Legislative Assembly of Manitoba

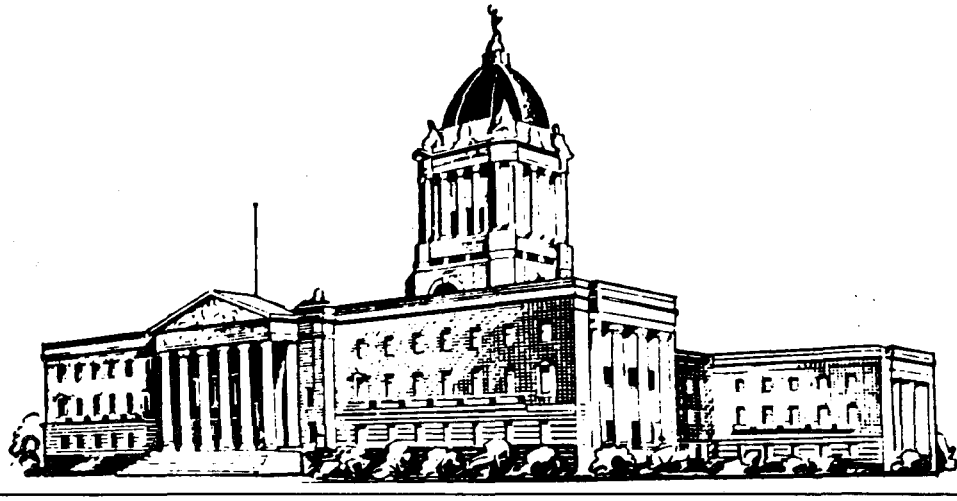
HEARINGS OF THE STANDING COMMITTEE

ON

LAW AMMENDMENTS

Chairman

Mr. Wally McKenzie
Constituency of Roblin



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Time: 2:30 p.m.

MR. CHAIRMAN, J. Wally McKenzie (Roblin): It has been brought to my attention that the Committee may want to discuss the length of time of briefs and I wonder if there are any views you want to place on this before we start.

MR. WARNER JORGENSON: Mr. Chairman, the rules provide that the Committee can determine the length of the presentations as long as they are in conformity with the rules of the House. I would suggest experiences in the past have indicated that perhaps there may be some agreement that there should be some limitation placed on the length of briefs. I would suggest that we do impose such a limitation. This of course that can does not include the questioning follows. It is an opportunity to elaborate on points that may not have been able to be made during the course of the brief. I would suggest that we limit them to twenty minutes.

MR. CHAIRMAN: Mr. Doern.

MR. RUSSELL DOERN: (Elmwood) I was just wondering for information, whether we have any indication at this time as to how many briefs or presentations or submissions we have to date.

MR. CHAIRMAN: There are 23 already on the list.

MR. HOWARD PAWLEY: I would ask Mr. Jorgenson if he would comment on two items then that would concern me about his suggestion. I don't know whether I heard the full scope of his comments. One, I would assume that any restriction on time would relate only as a guideline. On the 20 minutes, I feel that 30 minutes would be a better figure. I believe that was the figure we used before as kind of a guideline during discussions. Two, that there would be no restriction insofar as questions being asked by Members of the Committee, for clarification, expansion, elaboration of the briefs.

MR. JORGENSON: That's the point I made, Mr. Chairman. The time for presentation would be exclusive of questioning. The questioning would be in addition . I'm simply talking about the length of presentation of each particular brief. I don't have 20 minutes as a fixed time. I'm amenable to any reasonable suggestion and if 30 minutes is the agreed time that's perfectly all right with me.

MR. CHAIRMAN: Is the Committee agreed then, 30 minutes? Mr. Cherniack.

MR. CHERNIACK: I just want to confirm, I hope you won't have a hard and rough gavel on that 30 minutes, because I think that most people who present briefs when asked to keep within the 30 minutes, will do so, but if they go a little beyond, I would hope the Committee has discretion.

MR. JORGENSON: Well, I think, Mr. Chairman, that the Committee is always reasonable, as we are in the House. If somebody is making presentation that is of interest to the Committee and worthwhile, I am quite sure that additional time will be granted.

MR. CHAIRMAN: Thank you. For the benefit of those who are here today making presentations, I shall list the names of those who are already before me, and if there are more citizens who wish to have their names added to this list, you are at liberty to do so at any time.

Bill No. 5, the first one is Mr. Don Atwell; No. 2, Alice Steinbart; No. 3, Babs Friesen; No. 4, Mrs. Goodwin; No. 5, Murray Smith; 6, Millicent Laird; 7, Mrs. Muriel Smith; 8, Bernice Sisler; 9, Janet Paxton; 10, Sharon Granove; 11, Mrs. Pearl Cyncora; 12, Esther Kulack; 13, Laurie Mason; 14, Georgia Cordes; 15, Ruth Pear; 16, Mary Jo Quarry; 17, Jill Oliver; 18, Maxine Prystupa; 19, Evelyn Wyrzkowski; 20, Ralph Kyritz; 21, Charles Lamont.

Bill No. 6, an Act to amend the Employment Standards Act, there are two — the Canadian Association of Industrial Mechanic and Allied Workers and Charles Lamont.

Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I don't want to be presumptuous, but I would like to make some suggestions. Firstly, I would think that you would probably want to invite any other people who have not yet registered.

Secondly, I would like to suggest that we deal with Bill 6 first, because there are only two presentations and I think that probably the people in Bill 5 who have presentations to make will be interested in what each other says, but the short bill might be a courtesy to the two people involved.

Thirdly, Mr. Chairman, may I suggest that Bill 8 be laid over for the possibility that persons presenting briefs may yet appear. It occurs to me that the feature of the retroactivity might not be generally known and I think that there might be some people concerned enough to come if they had ample notice, and I am hoping that the press might yet find it possible to make the announcement in such a way that possibly even tomorrow there might be representation on Bill 8.

MR. CHAIRMAN: Mr. Jorgenson.

MR. JORGENSON: Mr. Chairman, if the two people who want to make representations on Bill 6 are here, and are prepared to go ahead, then perhaps that might be a good suggestion because they might be a long time waiting if they are not allowed to present their bills first, or their presentations first.

One other point I would like to make, Mr. Chairman, one of the members of the Committee was rushed to the hospital during the noon hour, and in those instances the Committee has a right to make a change in its membership due to illness and things like that. It was not possible to do so this morning because he was just taken to hospital after, so I wonder if there would be any serious objection to me making one change on the Committee. —(Interjection)— That's right, I'm saying the rules provide . . . I would like to move then that Mr. Blake be replaced by the name of — I'm looking around, to find out if there are extra here. Well, that proves a bit of a problem, perhaps we can do that later then.

MR. CHAIRMAN: Mr. Barrow.

MR. BARROW: . . . prior to the time he left and we have agreed to pair in these circumstances.

MR. CHAIRMAN: Thank you, Mr. Barrow. Okay, then I will, with the Committee's permission call Mr. Fast from the Canadian Association of Industrial, Mechanical and Allied Workers. Bill No. 6.

MR. FAST: Thank you, Mr. Chairman, I don't have a written brief, unfortunately-up with the speed and the short notice that was given to the organization about when the Committee would be sitting, I prepared some notes in writing, I hope that's satisfactory.

I'm appearing here on behalf of the Canadian Association of Industrial, Mechanical and Allied Workers which is as I am sure all of you know the union representing the workers who are on strike at Griffin Steel Foundries in Transcona. This has been a long and bitter strike going back to September 1976, approximately 15 months old as of this date. I don't want to go into a long elaboration on the background of the strike at this time.

I think when Bill 65 was presented to this Committee, I think it was the Industrial Relations Committee of the Legislature, last summer for hearings we presented a fairly extensive brief outlining our concerns at that time, and of course at that time we were looking at a bill which was proposing to amend the Labour Standards Act, bascially in two respect. One, to increase the statutory payment for overtime from time and one-half to time and three-quarters, but also to change the wording of the Act in respect of the compulsory aspect of overtime, and if I could just summarize that in a few words, because I want to come back to that point, I believe the legislation took the matter of overtime, as to whether it was a right of management under management rights, what is normally understood as management rights in collective agreements, took that prerogative of management away, in affect saying that if a contract was silent on the question of overtime — whether it was compulsory or voluntary — it would be assumed to be voluntary because management could not, under their management rights clause, assume that it was within the jurisdiction of the management rights clause. In other words they would have to negotiate compulsory overtime if they desired to have such a thing in a contract, and at that time our organization stated in very strong terms that we — well, we certainly supported that amendment as far as it went — but we opposed the proposition that compulsory overtime could be negotiated in a collective agreement. We could see no reason why overtime should not be voluntary. I don't think any reasons were presented to show why it should be voluntary. In fact, as I recall, virtually, in fact every brief that was presented on behalf of management at the hearings on Bill 65, in not one single case did a management organization — I refer you to such organizations as the Chamber of Commerce, the Manufacturers Association, Canadian Manufacturers Association and so on, a number of briefs presented by individual firms and organizations of firms such as the Aerospace Industry. Not one brief opposed the principle of voluntary overtime, and yet, this government, the government at the time, chose to introduce or to sustain or to allow the provision that compulsory overtime could be negotiated into collective agreements to stand and chose to take compulsory overtime out of the context of management rights. Which in effect, means that if a shop is unorganized, if there is no union, then overtime is voluntary. I presume, unless it's a condition of employment when a person is hired. It could still be a condition of employment, but in the organized sector of industry where unions have collective agreements it is something that could be negotiated into the collective agreement. That is the point that we fought.

On the question of time and three-quarters we stated jery clearly at that time, that the issue of time and three- -quarters was to us a secondary issue. It was not central to the debate on the overtime issue. It certainly had nothing to do with the strike at Griffin Steel and it had nothing to do with either preventing or resolving problems such as the strike at Griffin Steel, and yet, statements have been made in the House to the effect that this legislation was brought in because of the Griffin strike, and this statement has been made by members of the present opposition.

To us it is a secondary issue. It was brought in as a result, as they have said themselves, NDP MLAs, as a result of the Griffin strike and yet no one involved with the Griffin strike, and to my knowledge no one else, was particularly interested in increasing the overtime rate from the existing

time and a half. The fundamental issue involved in the whole debate was whether overtime be worked on a voluntary basis or on a compulsory basis. The problem at Griffin was not whether or not workers would work overtime, I think if you were to look at the record or speak to management at Griffin you would find that a great deal of overtime was worked in that plant over seventeen years that it was in operation, and it was worked on a voluntary basis without any problems. At times there were a lot of lay-offs as well I might say. In other words, there were times when there was a lot of overtime and there were also periods of time — in fact one year I am told where the equivlent of twenty-six weeks the plant was shutdown on lay-off. So it was a boom or bust type of thing at times because of the kind of product that this firm is involved in making which is steel wheels for railways, and it's a boom and bust thing at times. A lot of overtime was worked, probably too much overtime was worked, and the union made suggestions to reduce it. In fact, during the negotiations we suggested that one way of dealing with this was to hire additional employees and to train what you might call utility workers who would be skilled in a number of jobs in the plant so that if someone was sick or away on vacation, or whatever the case may be, that there would be a person there that could do the job adequately. This management rejected. They would prefer to work people on overtime than to hire additional employees and train them to do the jobs, to fill in when overtime was necessary.

One striker in fact said to me on the picket line one day, when I was enquiring about this, that he had worked 350 hours of overtime in one year, the year prior to the strike, which is equivalent to almost eight hours in a week. That is an extra day per week of overtime, and it cannot be said that these workers were not prepared to work overtime. Obviously they were. But when the company said to them in negotiations that we in future will tell you when you will work overtime, not ask you, they said that was enough, and they went on strike, by an overwhelming majority, for the simple reason that they were saying that my time is my own. That if the company requests overtime I am prepared to cooperate, the record shows that the workers at Griffin Steel cooperated for many, many years, there was never a strike prior to September 19, 1976, and there was never a problem with overtime, with the exception of a period in 1975 when negotiations were going on for a cost of living adjustment dealing with the very rapid inflation. At the time when the workers were under a contract providing for percent per yearnflation was ' 10 to 12 percent. My time is my own, it's as simple as that. It's not a statement against the concept of overtime. It's a statement against compulsory overtime.

I just want to say a few things about some of the statements that have been made in the House recently concerning the overtime issue and the Griffin strike, because it seems that whenever this subject is discussed the Griffin strike is brought into the forefront. I must say that our organization is becoming very frustrated with the comments that are coming from MLAs, particularly I am sorry to say MLAs who are presently in the opposition, who generally receive the strong support of labour organizations. Why discriminate? Because I'm saying that I haven't heard too many comments from the present government on the subject of the Griffin strike. I'm talking now about statements that have been made in the House. The previous government is defending its actions in dealing with this strike, and these are statements made by I'm assuming intelligent people, and I'm continually amazed by these statements, and the fact that they were repeated, in fact, new arguments have been brought forward. I can only imagine to discredit the strike or to discredit the union, because the facts are clear.

One argument that has been made is that overtime should be negotiated, not legislated. We agree. We have never argued otherwise. The dstinction we have made in our argument is this, that the rate of overtime, the rate paid for overtime hours should be negotiated. But it should be on a voluntary basis. That's all we've ever argued. No worker wants compulsory overtime. . No union wants to negotiate a compulsory overtime clause in the collective agreement where management is giving or taking the overtime. In a situation, and I want to bring this point up because it was brought up by the Member for Logan, Mr. Jenkins, who said that if unions want to negotiate 50 hours a week, that's their business. Well, I say this: If a company is talking about negotiating overtime, like on a construction project where that overtime is guaranteed week in and week out, where you're talking not about a 40-hour week, you're talking about say a 50-hour week or a 60-hour week, week in and week out, guaranteed that as a condition of employment, you will work 20 hours of overtime per week because that's the nature of the operation, you're talking about an entirely different situation than where you have a plant where overtime is completely at the discretion of management, it's given, it's taken away depending on the circumstances. When a person goes into a plant and knows that they're going to be working a 50 or 60 hour week, they know that before they're hired on.

