



**Legislative Assembly of Manitoba**

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**HEARING OF THE STANDING COMMITTEE  
ON  
STATUTORY REGULATIONS AND ORDERS**

**Chairman**

**Mr. D. James Walding  
Constituency of St. Vital**



**FRIDAY, June 3, 1977 8:00 p.m.**

TIME: 8:00 p.m.

CHAIRMAN, Mr. D. James Walding.

**MR. CHAIRMAN:** Order please. We have a quorum, gentlemen, the Committee will come to order. Before we begin, I have a brief announcement to make. Contrary to earlier indications, the Committee will meet again tomorrow morning at 10:00 a.m. and again tomorrow afternoon at a time to be decided by the Committee. Mr. Jenkins.

**MR. JENKINS:** In view of the fact that the Committee is going to meet tomorrow morning and at a time to be decided in the afternoon at tomorrow's meeting, and in view of the fact that we have been sitting late until midnight every night of this week, including one night on the City of Winnipeg Act until two o'clock, I intend that around 10:30 this evening, I'm going to move that committee rise. I won't interrupt anyone that is at the mike at that time. But as close as possible to that time, I intend to move that this Committee rise and I'm just giving the Committee notice.

**MR. CHAIRMAN:** Very well. When we adjourned last evening, Mrs. Bowman had completed her presentation and had agreed to come back this evening to answer any questions that the Committee might have. Mrs. Bowman, if you would come forward. Mr. Spivak. **MR. SPIVAK:** Mrs. Bowman, I at this point only have a few questions to ask you, approximately 24 hours since your presentation — maybe not 24 hours, 12 and a few hours more. You have had an opportunity of examining the amendments so far that have been proposed and I'm now referring first of all to Bill 61. I'll refer to Bill 60 after. Is it your opinion at this point, and speaking on behalf of the Bar, that the bill in its amended form should be passed with minor amendments, or does it require substantial amendments? I'll leave it at that point first.

**MS. BOWMAN:** It requires amendments in light of the comments that I made in my submission in respect — my submission is of deleting the community assets, family assets, and in dealing with the retroactivity. Now, those are major amendments but it is possible, assuming that the House will be sitting for the next week say, to make those amendments if the government is so inclined and to have the bill passed with those amendments at this session. There is sufficient lead time allowed because it will not come into force before January. I'm sure there are other technical amendments that will be required, but I think that those can be looked at and that it is important, if possible, to pass the bill with the amendments I have suggested, at this session so that people will be able to know as clearly as possible who is going to be included in this Act and will be able to inform themselves, and so that the professionals in the investment and legal and accounting fields will be able to inform themselves and their clients of what is going to come.

**MR. SPIVAK:** Is the group from the Bar Association prepared to present their recommended amendments to the bill to the Committee? You presented it by way of a brief; are you prepared within a week's time to present for consideration by the Committee the actual amendments that you would propose?

**MS. BOWMAN:** Well, I am not a draftsman, that's a pretty technical job. I would think that we could prepare proposed amendments within that time if there was an indication that there was an inclination to adopt amendments of that kind. We are not crazy about wasting our time of course and unless we had some reasons to believe that the amendments we would be proposing were acceptable in principle, we wouldn't want to do that. But we would try to do that, yes, we would certainly cooperate with the draftsman, for example, in giving him our input.

**MR. SPIVAK:** Moving on to Bill 60, and the same series of questions. Bill 60, in its amended form?

**MS. BOWMAN:** Bill 60 in its amended form is subject to all of the deficiencies and defects which I mentioned last night and which are contained in the written brief. I don't think that I can predict whether or not those deficiencies can be remedied before the House rises because I don't know when the House will rise and what kind of input is possible.

If those amendments can be made and those decisions can be taken before the session ends, then the bill can be passed. It may be that they are so extensive that the government may prefer or may decide to withdraw the bill and try again at the next session. I don't think it is of as major importance that that bill be dealt with at this session, because the changes will not require quite so much public preparation as those of The Property Bill and so I would not consider it as serious a matter to delay the Maintenance Bill to the next session. It could be dealt with in a fall session or in January.

I think that The Maintenance Bill particularly would benefit not only from the input of the Bar but from the input of the Family Court judges and others in the community who are interested in the operation of the legislation and I don't think that they have had really the opportunity to even look at it in some cases.

**MR. SPIVAK:** Well, without knowing what the government's position would be in terms of accepting the recommendations, can I ask whether you think within a week's period, the Bar, again working with the legislative counsel or a legislative counsel for drafting, would be prepared to submit, within a week, submit the amendments for consideration by the Committee?

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**MS. BOWMAN:** I don't think that we could undertake to do that within the week, no.

**MR. SPIVAK:** Two weeks?

**MS. BOWMAN:** You're asking me, as one person, to commit the time of other Members of the Bar and you know, I'm sure, as a lawyer yourself, that June is one of the busiest months for trial lawyers and it is a difficult thing for me to say that I would be able to command the time of my colleagues in that kind of quantity. We would certainly try to co-operate but I can't undertake that we would be able to draft the amendments. That is really not the job of the Bar Association; that is, a draftsman is a specialized kind of person.

