigation but the person to talk to would be the presiding judge of the Los Angeles Superior Court." Whom I next called, who said, "No we have seen no change in either volume or type of litigation since January '75 regarding this. It comes up as an issue maybe one or two times in 2,000 cases and only then in cases where families have already separated and someone is suddenly concerned about having access to chequing that wasn't already in a joint account." And he seemed quite surprised that it could be a topic of discussion.

In this general context I have been really disappointed at the level of research evidenced by the Law Reform Commission in this particular regard. While I realize it's always easy to criticize from the

outside someone elses job without realizing the magnitude of it, on the other hand they put out a working paper, and they put out a final report with, it would seem to me, no serious attempt to really look at this as a viable system or do any major amount of research into it. This sort of information was available to me as sort of "Joe Private Citizen, non-lawyer, non-law student" by simply picking up my phone and getting two authortative bits of information on the first try. That information could just as easily have been available by phone or by letter to the people doing research on this as a job over the last two-and-ahalf years. Apparently that source wasn't used.

I showed one of the Law Reform Commissioners a copy of the California Statute the other night asking for an interpretation, and she seemed sort of impressed that I even had a copy of it. Well, there are copies of both those statutes appended to the B.C. Law Reform Commission Report which came out in March '75. There are copies of two of the State's Statutes in the Federal Law Reform Commission Report. I find it very surprising that anyone who is seriously researching this had managed to miss all those sources.

I have tonight, copies of four state statutes which I will leave with Mr. Paulley afterward, as well as a lengthy article in the Osgood Hall Law Journal, summarizing both separate and community property systems and recommending the adoption of the an equal management system here.

The other red herring that's been thrown around about equal management is that people involved in businesses or family farms can't possibly operate under this because you will have endless maiital mayhem. At least two of the states whose statutes I have read solved that very simply by saying, "Assets are equally managed. If both partners are engaged in the business activity, the equal management provision pertains." If only one partner is engaged in equal management, then that particular portion is waived, even if the form of the business includes real estate, the transfer of which normally would require two signatures. By the way, California, as one example, has required joint signatures for transfer of buying and selling of real estate since 1915. This was a court effort to modify somewhat the excesses of a totally husband managed system. You will note the wheels of commerce have continued to turn in that state and people have dealt with a substantial volume of property which ought to indicate at least that couples frequently are able to come to an agreement on what they wish to do with assets in which they have an equal stake.

In the same context, Mr. Houston made the point or sort of implied threat that at least six businessmen were intending to leave Winnipeg immediately upon passage of this statute because they weren't about to suffer this sort of intrusion in their private lives. All of those states to the south of us which have equal management provisions, which is far in excess of what this bill would provide, have seen no flights of capital and no sort of massive commercial collapse, or at least I assume if they had we would have heard of it.

My only other major point is to speak to what has been said by Miss Bowman, as well as several other speakers, that it's impossible to legislate equality and that even if you do say assets, wages, whatever, should be shared, there's no way of guaranteeing that it will be. If you can't legislate how you'ie going to get your hands on the money, they have said, all you have is sort of a theoretical show of victory that doesn't mean anything — with which I disagree entirely.

Mr. Houston, I believe it was, used the example of a Gallup poll to indicate that most people already considered their marriages to be equal partnerships and that there was no need for legislation. I think what's important to remember there is that those people who were polled for the Gallup poll, who were normally property owning men, were being magnanimous and good and fair in saying that of course they considered their assets to be shared. The women who were saying that they considered their assets to be shared were lucky or hopeful, but they weren't operating from the same sort of perspective at all.

About a year ago when a group I'm in did some polling of various legislators and officials at the Legislative here to talk to them about a number of priorities we had, including family law, I had the same experience which I think was one of the things that brought this home to me to clear it. One particular legislator explained to us at great length that he couldn't agree with us more, that of course this is how marriages should operate. His own, as an example, had always been considered a partnership; it didn't matter who earned what or who contributed by whatever means, everything they had was jointly owned. As he read further in our brief and noted that we recommended an equal division of assets on separation, without any regard to fault for the breakdown, his immediate response was, "Wait a minute, you mean if she walks off on me tomorrow and goes off with somebody else, I have to give her half my property?" Well, I think that's precisely the point, 30 seconds before everything had been shared because there had been no threat to the status of the marriage.

I think regardless of the sort of lofty principles that we think we operate under, if you have two people both holding those principles saying, "Of course they are equals," but it is in the back of their minds they know that while they may be equal, one of them in the final analysis is just a little more equal because they have that financial security, one has it, one doesn't. Even if they never expect to use it or to have it used against the knowledge is there. I think it's impossible to overestimate the normative effect that the law has on how people view themselves and how they view each other

I'd agree with the point Mr. Cherniack has made that marriages in which you have constantly to have the court intervene to see that a pay cheque is shared are not long for this world. But I think on the other hand — well it's become a *cliché* that you can't legislate attitudes — but I think it's important to remember that attitudes develop against a backdrop of the law. When I was growing up, for instance, looking at how marriages operated around me, because I was in a small town and new, literally I think no women worked at jobs outside of a home unless they were just out of high school or older with children long grown.

I saw most of those women who usually put in 16-hour days and heard them always say things like, "Well, now I really shouldn't be buying this, after all it's his money." "No, I don't ever buy my husband anything for Christmas. After all it's his money and it would be silly for me to just take his money and buy him something with it."

I saw people who were extremely pleased to get gifts of money at Christmas from their parents because it then meant that they could turn around and buy something for their husbands and children with the feeling that it was money that they had a right to spend if they chose, not someone else's money that they were being supported on.

I don't expect any sort of immediate change in the way people operate their daily lives if we pass a law that says assets are to be equally shared. But I expect an eventual change because, by the provisions of that law some of the ways in which people operate will have eventually to be changed, if your law says that both people are entitled to participate in the decision-making process in the marriage.

The sort of stereotypes we have of male as contributor-creator breadwinner and women as consumer non-contributor will eventually have to die away if, for instance, life insurance salesmen know that they have to deal with both parties rather than just the man who is going to sign anyway. Similarly with credit lending institutions.

Women in marriages in which they know they have to participate in the decision-making process will eventually stop thinking of that as being something that they can't understand and, of course, don't ever get a chance to understand because they have no chance to develop those abilities.

There has been considerable concern expressed for strengthening the institution of marriage, especially by Mr. Sherman, I think, and not weakening an already sort of fragile structure. I'd suggest that if you present people with marriage as an opportunity to live with another adult who has possibly different things to offer, different ways of serving you, but is no less capable for so doing, rather than thinking of marriage as either an economic security blanket which offers women the opportunity to never really have to develop themselves with skills, the development ability to support themselves, but rather make themselves a sort of saleable commodity so that they can catch someone, and on the other hand force men to see marriage as a possible sort of lifelong economic sentence. You are much more likely to have people who go into marriages with some sort of sense of choosing this as a way they really wish to live, rather than economic security or social status or someone to stay home and make sure that the man gets to have children without actually having to do any of the — you know take the career penalty involved in stopping work to raise them.

In a sense Bill 60, which is The Property Act, I believe, while it's a major reform in many ways — sorry, Bill 61, is a major reform in many ways in terms of looking at sharing assets. But in terms of the statement it makes about whether men and women are equally competent in our society to be responsible for themselves, it's only the mere sort of nod in that direction. If you exclude wages and salary from family assets to be shared you're saying to a woman — because women are normally the people not bringing in the major part of a family's pay cheque — you're saying to this woman, all right, you may well have been working for any number of years earning whatever kind of salary. If you continue working while you're married you have a say in managing just what you own; that income which you bring in. If you cease bringing in salary, as most women do who decide they want to have raising children as part of their life experience, which is, of course, the decision that they have to make and most men don't have to make because they get to have both. You say to that woman, all right, if you continue to earn any amount of money at all, unless you keep careful records and make sure that you know exactly which penny is yours and which penny is his, you lose the right to participate in deciding how to make expenditures with that money. Since I suspect very few people bother to keep a separate accounting of what they've earned, you're saying to a person, while single you have seemed legally responsible to manage your own money, once you get married, however, you lose that capability somehow to be responsible and make your own decisions.

If you have someone who works in a family farm, a family business you're saying to her, all right, you're entitled to work 16 hours a day often with very little to really show for it because profits tend to get ploughed back into that business or that farm. You may work; you may not receive a salary or at least not one which you're husband can deduct — although he could deduct it if he pays it to your adult children but not to you — but you're not entitled to participate in the day to day management of that business because the law assumes that you are either not competent enough or that you are frivolous, that you're going to make stupid business decisions because you are mad at something

that your husband did two weeks ago. There's no such assumption on the part of the law with regard to men.

So I would suggest that if you're going to open the door at all and say, yes, we honestly consider marriage a partnership of legal equals; that you don't bring in a half-way reform that's going to make you vulnerable to criticisms of being extremely inconsistent in having, well say, yes we're going to set up a partnership, but it's only going to operate after the partnership breaks down and then it will sort of operate as if it had operated, only it really didn't. That you say assets acquired during marriage, with the usual exceptions, are to be owned, managed, shared, whatever, equally by either spouse. Now details of this can be studied in the State Statutes. Most of them have sub-clauses which say household goods, goods normally bought for the use of the household can't be sold, bartered, whatever, without mutual consent. Sometines that's required in writing; sometimes it's assumed to be implied consent. If the person has possession of the assets he is assumed to be able to deal with it, the credit cards, selling the car and whatever unless the third party has some reason to know that he hasn't this consent.

And that this include not only the salary that someone else brings in, but the day to day management affairs of family farms, family businesses. After all if you have two theoretically equal adults managing those, I have yet to hear any rationale for why the law must assume that only one of those adults is capable of making the decisions involved. It seems perfectly logical to me that if both people are not engaged in the day to day management of the business that the equal management provisions wouldn't apply. I think if the law assumes that one person, one adult partner in a family is going to act in good faith and with good judgment, unless they have reason to see otherwise, that the law can also assume that both adult partners in a marriage will act with that same good faith and good judgment unless they show otherwise. I'm finished.

MR. CHAIRMAN: Thank you. There may be some questions. Mr. Cherniack.

MR. CHERNIACK: Thank you, Mr. Chairman. Ms. Quarry, I'd like to explore with you the distinction which I now see between equal management and ownership.

MS. QUARRY: Okay.

MR. CHERNIACK: It seems to me that equal management means consultation and veto power prohibiting sale, prohibiting giving it away, in other words the family assets. Both have a right to — they must make a mutual decision in order to dispose of it.

MS. QUARRY: Yes.

MR. CHERNIACK: Equal ownership means something else to me, and that is that if I own half of something I have a right to have it sold so I can get my half out of it. The problem I want to explore is one of these beautiful paintings that might belong to us. I feel that if it is hanging in our home as an adornment — sorry I took that as an example — let us say any attractive ornament like antique furniture, paintings, as long as it is an adornment of the family it belongs to both of us, I think that it would be horrendous if I decided to deal with it without consultation with my wife and *vice versa*. On the other hand, I would not like to think that either of us with equal ownership would have the right to decide to sell it or sell our half which in effect would mean selling it all and dividing the proceeds. So could you elaborate a little on what you know of the law elsewhere and what your own opinion is on that?

MS. QUARRY: Well, sort of a preliminary caution that I am not any kind of resident expert on the fine points of community property.

MR. CHERNIACK: You are so far.

MS. QUARRY: Yes. Only by default. I noticed fairly early, on in trying to read about this stuff, that there was no real consistency between using the terms "equal management" and "joint management." Some people seem to apply either words to the same property regime and some people seem to use the words interchangeably. One article, however, indicated that the California statute originally called for joint management and after committee hearings and in its final form, specified equal management instead because this was felt to be a far less cumbersome system. Equal management saying either spouse had the same right to deal wholly with the asset as if it were his or hers, with exceptions about selling goods bought for mutual use: cars, furnishings, etc.

Professor Cross from the University of Washington corrected my terminology again when I talked to him yesterday and said, "Now be sure what you're talking about is equal management." Joint management is far more cumbersome. It means essentially that each person owns half and they have to both be present at every dealing." So what I have intended to talk about is equal management and not joint management.

I would think, and again, from my readings some states require that both spouses deal in writing when selling something such as a household furnishing, a car, etc. and others have provided for implied consent with, I would assume, although I don't know very much about this, protection for the third party if it could be shown that if the person undertook that activity in the interest of the community that the third party could get his claim satisfied from the community property whether or not both people consented, although again, now that's a fine point that I am not enough of an expert

on. I think the principle that should pertain is that both people have an equal right to manage but obviously the partnership isn't going to last very long if people go about selling each other's paintings.

MR. CHERNIACK: Then the way I see it, incidentally I think the bill now takes into account the protection of a third party, a purchaser, a *bona-fide* purchaser for value without notice being protected, and the protection of the law being against the spouse rather than against the third party. But to develop what you were saying, I now visualize equal management of a family asset. But the ownership distribution would only take effect when there is an actual separation and division of property, because if it took place before that, that as I say I can visualize a real scrap. I want to buy the kids whatever, and therefore I want to sell my half. And as you say that would already be an indication of a breakdown. But I visualize therefore equal management can be immediate but equal ownership would take place at the time of a breakdown.

MS. QUARRY: Yes, and if I used the terms interchangeably I didn't intend to.

MR. CHERNIACK: No, no, no.

MS. QUARRY: Okay.

MR. CHERNIACK: I am really visualizing that very important distinction to me. Now it's interesting to me that the name that comes up most common, I believe — you didn't mention it but Mrs. Paxton made quite an impression on I think members of the Committee and on people who were listening to her — and she is the one who made the point that equal ownership of the salary, the pay cheque, was a psychological thing which she thought very important, just as you gave us the examples today. She gave us some very valid examples. Yet, I have difficulty visualizing the legal effect of it. The psychological I understand, but you know sometimes legislators do funny things but I would still feel kind of peculiar of writing into a law that for psychological reasons it shall be deemed that the pay cheque belongs to both, and there is no manner to enforce that kind of a declaration. I'd have a little awkwardness in doing that although, you know, as I say we've done all kinds of things. How would you really deal with that?

MS. QUARRY: I don't think there is any way to legislatively deal with enforcing that any money brought into the house which is then spent is spent because people have agreed to spend it that way, any more than you can enforce the fact that people are going to be nice to each other in the marriage. What you have is a legal framework that sees that both people in the marriage are equal before the law and with an equal right to determine how the partnership operates. Now clearly, if they can't do that the partnership has to cease. But I think these examples that people have suggested — and we can't have a situation in which both people really get a chance to talk out their differences and make, a mutual decision — because either one of them will kill the other or we will have marriage breakups just right and left.

I don't really see that most marriages operate with one person dictating and the other person never having any say. Now I see that it takes turns from time to time and that you sort of back off on this article because what you really want is to decide how the next one is spent because you want something next month. But I don't see marriages breaking down that quickly. I see people having far more investment in making the marriage partnership work for financial reasons, let alone all of the emotional and social reasons. I just think that both people should be, and feel themselves to be, in an equal position to share in the decision-making, that you don't have to write into the law why we're doing this other than to say because it's consistent with our principle of marriage as a partnership of equals.

MR. CHERNIACK: I have the uncomfortable feeling that you have not answered my question or that I have not understood your answer. I am still concerned about what we say in relation to the pay cheque. (1) Do we say it belongs to both? (2) If we say it belongs to both, then how do we enforce it or how do we determine it or how can you give title to something that's ongoing in the future and spent usually . . . I think Mr. Johnson said within two days after receipt.

MS. QUARRY: Well, other than for a point of clarity in the law, when you read the state statutes you will note that they don't specify whether in the form of goods, cows, money, whatever, marital assets, assets brought into the marriage after the time the marriage begins by either partner, you know, accumulated during the working period of the marriage. So I don't think, except as a point of clarity, that it is necessary to specify this also includes the weekly, bi-weekly or monthly pay cheque. I see that argument — well, how are we going to enforce it once we have it — unanswerable because there is no way to enforce any other functioning in the marriage other than by providing people with access to remedy. How do you enforce the fact that people do not beat each other? Well, you don't really enforce it in terms of stopping them doing it. You apply a sort of punishment afterwards and hope that that will serve as a deterrent; a very simplified way of looking at it.

MR. CHERNIACK: Yes it is.

MS. QUARRY: I am aware of that, I am just not going to launch into that at all. But if the penalty for not being able to agree on how you spend your money is that you're not only going to have to wind

the marriage up but you're going to wind the marriage up with an equal division of assets, then you give both people a fairly substantial incentive, for money reasons in addition to everything else for coming to an agreement on how . . .