Guaranteed overtime is a completely different situation than overtime that is coming and going on a day-to-day basis. You could be asked two hours ahead of time to work overtime that evening when you have something planned. That's the situation that I'm talking about and that's the situation that requires, I submit, a change in the legislation in this province. In fact, the Act could be amended so that where the union and the company consent to X number of hours of overtime per week, then it would be included in a collective agreement but consent is far different from negotiate.

MR. GREEN: What's the difference?

MR. FAST: What is the difference? Both parties are saying we want six or eight hours per week because we want to work, it's guaranteed, the six or eight hours a week is guaranteed, Mr. Green, but in a situation where it's not guaranteed, where it's entirely at the discretion of management and they

say, well this week you'll get it, next week you won't, then we're talking about an entirely different situation. We're talking about negotiating compulsory overtime; we're not talking about consenting to work X number of hours per week overtime.

MR. GREEN: . . . not talking about the sanctity of the 40 hour week.

MR. FAST: I make that distinction. It's an important distinction.

The other point is free collective bargaining. We have no objection to free collective bargaining. We have never argued for anything . . . The word "free" is used in this context, I submit, in a very loose manner. There is no problem with free collective bargaining. Let the union and the company, if they come to a strike situation, let the union and the company fight out their battles on the picket line if it has to come to that. It's unfortunate when it does have to come to that but let me remind you that no one goes on strike just for fun. When people go on strike, first of all they go on strike because the majority of the membership so wills democratically to withdraw their services. They will go on strike and they will return to work in accordance with the wishes of the majority. We're talking about a democratic decision here and we're also talking about a lot of suffering for workers and for companies in strike situations, which is regrettable, but sometimes it is necessary because there are strongly held views on both sides such as in the case of Griffin Steel. We have no objection to working out a solution through the economic pressures that generate on a picket line but when you have a situation where the company is in a position to . . .

MR. CHAIRMAN: Order please. Mr. Green.

MR. GREEN: I would appreciate, Mr. Chairman, first of all knowing whether there is a time limit, whether that has been agreed to. Secondly, knowing when the gentleman is going to speak to the bill. The bill is relating to a reduction of premium rates on overtime from time and three-quarters to time and a half, an inducement by the employer to have people work overtime. I would like to know if the gentleman is going to speak to the bill.

MR. CHAIRMAN: Thank you, Mr. Green. Order. I was almost tempted to bring the same remarks to the committee as Mr. Green has. You must remember, Sir, that you are being allowed to stray fairly wide and I would like you to keep your debate within the confines of the legislation that's before us if you possibly could.

MR. FAST: Very well, I'll be somewhat more brief. I prefaced my remarks by stating that it is not our organization that continually brings these issues up. These issues are coming up in the House in debate over this same bill and I want to refute some of them because they are misleading and false in some cases.

MR. JORGENSON: Mr. Chairman, I make the same point of order. I don't think that that is a concern of the committee to hear your views on what went on in the House. What we're concerned with is your opinions on the question of the subject matter of the bill which is — and I read the clause to you — it's the only operative clause. "Overtime rates with respect to an employee means a rate of wages 1.5 times as great as the rate of wages ordinarily payable to him for work done." It is to that particular clause that you should be addressing your remarks.

MR. FAST: Very well.

MR. CHAIRMAN: Thank you, Mr. Jorgenson. Carry on, Mr. Fast.

MR. FAST: What I am saying, if I could just summarize again briefly the context in which I was discussing this. As I was saying, as far as we are concerned as an organization, the issue that led to the introduction of this concept of time and three-quarters initially was not the issue that was primarily of concern, they were involved in the Griffin strike. We are saying that the way to deal with this problem of overtime is not to increase the time and half provision to time and three-quarters but to bring in legislation which will make overtime voluntary, which will make overtime voluntary, which will give the worker the right to refuse overtime if that worker so desires and, if the concern of government is to — I suggest, by the way, that that in itself will help to reduce the amount of overtime if that is the concern of members to reduce the amount of overtime work and to encourage employers to hire additional employees — No. 1, making overtime voluntary rather than compulsory will assist that objective, will work towards that objective; and secondly, that making overtime more expensive obviously will as well.

We are not concerned about the rate of overtime, we are prepared to negotiate the rate of overtime in a particular plant whether it's after two hours, after four hours, whatever the case may be. There are contracts which have a wide variation of provisions concerning what is paid for various kinds of overtime, whether it's a first assigned day off, second or whatever. We are saying that the centre

issue here is whether overtime is worked at all, whether it is worked on a voluntary basis or on a compulsory basis. The fact that, you know, comments have been made in the House about free collective bargaining and so on and so forth, in some way to suggest that the way the Griffin strike was handled, you know, was in an appropriate manner suggesting for example that arbitration would have been the solution. Well' I want to inform members and have it on the record that our union offered to the company to take this issue to binding arbitration before the strike started and long after the strike was underway and it was rejected by the company.

I also want to say that at no time did this union ever ask the government to legislate it back to work. That's completely false. We stated in a brief to all MLAs in February that all we were asking for was that the government introduce legislation making overtime voluntary so that this kind of strike situation would not need to arise again. We said we were prepared to fight our own battles on the picket line until, of course, the company decided to open the plant and bring 100 police down to the picket line and do it in that fashion, Sir.

MR. CHAIRMAN: Order please. Mr. Enns.

MR. ENNS: I really believe, Mr. Chairman, that we ought to come to some assistance to you as the new Chairperson. We're not fighting battles on the picket line here; we're not fighting the Griffin strike here. Several attempts have been made to indicate the reason that we are here is mainly to deal with a bill before us and I would ask you, Mr. Chairman, to confine the person that is making a presentation to the bill that's before us.

MR. FAST: I've completed my presentation.

MR. CHAIRMAN: Thank you, Mr. Enns. Okay, Mr. Green.

MR. GREEN: Mr. Chairman, I just want to make sure that I am perfectly clear as to what the gentleman is saying. He agrees that provided overtime is guaranteed by the employer, that the employees and the employer should be able to make an agreement for 50 hours a week of compulsory overtime provided it is a guaranteed 50 hour week by the employer.

MR. FAST: Fifty hours of overtime or a total . . . ?

MR. GREEN: No, a total of 50 hours. Make it 45 hours, make it 41 hours.

MR. FAST: I'm saying that where there's . . .

MR. GREEN: I am asking you whether you did not say that provided the employer is prepared to guarantee a certain number of hours overtime per week, that it would be perfectly agreeable that there be an agreement between the union and the company that overtime for that number of guaranteed hours be compulsory.

MR. FAST: Well, compulsory in what sense? In the sense that the workers themselves consent to work that time and that everyone would be required to work that time, yes, then it's a democratically made decision.

MR. GREEN: That's fine. That's my first question.

My second question is, that you say that you are not interested in the rate of overtime being legislated, the rate of overtime wages being legislated. Would you therefore say that the present premium of time and a half should not be legislated and that that be something which is negotiated between the employers and the employees to be more direct to the bill. Would you agree that the time and a half should be taken out and it should be amended to read straight time and that the balance should be negotiated between the employer and the employee?

MR. FAST: Well, I can't agree to what you're saying there because of course not everyone is negotiating. Some are not organized in unions and in a position to negotiate.

I see nothing wrong with having a basic standard set out in the Act.

MR. GREEN: You did indicate earlier that you are not interested in the . . .

MR. FAST: . . . beyond what already exists.

MR. GREEN: Oh . . .

MR. FAST: Let me say that, beyond what already exists I think it's fair.

But let me make another comment on that point. That more and more trade unionists are coming to the view that overtime in general is a bad thing, is an unnecessary thing, or should be an

unnecessary thing, that wages should be sufficient during regular working hours to compensate employees in a satisfactory manner, and some have gone so far to suggest that the way to eliminate overtime is to make it voluntary — if that's wqt your concern is — and pay half time for overtime, and I don't think you'd find too many workers working overtime.

MR. GREEN: My question to you, Sir, is, do you believe that the rate of pay for overtime should be — and if you want to dodge by saying "unorganized" — in an organized plant completely subject to collective bargaining between the employer and the employee?

MR. FAST: You're talking now beyond the time and a half in the statutory positions?

MR. GREEN: No. You indicated that you are not interested in a legislated rate, and I'm asking you whether the legislated rate which is now being legislated, namely a reduction — (Interjection) — May I continue? Namely, a reduction from time and three-quarters to time and a half; that you are not interested in that legislated rate, you prefer that in an organized plant it be the subject of collective bargaining between the employer and the employee.

MR. FAST: Well, mw you are asking for my personal views because I'm not speaking here for the organization. es, I have no objection to that if it's on a voluntary basis.

MR. GREEN: In other words you are saying that the rate could be straight timsprovided that the employer and the employee then would set their own time for overtime.

MR. FAST: Yes, if it's on a voluntary basis, right.

MR. GREEN: And a voluntary basis in your opinion is if the owner guarantees an extra four hours per week every week, and the man agrees to work it, then the owner should be able to require that employee to work 45 hours guaranteed per week in accordance with their agreement at straight time.

MR. FAST: You're saying that that's what they would negotiate, straight time for five hours and that guarantees a week.

MR. GREEN: I'm saying that it would be legal according to your views that they negotiate such a rate.

MR. FAST: No, I'm saying where they consent, put a consent to it. That's different from negotiating

MR. GREEN: Yes, and you je saying it is presently not legal for an employer to negotiate straigh time for overtime.

MR. FAST: That's right.

MR. GREEN: You're suggesting that it would be a better situation if an employer and an employe could agree that they would work 45 hours of guaranteed time, that that could be worked at straigh time, that that should be legal.

MR. FAST: At straight time.

MR. GREEN: That's right. You said that you don't want the legislated rate if they're organize provided they agree and it's a guaranteed rate, they should be able to agree to it. So then what you'v said — and you can correct me if I'm wrong and then I will show you what's in the transcript — tha provided the employer and the employee agree that there will be a guaranteed number of extra hour five a week; that the employee should be required to work that guaranteed number if he agrees t enter into that arrangement in the first place; and that it would be legal to do it at straight time rathe than at time and a half.

MR. FAST: Well, you'rsposing a very hypothetical situation because of course no union is going t agree . . .

MR. GREEN: If it's legal they would agree.

MR. FAST: No, but you're posing in terms of two steps. First, they would agree to the five hours the they would negotiate the overtime rate. I suggest to you that's not the way it would work because r one would agree to work five hours per week compulsory overtime and then later on agree to do it straight time.

MR.green; Sir, I have known over the history that employees when they are in trouble and c certain basis will agree to many many things. I'm not asking you hypothetically as to whether they w

or will not agree. That's something that neither you nor I respectfully can answer. I'm asking you whether it should be legal, in accordance with your views, that the laws of Manitoba should make it possible and legal for a group of employes to negotiate a guaranteed workweek of 45 hours a week with the employees who chose to work it, at straight time.

MR. FAST: Well, you know I really don't know how to answer that because I think it's a preposterous situation.

MR. GREEN: Well then, I suggest that you look at your initial submission and see how preposterous it actually is.

MR. CHAIRMAN: Any more questions to the witness? Thank you, Mr. Fast. I call Charles Lamont. Mr. Lamont is not present apparently.

Bill No. 5, an Act to suspend the Family Maintenance Act and to defer the coming into force of the Matiral Property Act and to amend certain other Acts and make provision required as a consequence thereof. I call Don Atwell. I call Alice Steinbart.

MS. STEINBART: I of course am here. I wouldn't miss it. I'm Alice Steinbart and I am speaking on behalf of the coalition on Family Law. And before I go any further I'd like to say that this is my fourth set of Public Hearings on Family Law.

I attended the Public Hearings for the Law Reform Commission, and the Public Hearings for the Intersessional Committee last fall and the Public Hearings last spring for the Standing Committee. And this is the first time that we have been given so little notice to appear.

I know there's a number of organizations and individuals who would like to present but the notice which is going out to them is very very short and you may not hear from them as a consequence.

I'd like to give you some background information on the coalition on Family Law. The coalition was formed in February of 1976 after the Law Reform Commission made its final report on Family Law. We spent many hours studying this report and we came up with our own recommendations.

We approached various organizations and individuals and asked them to study our recommendations and the reports of the Law Reform Commission. We had a pamphlet printed which explained the recommendations for reform. As well the pamphlet contained a mail-in postcard which had some 12 points on it. People were asked to complete this postcard indicating whether they agreed or disagreed. Over 500 of these postcards were sent in to the Intersessional Legislative Committee which held Public Hearings on Family Law.

These postcards were sent in from all over the province and from a broad range of people. If you will look at these postcards you will see that people wanted family law reform based on equality. The coalition has been active in co-ordinating the efforts of all the organizations and individuals who want family law reform.

On November 9th of this year the coalition had a meeting at which almost 100 people attended, representing a wide range of organizations. The coalition adopted the position that the Marital Property Act and the Family Maintenance Act must not be repealed or suspended or delayed, but must come into effect on the dates on which they were proclaimed. This position was supported by the following organizations, and there's 25 of them: Manitoba Action Committee on the Status of Women; Manitoba Association of Women and the Law; Voice of Women; Canadian Congress of Women; UN Association; A Woman's Place; Women's Liberation; Manitoba Teachers' Society; Manitoba Librarians' Association; National Council of Jewish Women; NDP Status of Women Committee; Liberal Association of Manitoba; YWCA; University Women's Club; Provincial Council of Women; Diocese of Rupertsland; . . . Advisory Committee on the Status of Women; Provincial Organization of Business and Professional Women's Clubs; Winnipeg Council of Self-help; Committee for Women Artists Winnipeg; Manitoba Association of Social Workers; Women's Institute; Manitoba Association of Registered Nurses; Law Union; Manitoba Federation of Labour.

Our position has also been supported by many individuals as the Attorney-General and the Premier can indicate, they have received a great many letters and phone calls.