**MR. SPIVAK:** My question, really, through you, Mr. Chairman, is to determine whether the Attorney-General and the government would consider this, and they may not want to consider this at this point — they may not want to say anything at this point and that's fine, I accept that — but I want to at one point know from the government whether the position that has been given, at least even so far as Bill 61 is concerned, would be considered.

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

**MR. PAWLEY:** Mr. Spivak, I understand that Mr. Isaacs has already invited Mrs. Bowman to give him assistance, I believe.

**MS. BOWMAN:** When was this?

**MR. PAWLEY:** In the beginning.

**MS. BOWMAN:** In the beginning, yes, that's true.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** Ms. Bowman, I'm interested in your answers to Mr. Spivak on Bill 61. I understood you to say that providing the community of family assets and retroactivity feature were accepted, then the bill could proceed fairly well in this session. Is that correct?

**MS. BOWMAN:** I think that the bill could be enacted at this session in that it would sufficiently clearly define the scheme and who would be in and who would be out, that people could be informed and begin to plan their affairs. In the next six months before the bill became law, we would all have the opportunity to give it the kind of detailed examination, and it is a very complex bill, that it should have, and to suggest what technical and other amendments would be desirable, if necessary, if they were really that major, the proclamation of the bill might even be delayed until the session in January or February.

But I think it is of very great importance, if it's at all possible, to have The Property Bill passed at this session.

**MR. CHERNIACK:** Well, Ms. Bowman, I asked you whether I was right in interpreting what you said and then you said, well, we are not too crazy to waste time. I somehow interpreted what you said as saying, "If you accept our suggestions, we'll do the work and if you don't accept our suggestions, we won't do it." Am I wrong?

**MS. BOWMAN:** Well, I don't think that I would put it quite that way, Mr. Cherniack.

**MR. CHERNIACK:** That's why I'm giving you the chance to change it.

**MS. BOWMAN:** Well, I didn't put it that way to begin with. I said that if the government wanted our assistance in the wording of these changes, with the intention of adopting them in principle or accepting them in principle, then we would do our best to try and provide what we can in the way of assistance. But simply on spec, there's not much point in drafting amendments that we don't know anyone wants.

**MR. CHERNIACK:** Now, you said "retroactivity." Is there a difficulty in drafting it or is it a question of arriving at a policy decision?

**MS. BOWMAN:** I think that that is primarily a policy decision. I would think that it might be wise, if you were going to do that, to have whatever amendment is going to be made perhaps looked at by a number of people so that any obvious difficulties can be avoided.

**MR. CHERNIACK:** All right, Ms. Bowman, assuming that you know that the policy decision is adverse to your opinion, would you work with the Legislative Counsel to see to it that it is workable?

**MS. BOWMAN:** That what's workable? I don't think it's workable at all with retroactivity as it is now.

**MR. CHERNIACK:** I'm sorry, you just agreed that the retroactivity feature is a policy decision.

**MS. BOWMAN:** Yes.

**MR. CHERNIACK:** And suppose the policy decision were made contrary to your view. Do you say then that you could not apply yourself to it or you would not wish to apply yourself to it? Which?

**MS. BOWMAN:** First of all, I don't think I have any authority to say what the rest of the Bar would do.

**MR. CHERNIACK:** Right.

**MS. BOWMAN:** But if the policy decision is to retain retroactivity in somewhat similar form to what is presently in the bill, I would not want the responsibility of determining what the precise, or helping to determine the precise form of that wrong principle.

**MR. CHERNIACK:** Good, then that "wrong principle." All right, then let's go on and look at

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retroactivity. Where your brief says that there ought to be provision for a judge to give a discretionary lump sum out of the value of the ousted assets . . .

**MS. BOWMAN:** Yes.

**MR. CHERNIACK:** Was that sufficient for your satisfactory dealing with it as a judge or as a lawyer, to decide there, basing it on the contributions of both spouses to the marriage? Is that what you feel would be sufficient drafting?

**MS. BOWMAN:** Well, certainly not, that is a statement of what we think is a desirable kind of provision. It is certainly not any attempt to draft the provision. Insofar as the unilateral opting-out, I did bring with me a few additional thoughts on the subject which I have provided to the Clerk and you may want to refer to when you are dealing with that subject, including a possible draft notice to be used in the event of a person wishing to invoke judicial discretion. He may want to distribute it to you.

But no, the comments in the submission are certainly not intended as any attempt at drafting.

**MR. CHERNIACK:** Would you please picture for us how a judge would proceed to decide as between 50 percent, 60-40, 70-30, based on the discretion which he uses on the contribution of a marriage, as you described the intent — physical, financial, or the common intention. How do you expect a judge will arrive at an amount and then, consistent with that, arrive at another percentage for another couple?

**MS. BOWMAN:** I would suggest to you that if our proposal were adopted, that the court would look, for example, at the same kinds of factors that were advanced in the Murdoch case or in any other case of a similar kind. They would look at what life pattern the partners had in terms of whether they were working together in a common business; what kind of financial contribution each of them was making to the marriage; what kind of contribution a non-working spouse was making in terms of raising a family and so on; whether the partners were engaged in a co-operative effort generally throughout the marriage, that sort of thing. Now, looking at the facts as we recall them from the Murdoch case, it would be clear to me that that would be a case where you would find that the contribution of Mrs. Murdoch, both in terms of physical labour and in the raising of the family, fully entitled her to be considered an equal partner in any assets acquired during the whole marriage.

