



**Legislative Assembly of Manitoba**

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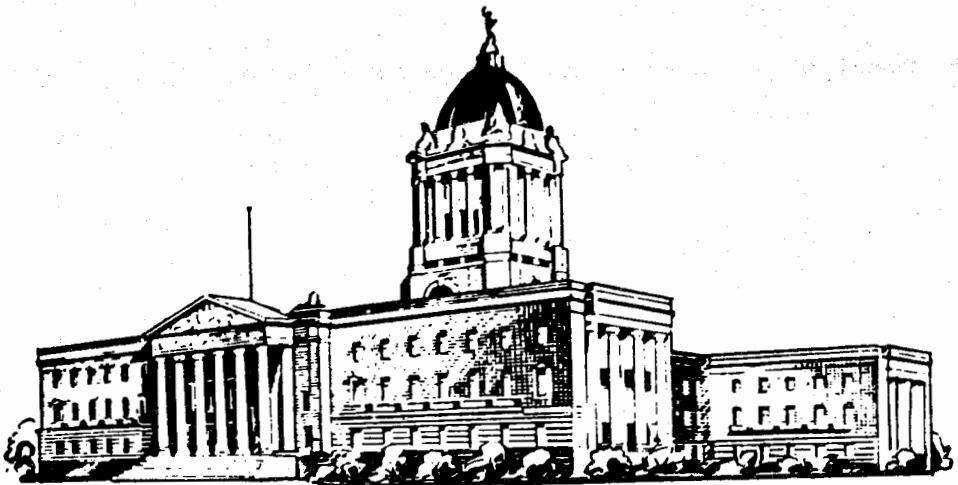
**HEARING OF THE STANDING COMMITTEE**

**ON**

**STATUTORY REGULATIONS AND ORDERS**

**Chairman**

**Mr. Warren Steen  
Constituency of Crescentwood**



**Monday, July 10, 1978 2:30 p.m.**

**Hearing Of The Standing Committee  
On  
Statutory Regulations and Orders**

**Monday, July 10, 1978**

ne 2:30 p.m.

**I. CHAIRMAN, Mr. Warren Steen (Crescentwood):** Committee come to order please.

On Saturday afternoon, when this committee was rising, it was generally agreed that persons out of town would be given an opportunity to appear this afternoon. I can't find it on my list, but I understand there's a Mrs. Maude Lelond from Miniota, representing the Women's Institute. Is she present? We will accept her presentation at this time because of the distance that she has travelled to be with us.

I might mention to you Madam, that the committee has a rule which we try to adhere to, and that is that presentations be not longer than 30 minutes in length.

**IS. LELOND:** Mr. Chairman, Mr. Mercier and committee members, I appear here as a member of the Manitoba Women's Institute and I am presently Chairman of the Standing Committee for Citizenship and Education of the W.I. Provincial Board.

Allow me to introduce Kay Hamblin, the President of the Manitoba Women's Institute and myself, Maude Lelond.

First, before presenting the W.I. brief, I would like to commend the present government for changes and/or modifications which they have suggested in their proposed family law bills. First, I am pleased that you appear to have dropped the very chauvinistic one-sided unilateral opting out for a mutual opting out. That is good.

Also you have included a clause wherein all assets can be shared on a 50-50 basis. One must carefully weigh the shelved family law bill of May 1977, which set a 50-50 sharing basis against the now proposed bill which has no basis of sharing except by Court decision, but as I say you have included the possibility of 50-50 sharing.

**We commend you for deciding that the new law, when passed, will apply to all marriages. For The Dower Act, we commend you in introducing the half division of the home rather than the third, and I've included here in handwriting, you will note my uncertainty of The Dower Act when I present the brief. And, of course, when I have those uncertainties, I hope Mr. Mercier will have the kindness to possibly fill me in eh? And now I'll read the brief.**

This brief was prepared in conjunction with a petition signed by delegates at the W.I. Convention in June 1978 in Brandon. The petition stated: We the undersigned do hereby indicate our support for The Marital Property Act and The Family Maintenance Act embodying the following principles establishing marriage as an equal partnership.

- (1) Immediate sharing of family assets.
- (2) Deferred sharing of commercial assets.
- (3) Limited judicial discretion.
- (4) Mutual opting out, and
- (5) No-fault maintenance.

Before beginning my discussion of the five principles in the W.I. petition, I would draw the attention of this committee to the fact that in the proposed Marital Property Act of May 1978, there is no preamble stating that marriage is an equal partnership and contribution of each spouse equal to that of the other. Possibly you do not believe in equal sharing?

I appreciate this opportunity to speak in layman's language and will begin with No. 1 — immediate sharing of family assets.

How can a man and wife ever join in marriage as an equal partnership if there is no immediate sharing of the home and such family assets as do not produce income? Certainly proposed Bill discourages any immediate sharing ideas. Spouses have two recourses if accounting is necessary. Go to court and break up their marriage or prove dissipation. Women, by and large, will be the spouses having to apply for their rightful share — a share of the home, a share of the furniture, maybe the camper trailer — any assets that were bought for the mutual benefit of both. Family assets which should immediately be shared as marriage partners if the woman

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is not just considered a mere chattel.

No. 2 — The W.I. supports the deferred sharing of commercial assets. This does not render a principle of equal sharing invalid. A married couple, benefitting by the income of commercial assets are sharing them in a happy marriage. However, in the event of a marriage breakdown there should be a fair division of these assets with no hardship to either party. As we are mostly rural women I think of a farm division. One-half of the increase in the value of the property acquired by a spouse or equal division of property acquired during marriage, at present value, less all debts, with time allowed to pay his or her spouse as the case may be.

Looking at clause 13(a) and I am, of course, referring to the bills, which I don't have with me. Discretion to vary equal division. It looks like a lawyer's heyday, especially the last two parts, weighing the value of domestic responsibilities against the ability of the other spouse to acquire, manage and maintain and improve any commercial asset.

Gentlemen, can you really weigh in court the value of a woman (in rural areas it would be a woman), who has borne children, trained them and raised them, been cook, housekeeper, mother and gofer — on the farm it's gofer this and gofer that — yes, can you really weigh all this in monetary value against the ability of the husband merely to make money. My husband said, "Are you going to weigh the raising of a prebred bull against the raising of a son and a daughter?"

Think of your own mothers. Is that the way you would value what they did for you? I hope not. If Bill 38 goes through as is I wonder how many Murdoch cases we are setting up in Manitoba?

No. 3 — Manitoba W.I. supports limited judicial discretion. Another lawyer's heyday. This part of Bill 38 insures that every settlement must go to court. I'm wondering, in some instances, if the couples will have anything left to fight over after they pay the court expenses. Seriously, if marriage is an equal partnership, and certainly a 1978 revised Family Law Bill should accept equality of men and women, then it follows automatically that equal sharing is the right of both marriage partners. Equal sharing should not be a right drafted by the courts through broad judicial discretion.

If the basis of our new family law were 50-50 sharing, then the non-wage earner, generally the woman, would be considered a partner, not a dependent, at the mercy of the judge's decision. A square one was 50-50 sharing, only limited judicial discretion in division of property would be necessary. With the wide judicial discretion allowed in Bill 38, spouses determined to keep their partners from having a fair share should have little trouble doing so.

The W.I. women also stand by No. 4, mutual opting out. No fair minded man or woman could support unilateral opting out. Was that evasion of equal sharing suggested at first to give the impression that the present government had made a concession when they abandoned it? How unfair that one spouse should not know what his or her assets were until faced with the distress of marriage breakdown, then to learn that his or her fate lay in the mercy of the courts. Unilateral opting out is legal gross injustice.

Before going on to No. 5, no-fault maintenance, I would like to briefly mention The Dower Act changes proposed. The present Dower Act is by no means perfect but the limiting of the definition of the marital home as outlined in the proposed Marital Property Act, Bill 38, is a further limitation of the farm wife's right to equal sharing. Now, we discussed this — I'm breaking from the brief for just a minute — we discussed this at our board meeting and I felt there were some here that would like this enlarged and discussed further and certainly it's far beyond my limits to present or discuss it, so that's why I'm asking questions instead of saying something.

Do you really mean to limit the protection in the present Dower Act as to the rights to the 3/4 acres in case of death or selling property? In other words, does either party still have the right to limit sale? I hope you'll observe those questions.

Lastly, No. 5 in the Institute brief — no-fault maintenance. We support the principle of no-fault maintenance. We take exception to Part 1, 2(2) Conduct of Spouses. Now possibly you mean we object by this clause for extreme cases but can you not visualize the court cases that could result. Adultère will again be the court accusation and what else to get out of paying financial support to the erring spouse? Fault is generally on both sides to some extent in a marriage breakdown. Maintenance is necessary to survive and should not hinge on conduct that may or may not have been caused by the incompatibility of the marriage partners.

Maintenance should be based solely on need and ability to pay. And that's a questionable thing there. Maintenance should not be a weapon of revenge or retribution.

Part 1, 2 (2) sort of by-passes 2(1), because we have no idea what a court might interpret gross misconduct or what the accused might have to answer under such an interpretation. The appears to be a double standard in this conduct clause.