This government has decided to repeal or suspend or delay the Marital Poperty Act and The Family Maintenance Act because of the problems involved in these Acts. After having read Mr. Mercier's speech given in the Legislative Assembly on November 29th of this year which introduced Bill 5, and having sat through all the public hearings of the Intersessional Committee in November and December of last year, and the deliberations of this committee in January, February and March of this year, and the Public Hearings and deliberations of the Legislative Committee in May and June of this year, and after having attended a number of meetings of the Family Law subsection of the Manitoba Bar Association at which these Acts were discussed, and having spoken with various lawyers and MLAs, I believe I have heard most, if not all, these problems. "And I intend to review these problems," and I put that in quotations.

Problem No. 1. There is no need to change the law as women can get all the equity, all the equality they want under the present law. Let us look at the present law.

Manitoba has a system of law called "separate" as to property. That is the legal name for it. It means that the person who bought the property or to whom it was given owns it. Thus, for example, and this is the most common example, if a husband is out working and earning money and the wife is

at home looking after the home and family and not earning money, then everything they acquire during their marriage is his unless he gives some or all of it to her. Since she did not buy it, she cannot own it. It is not hers, it is his. This is what happened to Irene Murdoch.

She did not earn any money. She did not have any money, so she could not buy the ranch or any of the machinery on the ranch that they had acquired over their 25 years of marriage. That ranch was all his because he had earned the money and he had not given any of the ranch to her by putting her name on the title. The title was in his name alone.

It did not matter that she worked as hard as he did on the ranch. It did not matter what work she had done. She did not have any money with which to buy that property and therefore it was not hers. This is "separate" as to property. This is the law in Manitoba. Each spouse has their own separate property.

That property is acquired by each separately from earnings or from gifts. If, as is becoming more common, the family home is registered in their joint name, then they both own it because the law deems that the husband has given one-half of the house to the wife. That is a gift to her. She has not earned it. It has been given to her, and under those circumstances she will share one-half.

The same thing applies to joint bank accounts. If both their names are in the bank account it is considered in law that the husband has given one-half of the bank account to the wife. This is a gift to her.

The present law does not recognize a woman's contribution of staying home and looking after the home and family. This is the law in Manitoba and purportedly the law that gives us all the equality, all the equity that we need.

The new Marital Property Act changes that. The new law says that rather than having "separate" as to property there should be community of property. This again is a legal term and it means that the couple are a community, that what they acquire during the marriage is shareable equally; that they have contributed equally in their own way to the marriage; that money alone is not what counts but that a woman's contribution of looking after a home and family is an equal contribution giving her an equal right to share.

No longer would, as happens now, the husband be able to walk off after a marriage breakdown with all or almost all of the assets and the woman walk off with nothing or almost nothing except the children. The new laws will leave each person on a relatively equal footing on marriage breakdown.

Problem No. 2. The new laws will cause undue interference in the lives of Manitobans. People already run their marriage on the principle of equality and we do not have to have this legislation. We have no business legislating for the minority of the population who do not run their marriage as an equal partnership.

The answer to this is to look again at the present law. When people marry now, whether they like it or not and whether they know it or not, certain terms are imposed by law unto their marriage. The law imposes a marriage contract on them. This of course may be undue interference. However, this is what is happening now under the present law.

And what is imposed on people when they get married? The law says that the property each spouse acquires separately during the marriage will not be shared equally unless that spouse gives the property to the other. Now the majority of Manitobans, when they get married, assume they are entering upon a life together, that they are sharing their lives together and everything in their lives together, for better for worse, for richer for poorer. They do not know that the law is imposing on them not equality, not sharing, but separation — separation as to property.

The new legislation which is based on the principle of equality in sharing is only bringing the law in line to what most Manitobans feel it already is.

Problem No. 3. The new legislation is offensive because it is retroactive. People got married under the old law, and now you are changing the law and imposing a different law on them. One solution that has been proposed is that the law must apply only to future marriages, or to assets acquired in the future, that is, after the law comes into effect, that people who are now married will not share any property they have acquired up to now. —(Interjection)— Let's hope not.

An alternate solution has been proposed which would allow one spouse, who is married under the old law, to avoid the new law, is unilateral opting out. This means that one spouse could, within six months after the legislation is passed, tell the other spouse without the consent of that other spouse that everything they have acquired to date would not be shared. The Coalition does not accept any principle to avoid equal sharing, there must be equal application of the new laws to all Manitobans who are presently married with the possible exception of those who separated before May 6th, 1977. Critics of the new legislation want an unequal application of the new laws. They use the terms of: no retroactivity or unilateral opting out, but these terms mean the same thing as unequal application of the new laws.

Problem No. 4. The new laws will be a boon to the gold-digger — the woman who marries a rich man for his money and the next day or the next year divorces him and takes half of everything he has. This is really an interesting commentary on those critics' attitudes towards women. The new laws do not help gold-diggers. All assets acquired by a person before marriage are non-sharable unless that person intends to share them with a spouse. Thus if a gold-digger marries a rich man she will not take half of everything he has, but only half of what they have acquired during their marriage together.

Problem No. 5. The Marital Property Act says that commercial assets such as bank accounts

some farms, businesses, revenue homes, will be shared on separation. Such sharing is inequitable because a husband would be forced to sell his business or farm in order to pay off the wife. One proposed solution is that there be no equal sharing of commercial assets. Another solution is to have judicial discretion, no doubt because it is felt that Judges, in exercising their judicial discretion will not force sharing of commercial assets. The Coalition opposes any recommendation to the effect that commercial assets not be shared as well as any recommendation that there be unlimited judicial discretion. This alleged problem of forced sale of businesses or farms in order to have equal sharing is simply non-existent.

Section 35 of the Marital Property Act specifically states that a spouse who must make an equalizing payment to the other spouse will be given time to do so. Critics have also argued that a wife should not share in the commercial assets because she simply has not contributed to them, that the husband has gone out into the work force and built up the business while she has stayed home to look after the home and family. The Coalition's position is that marriage is an equal partnership and that includes everything, that each person contributed in their own way to the marriage. One of the reasons the husband has been able to go out into the work force to build up a business is because he does not have to look after a sick child, or take the child to the dentist or to the doctor, or worry about all the responsibilities a homemaker has.

Problem No. 6. The equal-sharing provision in the new law is too rigid, too inflexible. It does not allow for those cases where it would be unfair that there be equal sharing. Therefore, it should be left up the judge, through judicial discretion, to decide whether there should be sharing and who should receive what. In reality, of course, the Marital Property Act allows for limited judicial discretion for those rare hardship cases where it would be grossly unfair or unconscionable to allow equal sharing. The Coalition opposes unlimited judicial discretion because there is still an ingrained belief in our society, and the judges are not exempt from this belief, that women have not contributed as much as men in respect to the acquisition of property. If there is judicial discretion, would there be 50-50 sharing of all assets? More likely, there would be equal sharing of the family home and the family assets, but not equal sharing of commercial assets.

Problem No. 7. The new laws are going to increase litigation and give lawyers a tremendous amount of extra work. Interestingly enough, the critics who have stated this are often the same people who have argued that there should be complete judicial discretion rather than 50-50 sharing, and fault-finding in determining maintenance. Both these provisions will increase litigation. There of course, will be increased litigation when these laws come into effect, because that is the name of the game. Whenever you have new, asset. Thus, the wife could not take off with half the car and leave the husband with the whole of the debt. The creditor would have the right to go against the husband for the whole debt, and the husband could turn around and recover it, one-half from the wife. Or the creditor could go against the husband's half of the car and the husband could turn around and recover one-half of the debt from the wife. However, if it is still felt that the creditor is somehow prejudiced, then an amendment can be made now, to the Act, to protect the creditor. There would be no need to suspend or delay the law in order to do this.

Problem No. 9. Problem No. 9 is the reverse of Problem No. 8. Critics of the legislation have said it prejudices a judgment debtor or bankrupt, or someone who feels he or she may ever be in that position. Or in other words, it benefits a creditor. It is now fairly common practice for someone who is in a risky business, to protect his assets by transferring them all to the wife. The new legislation, of course, will transfer one-half of the family assets and the family home back to the husband. Thus, if a man had no assets but a number of creditors, suddenly the creditors have some assets they can realize against. This, of course is a policy decision between creditor's rights and debtor's obligation. Which one do you want to protect? It is strange, however, that in Problem No. 8, the critics are concerned about protecting the creditors whereas in Problem No. 9, they are concerned that the creditors will receive an unexpected protection. Of course, it still remains possible for the couple to agree to opt out of the equal sharing law and to transfer all of the property into the wife's name, thereby protecting the husband from these creditors.

Problem No. 10. Tax problems. I believe that to date there has been only one tax problem that has become evident, and it deals with the disposition of family assets on January 1, 1978, and possible Income Tax or Capital Gains Tax which might be payable. On January 1, 1978, if the Marital Property Act comes into effect, then each spouse will own one-half of the family assets. Using the traditional situation where the husband owns the family assets, then under the terms of the federal Income Tax Act, he will be deemed to have disposed of one-half of these assets to the wife. Therefore, if there has been any increase in the value of these family assets since their acquisition, this will be a capital gain and subject to capital gains tax. The solution that has been suggested is to have the federal government amend the Income Tax Act so that there would be no tax in this situation. However, it is not necessary to repeal, suspend, or delay the Marital Property Act in order to overcome this problem. All that is necessary is to delay the implementation of those sections of the Act which allow for immediate equal sharing of family assets, make an interim provision that the family assets be shared on separation, where there'd be no tax implications, and bring in an immediate sharing of family assets in the spring, after the federal government has amended the Income Tax Act.

Problem No. 11. The Acts are unworkable. This is a very unspecific criticism and therefore difficult to deal with. However, using our background information, we shall attempt to pin down some of the supposed unworkability. One example that was debated at great length by the Legislative

Committee last spring, was the case of four men who owned a hunting lodge. The new Act, of course, gives their wives an interest in this hunting lodge. It was felt by some that this situation would not work, as the women might not get along, or one might try to force a sale, etc. The whole premise on which this argument is based is that women are catty bitches who cannot get along. On this basis, are you going to stop these Acts from coming into effect? Are you going to stop equal sharing simply because you believe some people might not get along? —(Interjection)— I don't think anybody ever expected you to legislate that. —(Interjection)— Not by the Coalition. I don't know who's expecting you to do that.

Another example of how these laws were considered by the critics to be unworkable deals with the sale of family assets. It has been said that if one spouse advertises in the want ads for sale of a family asset, such as a chesterfield, then any purchaser would have to get their joint signature. In fact, the law does not require that at all. It would be possible for one spouse to sell such an article without the consent of the other. But that spouse would still have to account to the other for one-half the proceeds. The purchaser would not be involved.

Problem No. 12. It has been said that it is impossible to classify family and commercial assets, that the only way you would be able to tell the difference, is by litigation. Of course, it is true that whether or not some property is family or commercial asset will depend on the facts of each situation. A car, for example, may be used for business, and therefore a commercial asset. Or on the other hand, it may be a family asset. It is, however, very difficult to see how such a problem would require the repeal or suspension or delay of this legislation.

Problem No. 13. The new laws will increase marriage breakdown. It is difficult to see how a law which recognizes marriage as an equal partnership will cause marriage breakdown.

Problem No. 14. The new laws will take the romance out of marriage and make it strictly an economic partnership. Again, it is difficult to see what is so romantic about the present inequitable laws.

MR. ENNS: I can understand that. I'd likely have trouble in understanding that.

MS. STEINBART: The new laws certainly set up an equal economic partnership, but it is nonsense to say that therefore marriage will never be anything more. It is nonsense to suppose that married couples will saddenly, come January 1, 1978, stop feeling love, commitment, respect, trust and so forth for each other.

Problem No. 15. Fault. The new law allows the woman to take off, on a whim, with the milkman and still receive maintenance. In reality, the new law says no such thing. The Family Maintenance Act states each spouse has the right to seek maintenance from the other, but it also states that maintenance will only be given, depending on a number of factors, which can be summed up on the basis of need.

MR. CHAIRMAN: Order please. I remind you that you have five minutes left.

MS. STEINBART: . . . I'm not so sure. Does that spouse need maintenance? In addition, each spouse is to try to become financially independent. Thus, the woman who takes off with the milkman may not need maintenance because he is supporting her. Or she may not need maintenance because she is working, or she is capable of working. On the other hand, she may need it because the milkman left her, and she may have custody of the young children from her marriage, and she must stay home to look after them. If she does not receive maintenance, what will happen. She may have to go on welfare, or she may try to survive on just child maintenance. Either way, the children suffer. The Coalition opposes fault-finding. It is difficult to say only one person is at fault. It takes two to make a marriage and probably takes two to break it. Fault-finding is negative, punitive. Maintenance should not be used as a reward or punishment. All too often it is the children who are hurt. If one spouse is encouraged by the law to find fault with the other, the resulting hostility of recalling all the incidents cannot but affect what that spouse will say to the children about the other parent. This is damaging to the parent-child relationship. Even worse, it may sometimes be necessary to call the child into court to give evidence against one parent. After all, there are very few witnesses to intimate family affairs and often only the children are available.

Problem No. 15. Enforcement of maintenance orders. The federal Law Reform Commission, in one of its working papers on divorce, has estimated that 75 percent of all maintenance orders are uncollected. The system of enforcing orders is just not working and the Family Maintenance Act does not substantially change the old system. The Coalition has always wanted an improved system of enforcement. But under no circumstances are we prepared to state that the new laws must be repealed, suspended, or delayed until a better system is found. The new laws must come into effect now. We are convinced that the government is aware of this problem and intends to do something. We would, of course, appreciate an official statement from you to that effect. We are prepared to work with you on this problem, but the problem itself does not require the repeal, suspension or delay of the Acts.