**MR. CHERNIACK:** Or possibly more than an equal partner, like 65 percent, or 60 percent, in view of the fact that apparently her husband was away from the farm for certain periods of time?

**MS. BOWMAN:** Well, it is certainly a possibility that if you are going to give one partner less than 50 percent, the other one is going to be left with more than 50 percent and it won't always be the husband who gets the larger share. It will depend on the circumstances.

**MR. CHERNIACK:** And you are quite prepared to leave it to the courts and the judges, all of them, individual judges, to apply that kind of a decision based on that loose kind of yardstick? You are prepared for that?

**MS. BOWMAN:** Yes.

**MR. CHERNIACK:** And then, as of the passing of the Act, you are saying from here on in, it's 50-50 regardless of the contribution to a marriage, physical — I don't know what physical means — but physical, financial and common intention.

**MS. BOWMAN:** Physical means in terms of labour. It may not be the most felicitous choice of words, but in terms of unpaid work and services performed in the marriage either in the home or in the business.

**MR. CHERNIACK:** So you are saying, as soon as the Act is passed, then you will no longer take any of this into account; you will just 50-50 . . .

**MS. BOWMAN:** Unless they agree otherwise.

**MR. CHERNIACK:** Or unless you have an immediate separation or divorce so that your marital term is a very very short one.

**MS. BOWMAN:** That's right.

**MR. CHERNIACK:** So what you are saying is, what I think I came to a conclusion on on another occasion, is that the advice that a lawyer might give to a client is, "Get a divorce now."

**MS. BOWMAN:** That's the advice the lawyer sometimes gives to a client in any event.

**MR. CHERNIACK:** No, no, but in contemplation of this Act, to say, regardless of how good a marriage it is, you had better save yourself difficulty in the future by being divorced now.

**MS. BOWMAN:** Well, you would have to take more than a decision to be divorced. You would have to have grounds for a divorce. But you could separate in any event. Yes, that's a possibility. If the only consideration in the marriage were the financial ones or if they were the overriding consideration, that's a possibility.

**MR. CHERNIACK:** And actually you don't need grounds if you are willing to wait three years.

**MS. BOWMAN:** That's correct. .

**MR. CHERNIACK:** So you would say that three years minimizes the growth of your estate.

**MS. BOWMAN:** Well, it really won't matter if it grows after the separation, will it?

**MR. CHERNIACK:** No, you are quite right. So, that's the advice, "separate," whether there is a divorce or not.

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**MS. BOWMAN:** That is the possibility.

**MR. CHERNIACK:** Would you say, at least, that it should be an equal splitting with the onus on the partner who would be required to give something up, to prove that it should not be equal?

**MS. BOWMAN:** I'm sorry, would you run that by me again?

**MR. CHERNIACK:** Well, I would say, would you think that it might be advisable to say to a court that it ought to be an equal split but since there may be discrepancies between the contribution in the marriage of the two partners that are not so equal, then at least the onus shall be put on the person who would be expected to give something up to prove that it was an unequal contribution.

**MS. BOWMAN:** Then, in the standard case, the onus would be on the husband to show why it shouldn't be 50-50.

**MR. CHERNIACK:** Yes, yes.

**MS. BOWMAN:** I wouldn't find that an offensive approach, no.

**MR. CHERNIACK:** Would you think it would be helpful in our efforts to clarify?

**MS. BOWMAN:** It's an alternative that I would find acceptable.

**MR. CHERNIACK:** Alternative to what?

**MS. BOWMAN:** Alternative to, I suppose, the opposite onus that you might find in the proposal that I put before you.

**MR. CHERNIACK:** All right. There is one point you made that since the bill exempts gifts from the commercial or other assets, you made the point that the husband may have given something to the wife out of love and affection and whatever, and then discovered that that is now exempt. Would that whole body of problem that you raised be set aside if we said, "Gifts other than from one spouse to the other."

**MS. BOWMAN:** Well, it would solve that problem, but it seems to me that it might not be a satisfactory way to solve it because I don't know that people should be prevented from benefiting their spouse, if they choose to do so, within the law, and then I hardly think it is reasonable to say that a husband may give something to his wife or vice versa and then get half of it back later on. If his intention really is to benefit her and to give it to her, then I don't think it reasonable that half of it should be snatched back when he is not feeling so generous.

**MR. CHERNIACK:** Now you are arguing the other side of that coin. Earlier you said, well, now the husband gives half to his wife out of the goodness of his heart, and then when it comes to split the marital regime, he cannot put her half back into the pot, but he must contribute his half into the pot, therefore, she will get three-quarters. Now you are saying, well, why shouldn't he be able to give her half and free it from her having to contribute it back so he could get half. Aren't you giving us both side of that problem?

**MS. BOWMAN:** No, not at all, Mr. Cherniack. I'm saying that if in the future a husband gives something to his wife, and it's a gift, then it should be exempt. But I was dealing, in my examples yesterday, with the instances where people have previously conferred a benefit, made a gift to a spouse — what is in law a gift — but that is not taken into account on the equalizing although it may have been intended in a sense as an equalization. And the example I gave to you was a man who had a piece of property himself and gifted to his wife another piece of property of equal value and that would not be taken into account later on. Now, had he been aware of course that there was going to be an accounting later on, he might have done things differently.