Now, that concludes the Manitoba Institute brief and Kay and I will discuss any part of the brief you care to question and Kay will also contribute her thoughts.

Did you want to now Kay or later? Okay she'll say just a few words now and then we

**R. CHAIRMAN:** Will you identify yourself before you speak?

**RS. HAMBLIN:** I'm Kathleen Hamblin from St. Jean, Manitoba. I'm the President of the Manitoba Women's Institute.

**R. CHAIRMAN:** Thank you.

**RS. HAMBLIN:** Mr. Chairman and honourable members. The Manitoba law-making body was the first in Canada to give women the vote in 1916. I would like to just add that I feel certain that what we are asking will come to pass, whether it be now, or left to the future policy makers. I would like to think once again that the Government of Manitoba would wish to be a leader rather than a lagger in setting fair policy for all people.

Thank you.

**R. CHAIRMAN:** Would you two ladies permit questions from the various members of the committee?

Mr. Mercier is first.

**R. MERCIER:** Mrs. Lelond and Mrs. Hamblin, I'd like to thank you for travelling so far to present your brief.

Perhaps starting on Page 4 of your brief, point no. 5. I assume from that paragraph that you are in agreement that in extreme cases, a small minority of perhaps bizarre cases, you are in agreement that in those cases misconduct could and should be a factor in limiting maintenance. Is that correct?

**RS. LELOND:** Well, I would rather say, Sir, that we were at a loss to interpret what this very gross misconduct might be that would disallow a 50-50 sharing.

**R. MERCIER:** If I told you that it was only intended to refer to a small number of cases in which there was — to follow the wording of this section — “A gross and obvious repudiation of the marriage”, but that in the vast majority of cases it's recognized that there is fault on both sides, and in those kinds of cases maintenance should be determined solely on the basis of need, and that this section is only intended to refer to a small minority of cases. Would that satisfy you and the position you've taken?

**RS. LELOND:** Well, our position is that in any case you should start from the 50-50 basis, not move up to a 50-50 basis. The sole crux of it, is that we feel that your bill starts anywhere, and at the Women's Institute feel that you should start at 50-50, and if there is one case which shouldn't have 50-50, well then search it out, but don't start down here somewhere and question everybody whether they should get 50-50 or not. Now maybe we've misinterpreted the bill.

**R. MERCIER:** But we're talking here, Mrs. Lelond, about The Family Maintenance Act, not The Matrimonial Property Act, and under The Family Maintenance Act . . . Pardon me?

**RS. LELOND:** Yes, this is Family Maintenance, I'm sorry. Well, in Family Maintenance, no matter what she or he did, we wouldn't want them ruled out entirely from support.

**R. MERCIER:** The clause reads that maintenance can be limited in these very extreme cases.

**RS. LELOND:** Yes, but we wouldn't want it limited to such an extent that the errant spouse and the children weren't physically fed and clothed and so on.

**R. MERCIER:** Perhaps just to answer the questions you've raised in the top paragraph on Page 4. Mrs. Lelond, the right of a non-titled holding spouse will continue under The Dower Act so that she will continue to have the right to have to consent to any sale or mortgage or lease of the property as is stipulated in The Dower Act, the 320 acres. Does that answer the question you've raised in paragraph 4?

**RS. LELOND:** Well, there was also a question . . . Oh, now where are we? Are we still on

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**MR. MERCIER:** The top paragraph on Page 4.

**MRS. LELOND:** We weren't sure about this 320 acres at all.

**MR. MERCIER:** The rights under The Dower Act still continue.

**MRS. LELOND:** That's still left in.

**MR. MERCIER:** So that if that property were in the name of the husband and he owned 320 acre she would have to consent to any sale or disposition of that property.

**MRS. LELOND:** Yes, that's fine.

**MR. MERCIER:** On Page 3, you state, "If square one was 50-50 sharing, etc.," are you aware the the presumption in The Marital Property Act is that there be 50-50 sharing, equal sharing, and that is the presumption and it is only in clear cases of inequity, which is already an interpretatic in Ontario that 50-50 sharing would be varied, but you start with a 50-50 sharing. Are you awa that there is first of all an presumption of 50-50 sharing in The Marital Property Act?

**MRS. LELOND:** Yes, I'm aware there's a presumption but I feel that it doesn't start necessari there, there's just a presumption. You have to fight it out in the courts yet. A woman wouldr automatically think that she got 50-50 without, you might say, fighting for it. Do I interpret th properly?

**MR. MERCIER:** No. There's a difference of opinion.

**MRS. LELOND:** Well, I guess then it's all in the way you read it then?

**MR. MERCIER:** Yes.

**MRS. LELOND:** Can Kay speak?

**MR. MERCIER:** Sure.

**MRS. HAMBLIN:** We felt that from what we had gathered that this presumption of 50-50 sharir was not so. We felt that when you go into the court you weren't getting your 50 percent of tl assets. Now you say that you do.

**MR. MERCIER:** Well, I say that you start from the presumption of 50-50 sharing which is wh you stated in your brief.

**MRS. HAMBLIN:** Well, on how many cases then would the judicial discretion come into it? Yc know, what percentage of cases would you . . . Are you going to have judicial discretion in eve case that comes up then?

**MR. MERCIER:** I would suggest not in the vast majority of cases.

**MRS. HAMBLIN:** Well, I think this is a concern that it can waiver quite rapidly downwards for tl women.

**MR. MERCIER:** Or upwards.

**MRS. HAMBLIN:** Well, we wouldn't ask for over 50.

**MR. MERCIER:** Why not?

**MRS. HAMBLIN:** Because I feel that the man has his place in this picture too. I don't want rob him blind.

**MR. MERCIER:** One for us.

**MR. CHAIRMAN:** Mr. Spivak.

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**R. SPIVAK:** When I go over your brief again and this will just be on the point that Mr. Mercier's been mentioning. On Page 3, you say: "Equal sharing should not be a right drafted by the courts through broad judicial discretion." But the Act actually states, "Spouses each have the right to have their assets divided equally between them in any of the following events of circumstances," and deals with the marriage breakup. That will be the law once this Act is passed. The law will say, "spouses each have the right to have their assets divided equally between them in any of the following events or circumstances." Then there's discretion with respect to family assets and discretion with respect to commercial assets, but the presumption will be equal division and that will be the law, not the court's interpretation. You say equal sharing should not be a right drafted by the courts. The courts will not be drafting anything. The courts will be interpreting the question of discretion, which in the case of family assets will be grossly unfair or unconscionable, or in the case of commercial assets inequitable.

Now, are you aware that in law there are other presumptions in which there are statements of legislative will, which is the law, which gives a presumption in which there is a right for a party to go to the court to vary that presumption on the basis of a discretion of the court, and are you aware that in most cases the court will not vary that presumption? That, in fact, is the rule. And I say to you, why do you believe that in this particular situation, the courts in interpreting what the presumption will be, will vary in their course of action when the history has been not to go against — unless there is exceptional circumstances and in a minority of cases — to go against the presumption in law.

**RS. HAMBLIN:** Well now, I am far from a lawyer but just in general reading, I understand that women get 12 or 13 percent and Mr. Murdoch broke his wife's jaw and kicked her around a bit and still she didn't get very much. I mean, so what is gross misconduct?

**R. SPIVAK:** Well, can I ask something? There was no law of presumption there of equal 50-50 sharing at the time that the Murdoch case came on.

**RS. HAMBLIN:** No, that's right.

**R. SPIVAK:** And I'm saying to you that once the law is stated, do you not believe that the courts will interpret the law as to what the presumption is, exercising discretion, when I say to you that in all the other cases where there is a presumption of law, the courts very rarely go against that presumption. The onus is upon the person claiming that the presumption does not exist, to be able to prove it to the satisfaction of the courts and unless you can cite me experience which is different than the experience that I am aware of, the courts will not go against presumption. In effect, what has happened to you and I think to a number of other people is that you have been misled to believe that based on the judgments of the past that the courts . . .

**R. PAWLEY:** Mr. Chairman, on a point of order. Is this a question or a statement of position by Mr. Spivak.

**R. CHAIRMAN:** I would think that he's questioning.

**R. SPIVAK:** I'm questioning, I think, Mr. Chairman.

**R. CHAIRMAN:** It's no different than some of the other members have been doing.

**R. SPIVAK:** I think in the same manner as Mr. Pawley and the others have questioned.

What I'm saying to you is that although I believe that you've come here with the best of goodwill and you are basing your judgment on the Murdoch case and what has happened in the past, I say to you and I ask you whether you do not realize that in effect the change in the law which will come about as a result of the passing of this Act, which will give the presumption of equal sharing which is stated in the law, will in fact become the law and the exception will only be the case where the discretion will be exercised.

**RS. LELOND:** Well, I can only reply, Mr. Spivak, that I have had a little dealing with the courts and lawyers — I'm not a divorcee and this is mostly wills that I'm talking about. I'm afraid I don't know too much, what it is I lack in belief in the power of the courts, so that's fine.

**R. SPIVAK:** So really what we are talking about here is not the legislation in its drafting, but how the courts will interpret it?

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**MRS. LELOND:** Right, exactly.