MR. CHERNIACK: We are providing for that in these bills.

MS. QUARRY: Yes.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Thank you, Mr. Chairman. Mr. Cherniack mentioned that we had these adornments on the walls. I was just thinking as I looked at Mr. Norris that he was the first Premier, if memory serves me right, to bring in equal vote for men and women, if I am not mistaken. It shows that maybe these have some inspiration quality after all. There may be some others around, I think there are some of the others on the wall that actually fought Mr. Norris when he did it, if I am not mistaken.

I am interested in your research on the California thing because hopefully it might provide some enlightenment on some of the other thorny issues that we have been wrestling with now for the past week. This whole question of discretion, as having attended most of the hearings you know that several speakers have made representation that we should revert to a much higher degree of judicial discussion and come up with a sane answer that we would under these bills, or perhaps even a better answer in a simpler way.

In the California system, as you have been able to determine it, is there an allowance under that system for discretion for those exceptional circumstances that we have heard so much about — the no et al minal alcoholic — where this can be challenged on the basis of someone having to show an illness based upon the circumstances. Do you know if that is part of their system?

MS. QUARRY: I haven't run across a reference to it. Now again, all of the readings I was doing was strictly relating to the operating of the property system and I did no looking at all on anything to do with maintenance. I certainly never saw any reference to judicial ability to vary the splitting of community property other than 50-50. If there is, there may be a custom to offset that with higher or lower maintenance awards and I just don't know. I've never run across it at all.

MR. AXWORTHY: It would be fair to share a cost of a telephone call . . .

MS. QUARRY: The other thing , I guess, well neither of the people I talked to today mentioned it. I guess it is not relevant to your point so carry on.

MR. AXWORTHY: So as much as we can tell then these systems which have had community property, equal management systems, inasmuch as they haven't necessarily allowed this kind of discretionary system to . . . . Speaking about that in terms of the recommendations that have been made about just amending The Married Persons' Property Act or this thing on constructive trust that we heard this morning, has your research indicated any findings in relations to those kinds of issues? I think that it's the English system which primarily uses the trust system as its basis for . . . . Anyway, it gives a high degree of presumption for judges to be guided by the Legislative Assembly or by the elected representatives, to then determine equal sharing of assets. That gives them that flexibility.

Now as one who is concerned about the question of flexibility because I was a little disturbed by one statement that someone made that there were going to be some victims of this Act and that we shouldn't worry about them. Well, I do worry about them to some extent and I want to find out whether there is a way of dealing with them. What can you tell me, on the basis of your research, if you have done anything about that aspect of it?

MS. QUARRY: I haven't run across anything addressing itself specifically to that. But again, you know, all of my research was looked up under sort of community property so that is basically what it would have pertained to. My personal reaction to either the suggestion of just amending The Married Person's Property Act to allow for a lot of discretion , as Myrna Bowman's well as suggestion for opting out with appeal, sort of unilateral opting out with appeal. I have yet really to hear of any specific examples where people can agree that this is a situation in which somone ought to be able to opt out in justice as opposed to just because they intend to keep what is theirs. I see, and I can't disagree with you, that we ought to be concerned about the victims created by any legislative change we make. I see a far greater number of victims under the present system and I am concerned first of all about helping those people. ,

MR. AXWORTHY: I agree with you on that but there is no point in making two wrongs or correcting one wrong by saying another.

MS. QUARRY: Oh, absolutely not. But this continual concern for someone, even if it is the woman in the situation who is hardworking and responsible, has raised her children, supported them well, kind of carrying along this alcoholic — for want of a better word — husband.

MR. AXWORTHY: Ne'er do well, yes.

MS. QUARRY: Ne'er do well husband, yes. I guess maybe the answer to that is that you cannot have it two ways lady, and if for whatever reason you decided to continue in this relationship, either you are getting enough out of it to make it worthwhile to you to put up with the aggravation or some of your own needs are being met by maintaining this situation. But, if you choose to continue on with

that and, you know, call it a marriage, then you should expect to take your chances and not say, "Well, yes, I am going to continue with this man and have him as my husband, but I don't want him to have a share in the house or to be able to get half of the assets if we split up because after all, I earned them." It works exactly the other way around with the male who feels, "It's my money, I earned it, dammit." I don't think that if you're going to talk about a partnership in the first place, that you can then have it both ways.

MR. AXWORTHY: How about the principle though, where if you're using — based upon retroactivity — where a number of transactions or arrangements were entered into without the foreknowledge that this would be the law, and that therefore, people might have done things differently and ordered their affairs, their properties whatever, in a different manner if they had had some foresight that this was what this Legislature was going to enact and that we have to, I think have some concern for that issue itself. Is that an area where discussion would come into play?

MS. QUARRY: Since they both have an opportunity to mutually opt out of the provisions of the bill they ought to be able to then re-order their affairs any way they choose. If one partner cannot get the other to agree to opt out I would assume that in 99-½ cases out a hundred that is because partner B knows that it is not at all to his advantage to do that , that he or she is going to be cheated out of what ought rightfully, as well as lawfully be half hers usually. And in that case, no, I don't think that that partner ought to be able to cheat the other person out of the accumulation, the assets accumulated, say, during the last 20 years of marriage, by simply sending her a registered letter. So doing because he didn't know those were going to be the rules of the game. Most of those property laws were made at a time when women either didn't have the right to vote or hadn't had it long enough to have plugged into the power structure. So you have a situation where women are entering into marriages which operate under laws and in most of which cases they didn't have any say in making in the first place.

MR. AXWORTHY: Would you hold the same to be true in terms of the proposed amendment relating to separations, Sections 2(2) as subsequently revised. I don't know if you saw the revised amendments , and then the Attorney-General then gave us a further revision of Section 2(2) dealing with separation, that anyone who is in separation status, with or without agreement, would not have the retroactivity in any way applied.

MS. QUARRY: I wrestled with that in my own mind all the time people were talking about it. Obviously I think anyone who has separated or divorced already under the existing laws has in a vast majority of cases —(Interjection)— Well, they may be living with them, but half of them got a pretty raw deal. Now you can't go back and reopen those I would assume, so I suppose it's logical that existing separation agreements would be exempted from applying under this law. And again, you immediately disadvantage a whole lot of people who unfortunately did it a month too early. I don't know how you would avoid that. You have to have some cutoff date. I don't know how you would avoid an injustice to someone at some stage.

MR. AXWORTHY: Coming back to your presentation on the . . . I gather you were advocating the inclusion of salary as part of the assets, and the question I believe Mr. Cherniack asked us: Can you introduce this if you can't enforce it? I, again, also have a certain apprehension about passing laws that you can't enforce, because I think it ends up in creating a disregard for the law if you can't enforce it.

Going back to your California example, is the mechanism there solely one of taking litigation? Did you enquire into that?

MS. QUARRY: The mechanism for enforcing that community property be equally managed operates, to the best of my knowledge, in the same way it would have to operate here, that the legal structure which is supposed to define how the marriage operates, if either one or the other partners is sufficiently dissatisfied with the operation of the marriage in that way, as in any other way, because they are being ill-treated , how are you going to legislate that you two people will in fact be very nice to each other and you will fulfill all the vows you made? You can't enforce that. What you do is that if it stops working, then they dissolve the marriage, the partnership.

MR. AXWORTHY: I just have one question that you may not be able to answer — I certainly can't — and that is, does the American system, where there are these fairly extensive equal-management arrangements, does it make a difference of the fact that we don't have quite the American legal system and we don't have the 14th Amendment, where you have equal due process of law and so on? Is it workable under that context more easily than it is under ours, which relies totally on the common law system?

MS. QUARRY: I wouldn't have the remotest idea, other than the community property states that have gone to equal management are doing it partly under the impetus of their legislatures ratifying The Equal Rights Amendment, which is going to make it impossible for them to have "husband managed" written into their statutes, as well as the result of a great deal of pressure from groups throughout those states.

MR. AXWORTHY: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Johnston of Sturgeon Creek.

MR. F. JOHNSTON: Ms. Quarry, do you know of examples such as I do, where, if the woman did not handle the money the man or the family wouldn't have two cents to rub together or any assets whatsoever, because the man is not a good manager?

MS. QUARRY: Well, I suppose I know of stereotyped arrangments like that, that get thrown around a lot. I really seriously doubt that very many adults are truly that incapable of assuming some manner of responsibility; and if they are, what that person has is not children and a husband, she has children and an additional older, dependent child. I don't think much of it as an operating marriage but if she wishes to continue to do that, then I think she has to look at it as a partnership and be willing to take her chances one way or the other.

MR. F. JOHNSTON: In most families in the middle income area and as a matter of fact in years gone by, I can recall men coming home with their paycheque and taking their little allowance out of it and letting their wife manage the affairs of that home, because he was a good man working to get that paycheque but could not manage the family income. On the other side of the fence do you know of women who are very poor managers who might blow the income on many different things? I would say on both sides it can happen. Why do you think that we as legislators should walk into the family homes and start making decisions on how they handle their affairs?

MS. QUARRY: (a) I don't think that you as legislators are walking into the family home to make decisions on how people handle their affairs in this context any more than you do any time you pass any law relating to how people live their lives.

(b) I don't think, again as I said, that there are that many people who are truly that incompetent either at managing the family money when it comes in, or any other aspect of life. I think that that's a sterotype. I agree there are usually broad ranges of competence and a lot of women are, in sterotypes, seen and in reality are seen as not very good at understanding money, they don't understand business, they don't know how credit operates. The reason they don't know those things is because those abilities don't develop in a vacuum, nor were their husbands born knowing them. If you take a class of seventeen-year-olds in a high school and hardly anybody in there has a clue how to arrange for credit in a bank, what to do about life insurance, how to fix a furnace that doesn't work, how to make lemon meringue pie, this whole range of abilities but take them eight years later and ten years later and the vast majority of males in that sample will have at least some ability to deal with finances, fill out income tax forms, those sorts of activities. The vast majority of females in that section will have picked up all sorts of other skills because they are socially expected to pick up those skills.

People tend to develop, generally, the abilities that society expects them to develop that are appropriate to their sex. I don't think there is any reason why men who tend to be spendthrifts can't develop responsibility in handling money. I don't see any reason why women who tend just not to understand very much about how this all works can't develop that ability if they see that it is legally and socially expected of them. They are competent adults and they should behave like it.

MR. F. JOHNSTON: But don't you think, in the average working income — I am not talking about the rich income, because in that particular case I would think that the management of money is a different thing entirely — but in the average working income the man's ability is to earn that income and I believe that the woman will learn the skills, as you say, to handle the family money better than the man in most cases in the working home?

MS. QUARRY: You do?

MR. F. JOHNSTON: There is no question about it.

MS. QUARRY: That's a pretty poor evaluation of most men. It isn't that complicated.

MR. F. JOHNSTON: I don't think it is a poor evaluation of most men in that maybe he is welding or doing something and he is good at that and good at earning income by doing that. The women basically will handle the skills of buying the groceries, taking care of the family and saving a bit of money better than the men.

MS. QUARRY: So what's your point? I am prepared maybe to concede that that is the way some families operate, I just don't see your point.

MR. F. JOHNSTON: My point is that all of a sudden we are talking here about maintenance, family law, women's protection and everything else, and by talking about splitting or making legislation that said that that income is 50-50 or an asset, you are basically taking a look at most families in the working area, putting the man in a position that he maybe should not be in.

MS. QUARRY: Oh, I see. You are assuming that people presently married will, once the law is passed, feel that suddenly they have to start behaving differently than they already are. I don't see that operating at all. I think in marriages that are working well and in which people have worked out duties in a way that is mutually satisfactory to both of them, that they won't even know that this law has been passed. It won't even create a ripple. I expect it to have an effect for the future.

MR. F. JOHNSTON: Why pass it?

MS. QUARRY: Ah, because I expect to let it have an effect in the future and like children growing up, when they are looking around the world and seeing how it operates, to see that both men and

women in marriages usually have at least some discretion about what they are going to do with their lives, their marriages; that their mother is not always upstairs busy doing something while their father is sitting in the living room talking to the insurance salesman or the man arranging about a loan or whatever; that their father is not handling the income tax form because their mother isn't able to do it. If they mutually decide to divide things up that way, they can. But if creditors realize that both people have an equal right to manage assets, then they will tend to want to have both people involved in the discussion.

MR. F. JOHNSTON: Ms. Quarry, I don't know of an insurance salesman today that would sell a policy without having the wife there. He would be out of his mind to do so.

MS. QUARRY: I think in my own family we have both insurance and some sort of savings plan organized by my husband at work because that is where the salesmen go to to find people sometimes. They are sort of there.

MR. F. JOHNSTON: But on the basis of the fact that the woman is the best manager in the house.

MS. QUARRY: Oh, that's an assumption. The thing is I don't want the law . . . .

MR. F. JOHNSTON: That's not an assumption.

MS. QUARRY: I don't want the law to assume . . .

MR. F. JOHNSTON: My wife is the best manager of the money in my house out of ambition.

MS. QUARRY: Congratulations. I don't want the law to dictate that sort of thing, what each person shall do best, which is what a law does that says you each share in the assets, the ownership but you don't both share in the management because it's assumed that somehow that can't be done because it is not the sort of thing that one of you does best. I want people to be free to decide that sort of thing themselves.

MR. F. JOHNSTON: If you develop skills to do something better than somebody else. why shouldn't you be the one to handle it? A woman does develop skills of handling a home better than a man.

MS. QUARRY: Well, of course. She has the opportunity and he doesn't.

MR. F. JOHNSTON: Thank you.

MS. QUARRY: The man develops skills of earning income, meeting people in the world, dealing with a wide variety of people because he has an opportunity and she doesn't. I don't see that it is an implication that either of them wouldn't be able to deal with a variety of other skills, they just have no opportunity to exercise them.

MR. F. JOHNSTON: Let's take a look at that on the other side of the fence. If the woman does have the skills and does handle the money well and the man doesn't, and they have built up in assets because of her frugal saving, etc., and now all of a sudden we pass a law that says he can walk out tomorrow and take 50 percent of it after she has been the best manager.

MS. QUARRY: He can walk out now and take all of it.

MR. F. JOHNSTON: No, not according to the laws of Manitoba, because we have had it proven in Manitoba that that doesn't happen. It may happen in Alberta or in the Supreme Court, but not in Manitoba.

MS. QUARRY: All right. He has a considerably better chance of walking out with all of it than she does.

MR. F. JOHNSTON: Ms. Quarry, I would suggest to you and ask you this, what chance has he got of walking out with all of it if there is a wife and children in a home? He can't do it now, but he will be able to.

MS. QUARRY: Oh, well, under the proposed law he would have a legal right to half the assets, as would his wife. They have a legal right to share in the participation of spending and I don't see that as applying any inequities that are not already present.

MR. F. JOHNSTON: That's all I have. My colleague was telling me I was pronouncing your name wrong and I am sorry.

MS. QUARRY: That's

MR. CHAIRMAN: Mr. Adam. okay.

MR. ADAM: Thank you, Mr. Chairman, I just have a couple of questions I would like to ask Ms. Quarry. In view of your remarks to Mr. Axworthy when you mentioned that you couldn't have it both ways in dividing property, what would your opinion be on the sections that deal with negative property? Like if there was a negative asset?

MS. QUARRY: If the value of it were less than . . .

MR. ADAM: Well, if there is a $25,000 mortgage after everything is divided equally.

MS. QUARRY: I suppose in terms of looking at it as a 50-50 situation, if their assets have a net value of less than zero, if they are going to share in the value of the assets, they should share in the liabilities, assuming that those liabilities were taken on for mutual family support and not some particular pet project of one or the other.

I have certainly heard a number of lawyers say that there are very few families who really have assets with a value lower than zero. In a practical situation if one of them has children to support,

there is hardly any point in saddling her with debts which she is going to pay with non-existent salary which she doesn't have, while she is living on maintenance which she isn't getting, other than possibly putting in a future claim against assets when she did develop them, if you are going to do that for both partners.

MR. ADAM: So your opinion would be, that the negative estate should be equally shared ? Do I understand you correctly now, because quite a few briefs came to us to say that we want to share 50-50 on the assets, but when it comes to a negative value then we don't want to share anymore? In light of your remarks to Mr. Axworthy, where you say you can't have it both ways , so now that's why I brought it up.

MS. QUARRY: It is not a situation I have given a great deal of thought to, as I said, because I don't think it tends to apply to very many families.

MR. ADAM: I think it is an important one.