**MR. CHERNIACK:** Yes, I understood your problem. I didn't understand or hear a suggestion from you as to how to get around that. So I thought I would offer you one.

**MS. BOWMAN:** I think that the way to get around it is by dealing with the problem of retroactivity because that's where I see the problem arising. If a person after the fact . . .

**MR. CHERNIACK:** Therefore opt out unilaterally, although you don't like that word, and then go to the court and say, "Well, now we want you to review the extent to which the unilateral opting-out is applicable here." In other words, the court should use its discretion?

**MS. BOWMAN:** That's correct and the thoughts that I have distributed amongst you here are that really, when we talk about unilateral opting-out, it sounds offensive because it has a connotation of an autocratic one-party final decision and that in fact if you think of it as invoking discretion with respect to previously acquired assets, that it's perhaps easier to look at the concept rather than the slogan. Perhaps that is a better way of describing it, really, because it doesn't constitute a one-person decision.

**MR. CHERNIACK:** Thank you. Incidentally, you gave us an example which you said could take it to a ridiculous extreme, and I remember agreeing with you that it was ridiculous. And that was an example of a six-month marriage, a young lady who gets the bejesus beaten out — I never knew what that was but I can imagine.

**MS. BOWMAN:** Something that my mother used to say.

**MR. CHERNIACK:** Beaten out of her weekly, or daily, or something like that. Would you say that that woman is entitled to a maintenance or property settlement if she has accepted having the

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bejesus whailed out of her throughout even that short term of marriage, and has continued to permit it to happen? Finding fault on the husband, what would you recognize as being her entitlement?

**MS. BOWMAN:** Her entitlement in property?

**MR. CHERNIACK:** Yes.

**MS. BOWMAN:** I would say her entitlement in property is that of any other spouse.

**MR. CHERNIACK:** So it's not more because it's the fault of the husband?

**MR. BOWMAN:** Well, this marriage, I'm assuming, has commenced after the beginning of the Act. I don't think she should be penalized further because she has been beaten up and tolerated it.

**MR. CHEIACK:** All right. Suppose that it had happened last year, in the last six months prior to the effective date of the Act. Then is she entitled to more, or would she not be entitled to that much if she didn't have the bejesus beaten out of her?

**MS. BOWMAN:** I don't think that the criteria I have suggested to you particularly related to fault, or misconduct, as between the spouses; they relate to the contribution to the marriage. Now, I don't know what this young woman's contribution would be. If she was, for example, performing the housekeeping services that are normally performed, that would be a contribution to the marriage. I don't know what contribution her husband was making. I take it he was working.

**MR. CHERNIACK:** I'm sorry, Ms. Bowman, I didn't remind you that what I am asking about in this bejesus story is related to your argument on family maintenance.

**MS. BOWMAN:** Oh, I'm sorry.

**MR. CHERNIACK:** Well, that's when you spoke of it.

**MS. BOWMAN:** Yes.

**MR. CHERNIACK:** And when you introduced the factor, the relative responsibility of both spouses for the separation or for the refusal and neglect to provide support, it was on that occasion, according to my notes, that you dealt with this example and it's maintenance I'm thinking of.

**MS. BOWMAN:** I see. I'm sorry. I thought you would ask me also about her property entitlement.

**MR. CHERNIACK:** You're right. I, too, was misled by my notes.

**MS. BOWMAN:** Now that we want to talk about her entitlement to maintenance. I think in that instance the fact that the paramount responsibility for the breakdown of the marriage appears clearly to rest with the husband, but that is a factor that would be taken into account in deciding that she, perhaps, ought to have maintenance to obtain further training, and whatever, even though perhaps had she left the marriage without cause, after such a short duration, the court might feel that that would weigh against maintenance.

**MR. CHERNIACK:** But did you not agree with the concept that she should be put in the position where the period of marriage was such that it may have made it difficult for her to acquire skills to earn a livelihood, and that it is advisable that she achieve financial independence of her husband as quickly as possible, in relation to the length of the marriage, which is also a factor which you endorse, I believe.

**MS. BOWMAN:** It's a factor that I think is relevant but, of course, amongst the other factors that are listed in the bill, and which I think are rightly there, are the reasons for her dependence and whether there has been an impairment of her earning capacity by reason of the marriage. And I would think, in the particular case that I described, there wasn't any impairment of her earning capacities and neither the length of the marriage nor the nature of the marriage contributed to her dependency.

**MR. CHERNIACK:** So that really I think that you are now saying that she is not entitled to anything.

**MS. BOWMAN:** No, I'm not.

**MR. CHERNIACK:** Except maybe damages for being beaten up.

**MS. BOWMAN:** No, I'm not. I'm saying although those other factors might mitigate against maintenance, the fact that this marriage has been destroyed through no fault of hers, and that she has been placed in the position of having to leave the marriage by reason of the unreasonable and abusive conduct of her husband, is a factor that weighs in the opposite direction.

**MR. CHERNIACK:** But what financial disability did she acquire because she was beaten up? I mean she suffered physically and emotionally, she suffered badly, she should be entitled to damages. I wish we could get her to sue him and get damages for it. Setting that aside, why is that a factor in determining the amount of maintenance she ought to get?