Problem No. 16. Drafting or technical detail. There are a number of areas where a word may be changed or a phrase added. For example, in Section 8 of The Family Maintenance Act, a judge may make an order for separation. It has been questioned whether a judge has the right to refuse to make

an order because of the word "may" and if so, on what grounds can a judge refuse since a person should not have to prove fault or grounds in order to obtain a separation. The solution, of course, is to change "may" to "shall." These drafting amendments have, because of the study given to the Acts by lawyers, by the Family Law Subsection of the Manitoba Bar Association, by the Law Society Seminar , probably have all been pinpointed. It is possible to make these amendments now, at this session, without delaying the implementation of the new Act.

The Coalition is unable to find any problems which are so great, so insurmountable, or of such magnitude as to require the repeal, suspension or delay of The Marital Property Act and The Family Maintenance Act.

On the other hand, we find innumerable problems with Bill 5. Bill 5 is inequitable, incomphrehensible, unworkable, and a dog's breakfast.

A MEMBER: I've heard those words before.

MS. STEINBART: You're right; they're coming back at you.

It has been said that if you allowed The Marital Property Act and The Family Maintenance Act to go into effect next spring, you would have the people of Manitoba pounding on your doors to change the laws.

Well, you have decided to change these laws and you have the people of Manitoba pounding on your doors not to.

There are so many problems with Bill 5 that it is possible, during this presentation, to list only a few.

Bill 5 is inequitable. It will perpetuate the old unfair laws which do not recognize a wife's contribution of looking after the home and family.

Let me give you a few case histories. I'll change the names, of course. Betty Smith is 63 years old, has been married for 36 years, and has not worked outside the home for any of her married life. She has two grown children. Bill 5 means that when she separates she will receive one-half of the value of the house, because her name is on the title, and her share equals $12,000, plus some furniture, and maintenance of $400 per month. Her husband, John, however, will have his share in the house, $6,000 in bonds, $500 in a bank account, his car, his fairly expensive carpentry machines and tools, which is his hobby, his valuable coin collection, his pension, and some of the furniture.

Since John will be retiring in a few months, Betty's maintenance will be reduced sharply. While John, on retirement, will receive Canada Pension, his company pension, and old age security . . .

MR. CHAIRMAN: Order. Your time has expired.

MR. PAWLEY: Mr. Chairman, I wonder if you'd agree that we would not interpret the rule so strictly, that it would be more used as a guideline. In this particular case, I would just point out that the coalition does represent many many groups. I don't believe that Ms. Steinbart has too much ground to cover yet, and certainly the brief has not become repetitious but in fact is moving very much into the meat of the issues before us, so that I would urge that we allow some flexibility in this case.

MR. JORGENSON: We are quite prepared to permit some flexibility, Mr. Chairman, but I wonder if Ms. Steinbart could tell us how much longer she . . .

MS. STEINBART: It's not much longer, it's hand written notes, it's doubled spaced and I've crossed off a number of things.

MR. JORGENSON: I can tell you that for a person who claims not to have very much notice, you've got a lot of notes.

MS. STEINBART: I have a lot to say.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Thank you, Mr. Chairman. I think there are a number of new members in the legislature on this committee, and I don't think we've had the opportunity in the past to hear the briefs that undoubtedly some of the older members of the legislature have, and in particular I think the Attorney-General hasn't had the opportunity, and I think that it would be useful for him, and it certainly would be useful for myself if we did have the opportunity to hear the criticism on Bill No. 5, which the speaker is just getting into.

MR. CHAIRMAN: Well, ladies and gentlemen of the committee, I'm at the mercy of the committee. We had a ruling at the start that the witnesses be heard for thirty minutes, so I'm not sure . . . discretion.

MR. JORGENSON: We could probably argue longer than it takes Ms. Steinbart to finish her notes, so I would suggest that she proceed.

MR. CHAIRMAN: Carry on.

MS. STEINBART: Thank you. Well, John, on retirement, will receive Canada pension, his company pension, and old age security. Betty, in two years, will receive only old age security.

Another case: Catherine Doe, at 33, has been married for 12 years. She has two young children and has custody of them. After her marriage, and before the children were born, she worked as a teacher for five years, putting her husband Gary through medical school. During the time when she earned an income, they acquired no assets other than some furniture, which has now been disposed of. After her husband became a doctor she quit her job. On separation she received half of the value of the house as her name was on the title. After the mortgage is paid, she will get $15,000.00. She also received $200, being one-half of what was in the joint account. Her husband received the revenue home, which was in his name alone, and which has a net worth of about $10,000; 40 acres of land near the city which again was in his name alone, and which he bought for speculation purposes which has a net worth of $23,000 his half of the house; his car; his half of the joint account bank account; $1,000 in bonds; a second bank account of $500 plus his medical practice.

Catherine, not being able to get a teaching job, takes a clerking job in a store. She knows she will probably have trouble ever getting a teaching job without taking further university courses. She has lost years of seniority, pension plan benefits, holiday benefits, and experience in her field. And still she does not share equally in the property which they acquired during their marriage. She has an order for maintenance against her husband for herself and children, but Gary is behind on his payments. She is trying to enforce her order, but in the meantime she cannot count on regular payments, and is having great difficulty managing her budget, as the money from the sale of her house has not yet been paid.

This is the law that Bill No. 5 is going to preserve. Bill No. 5 is unworkable. Is it working for Betty Smith? It's certainly working for John, but is it working for Betty? Is it working for Catherine Doe? Is it working for Elaine X, who after 12 years of marriage, and after working eight of those years, must now go through a lengthy and expensive court hearing to prove that she has an interest in the property acquired during the marriage, since it is not in her name. This means that she must find cheques or receipts which may be several years old, or check bank accounts to show her pay cheques were deposited into the joint account, and that the money from this account was used to buy particular assets, and so on. It is a long, difficult process. Is the law working here?

Inequities go on and on. It is incomprehensible that you should want to perpetuate this law. Bill No. 5 is creating a dog's breakfast. As a lawyer, I don't know what to tell my clients. What do I advise them? What law applies? Do I say: "Maybe you will have to prove grounds, then again, maybe you don't. Maybe you'll get maintenance, then again, maybe you won't. Maybe there will be equal sharing, then again, maybe there won't. Maybe you can expect to receive x number of dollars, then again, maybe you can't. Maybe you'll have to go on welfare. Maybe you'll get a separation, then again, maybe you'll be thrown out of court because you don't have grounds." Do I tell my clients: "You decide, because I don't know what's going on."

The coalition is very concerned about what will happen to the principles in the new laws. We are getting two different messages from you. On the one hand, you say you believe in equality, that you will not touch, or destroy, or water down the basic principles of these acts. But on the other hand, we are getting a totally different message. You have appointed a hostile committee to review the legislation. You have appointed Ken Houston to this committee. Ken Houston has publicly stated before the legislative committee last spring his opposition to this new legislation, and I intend to quote Ken Houston. If you will check Hansard last year, for June the 4th, '77, Saturday, turning to page 464 and going on, you will find this quote. Ken Houston, and I quote: "But let's get to the nitty of it. I have told you that the ladies can get all the equity, all the equality they want under the law as it presently stands." Next page, Mr. Houston says: "I am opposed to this bill in principle as being uneccesary." Again, Mr. Houston: "Well, before you get into that, the whole premise of my comment was that the law is presently sufficient. As far as I'm concerned, this legislation is uneccesary." Then when he was asked by Mr. Sherman what he thought the principles of the bills were, he replied: "The principles? I can't find something I would call the principle on either bills." And the last quote, where he was asked by Mr. Axworthy: "Do you believe there should be total equality between two partners in a marriage and all its ramifications?" Mr. Houston: "No." Just a simple "No", doesn't believe in it.

Myrna Bowman, another appointee, has also stated her views publicly. She would like to see major changes to the basic principles in the new act. She does not want the law to apply equally to all Manitobans, but wants some provision which would allow one spouse to avoid equal sharing without the consent of the other. She does not want equal sharing of family assets during the marriage, but only on separation. She wants maintenance to be dependent on fault. And at one point, and perhaps she's changed her opinions now, she wanted maintenance for women limited to one year — only one year — unless there were special circumstances.

Another message that we are getting — which conflicts with your current message that you believe in equality — is your decision to delay this legislation after two and one-half years of study and to study it some more. We all know that giving something further study is a common tactic used

to stop something completely. Furthermore, last spring, during the sittings of the legislative committee, and then again at third reading, Mr. Sherman said that he was authorized by his caucus and his leader to seek a delay of this legislation, but that in the interim, and for an interim measure only, bring in an amendment to The Married Women's Property Act allowing for equal sharing of all assets on separation, with such a division to be a rebuttable presumption. Well you have brought in the delay, but not the interim measure to share. That's another message we're getting.

Then we have received a whole series of messages from you from your own conservative MLAs. They are quotable quotes. For the time being, we will not put names to the quotations, but we will give you the quotations. —(Interjection)— You may know them.

Quotation number one, by one of your cabinet ministers, and given in the legislative assembly last spring during third reading: "The women of Manitoba don't need this legislation." —(Interjection)—I will not carry on if you name them.

Quotation number two, one of your MLAs during the vote last spring on family law, called across to the MLAs opposite voting in favour of the legislation: "Now we know who's henpecked."

Quotation number three, by one of your MLAs during conversation to one of the coalition members in the hallways in the legislature: "I wear the trousers in my family." —(Interjection)— I assure you it is not all his.

Quotation number four, by one of your MLAs during a meeting with the coalition that we had in the summer of 1976 with your caucus, and while we were discussing sharing of bank accounts, was heard to whisper to a fellow beside him: "I'm not sharing my bank account with my wife."

Quotation number five, by one of your cabinet ministers during third reading of the bills last spring, in a dismayed voice: "Do you know this includes your pension, your insurance?"

Quotation number six, by the executive assistant of one of your cabinet ministers this fall to an unbeknownst-to-him coalition member: "I hear the coalition on family law has 50,000 members. I din't even know there were 50,000 women in all of Manitoba."

These quotations, the feelings, and the attitudes expressed in them are in direct conflict to your stated position that you believe in equality. If you believe in equality, then bring in The Marital Property 8ct and The Family Maintenance Act now, with those amendments that do not destroy the basic principles. Thank you.

MR. CHAIRMAN: Thank you. Mr. Pawley

MR. PAWLEY: Ms. Steinbart, you are a member of the Manitoba Bar Association?

MS. STEINBART: No, I have attended their family law subsection meetings, but I'm not a member.

MR. PAWLEY: You made reference to the family law subsection of the Manitoba Bar Association — do you know what their position is with respect to the this legislation? I believe they had a meeting of October 20th of this year . . .

MS. STEINBART: Yes, they had a meeting recently and they stated they would like to see some amendments, but they want the acts to come into effect now.

MR. PAWLEY: Both acts?

MS. STEINBART: Both acts.

MR. PAWLEY: If there was a reinsertion of grounds in The Family Maintenance Act and a widening of the discretion in connection with the commercial assets, would you consider that to be a retention of the basic principles of this legislation?

MS. STEINBART: No. That would be a watering down, or a destruction of the principles in the act.

MR. PAWLEY: Would you give the committee your view in respect to pension plans, insurance policies, as to how they should be dealt with in relationship to this legislation.

MS. STEINBART: I believe they're considered commercial assets under The Marital Property Act, and they're shared on separation, and that's acceptable to the coalition.

MR. PAWLEY: Now you indicate, and I found it a most interesting suggestion, that in regard to the tax problem, that the legislature should deal with that by simply suspending the application of part two, I believe it is, of The Marital Property Act — the immediate vesting — until later in the year, until such time as there was a distinct and clear announcement from Ottawa pertaining to the taxation situation. Do you see any other tax problems beyond that dealing with the immediate sharing, the community property portion of The Marital Property Act?

MS. STEINBART: I am not a tax lawyer. I have been in touch with one tax specialist, and I've gotten some notes from him, and as far as I can see, there are no other problems that are evident at this time.

MR. PAWLEY: So as far as you have been able to obtain from your information, by simply deferring those provisions for a few months there would be no other tax problems from any investigation that you have undertaken in this regard.

MS. STEINBART: That's correct.

MR. CHAIRMAN: Mr. Doern.

MR. DOERN: Mr. Chairman, I wanted to ask Ms. Steinbart a couple of questions. She made continual reference to the fact that if both names of the marriage partners were not included on the lease or title of the house . . . I suppose that this would mean that the home was probably in the name of the husband. But it's my understanding that regardless of whether the names are on the title or not, that in a separation that both parties have equal title to the family house, is that not so?

MS. STEINBART: Under the Marital Property Act. Under the old law, there is only dower rights.

MR. DOERN: Secondly' was it your organization that sponsored that rally a couple of weeks ago?

MS. STEINBART: Yes.

MR. DOERN: The rally was characterized as largely an NDP front and I just wonder if you could comment on whether or not you have support from all political parties in your organization?

MS. STEINBART: We most certainly do and there are a large number of people in our organization who are very upset by being characterized as an NDP front. We have been working on this a long time, very hard, it has been non-partisan, we've all gotten along, we almost totally agree. It doesn't matter what party we belong to and we are not out for any political party. —(Interjection)— Pardon me? To be called an NDP front? I assure you there are some who are definitely not proud to be called that.

MR. DOERN: A final question. There has been, I suppose, considerable publicity given to the new Acts intended to be passed by our administration and considerable number of booklets circulated so that I assume that many people have read the booklets, followed the legislation, read the newspaper accounts and believed that in fact this legislation is in place. Do you think that a delay in implementing the legislation introduced by our administration may cause considerable confusion in the public?