MS. QUARRY: Okay. If the value of the assets is less than zero, in terms of debts and those debts were undertaken for family benefits, then in a strictly theoretical sense I would think yes, they should be equally shared, only if one of them is supporting children and not working any way, it's going to be a long time before she's going to be in any position to pay them off. As a principle, yes, I would go along with it, splitting the assets and so on.

MR. ADAM: I'll just move over to one other question, Mr. Chairman. When you spoke of equal management as it applies in California I believe you mentioned or some states anyway, how would this — just on a point of clarification, you may have mentioned it but I perhaps missed it — in the event that a family, husband and wife, I know there are many families that are involved individually in their own businesses or professions and so on, take for instance an example of a man who owns a paint company and is well involved with that — or it could be any other company — and the wife is a lawyer or something else, another business , a dress shop, how would you operate on that? Would you expect that both partners be involved in both businesses or should there be a power of attorney?

MS. QUARRY: No. Most of the States or at least the ones that I've read most about, have provisions in their statute that say, equal management of family assets where both partners are engaged in the same business together, they manage it equally, where only one partner is active in the business then the equal management statute is waived, so the woman lawyer would not have a share in the management of her husband's company, he would not have a share in the management of her law practice. If they split up at some time in the future, they each have a half claim on the value of the assets that either has contributed to the marriage but obviously, these states that have the assistance have found a number of ways of working out these difficulties that are common from state to state and would be common here. That's one of them, waiving equal management when it pertains to a business.

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

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you Ms. Quarry.

MS. QUARRY: One final point. A number of lawyers raised as a point of criticism of the proposed bills that they would result in a windfall situation of work for lawyers and there seem to be some general agreement that this was a bad thing. When several briefs suggested a large provincial investment in conciliation services and marriage counselling together with the Family Court. there was general agreement that this was a very good thing and something we should look at. No one suggested as a negative point that it was going to be a windfall situation for social workers, which of course it would be. I don't know whether that's because there's not as much collective hostility toward lawyers or what but it might be an unfortunate side effect, but it shouldn't be a determining point.

MR. CHAIRMAN: Thank you. Is Norman Coghlan here please? Norman Coghlan. Arnold Gardner. Is Arnold Gardner present? Harold Buchwald. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, Mr. Buchwald indicated to me he was unable to be present and unlikely to be present tomorrow either but would make an effort tomorrow if possible.

MR. CHAIRMAN: Thank you. Richard Dearing, please. Proceed when you are ready, Mr. Dearing.

DR. RICHARD N. DEARING: I first want to congratulate you on spending so much time and steadfastly with this. It's amazing how much energy you evidently have to accomplish this task.

I'm going to read my statement to you, having taken enough effort to write it.

I come before you as a clergyman who specializes in marriage and family counselling and presently conducts training programs in pastoral counselling as well as marriage and family counselling, at the Interfaith Pastoral Institute, University of Winnipeg. I come out of professional interest in marriage law reform and as one inspired by a brief submitted to this Committee by the Manitoba Council of the Catholic Women's League of Canada. I also come to you with the support of the Board of Directors of the Interfaith Pastoral Institute.

First, I commend this Committee for the work it has done on Bills 60 and 61. Although I am not an attorney and do not understand all the finer details of the two bills, I, in general, favour the concept of community property and its implications as described in the bills.

As a marriage counsellor, I am compelled to say, however, that financial litigations and conflicts usually come after the marital bond has deteriorated to a radical state of disrepair. Emotional separation almost inevitably and invariably precedes physical separation. Economic litigations follow in the path of emotional and physical estrangement. It appears to me that it is imperative that legislation be designed so as to maximize the opportunities for reconciliation of estranged marital partners prior to the utilization of these economic statutes. It is at this point that I applaud the Catholic Women's League of Canada's urging co-operation between the legal profession and the behavioral sciences in a conciliation process.

"No fault" is a phrase often used in these hearings and in current discussions regarding divorce and separation. I do not personally know whether this is a good legal term and I have no interest in preserving it. I would say, however, that the issue in divorce is a breakdown in the marital system and breakdown almost invariably involves failure by both spouses. Even adultery, a situation in which one party may be identified as having broken the marital standard, frequently includes conspiracy on the part of the "offended spouse" and/or personal stresses that are acted out in this undesirable way. What is significant is that many marriages survive adultery and other infractions of the marital relationship; that persons are able to learn from distress and to improve their marriages. We could make significant progress if the legal profession were to co-operate with the behavioral sciences in helping couples profit from crisis rather than providing only legal guidelines for dividing property and laying blame.

In one study reported by Meyer Elkin, only 71 percent of 500 couples approaching the Los Angeles courts had sought professional help prior to opting for legal separation or divorce. Couples often come to the court in a combative state, often aggravated by the adversary system, without benefit of conciliatory efforts. If, in this state, they succeed in divorce or separation, they often leave disillusioned about marriage, bitter, and hardened. They also frequently leave without benefit of clarifying the issues leading to termination of the relationship and/or giving the relationship the benefit of help.

Meyer Elkin also reports that in Los Angeles courts, 70 percent of those accepting conciliation counselling reconcile and 75 percent of those reconciled are found continuing in the marriage one year later. Persons given and urged to accept opportunity to reconcile prior to embarking upon or completing divorce proceedings can be helped to re-establish the marital bond.

Now, it is likely too much to expect the legal system to involve itself in marriage counselling *per se* as this can be a long and expensive process. Rather, the legal system would likely find conciliation counselling more useful. At its best, reconciliation counselling resolves substantial conflicts and assists in re-establishing a healthy marital relationship. Conciliation counselling, on the other hand, is a form of crisis intervention which has basic, short-term objectives. Conciliation counselling has these objectives: 1) bringing combative spouses together in a structured atmosphere; 2) identification of stress points in the marital relationship and methods for coping with them; 3) generating enough good will or "honey" in the relationship, that hope for the marriage can grow in strength. Many times a couple that has not tried structured help will respond quickly. Many others must be referred to a marriage counsellor where long-range assistance can be capitalized in the beginning of the conciliation process. For others, the benefit of conciliation counselling can be clarity and learning regarding the factors that are making divorce necessary.

Conciliation counselling is a benefit to the legal system as well as the marital system in the following ways: 1) It is one method by which the legal system can co-operate with the behavioral sciences in supporting marriage and family life; 2) It can provide a testing ground for persons petitioning the court for divorce and/or separation regarding the steadfastness of their resolve to end their marriage. Many hours of labour by attorneys are wasted annually because marital partners begin, stop, and begin again their divorce or separation plans; 3) Persons ending their marriages will have an opportunity to learn from their terminated marriage so that history need not be repeated.

The Catholic Women's League offered an outline of how conciliation counselling can work so I will not repeat that description here. Rather, I will briefly state its major characteristics regarding the courts. 1) It is free for the asking and strongly urged by attorneys and court at any point appropriate in the proceedings; 2) Legal proceedings may be interrupted, "put on hold," while conciliation counselling is attempted, and resumed without prejudice if it fails; 3) The court may use its authority through court orders to set ground rules for the reconciliation attempt; 4) The reconciliation attempt may be requested and terminated by either spouse at any time by petitioning the court; 5) The conciliation procedure provides a legal structure for attempting to sustain troubled marriages.

In closing, I wish to state that this brief is offered out of the conviction that marriage holds a special place in our society; that while it is threatened by enormous pressures in this time in history, it continues to be a fertile ground for intimate and nurturing relationships; that the legal system, through co-operation with the behavioral sciences, can offer major support to marriages stressed by life pressures; and that human beings have enormous resources for growth which can be assisted by

caring persons. Respectfully submitted.

MR. CHAIRMAN: Thank you, there may be some questions. Mr. F. Johnston, Sturgeon Creek.

MR. F. JOHNSTON: Thank you. Mr. Dearing, I am going to go to Page 2 of your brief, on the top, and in the second line of Page 2, "We could make significant progress if the legal profession . . ." and politicians — if that were added — "were to co-operate with the behavioral sciences in helping couples profit from crisis rather than providing legal guidelines for dividing property and laying blame."

I say that because I believe this legislation is such that politicians are providing legal guidelines and laying blame.

DR. DEARING: Yes, I commend this Committee for these bills and agree with that. I am wanting to speak to what I view to be a need for the conciliation counselling procedure and would like to see that added to these bills, or at least for this Committee to be sufficiently concerned about the conciliation procedure that that would be picked up at a later point.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Dearing, first, just so that we are clear on Mr. Johnston's question, I gather that you are in support of the basic principle of both Bills 60 and 61?

DR. DEARING: Yes, I am.

MR. PAWLEY: And you would approve seeing them go ahead with appropriate . . . ?

DR. DEARING: I certainly would.

MR. PAWLEY: Insofar as conciliation, if I could just ascertain your views in connection with the separation proceedings involving fault, a hearing involving fault, do you feel that in effort to reconcile the marriage after that, that it is much more difficult than if the proceedings avoided that fault-finding?

DR. DEARING: Yes, I do. As a therapist, I find it difficult to lay fault, as I am saying here, even in the case of adultery. Frequently there is no innocent party. Almost invariably there has been some sort of involvement in the marital system that has supported the opportunity for adultery. It may simply be a matter of the relationship having insufficient goodwill within it; it may be a situation in which the spouse, that is, so-called offended does not clearly say to the partner what his or her limits are with regard to involvement with other members outside the marriage.

Frequently one of the things that I hear in counselling is, a person who has been involved in adultery, sexual relationships, their marriage may not have been satisfactory. There can frequently be challenges to the marital partner to, "Why don't you see if you can satisfy yourself with somebody else?" The system is so complex and interrelated that I don't find it possible to say that here is one person who is responsible for the marital breakdown and here is the other one who is innocent.

MR. PAWLEY: We have had people before the Committee that have referred to situations where they claim one is obviously at fault and the other is not. In your experience, you have not seen many such instances?

DR. DEARING: I have seen very few in which I could say there is an innocent party and a guilty party.

MR. PAWLEY: Do you feel that bahavior should be any factor at all in the determination of the amount of the award of maintenance?

DR. DEARING. One of the things I like in the legislation is the expectation that separated spouses would become respectively financially independent. I don't see that fault has much bearing on your becoming financially independent. If I can't identify fault in the first place, it's hard for me to believe that it would be possible to say that fault is going to be a basis for determining maintenance at a later date.

MR. PAWLEY: You are speaking as a representative of a religious group, but there are some that would suggest on a religious basis that to not have some ingredient of fault would be to encourage marriages to some way or other lose their moral fabric or whatever the word that is frequently used. I would just like to receive your comment on that.

DR. DEARING: Yes, that's true that their are religious faiths and persons in almost every denomination that would say that. Speaking for myself and not for other denominations, I don't think very many marriages had substance or longevity only because they are forbidden to do something. I suspect that marriages are sustained, grow, become enriched because there is something positive to be received; there is something that is appreciated to be sustained and that the growth principle is far more important than the rules or mandates that would say that one cannot do thus and so. The condition for marriage is primarily fidelity and an interest in one another's welfare. When that is gone, the marriage is dead.

MR. PAWLEY: Do you have any remarks pertaining to where you feel there could be improvements in our Marital Maintenance Act dealing with separation and awarding maintenance, or Bill 61?

DR. DEARING: I'm taking this as an opportunity to underline the value of the conciliation process and other than in general agreeing with the principle of community property and concepts of

maintenance included, that's as far as I am able to go in commenting on 60 and 61.

MR. PAWLEY: Would you like to comment on the issue of judicial discretion?

DR. DEARING: No, I don't want to comment on that.

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

MR. CHERNIACK: Thank you, Mr. Chairman. Dr. Dearing, I do interpret what you are saying is completely supportive of the principle of what we are doing, but you don't want to get involved in the "nitty-gritty" as they say, of the . . .

DR. DEARING: Simply because I have not studied the bills that carefully to comment on the legal details.

MR. CHERNIACK: Then I do want to spend just a few minutes, if you don't mind, on conciliation and on your brief as well as that of the — I want to get the formal title of the Catholic Women's League . . .

DR. DEARING: I think I have it right on the first page.

MR. CHERNIACK: . . . so I took it off the third page — Catholic Women's League of Canada. In any event, we know the presentation. I just wanted to check with you on the present status and progress that has been made in this field. I have had the benefit in being involved, related to the practice of law for the last 42 years. I became a student of law about 42 years ago and I have not been active in the actual practice of law for the last eight years so I am a little out of date with practice on this kind of a problem which was a fairly substantial part of my practice in all those preceding years.

When I first started in the practice of law, I think that there was hardly any counselling even from those one would expect, such as the Church, such as social workers of that time, that when people came into my office and into the area of the law, they were already — in most cases — already separated physically and there was the question of making arrangements. But I would think that maybe fifteen years and not many more than that ago we may have gotten our first family It wasn't much befoie that that the Family Bureau became very much involved and I started to note a trend which was, I think, reflected in the practice of the profession of law where many lawyers became involved in amateur counselling helped by professionals later on and therefore your statement which Mr. Johnston quoted on the top of Page 2, about we could make significant progress, I honestly have the impression that it may not be significant but in my time there has been progress made in the effort of the legal profession to co-operate with other people interested in keeping marriages together — maybe not as much as possible — but would you care to comment the extent to which you have noticed advances in that field?

DR. DEARING: In the cases I'm involved with I have not noted that the legal profession has been overly supportive of the counselling process.

MR. CHERNIACK: You mean you have handled cases where lawyers are already in the picture.

DR. DEARING: Yes, I've had occasions in which an attorney has encouraged a wife to antagonize her husband sufficiently until he'd strike her — that sort of thing.

MR. CHERNIACK: That's why we're dealing with no fault rather than . . .

DR. DEARING: That's right, it's just not a productive method to have the fault system. Attorneys are not by training really skilled necessarily in marriage counselling and it may be asking him too much or her too much to involve him or herself in that process.

MR. CHERNIACK: Well you know that our present divorce law requires a barrister to certify that he has made some effort to investigate the possibility of conciliation. I'm rather cynical about that. Do you have any reason to think that it's of much use?

DR. DEARING: I don't want to cast aspersions to attorneys . . .

MR. CHE. IACK: Well, you already did Go ahead. Be my guest.

DR. DEARING: . . . any more than I have. My experience is that often that has been suggested and passed over pretty quickly but in other cases I suppose there are attorneys who are very conscientious about that and one in particular I can think of.

The reason I'm in favour of conciliation counselling is that it has the authority of the court and is a ready available structure that attorneys could refer to. In situations where it appeared that here's a couple that is sufficiently uncertain about whether they want a separation or divorce and they could, within the confines of the courts, have that kind of ready reference.

MR. CHERNIACK: May I first in defence of my colleagues in the profession say that I still believe that the vast majority of cases I've been in contact with are already separated and on their way and I don't think anything could stop them and therefore it's almost a foolish exercise to go through to attempt a conciliation. To be more precise about what you would like to see in the future would be what? A law that compels a couple to go through a counselling series or to visit with someone who is equipped to counsel them before the next step which might be separation or. . .

DR. DEARING: I think my point to you is that I'm not sure that your statement is true, that those people who have appeared to you for separation or divorce are beyond help at that point.

MR. CHERNIACK: All right, excepting that I'm not assessing it correctly. How would a law assist?

DR. DEARING: The law would assist by making the conciliation counselling available through the

court. For example, one of the things that happens in some divorce situations is that, let us say a man — and I think it's most frequently the man — for reasons of pride, for reasons of historic teachings that the man's supposed to take care of himself, whatever, really doesn't want to make himself available to counselling. He thinks that's a negative thing and simply will not involve himself. In the conciliation process as offered in the Los Angeles County Courts, a court order could be signed requiring that he appear.

One of the tasks of the counsellor is to catch his interest, just enough in order to see some possibility of looking at this relationship again. Now two things can happen at least. One is that some glimmering of hope for the relationship could be established. The other is that if any interest at all were gathered here the couple could learn something about what is causing the divorce at this point and go away from the relationship-enriched people.

MR. CHERNIACK: I'm sorry, I want to bring you down to my question again. Would you then recommend that there be a law that says that before a court hears a separation application, a division of assets, that there shall be a requirement to be interviewed by a counsellor?

DR. DEARING: I would not go that far. I think there are . . .

MR. CHERNIACK: That the court would try to influence those two.

DR. DEARING: That's right, and if within the court system the conciliation counsellor were on hand and readily available , then that action could be taken quickly.

MR. CHERNIACK: Thank you very much , Dr. Dearing.

MR. CHAIR Are there any N: further questions? Mr. Johnston.

MR. F. JOHNSTON: Dr. Dearing , when did the conciliation court come into effect in California? It's been mentioned here many many times.