**MS. BOWMAN:** It's a factor because this misconduct is the reason why she is put in the position of having to attain financial independence, that had the misconduct not occurred she would have been able to remain within the marriage and to derive the economic benefits that would flow from that.

**MR. CHERNIACK:** So that was a pretty lousy marriage, wasn't it?

**MS. BOWMAN:** Well, but it's lousy not through her fault. Had he not made it so lousy, she would have still been in it.

**MR. CHERNIACK:** Are you prepared to make that judgment, just on those facts?

**MS. BOWMAN:** Which judgment?

**MR. CHERNIACK:** That it was all his fault that the marriage was a lousy marriage.

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**MS. BOWMAN:** The facts that are given, yes, on those facts I would make the decision. But the judge, of course, would have heard both sides.

**MR. CHERNIACK:** Yes, but you're giving us an example. You're saying that the only factor involved was the beating up, and on that basis he is 100 percent at fault, and on that basis, she is entitled to get something which she wouldn't be entitled to get if she provoked him into beating her up. To me, that is just contrary to the concept we are trying to establish that fault shall not be the factor but indeed the need for financial independence and the acquisition of skills for that are the important features. I'm sorry to belabour it but you, I'm sure, recognize that that's a very important part of the decision we have to arrive at.

**MS. BOWMAN:** I appreciate that it's an important factor. I think that you are, in a sense, distorting what I'm saying. I'm not saying that this responsibility should be the sole factor. I think it is simply one factor. There may be other instances were, although all of the fault may be found to lie with the wife, the other statutes which the judge takes into account would outweigh those, in his judgment, and would lead him to say that regardless of the fact that the wife was not behaving well, or had committed some kind of matrimonial abuse, he would nevertheless award her maintenance. Perhaps because of the length of the marriage and other factors.

I'm simply saying it is one of the circumstances that should be taken into account. Before I leave this, you referred to the wife provoking him into beating her up, and I'm afraid that I find it very difficult to accept that as any justification at any time for serious assaults.

**MR. CHERNIACK:** Bejesus beating is serious enough so that provocation is not . . . .

**MS. BOWMAN:** I would say that beatings of that category are serious, yes.

**MR. CHERNIACK:** All right. Now, I'm just concluding my inference from what you're saying, and that is that there is a penalty that will be given to the beater-up and the compensating reward to the person who has been beaten up. There are a number of factors, of which this is one and when you weigh them all and you put some value judgment to all of them, this one has a certain money advantage.

**MS. BOWMAN:** I don't think that I did, or would, say that the person is being given an award to compensate her for being beaten up. I'm saying it is a factor in determining whether in all those circumstances, including the many others that she's listed, that is one factor that would help to decide whether or not it was fair and reasonable in those circumstances to give her maintenance.

**MR. CHERNIACK:** Then it's not an award but it may be a penalty on him.

**MS. BOWMAN:** Well, if you look at the maintenance as being a penalty then you may look at it that way. I wouldn't use those terms.

**MR. CHERNIACK:** Well, but if we had the same case of a person who wasn't beaten up but separated at the same time, he would have presumably given her less under all the same circumstances except the beating up.

**MS. BOWMAN:** Well, of course, if you are taking out altogether the factor of conduct then he gets the penalty without the crime.

**MR. CHERNIACK:** Oh, I'm sorry. I am saying to you, you have set up this description of this case of a beating-up situation, and I say when all the circumstances being identical but no beating up but just an understanding that they are not compatible, you would give two different awards, if that was the only difference.

**MS. BOWMAN:** If that was the only difference, I think there would be and should be two different awards.

**MR. CHERNIACK:** So there must be a penalty attached in your mind. Otherwise, why two different awards for the same people, the same separation, the same lifestyle, the same length of marriage, all of these things.

**MS. BOWMAN:** Well, Mr. Cherniack, I think you could take any one of the factors and make the same argument. You could say, well if all of the other factors were the same excepting the length of the marriage — and you would give maintenance where there was a long marriage but not where there was a short one — then the person is being penalized for having a long marriage.

**MR. CHERNIACK:** No, you would be doing it on the basis, surely, of their ability to readjust to the need for financial independence and the length of the marriage, to me, determines to a large extent that ability or otherwise. That's why I thought you put it in, as a member of the Law Reform Commission. If I misunderstood you — I better not take up more time anyway.

**MS. BOWMAN:** I'm afraid I'm not accepting the terms that you're putting in that the maintenance is a penalty. If you want to put it in specific terms, I would say more that it is a compensation for the fact that this woman is now being deprived of the economic security that she otherwise would have had from the marriage.

**MR. CHERNIACK:** If she weren't being beaten up.

**MS. BOWMAN:** Yes.

**MR. CHERNIACK:** All right, I'm sorry. Thank you.

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

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**MR. PAWLEY:** Mrs. Bowman, in the example you provided us with last night in connection with the husband that deserted a wife and left the wife with the family car. Let me ask you if the family car, under present law of Manitoba was in the name of the husband, what would the wife be able to do in that case under the very same facts and circumstances that you outlined to us last night?

**MS. BOWMAN:** If the car is in the husband's name alone, probably she could do nothing other than to obtain her maintenance order, have it seized, and deal with it in that way, unless there were circumstances which would justify her in claiming that he had made a gift of it to her, which is probably not the case.