MS. STEINBART: Well, it's certainly causing confusion for me. I think for other lawyers too but I'm not sure they're willing to admit it because they dislike this law so much. For the public, I'm not so sure they're quite as confused as that because I think they really believe that the law is equitable. When I get people into my office, they're absolutely shocked to find out that there is no equal sharing. They are shocked to find that we have these ancient inequitable laws. That's not what they thought the law was. But there is confusion, yes, because we don't know what's going on. I don't know, you know, which law is going to apply. We don't know what's happening. When a client comes into my office and her grounds are iffy for a separation, I don't know what to tell her. You know, should she apply or shouldn't she apply? What's going to happen? I've got a case of a woman, started an action for her and her grounds are very very iffy. She's going to be tossed out of court if we go back to the wife and children, so what is going to happen to her? You know, she wants custody of her children, she wants separation custody, maintenance and costs. And she's going to get tossed out of court so what's going to happen? She's going to have to start again under the Child Welfare Act; she won't be able to get a separation; she might get custody and maintenance for the children but not for herself.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: The cases you presented, not the quotes but the cases, are they real life cases?

MS. STEINBART: No, they are sort of a composite, put it that way.

MR. PARASIUK: When you were itemizing the problems, you listed a whole set of the so-called problems. I think you listed 16 or 17. No. 16 was headed "drafting and technical problems." The reason why I focus in on that is that my understanding was that the only reasons for the delay were in fact drafting and technical problems. Yet, when you went through the whole list of so-called problems, you list that as No. 16. It would strike me that if in fact drafting and technical problems are the only real problems and you, yourself, put them way down the list, you don't yourself consider them very relevant.

MR. PARASIUK: Oh, I would like to see these drafting problems cleared up, certainly, and I hope

that's the only thing that's going to be changed.

MR. PARASIUK: With respect to drafting problems, are there any drafting and technical problems that are serious with respect to the Family Maintenance Act?

MS. STEINBART: That's debatable.

MR. PARASIUK: You see, I've heard a lot of people say that there are problems with the Act. People tend to think of the Act as being probably the Marital Property Act.

MS. STEINBART: No, there are drafting things that we would like changed or drafting problems in the Family Maintenance Act that could be cleared up too. None of the drafting problems are so insurmountable that we have to repeal, suspend or delay these Acts right now. They can be done now. They've been pinpointed; they've been identified.

MR. PARASIUK: You've already pinpointed the drafting problems say with the Family Maintenance Act . . .

MS. STEINBART: The Family Law subsection has made out a list of these areas.
MR. PARASIUK: And they are quite minor. They could be passed quite quickly then.

MS. STEINBART: Oh certainly, they wouldn't be . . .

MR. PARASIUK: Where have you submitted the list. Have you submitted it to the Attorney-General?

MS. STEINBART: I believe he's probably gotten a copy.

MR. PARASIUK: Okay.

A MEMBER: I'm sorry, I didn't hear that answer.

MS. STEINBART: I believe he's probably gotten a copy. —(Interjection) — Well all right, I'll put it this way. When you look at his speech given in the House, it's very very close to what the Family Law subsection said.

MR. PARASIUK: Was it formally sent to him? Was it formally sent to the Attorney-General?

MS. STEINBART: I don't know for certain.

MR. PARASIUK: Okay. Could we get a copy of it as well?

MS. STEINBART: You'd have to ask the Family Law subsection.

MR. CHERNIACK: Who is that?

MS. STEINBART: Well the Chair this year is Myrna Bowman.

MR. PARASIUK: Okay. One last point from me. You are obviously a very strong proponent of the new Acts and from the testimony and from the reading I've done, Mr. Houston is obviously a very strong proponent of the old Acts. Just to satisfy me that there was some attempt to achieve some type of balance, have you yourself been asked to serve on this review?

MS. STEINBART: No, why would I be asked?

MR. PARASIUK: Just for balance.

MS. STEINBART: I have one thing I want to add. Dealing with the Family Maintenance Act, it is said that it is unworkable. In fact it's working right now. It's in effect right now. I've made two applications already under it and I've talked to I think three judges so far and a few other lawyers and some other people, court clerks and so forth, about the Act and they think it's great. They love it. They're trying to get used to the forms, you know the forms are different and it takes a while to sort of get used to them and there's a few things there that they want to get straightened out, like how do you work it, but the Act itself is working great. It's just beautiful.

MR. PARASIUK: So you've made two applications under the Act.

MS. STEINBART: So far, yes. It got immediate relief for my client. Usually it takes . . .

MR. PARASIUK: Oh, so there was an actual judgment?

MS. STEINBART: Well it's interim, it's an interim relief. It's into an *ex parte* interim relief and . . .

MR. PARASIUK: So in fact it's working right now.

MS. STEINBART: Oh yes. It's great.

MR. PARASIUK: And it's working quite easily.

MS. STEINBART: I can go in one day and get it the same day. I can get relief, I can get maintenance for her, interim custody, prohibition orders . . .

MR. PARASIUK: What happens under the old Act? old Act? Would it take a long time?

MS. STEINBART: Well, not necessarily a long time but you would have to have service. There wasn't any *ex parte. Ex parte* means that you didn't have to serve the . . . well, usually the husband, so you'd have to just serve . . .

MR. PARASIUK: From your professional perspective as a lawyer and experience as a lawyer, the new Act is working very well with respect to family maintenance.

MS. STEINBART: Much better than the other one, that's for sure.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Ms. Steinbart, I would like to just, when we are talking about the Family Maintenance Act, refer you to comments made by the Attorney-General when he introduced this legislation that one of the reasons for deferring the legislation was to the effect that concern had been expressed at this big meeting of lawyers that's referred to from time to time as the Act not setting out anywhere the grounds upon which the court must grant or refuse a separation order. Do you feel that it's necessary that The Maintenance Act set out a number of grounds in order that one obtain a separation order?

MS. STEINBART: No, I believe it was the intention of the legislation that there would be no grounds but, you see, this is the problem. The way the Act is worded, it says "may", the judge may make an order for separation. So it has been questioned, since that's not mandatory — it's discretionary — the judge properly can refuse to make an order. So if he has the right to refuse, how does he determine what grounds he has to refuse it on? Does he have to look at the old common law grounds of fault or what? You see, this is one of the problems, the technical details or drafting problems that's been put forward and all you have to do is change "may" to "shall" making it mandatory, the judge shall make an order for separation on application from.

MR. PAWLEY: Ms. Steinbart, I was interested in your comment as a member of the Subsection of the Manitoba Bar dealing with Family Law and Myrna Bowman being the chairman of that section, I was wondering if you would be aware whether the subsection advised Mr. Mercury, the president of the Manitoba Bar Association, that the subsection felt, that subsection dealing with family law, felt that Bill 5 ought not to proceed but in fact we should proceed with the Family Maintenance and The Marital Property Act. Are you aware whether Mr. Mercury was so advised before a statement of this group?

MS. STEINBART: I don't know if a letter went forth but it would seem likely that, you know, the subcommittees ought to obviously inform the president. I don't know if it did go forth but I would imagine that would be the necessary formula of what would happen.

MR. PAWLEY: Well, has there been any other body of the Manitoba Bar Association that has voted by way of a resolution in support of this legislation that we have now before us?

MS. STEINBART: No, the Bar Association as a whole has never considered it' only the family law subsection has considered it but never the whole association. I would imagine that when Mr. Mercury is speaking, he cannot speak for the whole Bar Association because they've never discussed it. He must have spoken just on his own behalf.

MR. PAWLEY: So you feel he was speaking only on his own behalf and not on behalf of the entire Bar as was the impression which seemed to be given in the press release.

MS. STEINBART: Well, I don't know how he would be able to speak for the whole Bar if they haven't considered it.

MR. PAWLEY: I don't either.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Thank you, Mr. Chairman. Before I ask Ms. Steinbart a question, may I direct a question to the Attorney-General and find out if he could furnish us with a copy of the statement of the family law subsection to which Ms. Steinbart refers?

MR. MERCIER: We could attempt to find that, Mr. Chairman, if we have that.

MR. CHERNIACK: Well, the reason I mention that, Mr. Chairman, is that Ms. Steinbart said that the Attorney-General's speech in the House follows very closely the opinion given to him by the Family Law. That's my understanding. So I assume, therefore, that they must have it.

MR. MERCIER: We may have it but certainly anything that was said wasn't based on the Family Law.

MR. CHERNIACK: Well, I'm not questioning that but if you have it, could we obtain it?

MR. MERCIER: Yes.

MR. CHERNIACK: Thank you, Mr. Chairman, then I direct a question to Ms. Steinbart where she spoke about, I think she said the law was beautiful and I would be inclined to agree. It has some imperfections in appearance but it's beautiful. But she spoke of the relief that she has already obtained under the law. I would like to know, without trying to extract a breach of confidence in respect to her cases, whether there are orders that may have been made and actions taken on the basis of the present law and of present family maintenance law which might go out of the window once this law is passed and which therefore then changes the grounds for the order to those under the Wives' and Children's Maintenance Act. Is there a danger that people will be adversely affected who already have that order?

MS. STEINBART: Well, I may have been reading Bill 5 wrong but it seems to me in reading it that Bill 5 reaffirms that any orders made under the Family Maintenance Act will still remain in effect even though the Wife and Children's comes back.

MR. CHERNIACK: Is that section 7? Which section?

MS. STEINBART: Yes, it would probably be section 7.

MR. CHERNIACK: Well, may I ask for your opinion as to just what it does say? As I read it, "any application that has been brought under the Maintenance Act and not completed, shall be continued under the Wives' and Children's Maintenance Act and any order made under the Family Maintenance Act shall be dealt with in every way as though it were an order made under the Wives' and Children's Maintenance Act." Would you say that on an application for variation, alteration or discharge, would the grounds for the separation order be under the Maintenance Act or under the Wives' and Children's Maintenance Act if this is passed?

MS. STEINBART: Well, to my knowledge, there has been no actual final order given under the Family Maintenance Act. It's only interim relief so far. Family Court is so far behind I think they're getting dates in February but it's only interim relief that's been given so far so there has been no final order for separation.

MR. CHERNIACK: Well, now I'm not talking about an order of separation, I'm talking about an order of maintenance and I'm thinking in terms of people who may have adjusted their relationship as to whether they are actually separated or not on the basis of the present law andif this bill were passed, then would you say that they could still demand maintenance based on need without having to prove the fault as it now exists under the Wives' and Children's Maintenance Act?

MS. STEINBART: No, it would be possible for say the husband to make an application to vary under the Wives' and Children's and, depending on the facts, it's possible that the order for maintenance might be reduced or thrown out.

MR. CHERNIACK: Then we are in agreement. Finally, Ms. Steinbart, you mentioned the card which you say I think 5,000 people signed, the list of . . . pardon?

ms. STEINBART: You mean the post . . .

MR. CHERNIACK: The list of 12 . . .

MS. STEINBART: Over 500, over 500 sent it in.

MR. CHERNIACK: Oh, I'm sorry. I misunderstood. Could you furnish us with a copy of that to each member so that we'll know just what it is.

MS. STEINBART: Of the postcard?

MR. CHERNIACK: Yes.

MS. STEINBART: Yes, I don't have that many. I just have the one copy today but I can do it.

MR. CHERNIACK: In due course?

MS. STEINBART: Yes.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: Any more questions for the witness? Mr. Corrin.

MR. CORRIN: Ms.Steinbart, I have a question which is possibly of a more practical nature and it arises as a result of your remarks pertinent to that instance, the case of the lady who you indicated was probably going to be precluded from proceeding under the Family Maintenance Act and would be forced to proceed for custody of her children as a sole alternative under the Child Welfare Act. You indicated that she well may be determined by the court to be the parent most suited to retain custody of the children in that particular instance. I'm wondering because in my practical experience I've always thought that it's very important for the children to have the stability of the family home. I'm talking now about the residence itself. You know, they have roots in the community and that imparts a sense of, well for lack of a better term, neighbourhood, and in a sense I think that gives the child or the children an opportunity to retain their stature and stability within a community and give them a sense of roots. Having said all that, I'm concerned, under the Child Welfare Act, would the wife possibly find herself precluded from being able to retain the home even though she'd been able to retain custody of the children?

MS. STEINBART: Well, in this particular case, she doesn't want to move into the home. It's out in the country and she wants to work in the city but yes, normally, if this home is in the city, she might have problems. She certainly wouldn't be able to do it under the Wives' and Children's.

MR. CORRIN: No, but under the Family Maintenance Act, I was under the impression that a judge now had the new power to suspend partition proceedings for instance, so regardless of fault, the children could stay with the mother couldn't they?

MS. STEINBART: That's right.

MR. CORRIN: So wouldn't this be a hardship? I'm concerned about it.

MS. STEINBART: It would be.

MR. CHAIRMAN: Any other questions for the witness? Thank you, Ms. Steinbart, for your presentation. I call Babs Friesen.

MS. GEORGIA CORDES: Mr. Chairman, my name is Georgia Cordes and Babs Friesen phoned in on behalf of the YWCA intending to put the YWCA name down. I was unaware of this until yesterday and I had also put the YWCA name down to present our brief at a much later time on the list and so with your permission, I would like to present the YWCA brief.

As I stated, my name is Georgia Cordes and I represent the Young Women's Christian Association. We presently have a membership of 4,000 women whom we represent. The YWCA includes women who reflect a wide range of political belief and women who are active in all three major political parties. The YWCA was well represented at the family law rally held at the legislature on November 28th. There were a considerable number of its membership present including those from the board, committees and staff.

The official YWCA position in the current discussion on family law is that the family law legislation regarding marital property and family maintenance should be implemented as proclaimed. If during the infancy of these laws it is found that amendments are necessary, then the regular amending procedure used for any other piece of legislation would suffice. Such procedure should allow for fu

opportunity for public input.

Since the beginning of 1975, both the provincial government and many organizations and individuals have been exercising the democratic process to bring about family law reform. During that time, the YWCA was invited to and did submit on three separatie occasions' both written and oral briefs, each reflecting months of research, effort and a cross-section of input from the membership.

The YWCA has again recently submitted a fourth written brief to the Family Law Review Committee.

The current government received no major indication from the public to initiate change in the family law legislation as it was proclaimed. We are concerned about the government's response to the positions of the professional body of lawyers and their respective clients at the apparent exclusion of the concerns of Manitoba women who form 51 percent of the population and their families.