**MR. SPIVAK:** And therefore you want us to be in a position to either not allow a discretion, or to legislate how the court will act, or legislate what's in the judge's mind? We can't do that. We can only go on the basis that they will interpret the law as it actually is.

**MRS. LELOND:** Well, do you need to use the word "presumption"? Can you not start straight at a 50-50, and then let the presumption be, that if anyone wants to come in and declare that the person is not eligible for it, instead of starting out with a . . .

**MR. SPIVAK:** Presumption is a term that we use; there is no such word as presumption in the Act. The Act states "spouses each have the right to have their assets divided equally between them in any of the following events or circumstances," and then the events deal with the marriage breakdown. That's what the law will be.

**MRS. LELOND:** That's fine. Thank you, Mr. Chairman.

**MR. CHAIRMAN:** Mr. Pawley.

**MR. PAWLEY:** Well, Mrs. Lelond and Mrs. Hamblin, if I could follow up on Mr. Spivak's last series of questions or statements to you, I would assume that one of the very valid reasons for which you drew your opinion that this was wide open legislation insofar as discretion was concerned commercial assets, would be Clause 13(2)(j). We have 10 factors listed, and the very final factor 13(2)(j) is a general catchall clause, "any other circumstance relating to the acquisition, disposition, preservation, maintenance, improvement or use of the asset." That after listing a number of other factors such as the date of acquisition of assets, the nature of assets, I suppose you would ask, Mrs. Lelond, if the desire is really to provide for equal sharing, why does this Legislature wish to propose such a list of factors and such a wide open catchall to the court?

**MRS. LELOND:** Yes, and it's also very confusing. I did mention twice in my brief that it is a headache for lawyers, and that's exactly what I mean. Well, in the case of any sort of family troubles, people naturally are very worked up and it's not the kind of a bill that you feel is helpful to you. You are more liable to get seriously confused. Well really, in my heart, Mr. Spivak, I can't feel that those clauses help the bill.

**MR. PAWLEY:** Mrs. Lelond, would you feel more satisfied, and the organization feel more satisfied if 13(2) provided for the presumption of equality, then went on to indicate that that presumption would remain unless a greater inequity would be created, rather than listing 10 catchall factors?

**MRS. LELOND:** That's exactly what I'm trying to say in my poor English.

**MR. PAWLEY:** Now, Mrs. Lelond or Mrs. Hamblin, I'd like to deal with the question of the 32 acres, and Mr. Spivak's questions again relating to that. The Dower Act provides for the 320 acres being the homestead, and indicates that in the event of death or sale, then consent has to be obtained for the sale of that 320 or a lifetime interest. Here what we are doing, Mrs. Lelond, is in this legislative reducing what is the traditional understanding of the homestead to the matrimonial home, which is the house and a small amount of land around the house. I can only assume it might be an acre or two acres, three acres, which is quite a differential from the traditional nature of homestead. So I would like to ask you ladies, as rural women familiar with farm values, if the farm home with an acre or two around the farm home, if that was considered to be family assets and to be so valued and if that family home could not be sold as a result of the restrictions in The Planning Act, because that now requires planning authority, if the value of the family farmstead would be very significant in your opinion?

**MRS. LELOND:** I saw that in the Free Press, and I was going to bring it with me to quote it, and then I thought I'm not going to quote newspapers because they are not really always authentic and I'm sure even the committee will appreciate that. But it said, and I thought how utterly ridiculous — I've been living on a farm for nearly 40 years, and it said, "so the wife would be better off with the house, than the non-profitable 320 acres," and of course I thought, well that can only be from the Winnipeg Free Press. Surely it isn't Gerry Mercier and I hope I still am right? Certainly there is no comparison with the value of the home and 320 acres of farmland today.

**MR. PAWLEY:** Well, Mrs. Lelond, are you aware that now in rural areas you have to obtain approval

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of The Planning Authority, i.e. the municipality or the province, to split the house and the acre or two around the house.

**MRS. LELOND:** No, I'm not.

**MR. PAWLEY:** So, if I advise you that that is the case, what would your opinion be now?

**MR. CHAIRMAN:** Order please.

**MR. CHERNIACK:** Mr. Chairman, can we finish the question and the answer, you don't have to finish them.

**MR. CHAIRMAN:** Can you hear through all the noise of the bells?

**MRS. LELOND:** No, I can't hear.

**MR. CHERNIACK:** I can hear through the noise, but not through the talking.

**MR. CHAIRMAN:** The delegate claims that she can't hear. I would recess the committee for a vote in the House.

Mr. Johnston.

**MR. JOHNSTON:** Could I make a suggestion, that if four of us were to stay here; four from the government's side and four from the opposition's side — unless they specifically want to have the vote recorded?

**MR. CHAIRMAN:** No, and I have four more persons on my list who wish to question the two ladies, so we can't finish it. So would you ladies please stay around, and we hopefully will be back in ten minutes time and we will reconvene the meeting?

*Committee recessed to the House for a Standing Vote.*

**MR. CHAIRMAN:** Committee come to order please. Are the two ladies still present that we were talking to prior to the recess?

Mr. Pawley you were talking at the time that you were interrupted by the buzzers.

**MR. PAWLEY:** Yes. Mrs. Lelond we were discussing the new definition of marital home, and that new definition of marital home we agreed reduced the usual homestead definition from 320 acres down to the house and the immediate area surrounding the house. I was in the process of questioning you, Mrs. Lelond, being from a rural point, as to what would be the value of a farm house, an acre and a half around that farm house, in itself, all on its own, without any of the land attached to that farm house?

**MRS. LELOND:** Well, it's quite easily understood that a house in the country is not valued the same in any way as a house in the city. In fact, when they used to sell farms, they never used to value the property. They used to sell the land by the acre. Now with new homes, they are valuing the houses, but a \$40,000 house or \$50,000 in the city, would not come near that value in the country. But the 320 acres — like the Free Press said, the non, not non-profit, I forget what word they used — but the 320 acres, I think land has increased in value in some areas 100 percent. It wouldn't even compare the value of 320 acres with a house. But the question has arisen, and some of the ladies in this room belonging to the Women's Institute, would like a direct answer. Now, you say the farm home and not the 320 acres, but does the farm home not be a commercial asset, thereby halved and you may or may not, at the discretion of the court, get half of the 320 acres. Am I twisting things up worse than ever or how do you interpret that?

**MR. PAWLEY:** Are you wishing Mr. Mercier to . . .

**MRS. LELOND:** Yes. They would like Mr. Mercier to answer that directly.

**MR. CHAIRMAN:** I have Mr. Mercier on the list for further questions anyway.

**MR. PAWLEY:** If I could further just deal with that, and then Mr. Mercier that question. I was commenting to you about the provisions of The Planning Act which can prevent the transfer of the homestead to a third party. In other words, that house would be locked in.



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**MRS. LELOND:** With the 320 acres?

**MR. PAWLEY:** With the 320 acres. How do you see the value of the farmstead in a situation such as that? Where no approval is granted by the planning authority to split off, by way of title, the farmstead?

**MRS. LELOND:** Well, I don't know because I wasn't aware of . . . My son has just gone on the Council and I know he's telling me different things, but he hasn't told me that. So, you are asking me what the value of the house would be in that circumstance?

**MR. PAWLEY:** Yes, if the house couldn't be sold to a third party.

**MRS. LELOND:** It wouldn't be worth a great deal. I know a boy that's just moved one into town and it's a two-bedroom home and I think he bought it for \$4,000 over at Hargrave and move it over to Miniota, and I can cite instances in the country of houses being bought like that and moved. So that's the value of that house if she could move it off.

**MR. PAWLEY:** Mrs. Lelond in The Marital Property Act, there is the family asset discretion, which is quite limited to the court, and the commercial asset discretion, which is much wider, much broader. Would you be satisfied if the discretion that was provided for the commercial assets, was the same limited discretion as is provided for in the family asset section of the legislation before us?

**MRS. LELOND:** Well, I think so. I don't think that we can go for broad in one and limited in the other, but I know my brief sounded a little bit like that, but it was not meant to be. I think 50-50 is the basis . . .

**MR. PAWLEY:** With limited discretions such as that provided for under the family asset section?

**MRS. LELOND:** Yes. Yes.

**MR. PAWLEY:** Thank you.

**MR. CHAIRMAN:** Mr. Parasiuk.

**MR. PARASIUK:** Mr. Chairman, through you to Mrs. Lelond. We've had a lot of rural MLAs sit in debates of second reading of this Act, that this is not a great problem in rural Manitoba.

The Women's Institute, does it have representation from different areas of rural Manitoba? Do you feel that the Women's Institute is quite representative of rural Manitoba?

**MRS. HAMBLIN:** There's over 2,093 members in rural Manitoba, / HAMBLIN/ and some in Winnipeg, but they're mostly rural.

**MR. PARASIUK:** So you have representation as well geographically from most parts of rural Manitoba then?

**MRS. HAMBLIN:** Yes. Our W.I. is divided into the same divisions as the Department of Agriculture: eastern, central . . .

**MR. PARASIUK:** Have you had an opportunity to discuss the whole matter of family law with your members over the last year or two years in order to come up with briefs like this, because this brief is a very good brief in terms of looking into pieces of legislation in some detail. Have you had a chance to discuss this matter with your representatives or your members?