**MR. PAWLEY:** Which could be true here with . . . Now, let me ask you then with respect to our limited community property concept insofar as the car is concerned, you would be prepared to acknowledge then, in the same facts and circumstances as you provided last night, that the wife in all likelihood as well would have a set-off under Bill 60, The Family Maintenance Act, as against payments for maintenance, that is, if you have a claim for maintenance as well.

**MS. BOWMAN:** Only if she were able to prosecute a claim for maintenance. And, as you know, she has first to find and serve him, then to establish that he has the means to pay, addition, of course, to showing that she has the requirements.

**MR. PAWLEY:** But those would be factors that have to be introduced under the existing law as well. You indicated that maybe she could lay a claim for maintenance under present law.

**MS. BOWMAN:** Well, of course, the practise of the courts is that she would not be able to obtain maintenance on a retroactive basis, that is, from the date of his desertion until the date that she caught up with him and got a court order. But she would, under the property bill, be accountable in any event and strictly for the proceeds of the sale of the vehicle. And whether or not she would get a maintenance order is open to question if she were not able to prove his means.

**MR. PAWLEY:** Yes, but that would be the facts under the existing law, as well. So what I'm trying to ascertain is whether there would be any disadvantage under existing law as in contrast to the same type of circumstances under the proposed law, insofar as her having to obtain a set-off, as against the maintenance award under Bill 60.

**MS. BOWMAN:** If the car in each case is registered in her husband's name, she is at a disadvantage, a serious disadvantage.

**MR. PAWLEY:** You would agree that that would generally be the case.

**MS. BOWMAN:** No, I wouldn't go quite that far. There are a great many two-car families and sometimes even if there is only one car it is in the wife's name, particularly if the husband may have one through his business. Under the present law, if the car is in her name, she can deal with it freely. But under the proposed law, she would not be able to deal with it freely. That is the distinction. If it's in his name, she has got a problem either way.

**MR. PAWLEY:** Well, if the present provisions indicated equal ownership the same way as a partnership — a law partnership — where one partner could, without having to obtain the signature and consent of all the partners to the law firm, sell furniture or an object from that law firm, would the same principle not be applicable here?

**MS. BOWMAN:** I'm sorry, I don't understand the question.

**MR. PAWLEY:** In a partnership, under Manitoba partnership law, it is possible, is it not, for a partner to sell an object or some property from that partnership?

**MS. BOWMAN:** I would think unless the terms of that partnership were different, yes.

**MR. PAWLEY:** And in the same way, would it not be, in this case, possible that the provisions so reflect that same opportunity?

**MS. BOWMAN:** Well, even in a business partnership you are accountable for the proceeds of that sale as provided in the legislation.

**MR. PAWLEY:** As it is in our legislation here.

**MS. BOWMAN:** That's right.

**MR. PAWLEY:** Internal accounting.

**MS. BOWMAN:** That's true. Now I am only dealing, and I can only deal, with the bill with its proposed amendments and its direction with respect to the third party, who will still be liable if he has notice. Now, if you had some other amendment I would really have to have a close look at it before I would know whether it would really be a satisfactory solution or not. To be able to dispose independently of the joint assets, of course, destroys to a considerable degree the supposed advantages of the joint ownership.

**MR. PAWLEY:** I have heard a number of objections to the pay cheque being included in the family assets. I'm just wondering whether, of necessity, you know the common argument we hear against including the pay cheque in the family asset section is that the wife could insist that the employer make it out in both names or could go down and insist that she receive half of that cheque. I wonder if that's really necessarily true. I don't know whether you made that statement to Committee but I believe some others have, that that would be the result of the pay cheque being included in the family assets. I am wondering whether that necessarily need be the case.



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**MS. BOWMAN:** Well, I think the best way that I can answer you, Mr. Pawley, is to recall a discussion that was held at the Y one time on the British Columbia report about a commission there which recommended general . . .

**MR. PAWLEY:** The Berger Report?

**MS. BOWMAN:** The Berger Report. . . community of property and Mrs. Muriel Arpin, who asked a question of the people from British Columbia, she said, "I see that I am going to share the income. Would you please tell me, how do I lay my hands on the money?" And the writers of that report were unable to give her an answer. If you don't make the pay cheque out jointly, if you don't provide the mechanism whereby the person can actually lay their hands on the cash, then you really aren't doing anything.

**MR. PAWLEY:** What worries me, Mrs. Bowman, about excluding the pay cheque, though it's not in our legislation but listening to the briefs, is that for 90 percent of the families in Manitoba, the pay cheque is the major asset outside of the home and the furnishings. — (Interjection) — Oh, I don't know that's necessarily so. And that's why I would be interested if there is any way that a pay cheque could be reflected in the family asset, rather than being excluded and included in the commercial asset.

**MS. BOWMAN:** Well, we have certainly given that a lot of thought in various committees I have been involved in and I know on the Commission that was discussed after we had submissions along the same lines that you have heard. I tell you I can think of no practical sensible way of doing that. There is no way it has come to my attention that is not fraught with difficulty and expenses and just general all round confusion for every-one, including a lot of people that are managing quite nicely thank you without that legislation.

Really the fact of the matter is that there is the obligation of support set out in the Maintenance Bill. There is the right to a separate allowance set out there, and if with those rights set out in the law, the parties cannot manage their financial affairs in a reasonable manner, then really the marriage is in such serious trouble I really don't think it can be saved by legislation that makes the family pay cheque out jointly or anything of that ilk.