1968-69 DR. DEARING: About or something like that.

MR. F. JOHNSTON: Thank you .

MR. CHAIRMAN: If there are no further questions, thank you, Dr. Dearing.

Mrs. Havelock. I believe I saw Mrs. Havelock just a few moments ago.

A MEMBER: So did I. She just walked out.

MR. CHAIRMAN: Carol Perch please. Is Carol Perch present? Bernice Main. Is Bernice Main here? Bishop Hacault. Is Bishop Hacault present? Mr. Reeh Taylor.

MR. REEH TAYLOR: You will be pleased to know, Mr. Chairman, that I shall be mercifully brief, which some of my critics might suggest is a switch.

May I just before I say what I came down to say, may I touch briefly upon two matters that have been raised in a number of briefs that have been presented to your committee to date. One, as recently as a few minutes ago and that's this whole question of conciliation services. We have of couise even now today in practice, not written into the law, but in practice at least in the Family Division of the Provincial Judges Court, a rule if it hasn't changed since I was last in that august body that you can't get into court as an applicant unless you have in fact been interviewed by a family counsellor, a social worker. I have to tell you that in my sad observation it simply doesn't work.

With great deference to my friends in the Social Work Department in the Family Court, all of whom are splendid people, I think they would tell you in total candor that their batting average is practically zilch. I have to make an observation of my own that from the lawyer's point of view — who was the playwright that said, "The critic goes to the theatre as the coroner goes to the inquest." For him the play is already dead and it remains only to pronounce the causes of death. We're in very much the same position in my trade you know. By the time somebody gets into a lawyer's office with a matrimonial dispute, it remains only — not even these days — to pronounce the cause of death. The courts don't give a damn about the cause. It's just a question of whether the body is still breathing or not.

So I say simply by all means have the Department of Health and Social Welfare or whatever it's called hire another two or three hundred social workers. I think in light of the bills that are before you, they should mostly be home economic specialists rather than social workers but having done that, publicize the fact that their services are available and keep people out of the lawyer's office. If you can guide people into the hands of behavioral scientists to help them get their marriage back on track, fine, because I really think that most practicing lawyers are happy if matrimonial problems will stay away from their door. But may I urge you please not to clutter up this legislation with any enforced conciliatory services because I suspect if they work in other jurisdictions, we have a lot to learn about making them work here.

May I touch also upon the other thing that I've heard mentioned many times and that's this concept of the jointly owned paycheque. I do pray that Mr. Cherniack was largely in gest when he was saying that he was becoming persuaded that this might be a good thing. I urge you just to abandon the whole concept. It seems to me first of all so wildly impractical that you shouldn't give it House room. Really, I don't know how the devil you would handle it by a declaratory statement in a statute that a paycheque belongs jointly to a married couple. As I think several members of your Committee have commented, how you enforce that joint ownership is beyond me. I tell you one thing that I , as

one who acts for and is indeed an employer, I act for employers as well as employees, I would instantly tell every employer-client of mine that he should obtain a waiver from every spouse or he should refuse to hire anybody who is involved in that kind of a joint ownership of the paycheque. He has enough problems of his own without getting involved in his employees matrimonial problems. I suggest to you that if we just give it a little quiet thought no matter what psychological, and I suspect rather mythical psychological benefits might result to the spouse, they would be way offset by the incredible confusion that would result. If a married couple can't decide upon that rather simple and basic point, making whatever compromises are necessary, doing for example what I do and just hauling up the white flag of surrender completely. If you can't do that then you shouldn't be married in the first place, it's just that simple. And when a couple reach a point where they are seeking to get direct access to each other's pay cheques, if they've got to get their pinkies on the other fellow's pay cheque in the marriage, then surely they are headed for the divorce court and we shouldn't be fretting about it in this committee.

When this Legislative Assembly tells me that my wife and I own a half of each other's pay cheques, then they might as well start telling me what brand of toothpaste I have to use every morning, then I'll just sit back and let Big Brother run my life for me even more completely than he does today.

On a serious note, Mr. Chairman, if we had such a provision in your bill, in your statute then surely, amongst other things, the Honourable the Minister of Labour wouldn't need to introduce his no overtime bill or any other legislaION INTENDED TO TURN US ALL INTO LAZY SLOBS BECAUSE NONE OF US IS GOING TO PUT IN ANY OVERTIME. Why would he worry? What's the incentive to do anything? It just seems to me to be a wild concept and I suggest you abandon it.

However, that isn't really what I came down to pound the table about this evening. I sit there and I listen to some of these happy thoughts and, you know, some things you just can't let go by. Which of course, is the problem with many marriages I guess.

Mr. Chairman, I would urge your Committee and I'm just simply a very ordinary practising lawyer. I have no axe to grind. Indeed I suppose I am one of those happy fellows who would stand to benefit from this bill on two counts, both these bills, professionally I shall find myself plunging back into the malaise of domestic relations law. There won't be much else that we'll have to practice it seems to me for many months or years to come. So I share the views of those who said this will be a bonanza to my profession. I would benefit in a personal way, because today my wife owns me from stem to gudgeon and under your bills I hope to get at least half of myself back and that might be a valid benefit. I don't suspect though, that your Committee or the Government really plans this as a Taylor Benefit Day so I assume you have other purposes.

May I urge you though to examine the motives of those who have appeared before your Committee to date. You have been a very patient and an incredibly hard working Committee and you've heard many very carefully thought out briefs and I'm not going to deal in any detail with any facets of these two bills. But look at the motives of the people who have spoken and I think you can say to yourself, that perhaps for once — it doesn't happen very often — but the one group, the one category of people who've appeared here with no real axe to grind and indeed, if anything, with quite the reverse, with an unusually altruistic approach, it has been the legal profession, the lawyers who've appeared here have no axe to grind really in trying to help you make these two bills intelligible and workable because not very many lawyers — and I'm not going to do it either — not very many lawyers have said to you, the bills in concept are bad. The whole thing is rotten. You should throw it out. You should forget the philosophy underlying these bills. I don't say that. There are certainly some facets of them that I would quarrel with. But that's again not my purpose here tonight. The general philosophy, the main thrust is quite desirable, something you should achieve, and if I may say so without sounding patronizing, you're to be much commended, the government itself is to be greatly commended for putting these bills together.

The manner in which they've been put together, the present wording of them, the drafting of them in my respectful view is execrable and I really do suggest to you, and that's my main theme tonight, that what I would urge you to do is wait until these bills are in a form of which you could have some pride because at the moment I have to suggest to you that you can only be ashamed of what's there in its present wording. Why? Because it's a patchwork quilt as we've added little bits and pieces. This great welter of amendments that has come out since the original bills were promulgated tells you that the things were conceived in haste in the first instance and the end product is not something that I think you really would want to stand back and look at with pride when it's finally gone down the shute.

The women of the common-law countries at least have waited for several centuries for this kind of legislation to see the light of day and surely a few more months of careful homework can't do any harm. Only good can come of it.

Both the bills in their present form, including all the amendments proposed by the Minister to date, represent, if I may say so, offensive examples of a camel which results from the committee that starts out to design a horse, you know. Surely you want to pass legislation of which you can be proud, and to do that you've got to give these bills more study and more revisions. Today each of these bills

looks like a body lying on the operating table after major surgery, covered with a myriad of band-aids because no one would take the time to suture the wounds properly, and that's really what you've got, Mr. Chairman.

The bills are, in their present form, I would respectfully suggest to you, are simply bad laws. Much of the philosophy underlying them, as I have said, is just fine and even if I disagreed with it I wouldn't be raising those points of disagreement here. It's not for me to dictate philosophy to this government or to this House. The Committee has been bombarded with enough detail and most of it — much of it, at least highly relevant and accurate. I would need a good few hours to cover detail that has for the most part been well covered already. You don't want to hear it from me.

So, my purpose is to urge you as forcefully as I can to make one simple but, I suggest, vital change in the declared intent of your government, Mr. Minister, rather than rush these bills through the dying stages of this House and wind up with a pair of monstrosities, which is what I suggest you are going to wind up with, with the effective dates of January of next year, why not reduce the bills into what you as a committee believe should be their final form or at least their penultimate form, and then give them wide circulation, specifically amongst all those who have taken the trouble to appear before your Committee to date; declare your intent to reintroduce the bills at the next session — you can still make all of the brownie points you need on the hustings if you let it be known that these bills are going to go in in their present form next time you have an opportunity to introduce them. But at least then when the bills become law they will have become intelligible; they will have been well thought out; and everybody who has evinced such a deep interest in these bills will have had a chance to back off for a few weeks or a few months, to stand back and look at them in their entirety instead of looking at this pair of patchwork quilts that we have before us today.

The only reason that I've been hanging around this Committee room like a bad smell for the last several days is to try and get that point across. It's not for me to say don't pass the bills if they meet with the general approval of all parties, as they seem to have, fine, that's what legislators are for. But for God's sake let's have legislation that everybody understands rather than a pair of bills which have been, as I say, have had the band-aid treatment. Every time somebody raises a problem that seems to be a problem, we apply an instant band-aid without stepping back and seeing how that relates to the whole cloth, how it relates to the whole patient.

Now, I'm almost afraid to make these next two and final comments, Mr. Chairman, for fear they be taken as an invitation to disregard what I've just said. I feel most urgently, most urgently, that you should not pass these bills until the next session when they've been carefully looked at by all interested people. If you are bound and determined to ride this chariot and not slow these horses down at all, then there are two other things that I would urge you to build into these bills, specifically into The Marital Property Act, and they are two rebuttable presumptions.

First of all, there is at the moment a presumption of equality of contribution and therefore it follows, of ownership of assets; and I would urge you to make those presumptions at least rebuttable so that where there has been a wild inequality a complete imbalance of contribution, that at least the courts would have some discretion to say, "Hey, hey, hold it. That's simply not equitable to do it in the standard pattern here." So make that a rebuttable presumption, Mr. Chairman, if you have to do anything.

You cannot equate, as I think these bills both try to do, you cannot equate a marital partnership with a commercial partnership. This is one of the facets of the philosophy underlying these bills which does trouble me greatly. It seems to me to be a terribly crass concept with which I, for one, cannot agree. If I had thought that my marriage was nothing more than a commercial partnership, why in the wide world would I want to get married in the first place? I have other partnerships in my life and they seem to work very smoothly without the bonds of matrimony, and I'm sure my partners wouldn't fancy me this week at the best of times.

In a commercial partnership, if my partner or partners are not pulling their weight, then I can dissolve that partnership. I can dissolve it instantly just like that. I can't do that in a marriage and I wouldn't want to. I don't think that's what marriages are all about. But I think and I would suggest it to you that you give more careful thought to making that presumption at least rebuttable, if a court can be satisfied that there would be a gross inequity resulting.

Secondly, the other kind of presumption that I suggest you should make rebuttable, indeed that there isn't this presumption at the moment, and I think it should be built into 'Section 9, I think it is, of The Marital Property Act, and that is that anything left to somebody by deed or Will — given to them by deed or Will — surely should be presumed in the first instance to be intended for the exclusive benefit of the donee, a rebuttable presumption granted. But you understand my point. At the moment there is excluded from shareable property anything that is left — have you got this in already? I haven't seen it in your amendments. I see Mr. Gibson making noises as if it was already there. But at the moment there is excluded from shareable property anything given, received by the donee by deed or Will, if it is intended for the exclusive benefit of the donee' but how the courts are going to interpret that I don't know and I suggest it to you that you should say in your bill that there is a

rebuttable presumption that anything given to you, to anybody, man or woman by deed or Will is intended for the exclusive benefit of that person. It can be rebutted by evidence to the contrary but the reason that I suggest that is twofold, Mr. Chairman.

First of all, the courts without that guidance from this Legislature are going to be floundering. They will not know what to do.

And secondly, there are surely thousands of Wills around this province today which are not likely to be changed between now and the time of the testator's death. I may say that as of three weeks ago when I first read this statute I have been building into every Will, every single Will that I have drawn, a clause which says: "Any person receiving a benefit directly or indirectly under this Will is intended to receive that benefit for his exclusive use." That gets around — if I may use that phrase — that destroys that provision of the statute but there are many thousands of Wills around this province today which are not likely to be changed, and yet in which the testator — and for that matter there are trust instruments gifts *inter vivos* in which the donor intends that gift to be for the exclusive use of his child, children, wife, grandchildren, whoever it may be; and he would be, I suggest, pretty distraught to think that if that child's marriage broke up the shares in the XYZ Company that he has spent the last 80 years building up are going to be split between that child and the child's spouse.

So I do suggest that you should build that rebuttable presumption into your draft statute but these are nut and bolt tightening. There are many dozens of such suggestions one could make to you and most of them have been made already. What I suggest we all need now, Mr. Chairman, and you and your Committee most of all, you need breathing space and you would like me to shut up, which I am about to do, but the rest of us need the time to take those bills back with us now and study them with all of their amendments to date, including those amendments that you yet propose to bring in, so that we can come back in a few months' time and say, "Fine, all that's left to be done are these few things," and then you can have a bill that seems to me, your government and Manitoba can be entirely happy with and proud of.

At the moment, I think as a province, as a government, as a Committee you can only hang down your heads in shame and pray for the souls of legislative counsel. I don't know if you have any questions. I suspect not.

MR. CHAIRMAN: There are some questions, Mr. Taylor. Mr. Cherniack.

MR. TAYLOR: I'm surprised.

MR. CHERNIACK: Well, Mr. Chairman, may I attempt to mimic Mr. Taylor's inimitable manner and compliment him on the positive, constructive, supportive comments he's made in our work.

MR. TAYLOR: That sounds like the slow tune-up before the fast break, Mr. Cherniack.

MR. CHERNIACK: Well, it's not unlike your style, Mr. Taylor. I would like to ask you whether you believe in principle in the equal sharing by the spouses of assets accumulated during their marriage.

MR. TAYLOR: Yes, I do. In basic principle, yes.

MR. CHERNIACK: Yes, and do you believe, in principle, in the purpose of maintenance to be one which is aimed to achieve the independence of the spouses from each other?

MR. TAYLOR: Yes, indeed I do.

MR. CHERNIACK: And do you feel that the finding of fault should not be a basic ingredient in the decisions on those two factors?

MR. TAYLOR: Well, you're asking for my personal philosophy and there I would have to say that I believe that in some cases, not all, but in some situations a finding of fault is inevitable if equity is to prevail, if justice is to be done between two people.

MR. CHERNIACK: Could you enlarge on that?

MR. TAYLOR: Yes, I can, though I only remind you that I didn't come anxious to talk about the detail of the bills.

MR. CHERNIACK: Mr. Chairman, I withdraw the question.

MR. TAYLOR: . . . but I'm happy to do so.

MR. CHERNIACK: Well, I don't want to put you in any . . .

MR. TAYLOR: No, I'm not in a spot. I really want to save the time of your Committee, Mr. Chairman, but I'm glad to answer the query if you wish. Surely if — well let me think of a particular young lady whom I happen to know, who married within the last 18 months. Shortly after they were married her father, who happens to be a fairly well-heeled gentleman, made a substantial gift to her and to her young husband. He made the gift to her but they've treated it as property of the two of them. Now, the husband as it happens has already shown his true colours, that indeed some of us perceived before this young couple got spliced in the first place. He is, to put it rather gently, a drunken lay-about and who is not much use to man or beast. He beats his wife, he drinks very heavily, he chases anything that has a skirt or that moves, he gambles; he has most of the evils that the rest of us have in small quantity, he has in great volume.

Now, they are of course going to split. In fact she has already felt obliged to ask him to leave and he has indeed obliged, he has left, leaving her with one bucking and one in the shute, as they say. She has one child and she has another on the way about seven months hence. Now it would seem to me to

be wildly unjust that that young man should be able to walk out of that marriage with a half of the assets that those two people acquired in the last 18 months. It just doesn't seem to me to make sense in any way, never mind the intent of marriage being an equal sharing and so on . . .

MR. CHERNIACK: What sort of assets would they have acquired?

MR. TAYLOR: They've acquired the — I can't give you too great a detail for fear that the . . .

MR. CHERNIACK: Well, the nature.

MR. TAYLOR: . . . they've acquired property in two ways. Let me put it this way. There is a quite substantial house registered in the young lady's name and if she can accomplish what she needs to do before these bills become law, why they stay in her name. But if these bills were already statutes, bingo, you know there's 50 percent of that has gone gurgling down the plug-hole of life before she can say Saul Cherniack.

MR. CHERNIACK: What was the source of that?

MR. TAYLOR: It came from her father.