**MRS. HAMBLIN:** Well, since the very first time that family law was brought forward, we have had this at our conventions, we've had a study paper last winter on it, and at our June convention this year we spoke about it, and then just the past week, at our board meeting in Winnipeg, we brought forth this brief and have discussed it.

**MR. PARASIUK:** So, in your opinion, as president of this organization, you would say that this indeed is a matter of concern to rural Manitoba, and to rural women in particular?

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**RS. LELOND:** Yes. I would say so, and we also had a petition, and I don't know if it was brought ward here and you have seen it or not, but there's quite a few signatures on it and the concern there.

**R. PARASIUK:** Thank you, very much.

**R. CHAIRMAN:** Mr. Mercier.

**R. MERCIER:** Mrs. Lelond, would you not agree that the land on a farm, other than the marital me, is in actual fact a commercial asset.

**RS. LELOND:** Absolutely.

**R. MERCIER:** Thank you.

**R. CHAIRMAN:** Any further questions to the two delegates? Mr. Pawley.

**R. PAWLEY:** I would like to, just so that question of Mr. Mercier's is not just left at that point you, however, feel that commercial assets should be divided on a 50-50 basis with very limited discretion?

**RS. LELOND:** Yes. I left the question for Mr. Mercier to answer. Whether it's half of the family home or half of the 320 acres? You see, you say the farm home to the woman, but then in the commercial assets they would be 50-50. So she gets half the house and maybe half the 320 maybe none of it, according to judicial discretion?

**R. CHAIRMAN:** Mr. Mercier.

**R. MERCIER:** Well, it would be half the value of the family home. I'm not sure, perhaps you could answer this question, and I really don't think you can . . .

**RS. LELOND:** I doubt it myself.

**R. MERCIER:** It occurred to me that there would be a limited number of instances in which a wife might want to retain the ownership to the family home without actual ownership of the commercial act. What would happen is that a sort of an inventory is taken of the value of all assets. Let's assume some adjustments were made and was a 50-50 sharing of all assets, but under the 50-50 sharing the husband had the ownership, or perhaps the bulk of the farmland, would seem to me in those cases the wife would not want ownership of the home but would want ownership to other assets of equal value.

**RS. LELOND:** Well, okay. We're very tied up; I think we're tied up in this worse than anything else.

**R. MERCIER:** So are we.

**RS. HAMBLIN:** I think that the sharing of commercial assets 50-50 is proper and right. What concerns me is, we have all these 13 headings, or 12, I haven't counted them, things that can vary a lot. Another thing that really concerns me, and I haven't had a straight answer from anybody yet, how you determine the value of commercial assets, and I'm talking about farmland. I know that farmland could be bought 10 years ago for \$200, the value is now \$600 an acre. Now, how do you come to the point of what you say the value of the land is so that a living could be made from it?

**R. MERCIER:** It would be market value at the time of division.

**RS. HAMBLIN:** And who is to decide the market value?

**R. MERCIER:** Well, generally if the parties don't agree themselves then it would have to be, I suppose, by way of appraisal.

**RS. HAMBLIN:** Have you considered the possibility that farmland is being sold very rapidly to foreigners in our country at a price far beyond the reach of our Manitoba families, and it's only

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under the chance that a farm boy is living on a farm, and handed down the farm by his father that he is able to continue farming. Now, when it comes to the sale of that land, and this is what concerns me, is what is the proper price? Is it a price that a man can go on farming, or is it price that you could sell to a foreigner? You see, it's two different prices, isn't it? So who determines the market value, and who determines the price that that land should be?

**MR. MERCIER:** Generally, it would be market value. The Minister of Agriculture is attempting to deal with the other question, purchase by foreigners.

**MRS. HAMBLIN:** I heard that there was something to do with looking back on your income tax to find out how much money you are making off that land. The productive value — is there anything along that idea whatsoever — on production off that land?

**MR. MERCIER:** Well, it would have to be by market value. I am not aware of all the intricacies of developing an appraisal, but there are restrictions now with respect to the sale to foreigners. I don't think that would be the price at which a farm would be valued.

**MRS. HAMBLIN:** Well, I know that in our part of the country that the land prices have gone up extremely, and I know that this is a concern either way.

**MR. PARASIUK:** Through you again to both presenters. You have raised a concern with 50-50 not being applied to commercial assets in the same way that it is being applied to family assets. That is a concern that virtually every group presenting to this Committee so far has made, and I am wondering if you would feel more comfortable, and if you felt that the government's statement that really they're treating both the same way essentially, would you feel more comfortable if the same wording was used for family assets as is used for commercial assets? I'd take a look at the wording on 13(1) with respect to discretion to vary equal division of family assets, and it's a one paragraph statement. And then I'd take a look on 13(2), discretion to vary equal division of commercial assets and it's a one paragraph statement with ten other additions. And I am wondering if you would feel more comfortable if the government did undertake to use the same wording for discretion for family assets as they did for commercial assets, if in fact they've said that they were applying the 50-50 principle to both categories of assets?

**MRS. HAMBLIN:** I would like to see, as you suggest, that both the commercial and the family assets were divided along the same lines. I think after reading these different circumstances that you could hardly escape from one or the other. I know that in business, if two men are in business together when they divide up I don't think they're questioned on the length of time they have been together in business, the nature of their assets, and all these things. There's no questions asked there, there, what they've been doing in their spare time?

**MR. CHAIRMAN:** Order please. Any further questions to the delegates?

**MR. PARASIUK:** Not from me. I think Mrs. Hamblin has made the case very well.

**MR. CHERNIACK:** I almost am inclined to ask a repetition of what went on since I was talked to by Mr. Miller and missed what brought about some response, however, I'll go on.

You asked certain questions of Mr. Mercier; you got some answers which is pretty good. There is one question you asked. How can a man and wife ever join in marriage as an equal partnership if there is no immediate sharing of the home and such family assets as do not produce income? That's a pretty strong statement. You asked a question, and I don't think you were given an answer by Mr. Mercier. But you go on to say, family assets should be immediately shared as marriage partners if the woman is not just considered a mere chattel.

One of the members of this Committee has made statements something like, "I don't want anybody interfering in my business, my wife and I don't need anybody to help us in our affairs until we're fighting and separating." That seems to be in contrast to what the Women's Institute is saying and I am wondering whether it is a matter of principle, or a matter of practical application, that prompts the Women's Institute to say this is what is right and proper, and that is immediate equal sharing.

**MRS. LELOND:** I don't think we're being biased against a man when we say that the women have taken the short end of the stick in all legal dealings. I can cite one instance that I know of where a woman got 50 percent, but as I repeated before, 12 to 13 percent is the average that women are receiving, and that is a pretty poor show for a woman that's worked 20 years on a farm, and

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don't think that she should have had to get out on that tractor to be equal in partnership. I never did it, and if I walked out tomorrow I'd expect half. I did raise five children, and I feel that those five children and my contribution to the home was equal to anything that my husband did. He's not poor, and he's not wealthy, but he also could be here giving a brief, and I think that's one mistake; the women don't ask the men. My husband partly wrote this brief, and he says, those men are chauvinists that wrote this bill. He actually does believe it, and he has a farm, and he's willing to give me half of it. Of course, as old as we are we're going to give the thing away pretty soon anyway, so that's not a big generous thing. But at the same time he does see that women have earned that; he feels that I've earned it, and I talk as much at home as I do here.

**R. CHERNIACK:** Well now, the point I was making about immediate equal sharing of marital assets, which was the principle in last year's legislation which is now being set aside, is contrasted with the statement made by a Conservative member that, "I don't want anybody to interfere between you wife and me. We can settle things very well."

Now, you say that you feel entitled to it. The question I have in my mind, and since I believe you speak mainly for rural and farm domestic arrangements, whether the wife is consulted normally on decisions that affect the household possessions, like furniture, like the fridge, the stove, the change of the house, or whatever like that. Do you feel that it is necessary to have it in the law?

**RS. HAMBLIN:** May I speak to that?

**R. CHERNIACK:** Please.

**RS. HAMBLIN:** My marriage has been going on for 32 years on the farm. I've worked on the tractor. My husband is with me here today. He may be the only man sitting back there but he's there. And we have been a partner throughout those 32 years. Our decisions have been in partnership, our buying has been that way. I have had my name on land and so I am not fighting for me. I am fighting for the odd ones that you hear that do not, and are not, recognized as I am. I never ought for one minute that I was very privileged to have this in my home and on the farm but apparently I am because there's many women, as I talk to them in W.I., that are not privileged in the same way and men do not all think along the same line that you are a 50-50 partner in marriage, decision-making of commercial assets, of everything that you do, and why should it not be?

**R. CHERNIACK:** Mrs. Hamblin, you just lead me into asking you about the claim that is being made, has been made, by some Conservative MLAs, that it would be damaging to the business process, to dealing with creditors, to dealing with a bank when loans are needed, to have equal partnership wherein the wife might arbitrarily say, I will not go along with a decision of the husband to do or not do some business aspect. Now, you've described your arrangement in such a way — are you aware whether that's a real objection, that this is a valid contention that women should not be included in the decision making of commercial assets during the marriage and that it might adversely affect the success, the financial success, of the couple?