In previous years, undue hardship and needless litigation — if they could afford it — faced a disproportionate number of women. Where was the concern of the majority of lawyers then? A great number of organizations and individuals have actively supported such reform for a number of years. Family Law Reform Commissions across Canada have been coming to the same or very similar conclusions. Both Quebec and California have enacted family law reform very similar to, or the same as, the progressive legislation that we have desired for so long. Surely all of these inputs cannot be ignored and must be given a fair and sincere public hearing.

The YWCA protests the government's apparent foregone conclusion that the Marital Property Act and the Family Maintenance Act will be stalled with indifference to public representations. We protest the possible use of the Law Amendments Committee as a rubber-stamp body. The YWCA questions the establishment of the Family Law Review Committee in accordance with our appeal for the legislation as proclaimed. In the absence of clear and concise terms of reference for the Committee as well as government direction and short and long term time guidelines for family law reform, the purpose of such a committee is, at the very least, confusing. Any true committee of review should have a membership reflecting a cross-section of ideas, knowledgeable about a wide range of family law practices and potentials, understanding of the very systems operating in the family life of the average Manitoban and finally who have proven themselves to be as fair, unbiased and objective as possible on the part of the general citizenry.

The YWCA has long supported the concept of equal sharing between spouses of family assets during the course of a marriage and of commercial assets at the termination of a marriage. Marriage should be an economic and social partnership of legal equals. As such, each spouse has equal responsibilities and equal rights. The responsibility is that of both of the spouses to mutually and constructively decide areas of responsibility for each. The contribution of a spouse working in the home, though different, is of equal value to the marriage partnership as that of a spouse working outside the home. The YWCA believes that 50-50 sharing must be written into all aspects of family law. Without this, even the most well-intentioned judges and family courts have presented prejudicial decisions. These have been based on unrealistic attitudes concerning family life and the roles women take in it. Laws reflecting equal status will promote uniform equality of treatment.

The Marital Property Act does allow for mutual contracting out and very limited judicial discretion. We believe this process to be of sufficient major to handle obvious inequities which may arise. The YWCA supports the concept of retroactivity to correct many injustices in existing marriages. Current family laws do not reflect the contributions of women in family life nor do they reflect equality between spouses. The YWCA supports the no-fault concept present in both the Marital Property Act and the Family Maintenance Act. The adversary or a confrontation approach inherent in the fault concept is outmoded and emotionally scarring for any family as a method of arriving at a fair solution. The termination of the marriage is seldom, if ever, a result of one spouse's fault and the other spouse's innocence.

Now I'd like to read to you just a very short paragraph from the Law Reform Commission of Canada, talking about the no fault concept. "Legal concentration on grounds for divorce such as fault clearly reinforces the adversary and accusatory elements of a crisis situation. Anybody who lives in a family or any other close relationship knows that this is no basis for arriving at mutual understanding and yet such understanding is essential to any constructive solution and ought to be a primary goal of legal policy. Even separation as a condition of divorce stresses division."

The YWCA strongly endorses the principle of mutual support of children, spousal support and interdependence during marriage. The mutual support principle after marriage is realistic and necessary where children are involved and insofar as either spouse could require a period for readjustment toward a financially independent state. For those spouses whose earning ability has been impaired or lost due to age, health or long term home responsibility, we maintain that a cutoff date for the provision of maintenance is not often realistic and, if so, should not be set.

The YWCA commends the government for introducing legislation to abolish interspousal taxation and interspousal succession duties. This direction is consistent with the underlying principles of the family law reform legislation. Through this meeting today, the YWCA is conveying its frank concern about the future of equitable family law in Manitoba. Premier Lyon has stated that the government is committed to the equal sharing principle, thus we all appear to share a common goal. The task now at hand is for the government to indicate to the public how individuals and organizations such as the YWCA can best assist in the implementation of prompt, equitable and

relevant family law legislation. Let us show what progressive really means to the current Progressive Conservative government. Thank you.

MR. CHAIRMAN: Thank you. Mr. Pawley.

MR. PAWLEY: Yes, you indicated that members of your organization, the YWCA, had participated in the demonstration in front of the Legislature. Those who participated in the demonstration, were they only members of the New Democratic Party who demonstrated?

MS. CORDES: Certainly not. I personally take it as an offence for someone to suggest that any group organized me to turn out to that rally. I assure you that it was completely spontaneous on my part.

MR. PAWLEY: Now, in your work with the YWCA, you have had opportunity from time to time I am sure to deal with mothers, wives, the victims of broken marriages and I was wondering if you could — and I notice you did indicate you support the no-fault principle. Have you had many practical examples of mothers who were unable to obtain maintenance because of the present Wives' and Family Maintenance Act?

MS. CORDES: I have made personal acquaintances through the YWCA and through friends of my husband and mine, of wives who have not been able to receive maintenance on their own behalf and even if they have received maintenance, it certainly has not been any kind of a fair share or an equal share that reflects the kind of input that the wife has put into the marriage. Now certainly, I might add, although I don't work in that department of the YWCA, I'm a volunteer, I do it strictly on my own, but we do have a counselling department for women and I'm sure that our counsellors do run into many of these cases and also through the Women's Centre, run into many instances of of this.

MR. PAWLEY: You expressed concern in connection with the makeup of the board of review that was established by the government to examine the family law, indicating that you felt that there should be a better cross-section. Could you offer some suggestions as to how you feel there could have been a better cross-section of representation in the board of review established by the present government?

MS. CORDES: Well, I think it's important to certainly have one or two lawyers perhaps who are working in the area of family law but not just family law as it is here in Manitoba. You know, I am concerned that perhaps there's not been an effort made to find out about family law, how it exists in other places, Quebec, in California, and what the potentials are and it concerns me that the lawyers who have been appointed, certainly they're well versed and well experienced in family law as it has been practised in the past and we maintain that's an unjust system. One thing that bothers me is there has been no attempt to put any of the — for lack of a better word — the consumer, an average Manitoban who is part of a family, a woman or a man, on there who might be able to reflect on what these laws might say to them personally or who has been involved on behalf of various organizations on behalf of organizations such as YWCA, or any organization who might have some knowledge and interest in this area, not necessarily a person who is a lawyer. It bothers me, the kinds of comments that have come from the people who sit now on the commission. I am concerned that it will not be a fair-minded review committee, that there are biases already built in.

MR. PAWLEY: Understandably.

MR. CHAIRMAN: Any more questions? Mr. Enns.

MR. ENNS: Well, Mr. Chairman, through you to the person appearing before us, and without treading on that area of 50-50 sharing and without in any way encroaching on that principle, the comment has been made through numerous briefs and representations and correctly so that there is never one person at fault in terms of a marriage breakup, one I think that most of us can accept. But I wonder if the group that you represent cannot also accept the fact . . . The mere fact that a marriage breaks up indicates that somewhere along the line the 50-50 concept of contribution to a marriage the 50-50 concept of responsibility to a marriage has broken down? Would you accept that as a fair statement?

MS. CORDES: I'd have to give it more thought, unfortunately. I do feel that in the legislation that the whole matter allowing for judicial discretion can certainly handle cases in which the contribution to the marriage, maybe in the eyes of most of the people concerned with the case, has not been 50-50 where it is so glaring and obvious.

MR. ENNS: Well, Mr. Chairman, I had really no further questions. I wasn't particularly worried about the question contained, you know of particular interest in the bill or of judicial discretion, I was simply asking the witness for a personal opinion and if she would like, that surely the fact that

marriage breaks up is possibly the best evidence possible that 50-50 sharing of responsibility and contribution to that marriage wasn't being made by either partner.

MS. CORDES: No, I don't think you can say that.

MR. ENNS: Oh, well then in other case, you suggest to us that in most instances, the fault of the marriage breakup is evenly divided as you would like us to evenly divide the commercial assets . . .

MS. CORDES: I don't think that the fault should be considered when discussing the issue of assets.

MR. ENNS: Pardon me, Mr. Chairman, again I didn't want to leave that on the record. I wasn't discussing the sharing of assets. I was simply asking for . . .

MS. CORDES: Contribution to the marraige.

MR. ENNS: . . . a moral judgment or a moral opinion on your part as to whether or not marriage breakups occur on that pat 50-50 formula. My feeling is that the mere fact that a marriage breaks up indicates that one partner or the other wasn't contributing in a 50-50 basis.

MS. CORDES: Well, it all depends on how you define contribution as well.

MR. CHAIRMAN: Thank you. Mr. Pawley.

MR. PAWLEY: Mr. Chairman, persuant to Mr. Enns' question and I wish the Attorney-General was here to confirm but you would agree with me, would you, that fault does not play a part now, even now with the old law insofar as property division, only insofar as the provision of maintenance.

MS. CORDES: That's right.

MR. CHAIRMAN: Are there any more questions for Ms. Cordes? Mr. Cherniack.

MR. CHERNIACK: Would you agree from your knowledge of the law today that the former law, the Wives' and Children's Maintenance Act defines certain matters as faults and leaves out many others that you and I and Mr. Enns might think are faults and yet would not be considered in the separation order and in maintenance?

MS. CORDES: Yes, I'm aware of that.

MR. CHERNIACK: Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you, Ms. Cordes. May I ask you a question before you leave? Shall we leave Babs Friesen's name on the list? Is she going to make a presentation?

MS. CORDES: No, she's not and you can cross out my name later on down the list.

MR. CHAIRMAN: Thank you and I thank you for your presentation.

MS. CORDES: Thank you.

MR. CHAIRMAN: Maybe just for the benefit of the committee members, word has been received from Mrs. Goodwin that apparently her son has sprained his wrist or something and she had to leave so she'll be back for this evening we hope and her name will come up. She was in fourth here. Murray Smith I call.

MR. MURRAY SMITH: Mr. Chairman, I should like first to compliment the committee on its flexibility in allowing adequate time for the presentation and discussion of Alice Steinbart's brief. It seemed to me a peculiarly important one and to contain many of the points with which this committee should deal. I'm very glad you took the time and patience to handle it adequately.

I would also like to make it perfectly clear that I am a supporter of the position of the Coalition on Family Law and would endorse everything that Alice Steinbart said.

Mr. Chairman, like so many others who will appear before you during these hearings, I am here to urge that Bill 5 be withdrawn or, failing that, defeated, shredded or burned at the stake and forgotten. With the massive opposition which has become apparent in recent weeks, the most reasonable course is for the government to withdraw the bill. That may sound a little radical but it would be only a recognition that the government misjudged, in this respect, the temper of Manitoba in 1977, misjudged the loyalty of Manitobans to the two Acts passed last June and perhaps most important, misjudged the strength and depth of our feelings. For these are no ordinary issues to be decided by ordinary criteria. It is not a matter of weighing one program against another in a cost-benefit study,

nor of weighing one tax against another in terms of who will be most effective, nor a matter of rewarding those who provided special support in a recent election. Mr. Chairman, these are issues which cut across political lines. Alice Steinbart made it perfectly clear that the Coalition has in it members from all political parties and many members who are not affiliated with any political party. Today's Tribune has an engaging appeal from Maureen McTeer who is quoted as saying, "This question which affects women so fundamentally must be discussed on its merits. It must not be partisan." Many of us have made the same point over the last few months. The Tribune quotes Ms. McTeer as urging Conservative women to voice their support for "true equality of rights for women in family law. Marriage is an economic as well as a social partnership. You have an immediate obligation as Conservatives and as women to make sure the facts get out."

These are issues which cut across socio-economic lines, across rural-urban lines, across age lines and yes, across sex lines. Some still view these laws as important only to women. The Premier has said that when new legislation is introduced sometime, women may be surprised. I feel rather that they may be outraged. The newspapers have reported women lobbyists besieging Cabinet members in their offices and certainly the Coalition on Family Law and the Manitoba Action Committee on the Status of Women are largely female but anyone at this Legislature on the evening of November 28th knows very clearly that the supporters of our new family law are from all political parties, or none, from all social classes, from all age groups and from both sexes. That vigourous card of 1,000 to 1,200 included many men, men who have come to understand that marital equity and humanity benefit all Manitobans.

In particular, they recognize that equal responsibilities accompany equal rights in our new laws. These laws establish for the first time that each spouse owes support to the other and to the children. This frees men from a primary financial support obligation, makes financial support shareable as our child care, homemaking and other family needs. They also establish that in the event of separation, each spouse must try to achieve financial independence. Secondly, these - men recognize that treating people fairly is good for everyone. In days of slavery it was perceptively noted that the institution affected both slaves and masters. The masters were poorer for the way they saw the world.

Marriage in this province has not often been a master-slave relationship, nor has it often been an employer-employee relationship, nor I trust has it often been a relationship like that between mare and stallion, God forbid. But it has frequently been a provider-dependent relationship and these roles have limited the growth of both men and women. These roles are not accidental; they were powerfully instilled in our very being by the ways we grew up. For we learn by our experiences be they enriching or impoverishing, freeing or shackling, strengthening or crippling. Nearly three years ago, my new found understanding of this experiential process lead to writing, with thanks to Dorothy Law Holte: Children Learn What They Live (and What Their Models Live)

If a child lives with criticism she learns to condemn.
If a child lives with ridicule he learns to be shy.
If a child lives with approval she learns to like herself.
If a child lives with fairness he learns to seek justice.
If a child lives with dolls and party dresses she learns to be passive.
If a child lives with rough games and survival courses he learns to be active.
If a child lives with mother's little helper she learns to be cooperative.
If a child lives with get in there and fight he learns to be competitive.
If a child lives with female clerks and male executives she learns to aim low.
If a child lives with male doctors and female aids he learns to aim high.
If a child lives with emotions and feelings she learns to share herself.
If a child lives with a stiff upper lip he learns to hide himself.
If a child lives with only paid work is real she learns to be dependent.
If a child lives with being a good provider he learns to carry the world on his shoulders.
If a child lives with only a housewife she learns to look down on her mother and herself.
If a child lives with doing a real man's job he learns to look up to his father and himself.
If a child lives with girls in home economics she learns to respect child care and scorn changing tire
If a child lives with boys in industrial arts he learns to respect grease and scorn dishwashing.
If child lives with people who see roles as a sex- typed she learns to draw back and he learns to reach out.
If children live with poor families they learn most sole-support mothers live in them.
If a child lives with volunteer women and dollar-a-year men, they learn men's time is valuable.
If children live with three dollar child care workers and twelve dollar auto mechanics they learn a new baby is less important than their old car.
If children live with petty thieves in jail and major thieves on pedestals they learn it's worse to steal seventy dollars from your boss than $7 billion dollars from your women employees.
If children live with the Old Testament verse that a female slave sold for six ducats while a male slave sold for ten they learn the world hasn't changed much — yet.
If children live men and women who see each other as persons they learn this is fulfilling for both men and women.