MR. CHERNIACK: All right, then we've already assumed — but let us assume without getting into a legal argument . . .

MR. TAYLOR: But it was intended for the two of them, you know, he did not say specifically this is for your exclusive use daughter.

MR. CHERNIACK: Well if we accept your suggestion assuming that it's necessary so to do and make it rebuttable presumption that it's for her, then would the husband walk out with anything of any consequence?

MR. TAYLOR: Well he might — it would depend. She also has some shares in the family business, now.

MR. CHERNIACK: Which they bought together?

MR. TAYLOR: No, which she acquired from members of the family.

MR. CHERNIACK: Yes. I think it's very valuable that you have made these points because these are the kinds of assets that surely it is not intended should pass, and we have counsel here who can make the appropriate notes to comment on your . . .

MR. TAYLOR: But if we carry that one step forward, Mr. Cherniack, supposing father had given these two young people money.

MR. CHERNIACK: Yes. Both of them.

MR. TAYLOR: Both of them, or you know, there's a cheque to daughter or to the two of them but it goes into the common pot, it's cash, and they take that money and invest it in shares of Ma Bell or something — Bell Telephone, Mother Bell — would you . . . well, that's not for me to question you I guess. I'd tell you candidly that I wouldn't think it proper that that young man should walk out of that marriage with an equal chunk of the family assets with which his wife would walk out.

MR. CHERNIACK: How will you prevent that on the assumption that it's a clear-cut gift to both of them? How will you prevent his walking out with what was given to him?

MR. TAYLOR: Because I'm suggesting that your judges should be giving some discretion as to who gets what out of the marriage pot.

MR. CHERNIACK: How about the law today? How about today's law?

MR. TAYLOR: Today's law?

MR. CHERNIACK: Wouldn't he walk out today . . .

MR. TAYLOR: Yes, he would. Today's law is sadly lacking. I think we need these bills in a more refined form.

MR. CHERNIACK: But we do need these bills, Mr. Taylor.

MR. TAYLOR: Oh, yes, no question, no question. I suggest. . .

MR. CHERNIACK: Well then, one other . . . Well, I don't want to preclude the right to ask even another question but the question I am now inclined to ask you is, whether you are aware of the vast number of very positive and helpful suggestions that we have been receiving from your own colleagues and others as to what could be done to make these bills better than they are now.

MR. TAYLOR: Indeed I do, Sir, and it's for that very reason I suggest that even the superhuman efforts of this superlative committee are going to have one devil of a time absorbing, fully understanding — not just understanding a clause, a sentence, but understanding all of the repercussions in the whole bill when you see it in its final amended form, I suggest that when all of those excellent suggestions that have been made to you are dealt with by your Committee, by counsel, and by the House and embodied in some sort of a final form, then we should all sit back and take a look at it and make sure that this is the way it should be. In other words, make sure that the last state of that man is not going to be worst than the first. Because I'm afraid, I really am afraid, that what we're going to wind up with if we pass them today, even with the amendments that have been proposed to date, we're going to wind up creating as many problems as we solve. That's all. I'm not saying to you this is bad legislation in concept, I would be making an entirely different noise if I felt that.

MR. CHERNIACK: Mr. Taylor, what is your experience in the legislative process, you know, of Law Amendments Committee and the reviewing of legislation section by section? Have you been involved in that kind of work to any great extent?

MR. TAYLOR: Not of course as an elected representative.

MR. CHERNIACK: No.

MR. TAYLOR: I have certainly had more than a passing interest, sometimes even for money, I've had an interest in seeing bills go through and in appearing before a Legislative Committee . . .

MR. CHERNIACK: But in the helping to draft them?

MR. TAYLOR: Yes.

MR. CHERNIACK: Good.

MR. TAYLOR: And I appreciate the problems of Legislative Counsel. I have made perhaps a few slighting comments about the form that these bills take. I'm not personally knocking the various counsel that have been involved though I must say I question what background one or two of them have had in the task, but I just say that the amendments have been coming up, and so thick and fast, that I defy anybody to make a really competent job, of which he can sort of close his file and say, "That's perfect, take it away."

MR. CHERNIACK: Mr. Taylor, when have you seen perfect legislation?

MR. TAYLOR: Many times, many times.

MR. CHERNIACK: Good for you.

MR. TAYLOR: But not tonight let me tell you.

MR. CHERNIACK: Mr. Taylor, are you aware that a few lawyers who came before us said that this uncertainty is a very serious thing; that the announcement of the intent to pass this kind of legislation carries with it a certain amount of unease . . .

MR. TAYLOR: Yes, it does.

MR. CHERNIACK: . . . and that, and I quote now that some of them have said, they would like a bill passed as well as could be, but passed so that at least the uncertainty is removed.

MR. TAYLOR: Yes, they speak of their clients being in a "legislative limbo" and so on. I appreciate that, Mr. Cherniack, and yet it seems to me, with respect to my colleagues who take that position, that the answer is very simple and it's one that I arrived at with another *confrere* of mine — yours and mine — just a few days ago. We have simply said, "We don't know what the final form of this legislation is going to be. We don't even know when it's going to be passed. We're trying to work out an agreement; we have worked one out on an interim basis and we have built into that agreement very simply a clause that preserves the rights of the parties under these current bills, if they become law, or any semblance of them that becomes law in the next 12 months. We have an agreement and that's fine. The husband has his income tax relief; the wife is getting her cash and everybody is as happy as they can be under those circumstances."

You don't need to leave your clients dangling. And indeed, if we are worried about that, I suggest you might very well take my good friend and partner's suggestion, Charlie Huband, if you want something nice and simple for instant action, embody into the law what Mr. Husand suggested this morning, which has a lot to commend it.

MR. CHERNIACK: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Taylor, you have made reference to your colleagues that had made representations, disinterested in the legislation, but it provided the Committee with a great deal of advice.

MR. TAYLOR: Surely.

MR. PAWLEY: I think it was therefore your view that the Committee should give a great deal of weight to their advice and I think that in fact we have been attempting to do so.

I want to just point out to you however that I would calculate that there have been nine members of the legal profession before the Committee to this point, six of whom have indicated — well, as I can recall — that at least six of the nine have urged us to proceed with the legislation this Session. Two or three of those six advocated some major amendments but they did urge us to proceed with the legislation this Session and not delay the legislation for a few months, as you did, plus two other legal members of the profession, from my calculations. Now, I made be out one legal counsel but I don't believe . . .

MR. TAYLOR: My recollection, Mr. Chairman, and through you to Mr. Pawley, is that — I wouldn't want to distinguish or differentiate between my colleagues — but I suppose that the brief to which you will have given the most weight, or the most attention certainly, if only because it was the most detailed and it had the most work done on it — was that of Mrs. Bowman's committee, I suspect. Do I not rightly recall that even Mrs. Bowman's committee said, in effect, "Please don't pass The Family Maintenance Act. It's not possible to tighten enough nuts and bolts on that thing to make it workable this Session. If you just have to go ahead with The Marital Property Act, and we don't recommend that you do, but if you have to, it could be done with these two really radical changes that we are

recommending."

MR. PAWLEY: I would say that she was more positive about us passing The Property Act. She did wish us to invoke judicial discretion retroactively, but I believe I would be not unfair if I said that she was a little more positive in respect to The Property Bill than your indication.

MR. TAYLOR: I wouldn't argue but my recollection is she said, "If you really want to, it could be done. The other one couldn't even be done no matter how hard you try; you couldn't do a decent job of it this year."

MR. PAWLEY: I would submit to you there has been a very substantial body of legal opinion, certainly even a number of legal counsel before this Committee , that have urged us to proceed with both pieces of legislation during this Session.

MR. TAYLOR: I am sure they have and of course the motive is very clear and easy to discern, Mr. Chairman, and that is that those of my colleagues who say, "Please pass it, pass something now," are seeking certainty rather than this limbo than they speak of.

I'm here to say to you, "better the devil you know than the devil you don't know." I would rather have the certainty of today's very poor laws — but at least we know them — rather than the certainty of a pretty extricable pair of bills in their present form. Why not wait until we have them right, then do it properly?

MR. PAWLEY: I would just mention to you that I believe it would be also fair to say that at least three gave pretty strong support to the legislation, in fact, would have liked to have seen the legislation proceed further in respect to certain aspects that I believe you were somewhat critical of, Mr. Taylor.

MR. TAYLOR: That's their privilege. I take, as you will gather, a strongly opposing view. I think we are galloping into it too fast. This isn't the old sort of reactionary Ray Taylor talking here; it's not a question of being concerned with their *cliché's* . . .

MR. PAWLEY: I never thought you to be reactionary until tonight, Mr. Taylor.

MR. TAYLOR: Oh, hell, I've been reactionary all my life, Mr. Pawley as you well know. This is not the reactionary part of me that's speaking to you now. I'm not concerned, I'm not worried about change, I'm delighted to see it, I welcome the damn thing, but not in its present form. Let's take a chance to look at it properly to see, make sure that it's going to work before you shove it through because I think we're going to have to problems.

MR. PAWLEY: Mr. Taylor, there's one comment that you made that worries me a great deal, which disturbed me considerably. You made reference to, when you entered into your marriage relationship if you had thought it only to be a commercial transaction you wouldn't have married. Implying that we were some way or other entering into a realm or into an area that placed marriage on a business basis. That was the impression that, knowingly or not, you mentioned in your remarks.

MR. TAYLOR: I don't suggest that your committee is doing that, but I do suggest to you, Mr. Chairman, that there has been a very heavy emphasis upon the commercial aspects of marriage to the exclusion of other considerations before this committee, and indeed implicit in the bill.

MR. PAWLEY: Well, Mr. Taylor I don't want to relate to anybody else's marriage so I'd like to just relate to my own, that in my own marriage relationship I would say with the contribution that my good wife has made over the years that . . .

MR. TAYLOR: It might be unjust if you took half of the assets.

MR. PAWLEY: I would say that she certainly ought to receive 50 percent of all that's been accumulated.

MR. TAYLOR: Or more?

MR. PAWLEY: Possibly more, but let's say 50 percent.

MR. TAYLOR: If you would agree that possibly more, you and I are speaking the same language.

MR. PAWLEY: Now, Mr. Taylor, because I feel that our, you know, I would like to feel that marriage is not related upon anything less than equality, I would like to have that certain now for one never knows, with the passage of time marriages can deteriorate, then we lose sight of the contribution that each partner has made toward the marriage, then we commence to quarrel and disassociate ourselves from the principal that we agree and accept when that marriage is valid and is good.

MR. TAYLOR: I agree with you entirely, Mr. Pawley. I just say, the only context in which I raised that comment at all, you know, was to say that it seems to me that an automatic, unquestionable, 50 percent ownership of management of assets in a marriage is a mistake. I just simply say that I would prefer to see at least some judicial discretion. Otherwise, we reduce this whole thing to a strictly commercial transaction.

MR. PAWLEY: The other aspect, I must say that I would just like your quick comment on, that I find somewhat of a concerning to me is that so many groups have advocated the community property concept to us, revenue concept. It concerns me a little bit that I believe yourself, plus other members from the legal profession have down-played it and I get an uneasy feeling that possibly down-playing it without too much research into how that concept is worked elsewhere, where it's been a . . .

MR. TAYLOR: I would say to you in complete candor, I have done almost no homework upon the mechanics, the actual day to day operations of community of property in other jurisdictions. I'm

familiar with the concept, I know something about it of course, I have done a fair amount of reading over the last 20-30 years on it but in basic, you know, in the real detail of it I am not competent to address this committee. I just simply say to you in passing that the jurisdiction that seems most frequently to be thrown at you is California and I would, frankly, hate like the devil to find Manitoba becoming as splendid a — what shall one call it — a battlefield as California's divorce courts are, where — what's the ratio — 3 out of 4 California marriages wind up in divorce.

MR. PAWLEY: But maybe they proceeded toward some of these systems because of the very bad record.

MR. TAYLOR: No, maybe Mr. Chairman, the reason is because there is too great an incentive on the part of the parties to seek a divorce when they know that they can liquidate their assets that quickly, or the assets of the other partner, the assets brought into the marriage by the other partner, and we constantly read, I like to think they are the horrible exceptions, but we constantly read of the acquisitive souls in the California courts who walk with very large chunks of asset, which in many cases they have far from earned in my book.

MR. PAWLEY: You're not throwing into those comments the Court of Conciliation that's been referred to from time to time.

MR. TAYLOR: No. What I hear of that, incidentally, seems to be good. What I read of it tells me that with perseverance it seems to work fairly well. Their batting average is a great deal better than any such body in Canada certainly, but that's of course of comparatively recent origin. I don't suggest it to you, all I'm saying is, I don't suggest to you that you should look to California with its community of property laws as being a shining example of what you would want to introduce here because, heaven help us, it has — I suspect that those very community of property laws have gone a long way towards the breakdown of the whole marriage concept in California.

MR. PAWLEY: But you would certainly not want to imply that without checking that out very thoroughly.

MR. TAYLOR: No, I wouldn't. This is pure surmise. I haven't a clue. I can only go from what I know of human nature.

MR. PAWLEY: You admit you might not be fair.

MR. TAYLOR: No, I won't admit that yet.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I would just like to follow up some of the lines of questioning of Mr. Pawley. I'm always intrigued by the arcane world of the legal profession which I, I suppose gratefully now, avoided following several years back and followed a profession that . . .

MR. TAYLOR: Wise fellow.

MR. AXWORTHY: . . . tends to give one a greater scope for generalization than the one that you follow, but I'm curious to find that the legal counsel that have appeared before us, all admit to agreeing with philosophy and then grinding down on their teeth when they start talking about the actual bill itself. I'm trying to discover where that particular leap of faith has occurred between agreement philosophy and looking at the execution, in particular when I feel that, as I've read it very quickly and I'm far from anywhere near the practise of it, but there have been law reform commissions across this country looking at this now for a matter of three years. The Canadian Law Reform Commission under Chief Justice Hart, reported on it and our own Law Reform Commissions elsewhere, all came out with, as I read them, almost similar forms of arrangements. They all talk about deferred sharing concepts, community property and family assets and aside from the small details they still — and all of a sudden we find now that these things are all unworkable. I'm just wondering why we just discovered them to be unworkable now when we've had three years of legal people looking at the problems, and that's why I'm really wondering is this just now coming into the arena of the practicing lawyer or what is the reason for it?

MR. TAYLOR: I think, once again now I'm having to do some more surmising so I may not be of much practical help to the committee or to Mr. Axworthy, Mr. Chairman, but it seems to me, first of all I am not convinced that the legal profession as a body has, in fact, been studying these concepts for three years. We've had several small groups, committees, working, the Law Reform Commissions, in fact, to do that very thing. They work, as you know better than I, they work for the most part in — I won't say smoke filled back rooms — but in quiet small groups. They produce their report, they render their report to the Minister. Now, it's only when that report hits the front porch as it were, that we reach out and pull it in and see what the Law Reform Commission has been saying. We may agree or disagree with it. Then, it's only within the last matter of weeks that we have actually seen the legislation proposed by our government. And it's only since that legislation came to us that many of us, I being one, have had a chance to study this thing and look at it and see how workable it is, and I said at the beginning of my comments that there may be, and in fact there are, some facets of these two bills with whose philosophy I disagree, but that's not, you know, that's not my privilege at the moment. I didn't come here to argue about the philosophy, that's something that the governments are there for and the Opposition. I'm concerned only to see that when the government has declared a

philosophy, one with which all parties seem to be in general agreement, that the bills that then emerge, in order to give legislative shape to those philosophies, things we're going to have to work with. We're the fellows then, who have to take those tools and actually work with them in the course of a day to day practice and operation, advising clients on what they mean and what their rights are, taking them into the courts to enforce them. Now, it's we then who have to deal with those and work with them, who are now, some of us, saying to you as a committee, please don't adopt these bills in their present form, not even with their most recent amendments. I for one don't know what the most very recent amendments are. I think I've got them all but I'm not sure. I'm just saying that when this Committee and the House has finally come up with something it thinks it wants to pass into law, then because these bills are so radical, so revolutionary, not bad on that account, but nonetheless revolutionary, let us at least take one more good hard look at them before you enact them and before we have to start living with them. That's all. I'm not suggesting you should throw the whole paper out the window.

MR. AXWORTHY: Mr. Taylor, I am concerned about that aspect because I think once you interrupt a process then to retool it, wind the machine up again may take almost equal or more time to. . . there is such a thing called losing momentum and making changes in those who generate that momentum. . .