**RS. HAMBLIN:** That's very simple to answer. Because they wouldn't be the success they are about us.

**R. CHERNIACK:** Thank you. Well now, let me go on. When you dealt with discretion to vary the equal division and you talked about commercial assets and you know that Mr. Mercier and his colleagues have a distinction in their minds between the degree of discretion as between family assets and commercial, now when you were talking about commercial and you mentioned the long list, the ten opportunities given to a court to exercise discretion to vary, Mr. Mercier said, "It is intended that it should only vary if there is a clear inequity." Now, you notice that is not in the legislation. If there were that — and I hope to persuade him to say at least — not that I will be entirely satisfied but I think it should help a lot the concerns you've raised — to persuade him to say that the court may vary the principle or presumption of equality if it is satisfied that a division of those assets and equal shares would be clearly inequitable period, instead of going into all these various circumstances.

Now, you're not judges, you're not lawyers, but you are people who understand the problems between husband and wife and I'm asking you whether you think that would be more helpful. Would I continue to try to persuade him to say, to use his own words, "clearly inequitable" rather than to give all these ten opportunities to . . .

**RS. LELOND:** Yes, that's what I meant when I said if square one was 50-50 sharing, that's what I mean by that.

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**MR. CHERNIACK:** Well, I must point out that Mr. Spivak and Mr. Mercier contend strongly that the square one is 50-50 sharing and indeed the bill says so but then it gives all sorts of other things that might interfere in that principle.

**MRS. LELOND:** Well, you see, I don't interpret the bill that way. I interpret it as saying it can be divided. I don't interpret it as 50-50 sharing. You see, the word "can" is there . . .

**MR. CHERNIACK:** Yes, okay.

**MRS. LELOND:** . . . and that's what bothers me.

**MR. CHERNIACK:** I'm certainly not arguing with your interpretation nor with that of the court. One other point, another point, Mrs. Lelond, when you talked about the no-fault maintenance and you said maintenance should not hinge on conduct that may or may not have been caused by the incompatibility of the marriage, I think it was there that Mr. Mercier said, "It's only intended to refer to a small minority of cases." I'm really not clear on whether he intended that description to apply to sharing of family assets or to the maintenance, but he did use the expression "bizarre cases." I don't know if you and I and Mr. Mercier could agree on what is bizarre but can you conceive of the kinds of things that might be in a court's mind or in a judge's argument, knowing as you do the relationship between husband and wife, as to what could be considered not his word or bizarre but words like "grossly unfair or unconscionable," just what that could mean in the mind of the average person.

**MRS. LELOND:** Well naturally, when I was writing this brief and I did write it myself at home and presented it to the Women's Institute, when I was writing it, I talked to my husband about it and his sort of idea is that there was a time when the man played around and sort of did what he liked and the women put up with it or hid behind a screen of "not knowing," and he feels now that it's sort of joint, they both play a little if they want to. And this is not funny. This is the society that we live in. So he interpreted it that the woman better not be caught playing around, that's all, and that was his interpretation of it, because anything so gross as, well, hurting somebody so badly they'd be crippled for life or something, I don't interpret that in it at all. I interpret it as moral conduct. But maybe, maybe I've interpreted it wrongly.

**MR. CHERNIACK:** You're saying that an act of adultery could be interpreted this way.

**MRS. LELOND:** Yes.

**MR. CHERNIACK:** Or breaking the jaw could not be.

**MRS. LELOND:** Yes.

**MR. CHERNIACK:** Or habitual breaking of jaws might not be, that's sort of . . .

**MRS. LELOND:** Well, there's more abuse than you realize, you know, even in the country.

**MR. CHERNIACK:** Yes, but when Mr. Mercier used the expression bizarre, I'm just wondering what that has any meaning that . . .

**MRS. LELOND:** No, it doesn't tell me a thing because bizarre conduct is . . .

**MR. CHERNIACK:** Unusual and . . .

**MRS. LELOND:** It's unusual, yes. Maybe Mr. Mercier would like to respond with what he thinks bizarre would be.

**MR. CHAIRMAN:** Well, to the two women that are here as delegates, I might point out to you and anyone else, that the committee is here to hear submissions from people and then if the two persons like in your case, wish to answer questions from the committee relating to your submission, fine and dandy. What we will be doing when we've heard all the submissions is we will be going through it clause by clause. I am quite confident that the Opposition has a number of amendments and I do think that even the government has some amendments so there will be much time spent on this bill on a clause-by-clause nature and that will be the time that Mr. Mercier will be answering

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ie questions.

**R. PAWLEY:** Mr. Chairman, on the point of order.

**R. CHAIRMAN:** It's not a point of order, it's just an explanation.

**R. PAWLEY:** Okay, if I could just ask a question. . .

**R. CHERNIACK:** It's not an explanation from Mercier is it?

**R. CHAIRMAN:** No, what I'm trying to get across, it's not for the delegations to come and ask questions to the various members of the committee, whether it be the Attorney-General or any other member.

**R. PAWLEY:** Mr. Chairman, last June when we had prepared amendments, the government had prepared amendments, we distributed those amendments so that the delegations would know what type of amendments were being proposed by the government. There has been indication by you that you think the government has a number of amendments to propose.

**R. CHAIRMAN:** No, I just said that there may be some.

**R. PAWLEY:** Well, then I would ask Mr. Mercier, because certainly last June we distributed the amendments so that the delegations would know. It may be that points that the delegations are dealing with will be covered by the amendments that the government proposes to raise.

**R. CHAIRMAN:** Mr. Mercier.

**R. MERCIER:** Well, Mr. Chairman, I think it would obviously be more appropriate to hear the delegations, to hear their submissions and representations before any final decisions were made with respect to amendments. I would think that that would be more democratic than telling the delegations as they appear that these are the amendments that we propose, do you disagree or agree with them?

**R. CHAIRMAN:** Mr. Cherniack, further to your questioning of the delegates.

**R. CHERNIACK:** Yes, I want to question, although I do marvel at the thought that it's more democratic not to tell people what is in the minds of the government. It seems to me the sooner they know the quicker they can respond with reasoned advice knowing what may be in the mind of the Attorney-General rather than not knowing. However, that's his business and, Mr. Chairman, he doesn't want to answer questions, I'm sure he could make that assertion without the need of the Chairman's protection.

**R. CHAIRMAN:** Mr. Mercier on a point of order.

**R. MERCIER:** Mr. Chairman, I'm sure it should be obvious that no final decisions of any kind would be made on amendments prior to hearing all of the delegations. I wouldn't want to commit myself until we've heard all of them.

**R. CHAIRMAN:** And furthermore, to the members, I didn't say the government had amendments, I said they may have some. Governments often have amendments on legislation.

**RS. LELOND:** Well, Mr. Chairman, are there any more questions?

**R. CHERNIACK:** Yes.

**R. CHAIRMAN:** Mr. Cherniack, do you have further questions?

**R. CHERNIACK:** Yes, Mr. Chairman. I just want to clarify the problem that would be posed the way Mr. Mercier seemed to describe it in case of the marital home on the farm. The way I gather Mr. Mercier conceives of what would happen is that on a separation, assuming that the wife does not get half of the commercial assets, that she would get half of the marital home and then she would be in a position of offsetting her half of the marital home against whatever she might be entitled to on the farm. In other words —(Interjections)— Well, Mr. Mercier is disagreeing with my

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interpretation of what he said. It's not really what he said I'm concerned about. It's the problem. Suppose the wife on a farm who acquires half of the marital home which is limited now to the house and some land around it but does not include the out buildings, I think that's clear from the definition she acquires a half interest in that and then the courts would be in a position of deciding how much she is entitled to have of the commercial assets, and arrives at a decision, would then be bound to either establish that the wife owns half the house and she owns half of or a portion of the commercial assets, then there would have to be some form of evaluation which would determine how they are going to separate it. You can't cut a house — no one is going to be a Solomon even the wisest judge — to cut the house in half or cut pieces out of the farm. What value — and that's the point that Mr. Pawley, I think, was getting at — what value could you assert if you owned half the house on a farm as compared with trading it off for some part of a right that you may acquire under commercial assets? I want to confirm with you my impression that the person who would be left with the home would be left with an asset worth very little and if trading off that half an asset, would have very little bargaining strength because of the inadequacy of the home.

What I'm getting at is, is there a market for that home on the land or must the home be dealt with as you described where somebody buys the house in order to move it off? Where is the market in a home situated on a farm?

**MRS. LELOND:** Well, that would depend how close you were to a large centre. That home might be quite valuable if it was in say a five mile radius of Brandon. You would get a lot for that house because there are lots of people looking for it. But 70 miles out, where I live, you would have to value that house so that the cost of moving and everything to get it to some centre, it wouldn't be worth very much.

**MR. CHERNIACK:** Well now, a woman who would acquire a half interest in a home to the extent that it is described as a homestead, that is the 320 acres, would that be a viable saleable piece of land and house almost anywhere?