**MR. PAWLEY:** Did you inquire into whether or not the pay cheque was part of the family asset in the Community Property Laws in California?

**MS. BOWMAN:** I'm sure that it is not but I have not specifically inquired. I think I would know if it were. I'm sure that it is not.

**MR. PAWLEY:** Now there has been a lot of comment about the limbo-like situation that would exist between now and the date of proclamation of the legislation. I'm wondering what your response would be as to the potential effects of making the legislation the marital property legislation effective as of the date May 6th, of introducing it in the House rather than January 1st as it presently reads. What effects do you see, outside the fact of course that those that separated on May 5th would be treated differently than those on May 6th if the law was made effective on an immediate basis rather than effective on January 1. We just made the law effective as of May 5th, this law that we're dealing with.

**MS. BOWMAN:** I'm speechless — I really can't come to grips with all the problems that could cause to people who have in the last month even made decisions and disposed of funds and assets and so on, based on a law that is now being changed backward. It would be a very undesirable situation. I just could not comprehend that possibility.

**MR. PAWLEY:** What type of arrangements are you referring to within the last month that have been made, in contemplation of this law you mean?

**MS. BOWMAN:** No, people who are making their arrangements in the belief that the law is what it presently is. People who have signed their separation agreements, taken their share of the assets and departed for example.

**MR. PAWLEY:** Do you feel that we need a date, January 1, rather than an earlier date? I gather the complaints that we've been hearing from the legal fraternity is that there is going to be a limbo-like situation, uncertainly that this is altogether too long a period for this uncertainty to continue.

Now there are a number of different ways you can deal with that. One is of course, to make the legislation effective at an earlier date than what is proposed presently.

**MS. BOWMAN:** I think, unless I've missed something that perhaps you have not understood to what particular aspect that complaint was directed. It's directed to the situation that's created in the amended Section 28 where an agreement entered into after May 6th may or may not be a valid agreement depending on whether it is subsequently confirmed pursuant to the provisions of the bill which will not in fact come into effect until January. I think that if you passed the bill with the retroactivity features dealt with as we've suggested then it's a benefit rather than a disadvantage that it won't be actually proclaimed until January because the profession and the public will have time to familiarize themselves with the bill and will know what is coming. The difficulty with Section 28 is that it leaves people with agreements signed from May 6th until the Act comes into force, not knowing for sure whether their agreement is a valid one or not.

**MR. PAWLEY:** Do you see any means by which we can provide for, and do you feel it's advisable, a

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better means to provide for couples to have an opportunity or an insistence, some form or other that efforts be made to conciliate differences prior to the actual separation. We had a suggestion made in connection with the Court of Conciliation as they have in California. Do you see a structure that can be inserted in the legislation from your studies, particularly as a Member of the Law Reform Commission

**MS. BOWMAN:** The Law Reform Commission *per se* has not dealt with that specific subject, but I am familiar with the Conciliation Court concept as it is in California. You are I'm sure aware, Mr. Attorney-General, that the the Family Court does in fact have a conciliation service there and has had for quite a few years.

**MR. PAWLEY:** Yes, the complaint is that it's not really very adequate to deal with the . . . That's what we've heard.

**MS. BOWMAN:** I've heard that complaint also. I think that the Conciliation Court concept is one that can be incorporated into our existing legislation perhaps at a later date. I think that you cannot expect too much of this legislation. It deals with property and with maintenance. You can't expect it to cure the common cold and all the other social ills that we may have. I think that you would want to study more carefully the implications and the concept of the Conciliation Court. I would remind you that indeed in October, the St. Boniface pilot project will be commencing, hopefully, where there will be a unified family court and the proposal includes, very specifically the provision of a conciliation service and it contemplates the use of the most advanced and modern techniques have attempted to conciliate couples. And I think that it might be better to work out those concepts in that experimental way and if they are found to have good concepts that work well for us then they could be generally implemented.

**MR. PAWLEY:** Now just one final question in connection with the Manitoba Bar, your subsection. I gather that there are some very different opinions insofar as this legislation is concerned that is not speaking as one, that there is quite a substantial number of the members of that subsection that or did disagree with the resolutions that were passed at the subsection meeting.

**MS. BOWMAN:** I don't know that I would say that there was that degree of disagreement. There was certainly not unanimity on a number of points. I don't have with me precise votes on each subject, but certainly there was division of opinion. You'll never find 25 or 30 lawyers agreeing on anything.

**MR. PAWLEY:** But my information is, and you might want to dispute it, but I think it's important because you've indicated that 25 to 30 lawyers, practice in family law, and my information is that in connection with the - community property concept that only 57 percent of the lawyers at that last meeting supported the resolution that you presented here this evening.

**MS. BOWMAN:** I don't think that I could confirm any percentage. I do know that at that meeting we were honoured with the presence of a number of law students who are women in the law group, and who do not form part of our normal membership. That could have influenced the figures somewhat. —(Interjection)—

**MR. PAWLEY:** Which way, yes.

**MS. BOWMAN:** They would constitute part of the group who favour the community property concept I take it. That is certainly not a concept that has found general favour or even a substantial minority support amongst the regular members of the Section.