MR. TAYLOR: But losing momentum is a pretty good thing when you're driving down hill and you don't know what's at the bottom of the hill.

MR. AXWORTHY: This is the question I'm coming to. You and others have made some very strong condemnations of the unworkability of the bill. As I've been keeping notes going through, it seems to me that with one major exception in the Family Law Bill, most of the recommendations are subject to change, that they are not all that irreconcilable, some of the definitions . . . the real issue being . . .

MR. TAYLOR: But the bills can be perfected.

MR. AXWORTHY: . . . except for this one question of discretion where it seems those representing the legal profession in large part are arguing for allowing some more flexibility in areas where a judge can go into court, where those circumstances, the young lady who has the n'er-do-well husband — sounds like a lot of people I know actually — that those circumstances . . . that's why I'm wondering, it seems to me without that one major exception which is a matter of principle and also execution, nothing else seems to be all that more horrendous and that can't be dealt with by this Committee. I'm just wondering why then you would advocate really what I consider fairly drastic action which would be to delay the bills.

MR. TAYLOR: Well, I say again, the bills can undoubtedly be perfected or certainly brought as close to perfection as human nature can do but there are so many changes that have been required from the time these bills first saw daylight, so many amendments already brought to your committee, so many more that I suspect will be suggested and true amending has to stop somewhere, but I come back to the earlier point and I'm sounding like a broken record, this is as radical, as drastic a piece of legislation as Manitoba has seen in many decades. I say again, it's not bad on that account, may be very good. But I do suggest that we should all — all of us who have any interest in these bills should have a chance to see them at least their penultimate form and reflect upon them, talk about them in groups of our own, study them once more: "Here now is what is proposed. This is very different from what we first saw some weeks ago. Let's take a look at this and see if it will work and if not how can we best help the House by showing them how to make it work." I don't think you'd find any of us here, not even the most reactionary of us saying the whole e concept should just be thrown out, that it's all bad. We're all trying to help you.

MR. AXWORTHY: I'm sorry to interrupt but you made the comment in your remarks that the bills seem to have that flavour of the old cliche of a camel that started out to be a horse because it was made by a committee. I must pass on to you a comment as an observer, after having listened to a number of lawyers appear and saying if we sent it back to them the camel would turn into being an orangutan. I'm just wondering again what we lose or gain by it. I don't want to dwell on that point. I just simply would like to ask maybe one final question. Could you pinpoint the area which seems to bother you as it does many others, this question of discretion, where in the bill would you like to see it inserted and if such changes were made, would you then be prepared to see it as at least a workable first step to go through.

MR. TAYLOR: Well, the old legal maxim, that to specify some is to exclude others and if I say, if you could just do this the bill would be workable, I wouldn't be being true to myself. There are too many things that I think need to be done, but certainly the area of judicial discretion that I speak of, the one basic one, it seems to me, and I'm not necessarily in step with everyone else here, but it seems to me the principle of equality of ownership of marital and commercial assets that is built into the Marital Property Act, seems to me should be one that on a proper case being shown could be varied by judicial discretion. It wouldn't take very much imagination to sit down and think of umpteen different examples where that would simply work a rank injustice, so that there I would think is . . .

MR. AXWORTHY: You would apply that primarily to those cases under the retroactivity question

and not necessarily to future marriages, or right across the board?

MR. TAYLOR: Right across the board, sure.

MR. AXWORTHY: So you'd like to see some clause, however it would be worded that would introduce the option for court discretion under the rebuttable presumption. . .

MR. TAYLOR: Otherwise if we don't do that it seems to me we're putting both parties to a marriage into a pair of t economic straight jackets.

MR. AXWORTHY: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Lyon.

MR. LYON: Mr. Chairman, I was wondering if Mr. Taylor could advise the Committee as to whether or not his bottom line position would be somewhat analagous to the position that was stated to the Committee by Mr. Houston, namely that, as I understood it, that a simple amendment to the Married Women's Property Act at the present time stating what the division of property should be for the guidance of the court would suffice to accomplish the principle that you subscribe to and that I think most members of the Committee subscribe to.

MR. TAYLOR: I suppose, Mr. Chairman, to Mr. Lyon, my bottom line position . . . Well, I guess the answer to that is this: If I were to say to you pass some legislation before you prorogue but put this one on ice until the next Session then I would say, adopt Brother Huband's approach to life, which is even more simple and I think has greater flexibility than Mr. Houston's. I guess you didn't hear Mr. Huband's pearls of wisdom this morning, but he was suggesting that we could simply enact, that the law of, really the constructive trust be made applicable to the ownership of family property so that the courts would have a discretion to allocate assets between partners in whatever seemed like an equitable spirit.

Mind you, I have to say with deference to my good partner, Mr. Huband, that while I think his idea is a very noble one and would be workable — it would be workable — nonetheless I would be just as happy to see bills passed such as you have on the table before you when they have been worked on, given more thought and perfected as best we can. At the moment I'm far from convinced that they are in as good shape as you as responsible legislators would want to pass without feeling a bit ashamed of what you send out. That's all.

MR. LYON: You're well aware of the fact of course that the division of property that ostensibly is being sought in this bill is a division that should come into play only in the event of marriage breakdown?

MR. TAYLOR: The bills don't say that do they?

MR. LYON: No they don't, but are you or are you not suggesting that that should be the case?

MR. TAYLOR: I'm finding myself asked to state my own personal philosophy on a number of these things which I've been trying to avoid doing. I've been trying to say take the bills with the government's present philosophy built into them if you will, but . . .

MR. LYON: Some of us are always suspect of the government's philosophy you go ahead and give us yours.

MR. TAYLOR: . . . if you want to leave them that way, at least make them workable. I have no particular problem myself in saying that wives and husbands should own at least some parts of their property equally whether they're breaking up their marriage or not. As I said when I started, my wife owns just about everything that I have and I'd be glad to get half of it back under these bills, it would be kind of fun.

MR. LYON: That being the case, why is there need for the kind of universality that one finds here to presumably correct a situation which has already been corrected by the interaction of the parties on their own without the heavy socially over managed hand of the government coming in to do what people of common sense have already done?

MR. TAYLOR: Well, I suppose, if I may dare to put words into the mouth of the Minister, he would tell us that his legislation is not intended for the commonsensical people who have done what they already should have done, it's intended for the idiots who don't.

MR. LYON: Why bother them ? Why have a piece of legislation that intrudes upon the private affairs of people who have already demonstrated that they are capable of managing those affairs, why not then — coming back to the first proposition — have a bill that contemplates the minority situation, namely that is the minority situation where a marriage breakdown occurs. At least at the present minority.

MR. TAYLOR: I suppose, in fact, in practice, as I said earlier, Mr. Chairman, the bills as we have them now are not going to be invoked by anybody whose marriage is healthy, so that although the bills appear to have universal application, I can't see wives or husbands for that matter running off to the courts to say, make this fellow pay me my clothing allowance and my spending money and make him understand that I can do with this as I will. Because once a husband or wife has gone to the court for that kind of remedy they're no longer in a married state, so that I really haven't — I understand your point well, Mr. Lyon, and yet for that very reason despite the universality of its language, I

haven't been too offended by that fact because I've assumed that the only people who are going to take advantage of the legislation are those whose marriages are on the rocks in the first place . . . nothing in those bills that is going to recement crumbling marriages, nothing at all. But it's for that same reason I believe that because of its universality that there should be judicial discretion. I suggested earlier, I think before you arrived that I think we should have two presumptions built into the statutes that are rebuttable so that we don't have a cookie cutter approach to every married couple, which is what we're getting under these Acts. That's what distresses me. However, I've already been here half an hour longer than I intended to be. I spoke about being mercifully brief and see what you've done to me.

MR. CHAIRMAN: Just blame the Committee for their long questions, Mr. Taylor. If there are no further questions, thank you.

MR. TAYLOR: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mrs. Havelock. Would you come forward please.

MRS. WINIFRED HAVELOCK: I'm sorry I was absent from the room. I didn't expect my name to be called so soon.

Gentlemen, I spoke to you in the fall on a topic which perhaps some of you remember, that is my feeling is that there should be some judicial discretion for cases of hardship. I'm well aware that many wives in the past have been not given fair treatment and that their maintenance allowances have not been paid and I am not trying to take money away from them nor from their children. I simply think that justice should be dispensed to more than one category and it seems to me that this bill was intended for the person who stays at home and has not paid moneys into an asset of some kind. Perhaps I'm mistaken.

It disregards the person who has contributed far more than 50 percent of not only the monetary contributions but also the non-monetary services. For example, one partner, quite frequently the wife, who has worked, educated herself, looked after their children while the husband spent his money foolishly. The responsible partner has managed to save some money, has a pension and has anticipated some measure of decent living after retirement. Does this person have to split 50-50 with the irresponsible person? In a private conversation I was assured that these special cases would be provided for and as far as I can understand, from my somewhat unlawyer-like approach to reading what is before me, there doesn't seem to be a safeguard for this at the present time. Instead we have a 50-50 split regardless of contribution to the monetary assets.

In addition, retroactivity to May 6th has been proposed in an amendment. This is a very pleasant surprise for those who are expecting justice. The person who is irresponsible is not always male. Some persons are not able to handle money and should not be rewarded with what has been saved by a more sensible spouse. There are people who spend more than they earn as a matter of principle. I think that these people who are irresponsible and who cannot get along on what moneys they have probably should be given some kind of training in handling money, not just handing out more allowance to whoever the person is.

I'd like to speak to the fact that so many representations here have been in favour of the 50-50 split. The reason there have been so many of these I think is that many people are working full time. They do not have time to come to these meetings. They may not be aware of the fact that they have the right to speak. They may think that what they have to say is not likely to have too much effect and so they don't come. I'm just a little stubborn about having the right to speak, I think, so I am speaking here the second time. As a matter of fact, it was only by chance that I saw an item in the paper. Now I realize that this is my own fault, but that's how it happened. I saw a notice of a meeting.

Many other working people do not have the time to spend doing this — and I'm speaking of people who do not work an 8 hour day, they work an 8 hour day and then they go home with extra work in the evening. I am fully aware that all you gentlemen are in this position with a few extra added hours to it.

It seems to me that any responsible group of law formers would not deliberately disregard a minority, which is probably the group that is paying a certain amount of taxes and therefore deserves some consideration. If judicial discretion has been so badly used as some people have suggested, why not have a committee which has the power to decide on division of property and on maintenance in special cases. This would result in a much more consistent decision on these matters than if it were left to one person.

Now I would like to speak to the assumption on which this whole bill is based, that the input in a marriage is a 50-50 situation. That unfortunately is not true. . If there is such a situation, there will be no separation. If there is no fault in the marriage, there is no divorce. I, too, am fully aware of the fact that no one partner is a hundred percent at fault, that both partners tend to be at fault to some extent.

I don't see any reason why there could not be a no fault separation and/or divorce, but also be a fair settlement of assets with consideration of contributions both monetary and non-monetary. I am fully in favour of the wife being given credit for the work that she has put into keeping up the home and the children and I see no reason why this would present any more of a problem than going through all sorts of other legal or financial statements with proofs of such.

It was rather strange to me to listen to people talking about what are necessities and what are not and one person mentioned the fact that the car represented independence. For some people a car is a necessity, depending on where you live, for others it is not. For instance, many people do ride the buses these days and authorities are generally persuading us that perhaps more of us should in order to conserve energy.

I could give you a long list of weepy, waily, stories, however, I don't think I care to at this point. If anyone's interested, I'll make out a list.

The opt out clause giving people a certain amount of time, would provide for those people who are currently in the state of wishing for a separation, perhaps even being in the process of getting a separation but not quite having achieved it. These people are caught rather by surprise with the retroactive clause that has been included . I agree with one or two of the previous speakers that marriage is not just a business arrangement , that it brings in many other aspects and I keep going back to this fact that if there is to be equal splitting of assets there should have been equal input, in some fashion, into the marriage. You can legislate for equal division of assets but you can't legislate for equal input, regardless of what you call it, monetary or otherwise.

I rather dislike the fact that somebody is going to come along and tell me what I am going to do with my money that I have saved. I wonder how they would like it if I went to them and said to them, this is the way you should dispose of your money. I think that is an infringement on my own private affairs.

I think that the people who want fair treatment for one kind of person should not deny the right of fair treatment to others.

Mrs. Paxton, too, prefaced her remarks on Friday night by advocating judicial discretion and Mrs. Paxton has gone through many trials which she related to you on one occasion. I also don't understand how speakers who have no home problems or very few in comparison with others, can stand up here and talk about something that they really have had no experience with. Now maybe I'm misjudging some of these people . . . someone tells me that some of the speakers have gone through separation proceedings, but I think possibly people who deal with these problems should have some major problem in the home situation.

Again, I say, that I don't really think it's the right of other people to interfere in my private affairs and that any fair legislation will allow some kind of judicial discretion, carefully guarded if you like. Give it to a committee to decide. I am concerned about the group that may be negotiating separation but not having achieved it and is caught right in the middle.

If this legislation is passed without consideration for special cases, it will anger many people . . . feel it is a direct intrusion into their own business. Even a prisoner has the right to appeal a sentence and I feel that people have the right to appeal a situation where someone decides what should be done with them.

I hope I have not sounded too sarcastic. I did not intend to be that way, it's just that I feel a little bit upset about the course of events in the last few weeks and I really feel that if you want legislation that is fair, that you will give some loophole or whatever you want to call it for those who have built up assets and the other partner , for whatever the reason, is not responsible, will only fritter away the money and I do not think that is fair if you cannot even give it to your own children. Now perhaps I have misunderstood some aspects of this.

MR. CHAIRMAN: That concludes your presentation Mrs. Havelock?

MRS. HAVELOCK: Yes.

MR. CHAIRMAN: Thank you. Mr. Graham.

MR. GRAHAM: Thank you, Mr. Chairman. Mrs. Havelock, I commend you for your presentation tonight. We have heard on some occasions some very highly technical and legalistic presentations, but it is presentations such as yours and Mrs. Paxton's that have probably had as much impact as any on members of this committee and I commend you for your presentation.

MRS. HAVELOCK: Thank you.

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

MRS. HAVELOCK: Thank you.

MR. CHAIRMAN: Mrs. McCormick, please, come forward.

MRS. McCORMICK: Having listened to the foregoing presentations on Bills 60, 61 and 72 and having heard my own viewpoint on concerns such as retroactivity, opting out provisions, survivorship rights, etc. etc. etc., I do not wish to take up the committee's time in unnecessary review. Rather I wish to zero in on one aspect of Bill 60, The Family Maintenance Act, which I feel does not go far enough to allow the principles and spirit of the bill to effect a practical solution to the problem which necessitated the introduction of such legislation. The problem is the enforcement of maintenance orders and I will present what I believe to be a practical alternative and a solution to this problem.

But first I wish to congratulate the Attorney-General on the introduction of the bills relating to family law reform. I see their introduction as the culmination of the efforts of many dedicated and

committed individuals and groups concerned with the quality of life in our society. Specifically there are many good things in Bill 60 which are worthy of commendation. I am pleased to see provision for a reasonable personal allowance during the course of marriage and endorse the idea of encouraging financial independence of spouses upon termination of the marriage, with some hesitation on the three year time frame. I would prefer that the question of fault be removed entirely and as such I am concerned about the extent to which each spouse is fulfilling the domestic service obligations, as set out in Section 5(1)(e) which could be construed as a fault clause.

The area of my greatest concern is in the enforcement of orders. I am certain that the drafters of this legislation recognize that a full 75 percent of maintenance orders are in some form of default as provisions have been made for deposit of a specified amount with the court as security against default. But as default occurs in the majority of cases and as judges to date have been reluctant to use the threat of jail as it interrups earnings and jeopardizes the employment of the defaulting spouse, I believe that we are no closer to a solution to this problem with the provisions of Bill 60.

Over the past ten years I have worked in the day care field in daily contact with many parents who are working, or in retraining or upgrading programs and who are supporting their children. Many of these people had been awarded maintenance orders at the time of separation. Most of them do not receive maintenance payments on a regular basis, if at all.