**MRS. LELOND:** Yes, if you left the house there and the land, it would be viable.

**MR. CHERNIACK:** Thank you, Mr. Chairman.

**MR. CHAIRMAN:** Any further questions? Seeing none, thank you ladies.

**MAUDE LELOND:** Mr. Chairman, we wish to both thank you for your kind attention.

**MR. CHAIRMAN:** Next person — Maxine Prystupa.

**MS. PRYSTUPA:** Mr. Chairman, I can come back this evening, but the person who is next on the list after me cannot, that is Ms. Winnie Fong from the Family Services of Winnipeg, and I have agreed to switch places with her if the committee so agrees.

**MR. CHAIRMAN:** All right, agreed.  
Is this Miss Emery?

**MS. WINNIE FONG:** No. I'm taking the place of Lois Emery. I'm Winnie Fong, I'm the Executive Director of Family Services of Winnipeg, and I'm here to speak on behalf of this agency.

We have worked in the city serving families since 1937, and many of the families who have come to us over the years have come to us at a time when their marriages are breaking apart and they are in distress, and it is out of our experience partnering these people that we would like to speak to you today, Mr. Chairman. We have discussed this with the board of our agency, and we have shared our experiences among our workers, and it is out of this that we speak. I would like to read the brief to you, and if you have any further questions I will be pleased to try and answer them.

Mr. Chairman, Family Services has served Winnipeg since 1937. Over the years and through such services as marital and family counselling, homemaker service, family day care and family life education, we have helped families with the challenging tasks of growing, living together and sometimes separating.

Our experience has shown us that families exist as families before and after separation; that there is pain for all members of the family when marital breakdown occurs; that this pain can be exacerbated by laws that seem unfair or no longer fit the realities of today's families; that such laws can continue to affect families adversely long after the legal separation has taken place.

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In this context we would like to comment on certain aspects of the proposed Family Maintenance Act and The Marital Property Act currently before this committee. We are concerned because several principles we have supported as a result of our experience with families may be abrogated by the proposed legislation.

We believe that marriage is a partnership in which there should be mutual responsibility and sharing. We do not believe that the equal sharing of family and commercial assets should only become explicit and real at the end of the marriage. We realize that there may be legal complexities related to equal sharing during the marriage. However, we do not see the current proposal of deferred sharing of all assets as a solution to such problems. Instead, deferred sharing appears to maintain the current inequity and encourage the dissolution of the marriage before even family assets can be shared.

We are also concerned that the circumstances under which the courts may exercise judicial discretion to vary the division of family and Commercial assets, in other than equal shares, are so inclusive as to undermine completely the principle of equal sharing. Moreover, these provisions or "extenuating circumstances" will actually encourage fault-finding and lengthy litigation around the division of assets. Far from facilitating family re-adjustment these fault-oriented provisions will seriously undermine it. Our experience has shown that if the act of legally dissolving the marriage creates anger and stresses beyond those already present it can only damage all members of the family, perhaps irreparably, and I speak particularly to the children that we are in touch with.

We believe the concept of fault has no place in today's family law. To continue to dwell upon fault or to have to prove fault in order to obtain adequate and extended spousal maintenance, or a larger share of assets, can only impede the effective resolution of the marriage that has ended. Surely the only consideration should be the needs and resources of both partners with the aim, wherever possible, of the eventual, economic, self-sufficiency of both partners.

We are particularly concerned about The Family Maintenance Act's "limited fault" provision in the determination of spousal maintenance: "a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the marriage relationship." This provision may be unfair to and penalize certain people because of their age, lack of education, or work experience, or illness. Will the person for whom economic self-sufficiency may be an unrealistic goal be required to prove or deny fault if he or she wants to end an unhappy marriage with some hope for future economic survival?

Finally, we are still concerned about the issue of enforcement of maintenance orders. We thought the previously proposed Family Maintenance Act inadequate in this regard and The Wives and Children's Maintenance Act even more so. However, the "Enforcement of Orders" section of Bill 3 does little to improve the existing, inadequate procedures. We urge that new procedures be developed to ensure that maintenance is payable and collected via a public agency associated with the courts for all recipients who so wish.

Family Services appreciates the opportunity to present this brief to you. As a social agency, whose purpose is to enhance, restore, sustain families, we are very much aware that good family law is cornerstone of all aspects of family life.

Thank you for your attention to our submission.

**R. CHAIRMAN:** Mr. Cherniack.

**R. CHERNIACK:** Thank you, Mr. Chairman. Ms. Fong, you are a professional in the field of dealing with family problems?

**S.FONG:** I am a social worker, yes.

**R. CHERNIACK:** In the work you do now, and I don't know what you did before you were with Family Services, you must be involved with, I would guess, the largest proportion of broken marriages of lower income people? Is that a fair statement?

**S.FONG:** Yes, I would like to answer that, Mr. Cherniack. All families that we serve — we serve anything from 3,000 to 5,000 families a year in Winnipeg. Most of the people who come to us are self-supporting families. An average income is more like \$8,000 or \$9,000 for each partner that's working, and now-a-days the two partners are mostly working because, as you know the cost of living increased, and so forth, and people are no longer working for the second car, they are working to maintain their home and their children. So a lot of the families we are working for do not have that much, many of them I would say — you aren't talking about commercial assets these are salary earners, wage earners. When the home breaks up, as in any home, when you share and have to maintain two families all over again there is very little to share. We meet up with many wives, in a lot of instances — again I don't need to repeat what you have heard through all these presentations



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— these are people who have contributed to their home. If they have a job or recently had a job mostly low-income earners newly started, they are not in a position to be able, independently, to maintain their family apart, so that the question of maintenance becomes a very important one.

Very often, when we meet with these people, and very often it is at a time when they are separating or have separated, the whole question of what maintenance they are getting becomes a real problem and very often at that point of stress, when the marriage is unhappy, and in many cases — I'm not saying that this is representative of all broken marriages, but certainly is representative of many of the people we come in touch with. These are women who have, quite often, been battered and abused emotionally, and quite often, physically. They are people who want to get away and very often would want the protection of the law, and get away, and if they have sometimes the assurance that they will be protected they are quite ready, sometimes, to give up on the very short-term kind of consideration, any asking for maintenance or any reasonable, liveable maintenance from their spouses.

This is where we are extremely concerned. They are also people who have no resources, legally to go and ask a lawyer to represent them in great depth. Even if they had the use of Legal Aid facilities, for instance, they are not people who have very often the kind of content and comfort with social services, and even less so with Legal Services, or they know how to have entree into that. So very often we come across situations where these people have, in fact, no maintenance and if they have gone through Family Court, for instance, the enforcement mechanism is really weak. If they have to go back to court time after time to collect, if they are starting on a job, if they have to go home and look after a family, these are the people who do not benefit from the fact that there will be judicial discretion, that they can move through litigation. They don't have the resources, neither do they have the entree to these resources.

**MR. CHERNIACK:** Thank you, Miss Fong. I am going to go back because I am going to come to maintenance aspect, I want to still deal with the assets.

It has been suggested to us — you said the commercial assets are not a big problem for many of the people you deal with — but it has been suggested to us, and I think I agree with the concept that commercial assets that are bank account savings, say some bonds purchased, government bonds, a second house that may be owned by the family, a pension — these are all commercial assets under this bill. Would you say that you don't have a significant number of cases that come within your orbit or your view that do have at least that kind of limited commercial assets?

**MS. FONG:** I would say, talking for the families that we are talking about, and we are talking about many broken marriages, that there would be rare exceptions where they would have a second home maybe they might have a cottage, for instance, that they might have acquired years ago for very little. Generally speaking, I would have to say that they have a car five years old, or older. Talking about bank account, we are talking about people who are trying to keep up with being able to live by having a lot of credit payments to meet, and we are really not even talking about what is considered commercial assets, I would say no, that is not the kind of families we are talking about.

**MR. CHERNIACK:** All right, that clarifies the group of people you're dealing with. Now, you speak about instant sharing as compared to deferred sharing of family assets, that is the car you mention that would be the furniture, that would be the house, if they own a house, with the mortgage on it. Do you see that there would be benefits if the husband and wife had equal ownership of the acquired during their marriage rather than after the separation? Can you picture the difference really makes?

**MS. FONG:** Yes, let me perhaps describe the situation that we come across very often, and I think it does make a difference. When we talk about supporting the family, as we are working with these families, we are also working with the family on an ongoing basis, sometimes very early on in the marriage, and it seems to me from my contact with families that it is important for them to begin with an attitude where they are open with each other about what their financial accountabilities are or what their liabilities are. We quite often come across families, and I would venture to say that it is pretty indicative of

We quite often come across families, and I would venture to say that it is pretty indicative of the kind of tradition that men and women are still living under, where our wives do not know how much their husband earns, do not really know how much is in the bank account, all the things that have been bought, have been bought out of the husband's pay cheque and paid for, and so no suddenly, we have been quite distressed in terms of the principle of equal sharing right from the start. It seems to us, if the only time you get to know where you stand in terms of the partnership

relation to what you have accumulated, is at the time when there is a breakup, then that is not, in my mind, a positive attribute to ascribe to a marriage. A marriage is an equal partnership right from the start.

**R. CHERNIACK:** Well, Miss Fong, what you have stated is what you think is desirable. What some people would say, and I have quoted a member of this committee who has said something to the effect that, government has no right to interfere in my business, and my wife and I don't need anybody else to help us make decisions until there is a breakdown. Now, what you said is desirable, and I think no one would question the desirability. The question is, should government say that that is the way it ought to be, and then enforce it by saying — let's say furniture acquired for household use shall become immediately equally owned.