As we have come to understand better our experience, including our experience of law, shape our perceptions and behaviors, we have understood more clearly how the old marital law both reflected and reinforced the stereotypes of who does what, who provides, who cares, who nourishes

The new laws help free us from these assumptions. Free us to choose which roles we shall fill, which roles we are most suited to and most inclined to. We see that almost all roles can be filled by men or women, or better be shared between them. After years of study and discussion since the days before the Royal Commission on the Status of Women in Canada we now have laws which reflect the changing nature of our society and which have the support of the great majority of Manitobans. Don't shelve them or weaken them. Don't return us to the confused, inconsistent and fundamentally unfair laws of the past. Perhaps some examples can remind us of what lurks there. First some quotes from a judgment in a Manitoba Court. The court held that although the wife helped her husband considerably in the operation of tbe business she did not own half of it. The court concluded that the husband loved money, assets and property more than anything else in tbe world. To take such things away from him would undoubtedly provoke a great deal of emotion. The court declared that the matrimonial home should belong entirely to the wife, and in view of this, and the possibility that the husband would lose all incentive if the court decided otherwise, the court held that he would remain sole owner of the business. Now that kind of attitude and thinking leads to this kind of judgment.

(a) At separation this particular couple split the value of the home but ignored any other assets, such as pension, insurance, savings or investments. From his income of $17,000 she and their three children received $6,000.

(b) At separation tbe second couple split the assets about three to one, and from his income of $40,000 thousand she and two children received $12,000.

(c) At separation the third couple split the assets about ten to one. From his income of $24,000 she receives $2,400.

Because I am proud of the new Manitoba laws and fearful of either a return to the old or substantive changes to the new, I urge that Bill 5 be not passed by this legislature. Let the Family Maintenance Act continue in effect, let the Marital Property Act come into effect January lst. If , necessary make at this session whatever detailed changes are essential to remove the few problems which are generally accepted. But let Manitoba live with this lighthouse legislation, and amend it only as experience reveals any difficulties in application. Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Smith. Are there some questions from the Committee for Mr. Smith. And I thank you for your presentation.

MR. SMITH: Thank you for your attention, Sir.

MR. CHAIRMAN: I call Mrs. Millicent Laird. I call Mary Wallace.

MARY WALLACE: Good afternoon Members of the Legislative Assembly. I am Mary Wallace-Awan, Chairperson of the Manitoba Federation of Labour, Equal Rights and Opportunities Committee. One of our objectives of the Committee is to help establish equality for all Manitobans. This is why we on behalf of all Manitobans appear before you today.

Three years ago, the Honourable Howard Pawley, Q.C., Attorney-General of Manitoba requested the Law Reform Commission of Manitoba to investigate into the state of family law in the province of Manitoba. Following considerable investigation and numerous public hearings the Law Reform Commission issued its report on family law, February 27, 1976. The Equal Rights and Opportunities Committee of the Manitoba Federation of Labour is of the opinion that the proposed family law legislation proclaimed by the NDP government must be fully endorsed and any changes that are necessary will be done through actual court cases where one party must prove why the equality must not be gjnted. Amendments to the Act may also produce necessary changes. It is essential for marriages to meet its criterion of an economic and social partnership. This legislation is a bases of provision for that partnership. Justice delayed is justice denied.

As our society keeps changing it is necessary that our laws keep up-to-date. The legislation that the Manitoba Legislature passed at the 1977 session keeps Manitoba at the forefront of law reform. People have waited decades for this equality. Why should we wait further for government to now perfect a piece of legislation which already stands accreditable As Alice Steinbart, lawyer said, there are no reasons for revocation of of the Act. Actual court cases and amendments will iron out problems. Mr. Ken Houston, lawyer, said when approximately 600 lawyers met to discuss the family law they found themselves confused by the laW. What piece of legislation is clear, understandable and unequivocal. Any panel of legal experts will disagree on interpretation and will continue to do so until it is determined by a court interpretation.

Each spouse is responsible for supporting the other, either by looking after the home and family or by earning an income, or by doing both. . Tampering of this law will be detrimental as far as equality for spouses, but is a known law fact that the law has never been beneficial to all.

Legislation for ensuring economic equality during the currency of the marriage has been revolved by this legislation and must not be repealed. To delay at this time will be to deny the value of the contribution made by the large spectrum of Manitoba society which helped draft and support this legislation. Marriage is an equal partnership. Present government appears not to want to accept thsprinciple of equal sharing as, by the Premier's statement that the Conservatives are the best

breeders, leads us to believe that our present government is in favour of keeping spouses at home and not in the work force. How unrealistic could that be?

This intention of equal ownership of assets is a fundamental principle of fairness and humanity is long overdue. On November 28th when a delegation met at the Legislative Building, 40 percent were men who also agreed with the philosophy of equal sharing. Because the legislation provides for rehabilitation or reeducation of the separated spouses this should result in his or her employment whereby contributing also to the maintenance of the children, which means that there would not be such a heavy burden on one member.

In conclusion, we therefore declare the laws relating to women and men in marriage shall incorporate the principles of equality between spouses and marriE AS AN INTERDEPENDENT PARTNERSHIP OF SHARED RESPONSIBILITIES. Bearing in mind the great contribution made by women to social, political, economic and cultural life and the part they play in the family, particularly in the rearing of children. We therefore declare that the loss relating to marriage shall incorporate these principles to achieve equality, that we, the Equal Rights and Opportunities Committee of the Manitoba Federation of Labour representing some 80,000 workers in the province of Manitoba, strongly recommend that this government implement immediately the legislation passed in the last session of the House to prevent any further miscarriages of social justice.

MR. CHAIRMAN: Any questions from Committee members? Thank you for your presentation.

MARY WALLACE: Thank you.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I wonder at this stage if I could make a motion which will I think be taken as notice for tomorrow. I would like to move that the Committee iftruct Mrs. Bowman and Messrs. Houston and Anderson to be ready to appear before the Committee before it concludes its hearings in order to give a progress report on their work.

MR. JORGENSON: Mr. Chairman, I am not sure that I would want to accede to that request at the moment. I wonder if the Honourable Member would allow me to consult with the Attorney-General he will be back here tonight. I wonder if he would postpone his motion till this evening when the Attorney-General is here.

MR.CHERNIACK: Certainly.

MR. JORGENSON: I might that the Attorney-General has asked me to apologize he's has a commitment that he couldn't very well get out of but he promised that he would be back here at 8 o'clock tonight.

MR. CHERNIACK: I am sure you will tell him what went on in this session.

MR. CHAIRMAN: I call Mrs. Muriel Smith.

MRS. MURIEL SMITH: Gentlemen, thank you for the opportunity to appear before you. I am here basically to share with you a problem that we the women of Manitoba, or the women of Canada perhaps I should say, have been working for almost ten years to solve.

Our problem is gentlemen, how to bring about the kind of changes in our social, economic political and legal systems that will bring about equal status for fully 51 percent of the population. Our studies have been lengthy, comprehensive and perhaps more participatory than any other studies that have been carried on in recent years. But the people participating in those studies had a particular characteristic. Almost all of them were women. While the people they were reporting to the people with most of the political, legal and economic power in the society, were men, and in almost every instance the point that the women were making was that they, we as a group, hold far less than our fair share of power in this society. Not some abstract kind of ego-boosting fantasy trip exotic Alexander the Great type of power, but an every day garden, kitchen sink, grocery money, rent and mortgage type of power. Equal power to receive economic security from the work that we do Equal power to be able to live in dignity with some independent power over our own destinies.

The problem is severe enough for women employed in the paid labour force occupying, as most women still do, the lower paid, lower status, more boring and routine jobs in society. Their problems need to be remedied by unions, by governments, and by employers.

But even more severe are the problems that women who perform unpaid labour in the home face Full time, many of them, they work to care for their homes and for their families. They do this either by choice or because there are no jobs available, or no alternate forms of child care available, or because they live with a man who does not believe it would be proper for his wife to work outside the home. These traditional family patterns work well enough for many men and women so long as they remain together and enjoy a reasonably harmonious relationship. Most people work out their distinctive patterns of bread winning, housework, child care and mutual emotional nurture, financial

decision-making reasonably well without the intervention of the state. But you know, and I know, that live does not always roll smoothly for people. Relationships that start off well and compatibly can come on rough times. The relationship can break down for a thousand different reasons. It is at that point that the laws of the land become relevant.

We have heard a lot about whether or not the state should intervene in the life of the family. Is that really the question we should be asking.

For centuries since human beings have lived in communities, settled communities, the state has intervened in the family. Here in Manitoba it does so with a bewildering mixture of case law, statute law, provincial law and federal law. The time has long since passed when the question of whether or not the law should intervene was relevant. The question now is, on what basis should the law intervene? The basis we've been working under have certain underlying assumptions. Assumptions that are rarely made explicit but which can be deduced by a careful analysis of the judgments made.

MS. SMITH: The assumptions have been that women, like children, were economically dependent in their marriage. They were dependent on condition of good behaviour on the husband, who had the corresponding obligation to support. At separation, the wife was entitled to maintenance, possibly for life if she was not found technically at fault. Maintenance orders were never enforced, but the courts recognized in theory the right of the woman to that support, and the obligation of the husband to support her. Over time, some new protections were added: the right of woman to stay in the marital home; some right to apply for partition in sale of that home. Still, the assumption was made that the wife was dependent and a supplicant for economic support — not an equal partner entitled to her fair share because of the time, energy, emotional and brain-power that she contributed to that partnership while it survived.

The new laws seek to enshrine a different principle, one far more in keeping with the social and economic realities of the present world. And with our hightenend awareness of the equal value of women as persons, and as economic as well as social and emotional contributors to that marriage. The basic problem we were trying to solve in the new legislation was how to get equal economic recognition to the investment both spouses put into their marriage. To say economics has something to do with marriage is not to say that marriage is only an economic arrangement. That's illogical fallacy, pure and simple. Of course marriage does have economic aspects.

Consider the man's contribution. In most marriages, he contributes his eight hours per day as labour in the workforce, in return for which he gets paid from his employer — which he then shares with his family — an around-the-clock support system from that family, which so to speak subsidises his paid labour. In return for sharing his income, he receives the benefit of unpaid labour at home, performing the duties of housework and child care and possibly various status enhancing social and community roles as well, if his wife is beyond the stage of full-time child rearing, or if they are jointly well enough off to engage other people to perform those duties. The wife may, throughout the marriage, move in and out of the labour force for periods of time, but since the assumption has generally been that women work by choice and for extras, not necessities, they tend to retain primary and so responsibility at home for the housework and the child care' take lower-paying, more routine, less prestigious jobs in the labour force.

What are their respective economic situations should the marriage break up? He generally has his job, and his experience, and seniority at work. She generally has no job, minimal job training, no job seniority or job experience. In return for the years of time and effort she has invested in the marriage, she may have had a claim to family assets — rarely as high as the 50 percent claim — and some claim to maintenance if she can collect it, generally at a level of one-fifth to one-quarter of what the husband earns. She has had no claim in the past to his commercial assets — a farm, a business, a professional practice, investments — except in the most unusual of circumstances, and unless she can be shown to have made a monetary contribution. And here, we have the crux of the problem, gentlemen.

What economic security can the woman get for her years of unpaid labour? Granted, she had her keep during the marriage, but that much used to be given to live-in servants years ago. She may collect maintenance at a small fraction of the husband's current earnings — theoretically forever — but we all know how rarely that occurs. There's something like a 70 percent non-payment of maintenance orders. In economic terms, she has very little accumulated wealth, very little job training, or expertise, or seniority to show for her years of investment of her labour in the marriage; while he has his on-going ability to earn his living, his current job status, and any commercial assets he may have acquired. He may have to forfeit a half to a full interest in his home, and make monthly spousal and possibly child-maintenance payments. These he too often resents, thinking he is giving her something that is rightfully his, forgetting that she has offered him an invisible, unpaid support system throughout the marriage. She in many, though not in all cases, has fo forgone gone earned income, contributed her labour, and not built up job security with all its accompanying fringe benefits and longterm protection.

And that, gentlemen, has been the problem that we've been trying to solve: the problem of economic security and independence. Not for people who are happily married, though our proposals re joint marriagement or full disclosure of financial information, and rights to some share of family ncome per personal expenditure were intended to strengthen marriages by putting both partners on a firm economic base; but our proposals were for those people who are caught in unhappy and

disintegrating marriages. We realize family law reform alone can't solve all the problems. There remain the problems of poverty, of adequate income for both husband and wife, in marriage and out the problems of structural inequalities for women in the labour force; the questions of fair taxation – should the primary unit for taxation purposes be the family, or the individual? Should income splitting be permitted? Should family allowances become high enough to recognize the actual cos of the work involved in caring for a child, as well as the actual out-of-pocket expenses; and should there be free universal day-care and luncheon-aftei-four programs, so that fathers and mothers both have a real choice to work full-time in the labour force?

We also realize that federal family law reforms will be required as well. But these changes will no come all at once. Someone has to start the ball rolling, and then let the other jurisdictions sort out the complications, or follow suit with their reforms. We're not denying there may be complications. Wha we are expecting is help in dealing with the complications, not delaying tactics to avoid dealing with the initial problem: how to give both men and women equitable economic rights in marriage. It's been said that the family law reforms are cumbersome, and that a simpler, more flexible method would be to move to full judicial discretion with a simple amendment of a presumption of equal contribution by each spouse to the marriage. I think that was Mr. Houston's proposal.