When they apply to the Manitoba Department of Health and Social Development for Day Care subsidy they are obligated to indicate whether they have a maintenance or filiation order. Many apply for subsidy at the point of separation and indicate the amount they expect to receive. They are assessed on the basis that they have or will receive the payments at regular intervals and their fee reflects that assumption. Many view the award as being for child care, or for payment of the day care fees from their spouse. When the payment is not received, their first reaction is to approach the day care centre and indicate that they have a financial problem. We then encourage the individual to contact the Child Day Care Office for reassessment. The policy at the Day Care Office is that reassessments are done every six months and they are willing to average the payments received in order to calculate the fee in the ensuing six months. There is no retroactive adjustment despite the over-assessment of fees in the first six months. The child Day Care Office is likely to encourage the parent to apply for Legal Aid for enforcement of the order. This involves loss of time from work and potentially further loss of income. The vicious circle begins and people in these circumstances are vulnerable prey for high cost credit, high interest loans and even for welfare. The real support to encourage financial independence is lacking. The shocking truth is that 78 percent of all female headed single parent families in Manitoba are living at or below the poverty line. We cannot and must not accept this as necessary. There is an alternative.

I propose an amendment to section 27(1) to read that a judge shall require an amount equal to three months payment to be deposited as security against default. This amount would remain in the central fund for the life of the order and be deemed to be the last three payments should no default occur during the period of obligation. Should default occur, the recipient spouse can draw against the central fund amounts equal to the monthly award and thus provide a buffer against financial hardship and vulnerability while the courts pursue the defaulting spouse.

Thus the fund would comprise an amount of three months deposit for each order awarded during the life of the order. This pool of money could be viewed as a general fund against which a recipient spouse could borrow should the court not succeed in re-establishing regular payments within the first three months. The obligation for repayment would rest with the defaulting spouse or failing that the charge could be against the interest accrued by the general fund. However, under no circumstances should the recipient spouse be forced onto welfare or into personal debt because the defaulting spouse or the courts are unwilling or unable to assist.

Perhaps when the trend is reversed and 75 percent of all orders are collectable we could consider returning to the paying spouse the interest accumulated on the deposit after the obligation has ceased.

I have been challenged on this plan by those who believe that it is unrealistic to expect the paying spouse to come up with the three month deposit as security. I must counter that it is equally unrealistic to expect the recipient spouse to get along without it. And if the paying spouse cannot pay, it is ridiculous that an order should have been made in the first place. You cannot get blood from a turnip! A compromise could be developed with the concept of bonding which has been introduced in the amendment. But again I must repeat that the Act must be strengthened to be effective. Should it not say that where the judge ascertains that it is impossible for the spouse against whom the order is made to fulfill the obligation of the three month security deposit, having exhausted all attempts at raising or borrowing the necessary amount, a bond equal to three months payment "shall" be posted?

I wish to repeat that we can no longer accept the uncollectability of maintenance orders as a given and ignore the hardship that this metes out to those who have been deemed to have a legitimate need and right to this support.

We do not overlook the obligation to pay our taxes and fines and we are rigorous in our pursuit of those who try to default on these. Maintenance orders awarded by our courts must be pursued with equal vigour.

MR. CHAIRMAN: Thank you. There may be some questions. Are there any questions? Mr. Pawley.

MR. PAWLEY: I just want to ask Mrs. McCormick . . . I'm sure she would want to correct it if it's wrong. She may have noticed a statement which was issued earlier this evening by the Coalition on Family Law indicating the source for the figure which was used by them of 75 percent of all maintenance orders being unenforced, uncollected, is a "Study Paper on Family Law" by the Canadian Law Reform Commission. I wonder on Page 2, would it be correct for me to assume that you had meant, Mrs. McCormick, to say in Canada rather than Manitoba. I'm not aware of any source of statistics in Manitoba, in fact I would question that our figures are anyting as high as that.

MRS. McCORMICK: Would you say that Manitoba is doing a better job than say, Ontario or . . .

MR. PAWLEY: I feel that we are doing better than the national for a number of reasons. The garnishing order taking primary order above other trade debts and also the . . . better it could be, but it's there, it's been used I think, somewhat effectively, the enforcement officers brought directly on staff of the Family Court.

MRS. McCORMICK: Okay. Well, there's two points. First of all I'd like to say from my personal experience, you know, on the firing line, I would dispute that our track record is better. Again, you know, we could get into the war of statistics and you say, prove it to me and I'm going to say back to you, you prove it otherwise. That's point number one.

Number two, is the question of enforcement, you know, we have the mechanism but the situation is, you know, like I said you can't get blood from a turnip, so, what seems to be is that you find the turnip and we'll get the blood out of him, but the onus is on the receiving spouse to track down the turnip, get the turnip's location and whatever else to the enforcement officer and then, perhaps, something will be done. And this is not always easy or not always possible.

MR. PAWLEY: Would you agree that there is much that can be done at the province's working out a system with the Federal Government support to attempt to get some better co-ordination across Canada, province to province , also to improve the effectiveness of obtaining the source of information on uncollected maintenance orders, such as addresses and things of that nature, which has been proposed earlier?

MRS. McCORMICK: Right. I would very definitely agree and would urge the province to pursue actively such a solution with the Federal Government. However, I think so long as it's not a charge on the public purse in a sense, or not really a matter of prime concern, it seems to me you're not — not you specifically — but the motivation just isn't there. I think that instituting something like this where we were bound to make it work, and to make sure that the things you are saying in your bills people have a legitimate right to, that if you have that commitment and had your name on the line and if a system like this failed . . . that it was your money then I would have more faith in those kind of government agreements to be worked out. But right now it's the little person that is being . . . off in there.

MR. PAWLEY: I would like, because you've been sitting here this evening, you've listened to the earlier briefs, because it has been the main subject matter — just like a brief comment from you insofar as judicial discretion and its relationship to the equal division of property.

MRS. McCORMICK: Well, I'm totally opposed to judicial discretion. We are not likely to have complete equity. We're not asking for life to be fair and it isn't. I think we're only asking for an even break and that's what we're going to get with 50-50 sharing. So judicial discretion to me has not worked.

MR. PAWLEY: What about the reference to the unconscionable or hardship cases that have been repeatedly referred to by those presenting briefs? What are we going to do about them? For instance the last speaker referred to sad cases that she felt were not properly dealt with under the 50-50 basis without the provision for some sort of discretion to handle that type of situation.

MRS. McCORMICK: Well, it's been my experience that the discretion up till now has worked against and created a lot more hardship than it solved. We've got Murdoch and Murdoch as a case in point. I don't have any faith. . . Perhaps if the judiciary were 50 percent women, I could see myself recommending judicial discretion.

MR. PAWLEY: I assume from that that neither would you agree with the proposal last Saturday, by Mr. Houston, the presumption of equality. Or what about the proposal this morning? I'm not trying to put you on the spot but Mr. Huband's proposal with regard to implied trust.

MRS. McCORMICK: Well, again I'm not a trust accountant or trust lawyer but it seems to me that if that was such a hot idea it would have first of all come to the attention previously of the Commission. Again, I'm just saying that what we have before us is what I believe to be a good beginning — I'll put my money on this. Let's take it and let's improve on it.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I'd just like to go back to the specific proposal on the security deposit. I gather the major change between this proposal and the bill as it now reads is that you want to specify a three month security deposit opposed to an unspecified amount by the judge?

MRS. McCORMICK: Right, it gives the judge the option. In section 27 (1) it says that the Act "may" require a person against whom the order . . . and I would say it should read "shall" for the reasons that I've stated.

MR. AXWORTHY: So it becomes a mandatory requirement not a discretionary requirement, to use that word that's now coming into play.

MRS. McCORMICK: No, that's right.

MR. AXWORTHY: Okay, and I gather that the proposal also implies some form of central pool to which these deposits are attached. That is not in legislation, so presumably that would have to be added, perhaps spelled out.

MRS. McCORMICK: Well, again, where ever there's money that may be deposited. . .

MR. AXWORTHY: It may be a person, or whomever. . .

MRS. McCORMICK: . . . in court. Yes, perhaps we would refine that to say that it would be to a trust fund or whatever.

MR. AXWORTHY: Would this particular formula, would that require the kind of recommendations we've heard previously that they need to have court-collected maintenance orders, that the court should be responsible for collecting them as opposed to individuals. That would do away with that?

MRS. McCORMICK: Well, it wouldn't do away with it but at least it would give lead time. You know, the courts are not moving all that quickly. At least it gives three months in which you know the order that you're counting on is there and then the next phase that I'm speaking of is bcause there is a central fund which is generating some revenue, the person could borrow against that fund, rather than being forced into the high credit . . .

MR. AXWORTHY: Let me clear that. You mean if someone was running into default beyond the three month period their own security deposit would allow them that that person could then collect six months, nine months against the revolving fund, and presumably there would be enough revenue in it to keep it liquid.

MRS. McCORMICK: Right, and I'd also say if somebody is prepared to set up that fund and enshrine it in legislation then somebody is going to be pretty darn sure that they actively try and collect to keep the money in the fund. And that's what we lack right now is somebody to really take that up.

MR. AXWORTHY: On Section 27(3) in the bill where there is a committal to jail if you don't anti-up the security, are you in agreement with that or do you think that other means of penalty should be found, such as a work order or whatever it may be? .

MRS. McCORMICK: Again, I would suspect that this is useless if it interrupts earnings. I don't know what's going to come out of this review of the penal system — perhaps if people were working in prison making money and that money while they were in prison was going to their spouse then jail might be the answer, but right now. . .

MR. AXWORTHY: What about the idea like they have in Saskatchewan where you have a community work alternative in the jails where you make money by doing whatever. Is that applicable?

MRS. McCORMICK: Okay, well again if the person has no job and you're going to create a job for them then that's one thing, but what happens more frequently is people are employed but they sort of scamper around and can't be traced. It's not that they're not working they're just not putting the money into what the order says they're supposed to be.

MR. AXWORTHY: Can you give me an idea of what are we talking about in the kind of family that you deal with in the Day Care Centre . . . when you're talking about a three month security deposit, what are we talking about. How much money? Are we talking $300., $600., $900. what?

MRS. McCORMICK: Again, it depends. . .

MR. AXWORTHY: But roughly, I mean what's the range.

MRS. McCORMICK: I've seen orders ranging upwards to five or six hundred dollars, but most of them are peanuts . . . the equivalent to the Day Care fee which is $120 in four weeks.

MR. AXWORTHY: So we're not talking about big sums, we're talking probably a range of $500 to $1,500 for security deposit?

MRS. McCORMICK: Exactly. The only reason — I don't know if this is answering somebody's question — but the only reason that I'm really concerned about this is that for many people it's the difference between making it and not making it and we can force people out of the work force and back onto welfare by not giving them this kind of support. For example, if two people split and one person makes $600 and they've got the kid. Now, welfare is no solution because they won't give you welfare on top of your salary. You can't make it on $600 a month, so what you wind up doing, as I've done this with people in my experience is sitting down and working out the nickels and dimes to see if

people really are better off working or on welfare. Because there doesn't seem to be any sort of thing that says, Okay, you keep your job and we'll help you out. Welfare seems to be an all or nothing thing. I hate the term disincentive, that's not the point, but it gives people no help. And just says, Well, so tough. The paying spouse is not going to pay. You just keep your job and slug it out and things get tougher and tougher and eventually welfare does become the only option. I rebel at that. .

MR. AXWORTHY: One thing I've been puzzling about as I've been listening to the briefs is that, and you endorse it yourself, that there is an implied assumption of the capacity to gain financial independence and we've had a tough time defining exactly what the that financial independence is. I think the best proposal I've heard yet is that it should be 90 percent of the average industrial wage index. But in the case of a single parent mother whose got some kids and they're coming to your Day Care Centre, what's the definition of financial independence. You're describing them basically as all living — 78 percent living below the poverty line. That is not a definition then of financial independence. So we're presuming something beyond that, even though they are working and their kids are in a Day Care Centre they are really not financially independent? So this would not apply to them.

MRS. McCORMICK: No.

MR. AXWORTHY: Well, then that makes it kind of unworkable doesn't it?

MRS. McCORMICK: Well, I'm saying that the basis of the order is that it gives the person . . . like the maintenance order brings the person up to a standard for their children, of financial independence — the combination of their job and their maintenance order.

MR. AXWORTHY: That's the point I'm getting at. The Act seems to imply that after a three year period a spouse who becomes financial independent, and I would think normally that would define someone who has got a job and has now sort of /moved away, but you're saying that's not realistic because they still depend upon the maintenance support to give them that extra edge.

MRS. McCORMICK: You see we're talking about spousal maintenance and we're talking about child maintenance. Now the spousal maintenance ceases I assume when the spouse has achieved financial independence . . .

MR. AXWORTHY: Whatever that is.

MRS. McCORMICK: . . . but the maintenance for the children continues.

MR. AXWORTHY: Yes. I'm still puzzled though because — and I hope I'm not confusing it — but it seemed to me that from your description of a single parent — mother primarily, or a single parent period, having their children in a Day Care Centre and is working that they still do not have sufficient income to allow them much latitude in the way they live. Presumably by the figure you gave that 78 percent are below the poverty line which I think. . .

MRS. McCORMICK: At or below.

MR. AXWORTHY: At or below. That's what bothers me about the bill then. How do we say someone's financially independent. Who's deciding that?

MRS. McCORMICK: Again I have no ready answer but I can carry a concern that I have out of the realm of simply being able to survive above the poverty level to another situation, if I can give it to you.

A couple graduated from pre-medical school with a Bachelor of Science degree. The couple jointly decided that if they could not both afford to attend medical school at the same time, he would go and she would work as a technician, you know at say, six, seven, eight hundred dollars a month, okay? At the end of four years, he graduates from medicine with an earning potential and the marriage is over. She has been and continues to be financially independent . . . according to what we would say, she's not going to be a charge on the welfare system or anything, she still has her capacity to earn her $700 or $800 a month, where her husband has the capacity to earn treble that. Now to me, not wanting to get pinned down to a definition, financial independence would hopefully be so that both people are living at a standard of living which is roughly equal.

MR. AXWORTHY: I don't want to turn around, but didn't you just give us a good case for the need for judicial discretion in the sharing of assets because that would be one way of levelling that situation out?

MRS. McCORMICK: No, I'm saying that in terms of the maintenance award, which again is . . . that's bound to be decided, like I don't have a right to go and say, I demand X number of dollars for my maintenance. I mean the judge is going to decide taking everything . . . so judicial discretion remains in there.

MR. AXWORTHY: Yes, but wouldn't it be the kind of case where if after the example you gave where someone worked and put the other spouse through school, they acquire some assets during the time, let's say a house or whatever, that she has earned and all of a sudden he gets his degree and figures, what the heck, she's been working all this time, I might as well find someone new that's fresh and all that kind of stuff, and out he goes and he takes half the assets, wouldn't that then be a good argument for her to say, I want to do what Mr. Taylor was talking about, the rebuttable presumption to ask for a higher share, that he shouldn't get 50 percent of those assets?

MRS. McCORMICK: But again, it's not an asset we're talking about, it's an earning potential.

Supposing they've lived in student housing all this time and they're poor as church mice, that they graduate and you know, their whole future is ahead of them.

I have no problem with the 50-50 sharing of whatever assets they've accumulated. What I have a problem with is that by this she's financially independent, but she has invested something that she is not going to see a return on. I'm really concerned about tying down a level of financial dependence based on something that's global because the average industrial wage or the minimum wage or whatever is irrelevant to people's individual circumstances.

I would say that financial independence for me is so that the two people outside the marriage are living as close to an equal standard of living — not as they were inside the marriage because that's not practical, because it costs more to live apart than it does to live together, but at least so that there is not wide discrepancy . . . one's not riding around in a Cadillac and the other's bussing it with three kids.

MR. AXWORTHY: I guess I'm still concerned why in one Act you permit or allow a high degree of discretion to decide those things, in the other we don't. I guess that's the thing that's still bothering me.

MRS. McCORMICK: But still I don't have the right to negotiate upon marriage breakdown . If I were to split with my husband for example, and I say to him "Look I need $400 a month to keep the kids, or I'll give you $400 a month to keep the kids, you know whichever . . . okay? We still have to go into court and get somebody else, a third party to agree to that and to commit us to it. Okay? There's judicial discretion in there if someone says, No, I mean, you should get $600 . . . I'll take the six or give up the six. So judicial discretion has a place I think . . . well it has to have in terms of maintenance awards, but not in terms of marital property.

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you, Mrs. McCormick. Ruth Pear, please.

MRS. RUTH PEAR: I'm sorry I wasn't here when you called my name before. I was at work and not able to get out of the commitment that I had at that time.

I don't have anything typed for you. I've sort of changed what I was going to say several times listening to the comments over the past several days. There's just a few things that I'd like to touch on that either haven't been mentioned or I think I something to add in addition to what you've heard before.

I'm very glad that Mrs. McCormick dealt with a more effective enforcement. I find her proposal attractive because it embodies some of the things that the Coalition originally argued for in guaranteeing child support payments. I sense that the Committee is not prepared to sort of go the whole hog with a central agency and a guarantee and I jotted down a few things that perhaps could go some way towards providing more effective enforcement.