**S. FONG:** I would like to use the analogy, because I'm a family service worker, of, I see the government very much like sometimes, the educated parent, for its citizens. I know you are democratic representatives of your constituents, but I think very often government can be forward thinking and can be providing the atmosphere whereby your citizens begin to think in a certain way and manner, and it is that we look to when we look to family law or any other piece of legislation. So in my mind, I would say that of course it would be ideal, and I think I, along with the rest of any other people, would say, "I would like to manage my life, I would like to make my decisions."

I also know that at times I look too for support, whether it's from my relatives, from a social worker sometimes on the odd occasion, from, you know, my friends, and very often when one speaks to you is when you're in distress, when you have accumulated pain and suffering and anger over a long period of time, and finally it goes to the court. That is not the time when I — I will speak for myself — when I am at my most reasonable, and I can be depended on to think through with firmness and with consideration for the partner who, at that point in time, I feel has damaged me. So in that sense I am saying, if the law right from the start establishes the fact that it stands in support of equality and consideration and caring for each other in a marriage, I think that you would have done something to uphold families.

**R. CHERNIACK:** Thank you. The Maintenance Act now, I would like to come to. It says that when the judge makes an order, whether or not to make an order, he can deal with many circumstances, a long list of ten different aspects of it. And although I read this to mean that the court may not make an order if it feels that certain factors of a conduct nature, adversely affect one party or another, Mr. Mercier has stated that is not the intention, and that they intend that an order shall be made, at the amount of the order may be influenced by the judge's determination having regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the marriage relationship. I have to assume that your experience being much more extensive than mine, say, in viewing conduct between couples, that you might have some speculative educated understanding of what could be conduct so unconscionable as to constitute obvious and gross repudiation. Would you care to speculate on that or do you want me to give you examples?

**S. FONG:** Let me try to answer this in terms of saying that it is important, and I guess we place value, working with people as we do, on need overriding conduct. I guess to exercise a judgment, you know, I would not attempt to speculate what a judge, or you and I, in that position, would deem gross and unconscionable. All I know is that we have heard many sad stories of how, when marriage goes bad, people have done very harmful, painful things to each other. I would not want to be in the position, and because of my philosophy and training, to gage that in a monetary kind of manner; I do not stand for even gaging it from a personal value point of view, because my personal value — I can only speak from understanding at that point in time, I guess all we need to do is look inside ourselves — when I hurt, I hurt back. It is very easy and it is a very human thing to do. To judge who started the hurting and who ended it and what was done that was worse than the other party, becomes quite a problem.

Let me give you an illustration perhaps of what may seem gross behaviour. I think we have seen times unhappy marriages, where in some instances one of the spouses have become — there is no other word for it, an alcoholic — that the drinking has become so extensive that, and let me at this point use an illustration. This is a makeup composite; not a particular story I am telling you, but you know, the kind of circumstances that we see very often. When, at that point in time, you see that woman at that point you would say there is no way that I can approve of the behaviour of this woman who is drinking all day, not looking after her children, and so on. Now, is that the one when you judge and deem that that is the kind of behaviour that she is being and that she does not deserve support, or whatever? So, in my mind, just to say, you know, behaviour in my mind doesn't tell you what is underneath all that, because that also could be a reaction to what

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is happening through many years. This woman could well be, you know, quite a number of years ago, for instance, a person who has really done and contributed a lot to the marriage. I find it to go to court at that particular point in time, and then to assess it, the court in all its wisdom is still after all, human, and it is very time limited in how much time the courts can go into discussing what is and what is not at fault. In the long run, the practicality becomes whoever has the most adequate representation will get heard.

**MR. CHERNIACK:** Miss Fong, there has been a recent case of a man being convicted of raping a babysitter. That could be attributed as obvious and gross repudiation of the marriage relationship. If that were the case, and I think that that is not an unreasonable speculation, this section suggests that the court might increase the amount of maintenance that he has to pay, because of his course of conduct. Would you see any sense to that?

**MS. FONG:** I do not personally, and I would say I'm speaking for my colleagues. I think if I could just use that as an illustration, that act in and of itself, does not mean that the partner necessarily wants to repudiate the marriage, for instance. Spouses have, you know, and you talk about male or female at this point, have at times accepted, and I will use the word "forgiveness" behaviour which in another party's eyes, seem unconscionable and unreasonable. Well, sometimes I really feel that we know each other far better than somebody reading five lines in the newspaper. I want to separate the two things, and say if what you are saying is that the judge viewing this particular act, may vary the order, and increase the maintenance, it does not make sense to me the connectedness of it.

**MR. CHERNIACK:** Okay, let's try the other side. We have a wife who has left her husband, and has started to live with another man, and she applies for maintenance for herself, bearing in mind that she is expected to arrive at the stage of supporting herself, and is making an effort to acquire a skill. Would you say that that could be interpreted — I'm not asking for your opinion of how you react — but would you say that it would not be unreasonable to expect that society would interpret that as being conduct unconscionable and constitutes an obvious and gross repudiation?

**MS. FONG:** If you are mentioning the fact that this woman has decided to form another relationship I would like to say to you that I hope, for goodness sake, that the fact that one marriage or one relationship has not worked out does not mean that this person, whether it is a man or woman shall stay pure and chaste, and deprived of caring relationships after that.

**MR. CHERNIACK:** I'm sorry, Miss Fong, I wanted to take you to what I think could be considered a more extreme case. We know that our society now has become much more liberal than it was. Miss Fong, I am thinking now, with the liberal society that is becoming more and more liberal actually we find situations where couples live together for many reasons that need not be a long lasting relationship contemplated. It may be a matter of convenience of kind, or a friendly relationship that may grow into something, but we do know that it can happen, and does happen, that a marriage breaks up, a wife may leave her husband, she may not leave her husband in order to establish another relationship, but having left him, having lived alone for a while, then becomes associated with a man in a common-law — no, let's say in a sharing of a home and is still in need of maintenance. She may have a child with her, she may not, she may be going to school, she may not.

I believe, and now I'm suggesting to you, I believe that there are people who would say that that is conduct that is repudiation of marriage, and I think maybe it could be, should that disentitle her to maintenance, with your experience?

**MS. FONG:** I am impressed with many sections of the present family law as it has been presented and in parts of it, what it in fact is, gives consideration to for instance, some of these circumstances I do not think, however I am — fault finding is something — the matter of definition, I would agree with you, Mr. Cherniack, I am sure there are, and there always will be, people who would describe certain behaviour as gross or unconscionable, and that is precisely where I feel, when two people come and join in a partnership, and they took vows to share, that is what I thought this society sanctioned legally or religiously. It does not make sense, therefore, at that particular point in time at the dissolution of marriage, that suddenly this is no longer a principle that is held.

**MR. CHERNIACK:** All right, I want to move to two specifics, Mr. Chairman. One specific. I have suggested to the Attorney-General, and I am dealing now with unmarried cohabitation, that I have learned that in a common-law relationship there are occasions when there is a separation and a woman usually has to appeal to the police to protect her from her former common-law husband.

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ho wants to have access to the premises she occupies as her home, and that the police will not ve her that protection saying it's a domestic problem. The bill before us suggests that a woman ould have an order made, if they have lived together for a year, and there is a child of the union. have suggested that there may be a need for an order to be made protecting that woman from r former common-law husband even if they have no children at all or have not lived together r a year. Am I informed correctly that there is a protection needed in that kind of a case which ould justify an order for prohibition to enter?

**S. FONG:** I would support that very strongly. I would have to say though, that we know of rcumstances also, and it goes back to the enforcement, where among married couples, where domestic disputes, that although there is this order, that women have found it very hard to have enforced and I do not think that I would include the common-law couple in this, but I would still ce to stress that this is something that many women fall danger to at this particular point and at an order is an order. Until you get a policeman there, it doesn't work and because there are o many disputes, domestic disputes, and I think you are aware that it is not the most easy matter r policemen to deal with. There is quite often when we have felt that women have had nowhere r turn, not even to the police, in spite of the fact that they are legally married and they are talking out a settlement that has been reached in court.

**R. CHERNIACK:** Thank you. I want to move now to my final question dealing with the enforcement rd the provision for a security deposit or bond. It has already been suggested to us that where e bill reads: "An order made under this Act may require a person to deposit money or enter to a bond," the suggestion is that it should be changed to "shall require." And then it is suggested person may not have the money to deposit. Secondly, a bond may not be of any use if that person prepared to abscond and if there are no sureties. Would you still support the word "shall" instead "may" and would you add to it — and this is my suggestion — a requirement that whatever ssets are owned by that person, be it a car or furniture or T.V. set, should be mortgaged or pledged r the court in lieu of money in court or surety? Would you see that that would be of any additional ssistance in the enforcement of the order?