If there were any evidence that the judges understood the problem of unpaid labour in the home foregone income, lack of job training experience and seniority, or the fact that a spouse at home provides an invisible unpaid support system to the spouse who builds up the farm, the business, the professional practice, the investments, whatever, then full judicial discussion might provide the best answers. But what does the review of past judgments reveal? What is the pattern of legal judgment? The Murdoch case dramatized a problem with the law that the non-monetary contributions to the spouse both in the house and on the farm did not entitle her to more than a minimal maintenance award. Many years later, many legal opinions later, Mrs. Murdoch did secure a remedy through the courts. But who would agree that justice for women should depend to that extent on a chance choice of strategy by an individual lawyer, or on a lenghty and costly series of appeals through the various levels of the court? As stated before, the Murdoch case dramatized a problem, but it was not the only example of the problems.

The Royal Commission Report on the Status of Women identified the problem of economi dependency status for women in marriage, and of the discrimination against women in the economi settlement following mariiage breakdown. A careful survey of both economic settlements made b judges, and of the opinions voiced by judges, reveals the true nature of the problem, Murdoch aside The problem, remember, arises not for those spouses who are happily married, or for the spouse who separate and voluntarily arrive at an amicable settlement; the problem arises for those spouse who can't agree. They are the ones who must resort to the courts and depend on the principle enshrined by statute and precedence. What are the principles currently applied? To the best of m ability, I have reviewed the reported cases, tried to deduce the patterns and the assumption underlying them, and tested these hunches on lawyer friends directly engaged in the practice c family law to see if they matched with their experience. To date, I have found no one who rejects m analysis.

What I have discovered, gentlemen, is that commercial assets are rarely if ever considered a sharable; family assets — the house, the car, the cottage, the furnishings — are seen as sharable sometimes equally, very occasionally given in toto to the wife if there are children. Maintenanc payments to keep the spouse and children are on a ratio of four or five to one as between th husband's salary and the wife's and children's share. Maintenance payments are for indefinit periods, but they're rarely fully collectable. They depend on fault and punishment principles, rathe than on economic rights and responsibilities because of the time, effort and ability invested in bot paid and unpaid work.

In reviewing actual comments by judges, I found a general acknowledgement (1), that financi contribution alone is considered as giving entitlement to ownership of family assets other than dowr rights; (2). that commercial assets are never considered as sharable; (3), that the man's tradition role as breadwinner is better understood in its economic aspect than is the woman's traditional ro as homemaker and child-carer, and is given priority whenever economic decisions are made by th courts; (4), that maintenance allocations for both children and the female spouse are rarely muc above the welfare level, even the most generous awards reflect a ratio of man's salary to woman's four or five to one.

In time perhaps, judicial discretion will be a realistic procedure. The time, I submit, is not ye Gentlemen, I can come to no other conclusion than to endorse once again the principles enshrined i the current family law package, and to ask that if that legislation can be tightened up in its deta without sacrificing any of its essential aspects, please do so, preferably without delayir implementation, but failing that, at the spring session of the legislature.

What I urge all of you to avoid doing is using objection to detail to further block or delay th passage of this legislation. The problems the laws were designed to solve are real problems — the affect many women in their society, at a time when they are most vulnerable and least able to he themselves, when their marriage is broken down. No law is perfect when it's first passed. Comple laws are going to have more imperfections but they can be worked through in case laws in the cour and through later amendment in the legislature. Individual couples under the new proposed laws c

have the remedy of opting out in a made-to-measure marriage contract. Of course there are going to be problems with estates, with taxation, with businesses and partnerships, with federal laws. Those who now have a monopoly on money and power will have to be willing to share some of what they've got with their spouses. There are problems but they can be worked through if there's a will to do so, if the problems that we're trying to solve are understood and seen as significant. But if that will is missing, any slight difficulty or ambiguity will be seen as justification for inaction or delay. I hope that all the experts to be consulted — lawyers, accountants, businessmen, whatever — will be charged with adopting a positive problem-solving approach within the five to six months' time frame to this legislation, and not encouraged to dream up more and more exotic, far-out reasons why no changes should be made. You are not asked to legislate that people get along amicably, you're being asked to see that one group of persons are not permitted to exploit another economically, and that's a very different matter.

MR. CHAIAN: Thank you, Ms. Smith. Mr. Pawley.

MR. PAWLEY: I was wondering, as you reviewed those cases from your reading of them, whether if in the law as was changed to read: "equal sharing of family assets with judicial discretion insofar as the commercial assets were concerned," if in view of the findings from your reading of those cases, whether or not that in fact would worsen the existing situation by implementing measures along those lines.

MS. SMITH: Well, I can't see it worsening the situation, because in fairness to the judges now, I guess they're implementing the law as it is, and there's nothing that directs them to consider commercial assets. If they had the option of considering commercial assets, they would. I truly don't know, because I can see the problem that most men have — and the judges are almost all male — is that they can't see how work which they have done putting in their own energy, their own time, using their own experience — that's the work for which they get paid, and it seems very difficult for them to think that someone who isn't doing that work has a right to that value. So they feel that the commercial assets are somehow theirs, and on a commonsense level, I understand that; but the problem is, what about the woman who's part of that system, she's working at home, also putting in time, energy, and ability, and not getting any economic return. It stretches commonsense, and that's what we're asking the judges to do. I can't see, unless the judges were given an intensive awareness type training, that they would necessarily improve, so I really wouldn't want to see that kind of solution.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: You indicated in your brief that you had discussed certain matters with lawyer friends, and you indicated that commercial assets by these people weren't considered sharable. Did they give any reasons for that? MS. SMITH: No they don't. And when pushed a little they get very defensive. I like my lawyer friends, I'm a lay bencher in the law society, so I've spent quite a lot of time in the last couple of years trying to understand their problems and their frame of reference, and so I've spent a fair amount of time trying to present to them my problems and concern about family law. I find in general that their training doesn't really encourage them to go below the assumptions of the law. They're used to working within a certain legal framework, taking an individual case and applying the existing law to that case, and I don't find they tend to be the sort of people who stand back from the law and say: "How can it be improved. Are the underlying assumptions the best there are?" I find that they are uncomfortable with the . . . like when we try to talk the basic assumptions of economic dependency. That isn't the way they're used to looking at it. Nor are they used to examining judgments in any kind of patterned way. They don't analyze the general drift of decisions. They tend to look at individual decisions and the peculiarities of one case. So I have found that they had great difficulty understanding what we're about, and of course the new family law will require that they learn quite a few new tricks, to digest new legislation and use it effectively for their clients is a challenge to them, and I know that's a difficulty.

MR. PARASIUK: So they don't recognize the family as a unit with respect to commercial activity, or . . .

MS. SMITH: No, I think they're so used to looking after women who are in difficulty in a marital situation, that they don't stand back and say, "Is there a better way to do it?" I think they are caught in the old framework.

MR. PARASIUK: They wouldn't consider that a wife contributes equally to the developments, say, of farm assets over a period of time?

MS. SMITH: Well they might say they do, but when it comes to the money aspect, they don't apply that principle. At least I have a found a couple willing to move that far, but by and large, I've found great reluctance, and of course the legal practice — their own professional practice, and how they

would divvy that up — it hits them very personally, and they can see problems, difficulties, whatever. I really find that they have no more awareness of the kind of problems that we women are talking about than other members of society, and in some cases they have less because their thinking is so structured in the framework of the current law.

MR. PARASIUK: I probably should have asked this question to one of the others, possibly Ms Steinbart, when she presented her brief, but what would happen if a farmer purchases the farm from his father-in-law at quite a low price and then goes through a divorce with his wife. Would he be entitled to that land?

MS. SMITH: Well, under the . . .

MR. PARASIUK: Under the old law.

MS. SMITH: Yes, I think that was an issue in the Murdoch case. There had been money that came from the mother-in-law, actually the wife's mother, to the man, but because it was a money transaction and with the man, the wife was not seen to have any claim on that. So, it's been based strictly on how the money was transferred, that's my understanding.

MR. PARASIUK: One final point. With respect to splitting up of commercial assets, I gather that this only applies to the increased value of commercial assets during the lifetime of the marriage.

MS. SMITH: Yes, it wouldn't apply to ongoing build-up of commercial assets after the separation

MR. PARASIUK: What existed before the marriage. Does it apply to what existed before the marriage?

MS. SMITH: No, it's only to the asset increase for the duration of the marriage. They were definitely looking at a chunk out of a person's life — a time period during which they have the right to share with the spouse they live with, and then if they separate! that obligation ceases, although the payment of the shared asset might occur over time, so as not to jeopardize the legal practice, or the small business, or whatever, from being productive. It's not a free meal ticket for a life situation, as perhaps it used to be.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Ms. Smith, with all this talk about lawyers being structured in their thinking and, you know, I am a lawyer and I'm becoming concerned because there's so many assumptions here — strata upon strata of assumptions — there are assumptions about lawyers, and there are assumptions that this law penalizes men. That seems to be taken almost as gospel by all the people who have addressed us this afternoon. Excuse me, that seems to be taken as gospel by some of the people in their responses to questions, or submissions made here this afternoon.

I'm wondering, Mrs. Smith, are you aware, structured thinking aside and assumptions about lawyers aside, are you aware that there are benefits conferred upon men by this, benefits that aren't necessarily implied in your submission. I was thinking, for instance, about tax benefits. I was thinking about happy marital situations, situations where there was no acrimony or breakdown, situations where for instance because of deemed joint ownership there was going to be entitlement to income splitting. For instance, I'm wondering about the situation where spouses may have acquired a number of homes, each of them in succession being marital homes over the years, and maintained them for rental purposes, and I'm wondering whether or not there might not be an entitlement as a result of the deeming provisions of this act to income split on this basis. And if that's the case, I'm submitting that first of all, lawyers perhaps aren't necessarily height bound and bound only by their former experience, and I would also suggest that this law doesn't unnecessarily penalize men. It may actually confer a benefit on both men and women, and I say that because when you made your submission, you indicated you had some reservations about the possibility of income splitting. I'm wondering if you could address that question.

MS. SMITH: I agree that there are as many potential advantages for men as for women. The reason I took the direction I did in my presentation is that the impetus for change in the law came over a period of ten years from women who perceived the main problem to be where women had a deficiency of economic right. Now, there have always been some cases where both men and women earned, or perhaps where the wife earned more, and maybe the m8n benefited in the past, I don't know. But to take the law as it now exists and apply it to current social patterns where there are often two incomes in a family, and under the new law, if the woman earned the higher income, the man would certainly gain. Whichever one earned an income, if they were entitled to income split, that would mean that they could from a $25,000 income, they could both put in a $12,500 income tax return, and the total tax would probably be less. I don't know if the federal government tax department has clearly stated how it would treat that. Manitoba is the first province in Canada to have gone as far in the marital

property laws, and so I presume it would be a first take for the federal income tax department. But I'm pretty sure that either before the income tax forms are made out, say the law did go into effect as was planned, before the date of income tax return, either the federal government would sort out whether it was going to permit income splitting in Manitoba, or it would not clarify the situation, in which some people would income split and some wouldn't, and then the federal government would be left with the problem of sorting that out. I think they would then react to that problem, and make up their minds. I frankly would favour income splitting because I think probably that's the fairest way to measure the actual, how should I say it, to produce the most equitable system. It would represent reality the most clearly. It would show what package of money is available for how many people, and then the tax rate would be based on what is left. So a very high incomed single person under progressive taxation system would and should pay a high level of tax. The same income to cover the needs of a family there would in effect be a much greater deduction, recognizing the actual higher cost of running that family. I guess I really would favour the income tax splitting. I raised it only as a legalistic point that's been raised — how would lawyers advise people because they wouldn't know whether to say, "Do it," or "Don't."

MR. CORRIN: I know my friends opposite would be very concerned in that because that's a stimulus to investment.

MR. CHAIRMAN: Mr. Enns.

MR. ENNS: I have no matter of great importance, Mr. Chairman, except to indicate and ask this witness that the representation to date have gone out of their way to express a non-partisan political involvement, indeed to express a distinct disassociation from the politics of a particular party, namely the NDP. I would take it that you, Ms. Smith, have no such inhibition about expressing your political affiliation, and are rather proud of it.

MS. SMITH: Well, on the other hand, I would like to say, though, that I was part of a women's group studying these kinds of problems before I joined the NDP, and my choice as NDP, I think, was because I thought their understanding of equal rights between different groups of people in this society seemed to hold out the most promise of improvement for women.

MR. PAWLEY: There's a message in that.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: With respect to non-partisanship, are you aware of the lawyer Ken Houston having any political affiliations at all?

MS. SMITH: I just infer, I haven't seen him carrying a card. Actually, he's even very hard to get hold of these days.

MR. PARASIUK: Hopefully he will come here and we can ask him directly.

MR. CHAIRMAN: Thank you for your presentation, Ms. Smith. The hour is now is 5:25. Mrs. Goodwin, you are next, would you prefer to come at 8:00 o'clock? Would that be okay, when the committee sits in the evening?

MRS. GOODWIN: Well, if you would prefer.

MR. CHAIRMAN: Rather than you make a five-minute presentation now, and then you wouldn't be finished maybe. You will be the first one at 8:00, if that's okay.

MR. CORRIN: Mrs. Goodwin says her submissions is very brief.

MR. CHAIRMAN: Oh. Okay, let's hear it then.

MRS. GOODWIN: I think I would prefer to come back later.

MR. CHAIRMAN: Fine. There's another committee person who wants to speak.

A MEMBER: May I ask who speaks after Mrs. Goodwin.

MR. CHAIRMAN: Bernice Sisler.

A MEMBER: Thank you. That's what I wanted to hear.

MR. CHAIRMAN: Committee rise.