In providing a larger number of enforcement officers and giving additional powers to them to file garnishment orders perhaps on their own initiative and pursue matters without the person who is dependent, who has been described so vividly having to take additional time off work or provide additional babysitting arrangements for repeated court appearances.

One note on judicial discretion. I'm opposed generally to it and I think it should only apply if it is carefully circumscribed. I'll only add to that a further comment that the wider the judicial discretion you have, the more invitation you have for increased litigation and increased work for lawyers, because the more uncertain it is the more likely people are going to say, "Well I'll try and see if I can get something out of it." If you have it spelled out it's 50-50 even if that works a hardship in an occasional individual circumstance, at least people know where they are and they are not likely to seek to have it changed or, if it's not workable for their relationship, they will go for the bilateral opting out. But if you have wide judicial discretion, people will be tempted to go with the standard marital regime but then apply to the court to see if they can get something from that discretion.

We've had a great many instances given to us of the poor spouse who has been so conscientious and so on and has been stuck with a situation in which they have made all the conttribution and now they are go only going to get half the assets. I would suggest to you that the predominant situation is the one that Carr admitted to you under questioning, that if you have judicial discretion it is more likely to work against the spouse who has not been earning outside the home. That will be the general effect and that's why I am opposed to it.

There has been some discussion of those who are caught in a situation of not having a continuing marriage relationship at the time that this bill goes into effect, but not having a final divorce decree — those that have been separated even though they have been separated for some time. What should apply to them? I'd suggest that you go back a reasonable period of time, I would suggest seven years, and make the property disposition challengeable back for that time. I don't think you can make it back very far into the past, but that's a reasonable limitation to me. While I am dealing with that, those whose marriages continue, I would say the standard marital regime, the full effect of the legislation should apply back to whenever it was they got married, even if that's 1890.

Dealing with financial independence, it seems to me one helpful concept here would be to look at

it as a kind of compensation. What would the person's earning capacity have been if they had not been married, if they had not entered into that relationship. That would give some guide as to what would be reasonable. That would deal with the example that Mrs. McCormick suggested of one spouse putting the other through school and then getting ditched. I've seen that, as a matter of fact, that particular example.

I would like to point out to the committee that this legislation comes at a time when there are now going to be some men benefiting from it as more women enter the work force and more women are fortunate enough to have jobs such as I have. In fact, I'm on the verge of a relationship myself in which, financially speaking on a 50-50 basis, I'm the loser but I accept that and even knowing that is the case, I would still prefer to have family assets include both pay cheques as it would be in this case. I think in order to be consistent with the principle of the bill, you have to include that. I think you have to include the family farm and the family business too.

Finally, I would like to commend the government for this legislation, all three Acts. It's been awaited a long time and I hope that even if there are some flaws in it that you feel that you are not able to deal with immediately, that you will pass the legislation and get it through and deal with amendments as the general public brings forward difficulties in further amendments in later years. You've come this far, please don't wait. Thank you.

MR. CHAIRMAN: There may be some questions. Mr. Pawley.

MR. PAWLEY: Mrs. Pear, at the commencement of your remarks you indicated that you were not favourable to judicial discretion except that it — I believe your words were, "only if it applied in carefully prescribed conditions." I was just wondering if you would like to expand on that as to what "carefully prescribed — carefully circumscribed" were the words, "conditions."

MRS. PEAR: If you are going to use it at all, I would prefer to have the legislation spell out the factors that the judge is to take into consideration and in which direction those factors ought to operate, so that the judge has a minimum of scope for personal bias or anything of that kind.

MR. PAWLEY: What type of factors would you have in mind, that would not open it up wide.

MRS. PEAR: Well, to my mind, if you have as you have a provision that deals with dissipation and you've dealt fairly severely with separation agreements already in existence and that whole situation. I don't see need for judicial discretion but I'm just saying if, after you've considered it in your judgment, then I would say draw it as tightly as you can. That they should follow the 50-50, unless there are exceptional circumstances and spell out instances where there's been very little contribution of any kind by one partner or something as severe as that.

MR. PAWLEY: Were you here the other evening when Mr. Schulman presented a brief and suggested that there should be provision which would relieve against a situation in which equality would, in fact, work against equity and he gave an example of where that could occur. Is that the type of thing that you would have in mind ?

MRS. PEAR: That sounds kind of general to me. I would hesitate to go along with that. I think it should be more tightly framed than that. The caution that I have is that if you . . .

MR. PAWLEY: His example, by the way, was someone who brought into a marriage a separate property — I believe it was a million dollars — and at the end of two or three years, the $50,000 that was accumulated to husband and wife, was split evenly so the one spouse kept the million plus half of the . . .

MRS. PEAR: That's right, I do remember hearing his example now. It seems to me that there is a couple of things, that you have the provision about dissipation which I think takes care of the sort of gross conduct things, the alcoholic, gambling, you know, obvious things. I'm trying to remember the details of that example. It struck me that there was something wrong about it at the time, but I can't remember it clearly enough now. I think I would have to say on balance that I would risk having some inequality there because the person brings a certain amount into the marriage, that's exempt, the stuff that comes from before is exempt and, as you say, we can't have it both ways. Situations in which something that is considered a less important contribution because it's the non-monetary contribution, you know, weighing less heavily, is the danger that I see. If you have judicial discretion included, there will be a tendency to drift in that direction, to view the less tangible contributions to the marriage as less valuable. What you have now is a very good statement and a very thorough following through of the principle that the partners to the marriage are deemed to be equal partners and their contribution is deemed to be equal. I don't want that disturbed very much and I think that it will be if you allow much tampering with it.

MR. PAWLEY: Mrs. Pear, you are a practising lawyer and it has been suggested that the bill is so riddled with imperfections insofar as drafting etc., etc. that it would be better to put it over for a few months and come back with it with a much improved, much better bill that would be therefore much better for all parties concerned if they were working with such an improved bill, even if there was some short period of delay.

MRS. PEAR: I can't hold myself out as any expert in Family Law. I am a member of the Family Law subsection, by the way, and I was present at that meeting, obviously voting in the minority. The thing

that has bothered me again and again about some of the things that I have heard said is that there seems to be a thread running through those comments of, "I don't dare speak out against the general principle because it has such wide acceptance, but I'm really queasy about it so I say, let's delay." I'm not sure if I'm being fair to the people who are saying that, but I sort of wonder, you know, if that's maybe not what I'm really hearing.

I would say, as I had just said earlier, go ahead and put it through and if it turns out that there is some things that are not workable, you maybe want a slightly different provision dealing with rights of third parties when something is sold and it turns out okay you didn't have the consent of the other spouse, you know, dealing with some of those problems or something; it turns out that there is something that's difficult. Then deal with them by amendment at that time, as the problems emerge. Don't put it off. I think the general public has now understood that this is coming about and generally are in agreement and accept it and say, yes, this is how we think about marriage now. Some lawyers have argued before you and practising lawyers, who have more experience than I've had, have said, "If you're going to do it, please go ahead and do it because I don't want cases hanging in limbo for a year while you're arguing over the sub-clauses."

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you, Mrs. Pear. Pat Cooper, please. Is Pat Cooper present? Is Patricia Layne here? Maybe I should explain to the committee that the Chair has been informed that this lady wants to address the committee but not on the bills that are before it. On a slightly related topic. Am I correct, Mrs. Layne?

MRS. LAYNE: Yes, Mr. Chairman.

MR. CHAIRMAN: Now the Chair would normally rule out any presentation that did not have to do with the bills before us, but I will be guided by the committee. What is your will and pleasure?

A MEMBER: Proceed.

MRS. LAYNE: Thank you kindly, gentlemen.

MR. CHAIRMAN: Proceed, Mrs. Layne.

MRS. PATRICIA LAYNE: Mr. Chairman, members of the committee. I am a private individual partaking in this public hearing to voice my feelings and opinions very briefly. I have become extremely interested in Family Law and the reform and changes to improve the amendments to work better in today's changing society.

One basic, extremely important factor, however, to be desperately in need of studying, which is an extension of today's hearings and has been for the past few days, is the whole realm of custody. It was briefly raised by Mr. Enns the first evening. Therefore, I hope you will forgive me if it does not directly fit into these hearings but is, however, very closely related to separation and to divorce and the aspects thereafter.

This aspect has become extremely important to me personally and . . .

MR. PAWLEY: I wonder if I could just interrupt and assure Mrs. Layne that she need not feel that she is speaking outside the terms of the bills because there are provisions dealing with custody so you should feel very confident that you are speaking to the subject matter before us.

MRS. LAYNE: Thank you very much, Mr. Pawley.

This aspect has become extremely important to me as it has played a major part in my life in the past two years. It has been a nightmare for me and my child when I was forced to give up my baby who was only one year and eleven months at the time. The judgment was handed down for reasons as follows: I was a working mother, therefore not having time to look after my child. I was considered a hard and calculating businesswoman. Because I happened to be of white descent and my child being of mixed racial background, I was declared it best for my child to stay with the minority group. In other words, racial prejudice.

I ask the members here tonight, is there no legislation, Acts or guidelines that should be adhered to for our social workers and judges to follow pertaining to custody matters. The only legislation that I have come across, and I have done some thorough investigation as to what pertains to custody, the only thing that I have come across "in the child's best interest." Is that all there is to this matter? If so, God help our poor innocent children who are caught in the middle of these perplexed problems and separation and divorces. These children who are too young to decide for themselves become the victims of government to decide their future and destination for them. Is it not high time that we, as responsible, educated human beings give the children a fair and just decision in custody disputes? Is there no avenue of justice for the innocent?

How competent are these Family Court social workers in their reports to the courts? I am asking these questions of you. Judges use these reports as Bible value in their decisions in the judgments they hand down and these come directly from the social workers hired by the Family Courts. Would any of you committee members be satisfied on a social worker's facts and evidence, who is appointed by the Family Court to spend approximately 30 minutes with you and your child and then decide on the future and destiny of that child? This is fact. This is what we are faced with today in our courts because of the tremendous lack of proper government legislation to act as guidelines and to be followed in custody aspects by social workers and judges who are the only key of justice we have in

custody disputes.

In a custody dispute, who are you disputing? The father or his parents? In my case, I was fighting the parents for my own child. Is this justice? What is classified as an unfit, unsuitable or undesirable mother? I would like anyone to give me a proper definition. In my case, unfitness was never the real issue. Should grandparents of a child become a factor in the custody aspect before a mother or a father are declared unfit? Should grandparents be allowed into the same arena to be declared equal in the rights of one's own child. I just want to give you one issue.

Who is responsible for the child's maintenance in a case like this?

Summary: This is a court case I have experienced personally. Therefore it is not hearsay. The evidence is on the records in our court files if you care to check them. Is it not imperative that we start realizing how important custody legislation is? I believe it to be more important than any property or money factors could ever be. If so, what can we as parents enforce into our legislation to protect our innocent children of undue pain and suffering and anguish they are forced into because we have not done our duty.

I am not through with the courts as yet. I have already spent more than $10,000 in court costs, lawyers' fees and disbursements. Needless to say this is a very expensive experience for me, however, I will not give up because my child means more to me than whatever money can possibly achieve.

I've just made a little note here for you gentlemen. I don't know how good this is going to go over, but anyway I call this heading, A Woman. I know there are quite a few around tonight.

A woman is desirable enough to marry. A woman is good enough to provide. A woman is good enough to get pregnant. A woman is good enough to carry a child. A woman is good enough to give birth to a child. A woman is good enough to give satisfaction, love, understanding, trust, financial support, patience, for the mere promise that the future will be a rose garden. After all these commitments have been fulfilled on her part, then she is no longer good enough to be a mother. Thank you.

MR. CHAIRMAN: There may be a question. Mr. Pawley?

MR. PAWLEY: I don't want to place Mrs. Layne in a difficult position because I gather this specific matter is still before the courts. I don't want to take the chance of jeopardizing the particular case. There was one comment. . .

MRS. LAYNE: I will give you just one statement, Mr. Pawley. I am just about at the bottom of the barrel anyway, so I don't think there is too much chance of too many problems arising. I can't go much lower, so go ahead.

MR. CHAIRMAN: Before you do, I should remind you Mrs. Layne, you're free to refuse to answer any question.

MRS. LAYNE: Thank you kindly.

MR. PAWLEY: There was one comment at the beginning that I wondered about, if you'd like to elaborate further. You indicated to yourself being white descent, the child being of mixed. . .

MRS. LAYNE: My former husband is part coloured. His father is black and his mother is white. Therefore he is classified as mulatto or part coloured.

MR. PAWLEY: Were you suggesting this had some influence in what happened?

MRS. LAYNE: Being that the child was of mixed racial background it was beneficial to him as far as the court judgment was concerned that the child stay with the paternal grandparents because of his racial background.

MR. PAWLEY: Was that part of a court judgment?

MRS. LAYNE: Yes.

MR. PAWLEY: An actual judgment along those lines?

MRS. LAYNE: Yes.

MR. PAWLEY: I'd be interested if you could provide me with a copy of that.

MRS. LAYNE: I've got a 508 page transcript if you want to see it.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I'd just like to ask some questions on the statement itself. I gathered from what you were saying that the basis for this judgment was a report by a social worker, a child care worker in this case.

MRS. LAYNE: Yes, in the event of a child dispute where a father wants custody and a mother wants custody, the Family Court intervenes and hires or maintains a social worker that goes to the mother's home and the father's home and then decides as to what kind of a report he will give the courts for their use.

MR. AXWORTHY: Did you have access to that report? Did you know what kind of assessments were being made?

MRS. LAYNE: I did not see the report before and I did not see it during my court case. I did however get a file of it from the court files later.

MR. AXWORTHY: So in effect the decision was being made based upon information which you

had no access to.

MRS. LAYNE: That is correct.

MR. AXWORTHY: I'm tempted to make a political statement, Mr. Chairman, but I'll desist for obvious reasons — considering the question of how much access to information we have in this province.

I'd like to go one step further though. You also made the case about the involvement of grandparents in this. Were they part of the court action?

MRS. LAYNE: Yes.

MR. AXWORTHY: And is that a normal practice?

MRS. LAYNE: I don't believe so. I hope it isn't.

MR. AXWORTHY: Why would it have happened in this case then?

MRS. LAYNE: I don't believe my husband would have received access or custody of the child because the prime reason for my divorce case was physical and mental cruelty. He had never worked during the period of our marriage. He had never given anything to the marriage. He was in school for four years out of the four and a half years we were married. After that he went broke on a six month venture which he tried on his own which I bailed him out on. So, therefore, he was not really classified a fit father at the best of times, therefore he hauled in his parents to help and back him and he got the child providing the child stay with the paternal grandparents. So, in essence I was fighting the grandparents more so than I was fighting him.

MR. AXWORTHY: It seems to me what you're recommending is that the laws of custody, the Child Welfare Act and all the rest of them that are combined be rewritten to give guidance to the courts as to what criteria should be used in custody cases, is that . . .?

MRS. LAYNE: I would like to ask you, Mr. Axworthy, in return of your question, what legislation is there?

MR. AXWORTHY: I don't know. I really don't know. I presume from your question there is none.

MRS. LAYNE: "In the child's best interest."

MR. AXWORTHY: That's the full definition.

MRS. LAYNE: That's it as far as I can tell.

MR. AXWORTHY: No other of these presumptions we've been talking about for the last week.

MRS. LAYNE: Right.

MR. AXWORTHY: Thank you, Mr. Chairman.

MR. CHAIRMAN: Any further questions? Mr. Graham.

MR. GRAHAM: Mr. Chairman, through you to Mrs. Layne. In the case of custody, did the court . . .? Perhaps I shouldn't ask this question, you don't have to answer it. Did the court also assess maintenance to you?

MRS. LAYNE: No, there was no maintenance ever involved. I didn't ask for maintenance. I didn't ask for anything.

MR. GRAHAM: No, but maybe you misunderstand me. Did the spouse or the grandparents who have the child, did they ask for maintenance?

MRS. LAYNE: Maintenance was never mentioned at all.

MR. GRAHAM: Very good. Thank you.

MR. CHAIRMAN: If there are no further questions, thank you, Mrs. Layne.

MRS. LAYNE: Thank you gentlemen.

MR. CHAIRMAN: That completes the list that I have of persons wishing to address the Committee. Is there anyone else present this evening wishing to speak to the Committee. If there is not, the time that was set aside for tomorrow morning's hearing will not be needed. Committee rise and report. Committee rise.