**S. FONG:** I would support that and again reiterate that there is need for an enforcement agency establish this.

**R. CHERNIACK:** Thank you very much.

**S. FONG:** Thank you.

**R. CHERNIACK:** Thank you, Mr. Chairman.

**R. CHAIRMAN:** Mr. Green.

**R. GREEN:** I'm sorry, I didn't get your name. What is it again?

**S. FONG:** It is Winnie Fong.

**R. GREEN:** Mrs. Fong?

**S. FONG:** Yes.

**R. CHAIRMAN:** Miss.

**R. GREEN:** I took it from what you were saying that many of the problems that you are dealing th are from lower income families, working families, and I would even include families that have o income at all, but are living on welfare.

**S. FONG:** No, there will be very few families who are on welfare because we are a United Way pported agency and we would naturally generally refer people who are on assistance to the city ppartment and the provincial department.

**R. GREEN:** I see. So that excluded from your considerations would be all the social welfare cases, ich I imagine would also be a considerable number of family breakdowns.

**S. FONG:** Of course, of course.

**MR. GREEN:** Although it would not be a straight line relationship, I would think that the percentage of family breakdowns would be higher in the lower income groups than they would be in the upper income groups, because money is sometimes the problem.

**MS. FONG:** Based on my experience and I would like to expand a little bit about the people we serve. While the majority of people we serve I would call — and don't ask me to define it too clear — your lower middle-class.

**MR. GREEN:** Right.

**MS. FONG:** We also have people who are professionals who come to us for help. We have the odd lawyer, the odd law professor, you know, they come too because . . . I guess what I'm trying to say is yes, financial stress is one of the stresses but I'm sure you would be aware that that is not the only cause of marriage breakdown.

**MR. GREEN:** I think that I said that and I concede the odd lawyer. There are odd lawyers. I really wanted to deal with the question because I want to see whether my own experience is similar to yours dealing with marriage breakdowns and I've had many, many in my practice, that I generally dealt — generally, not exclusively — generally dealt with lower middle-income groups.

Now the other thing is that you indicated that you are a . . . Mr. Cherniack put the question that you are an expert and you said you are a social worker; you qualified it. I would think that you have no knowledge — and I'm not criticizing this, I want to find out — about the relationship between partners, commercial partners. You are not an expert on partnership.

**MS. FONG:** I am not an expert. I do not like the word expert.

**MR. GREEN:** Are you familiar with . . .

**MS. FONG:** It is a matter of qualification.

**MR. GREEN:** Yes, are you familiar with commercial partnerships?

**MS. FONG:** I am not.

**MR. GREEN:** You wouldn't know the problems that partners encounter with one another.

**MS. FONG:** I will only speak to it to the fact that when things go well between two people who have decided to throw their lot together, they can arrive at many agreements and they would be quite free to share and give to each other. When they break up, as you well know in your situation the tangible, symbolical battlefield is money.

**MR. GREEN:** Right.

**MS. FONG:** There is no other reality at that point because the emotional togetherness has broken down. And you would be aware from your practice, Mr. Green, that in most instances it is the husband who has been the chief breadwinner who has knowledge of the commercial assets and has control of the financial situation. In that case, I would say that in 80 percent of the cases, the woman is not the expert comparative to the man who is more of an expert.

**MR. GREEN:** Well, the reason I'm asking Miss Fong the question, and perhaps I can be more explicit is that when you talk about marriage being a partnership, you are using the partnership in a sense which you are really not familiar with as to how partners get along and the problems that partners have.

**MS. FONG:** I would say that I would be using it in the manner that most of the citizenry of Winnipeg would use it, that the partnership is the marriage vows that we exchange with each other in front of the community.

**MR. GREEN:** You're not then relating it to the term "commercial partnership," you're using the term partner as being like a buddy, an equal companion.

**MS. FONG:** I will use the word "partner" in again saying that when two people choose to li

id share their life and to bring up children, they both contracted to share.

**R. GREEN:** But the reason I'm doing this, Miss Fong, is not to challenge you but I would hate to relegate to marriage what I know to be the situation in partnerships which are not marriage partnerships but commercial partnerships.

**S. FONG:** Yes, and I would accept that and in effect would say that most people that we have met have never entered the marriage viewing it as a commercial partnership.

**R. GREEN:** I said that I would try to compare my own experience with yours. My experience in the law business was that a couple in this difficulty, regardless of how they got there, generally either rented a home and therefore had no home, or if they had a home, they had it jointly. Is that correct?

**IS. FONG:** I think in quite a few instances there are still, until recently — it depends when people are married, Mr. Green.

**R. GREEN:** Well, I'm talking about within the last 20 years.

**S. FONG:** I would say that there would be still people who have no joint ownership of their home . . .

**R. GREEN:** Yes.

**S. FONG:** . . . Meaning that the wife has not been the joint . . .

**R. GREEN:** Well, of the cases that you have dealt with, and I have had over 300 of them, and I have never had the couple not buy the home as joint tenants nor have I had a couple separated here they were not joint tenants. What percentage would you say exist in these — and I'm talking about the lower income groups — in what percentage is the husband the sole owner of the home?

**S. FONG:** I am not able to give you a figure. I can only tell you of circumstances. I also want to say though, in most of the families, I don't know whether it is true of your experience, in most of the families where they jointly own the home, mostly what they own between them is a very large mortgage.

**R. GREEN:** Exactly, I agree with you entirely and I was going to say that your experience and mine are exactly the same, that this couple own a home that may be able to be sold for \$35,000 and has a mortgage of \$30,000, but they own it jointly, in the large majority of cases. That they have furniture, some furniture, which there may be a debt against which they may still be making payments on. There may be a five-year-old car which is what you described, and there may be a small amount of money in the bank account or there may not, as you have indicated. That is my experience with the large majority of marriages. Would that be your experience as well?

**S. FONG:** Yes, very much so.

**R. GREEN:** Okay. That when they break up — and now I'm going to give you my experience that generally there is not a great deal of argument with the home. If there are children the husband generally says that the wife can occupy the home with the children, or the equity of the home will be sold and divided between them, but that the first is more likely the case than the second, that the wife will continue to occupy the home.

**S. FONG:** I think that is where your experience and ours depart perhaps because the people do not resolve it in the manner that you have spoken of . . .

**R. GREEN:** Yes.

**S. FONG:** . . . and do not have as much difficulty as the people who cannot. Some of the families that we encounter are into situations where there has been a very painful situation going on for quite a lot of years, that the only way at that point for the marriage to dissolve is for the wife to get out.

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**MR. GREEN:** All right. In that case, she has the right to 50 percent of the home. If it's owned jointly, she has the right to 50 percent of the home.

**MS. FONG:** Very often these are women at that particular point in time who have not worked because they have two or three young children in tow; they are on welfare or they may be into starting a new job and they are not, at that point, when they are reforming their life, they really are not at the stage when they would go through the courts and ask for that 50 percent and there is a long delay over that.

**MR. GREEN:** But this Act doesn't change that. It says that they will have 50 percent of the home which they are entitled to under the circumstance that you've related.

**MS. FONG:** Yes, I guess . . . No, we are speaking to an instance — like I don't think law can change humankind.

**MR. GREEN:** I agree with you entirely, I agree with you entirely. I'm asking you what they are entitled to and if they own the home jointly — if you are looking for support that the law won't change for people, I agree with you entirely. I am asking you in this case where they own a house jointly, which you agree is in the large majority of cases, and they are joint tenants of it and the wife leaves she is entitled by law to 50 percent of the home.

**MS. FONG:** And this is where I have to reiterate that maintenance is important because there is no point about talking 50-50 over very little.

**MR. GREEN:** I agree with you. I am really not trying to put that question and I really wonder why it's so hard . . .

**MS. FONG:** Perhaps I'm not getting what question you mean.

**MR. GREEN:** Well, then I will repeat the whole thing and you will see that we are in full agreement that the joint tenancy in the home is there but it does not solve the problem. She is entitled to 50 percent of the home. That in many cases the furniture is turned over to the wife, that the husband drives away with the car and the problem is maintenance from the husband to the wife. That has been my situation. Do you agree that that is the large majority of cases?

**MS. FONG:** That is the large majority of situations in the experience I have had.

**MR. GREEN:** And that confirms exactly the experience that I have had.

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** Thank you, Miss Fong, and thank you for presenting your brief. I think the answers have been very much appreciated and forthright and I commend you for withstanding the cross-examination of the previous committee member.

I just want to ask you one question. In your experiences, what is your view or your opinion about reconciliation or conciliation services that are available to couples who find themselves in that predicament?

**MS. FONG:** I think I approve and support the fact that there is this clause in the Family Law legislation. I think quite often, in our experience, if partners have the time to think over the situation they may change their mind. What we have found, however, in our experience, is that most partners and I think we are speaking from our own personal experience as well as from my work, that most partners don't want marriages to break up, so the Court very often becomes the last step. We are one step before court and we find that very often, even we feel that they are not coming to court in time. So that while it is laudable to have that reconciliation clause in how effective it is going to be at that point when they have reached the moment when they say, "I am going to court" is another question. I would nevertheless still support that principle.

**MR. MERCIER:** Thank you very, Ms. Fong.

**MR. CHAIRMAN:** Any further questions? Seeing none, thank you very kindly for your presentation.

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**S. FONG:** Thank you.

**R. CHAIRMAN:** Committee will rise and meet again at 8 p.m. tonight.