**MR. PAWLEY:** The resolution dealing with the question of maintenance and fault was not dealt with at that last meeting.

**MS. BOWMAN:** It had been dealt with at a meeting several months earlier in those specific terms.

**MR. PAWLEY:** How many lawyers were at that meeting?

**MS. BOWMAN:** I don't have the minutes with me but I think the ordinary attendance of regular members is about 20, give or take a few. The last meeting had a larger attendance than usual because of the fact that we were dealing with these bills.

**MR. PAWLEY:** Interest, yes.

**MR. CHAIRMAN:** Mr. Axworthy.

**MR. AXWORTHY:** Mr. Chairman, I'll try to be short. I just want to check some points. The last comment reminds me that they say; when there are two lawyers in one room, you get 11 different opinions. I think it's been proven here tonight. I went over your comments from last evening, wherein it was suggested that the application of the community property sharing of family assets would end up in a fair degree of difficulty because you couldn't decide — or if there was a difference of opinion as to how the community property should be allocated or distributed there would be litigation, I suppose. Has either the Law Reform Commission or your Bar Association examined how it works in jurisdictions where there is community property sharing? What system do they use there and how does it work?

**MS. BOWMAN:** The California system, I can't tell you about because it is only very recently that they've had joint management' just within the last two or three years. Prior to that it was a single

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management situation. I can tell you that with respect to the Berger Report I was very curious on that point as to what method would be proposed and we looked at some other systems — was two or three years ago now when the Law Reform Commission was looking at it to see precisely how they dealt with that question of when you can agree on how the asset is to be dealt with, and there simply is no solution short of litigation, no solution that I have been able to see.

**MR. AXWORTHY:** So, it would be a matter again of judicial discretion applied to who is right in the disposition of the property. Is that right?

**MS. BOWMAN:** Well, I suppose you could put the legislation that way. I think that probably unless you specifically provided that, if the parties couldn't agree, the asset would be ordered to be sold and the proceeds divided.

**MR. AXWORTHY:** Going back to the that favourite of all topics called retroactivity, we are just checking with some of the . . .

**A MEMBER:** Excuse me, may I consult with Mrs. Bowman for one minute?

**MS. BOWMAN:** I'm sorry.

**MR. AXWORTHY:** Is the consultation over? Was the clock on?

**MR. AXWORTHY:** On the retroactivity thing, I was just looking at your proposed amendments, and I must confess I'm a little confused by them. You say something about that the discretion would only apply for a six-month period after the coming into effect of the Act. Now that is in existing marriages. I interpret it you mean if a couple decided — do they have to decide to separate within that time? — after six months, or does someone just indicate that sometime perhaps in the future, if there ever is to be a separation, that they would want this particular application of the Act? Is that the way it works?

**MS. BOWMAN:** Yes, I think if you look at page 3 of the second submission that I made and the form that I've annexed, you'll see that what would happen is that say two or three months after the Act comes into force, you might decide that you do not wish to share a specific asset or all of your assets acquired up to that point and you could, if you were so inclined, serve the kind of notice that I've annexed here on your spouse and say: "Upon the termination of our regime, if it terminates, I will invoke judicial discretion in regard to claim 'set I don't to share to sharing of these following assets." And you anything I've acquired;" or: "these are the particular things I don't want to share." And you serve that notice on your spouse. If in ten years' time you separate and you wish to dispute or share in that particular group of assets, that would then be determined at that point by the court.

**MR. AXWORTHY:** Doesn't that get awfully complicated? Don't you have a lot of people sitting down and worrying about what may happen in the future, and are most human beings likely to undertake. . . Wouldn't that be even more divisive if you all of a sudden had to sit down and say in a hypothetical situation, where we might separate somewhere down the road: "I want to put a lien on certain properties.

**MS. BOWMAN:** I think that whenever you change the entire system for people's lives you're going to find there are complications, that's true. I suspect this kind of provision would be invoked primarily by people whose marriages were already in serious trouble, and unless that were the case they likely would not wish to invoke this kind of discretion or this kind of provision. There could be though, specific instances such as the man who had benefited his wife equally with himself and there would be really an unjust benefit, where he might wish to say, "No just a minute, I'm not going to share that piece of property that I got because I've given you one to compensate for it." He might want to do that. But, primarily this would deal with the people whose circumstances are pretty unusual or whose marriages are in serious trouble even though they may not have quite separated yet.

**MR. AXWORTHY:** I gather as well from your remarks that you believe that the proposed amendment or Section 22 doesn't make much sense in relation to the rest of the legislation. Would you agree — I asked Mr. Carr this this morning that in the case of couples who are already separated, that we shouldn't accept 2(2), and just simply cut everyone off, but that there should be some opportunity to take action to recover half the assets and have the court so instructed for them to make a decision. Would you agree with that?

**MS. BOWMAN:** Well you're correct in that I don't think that Section 2(2), if you simply cut off everyone presently separated, would be a reasonable thing to do. I'm not quite sure I understand what you are suggesting.

**MR. AXWORTHY:** Well, what I'm suggesting is, that in those cases, if someone wants to make application to the court a on sharing principle and the court would have a right to make some decision on the division of those assets, but that they could take into account circumstances.

**MS. BOWMAN:** You're saying in effect a discretionary jurisdiction for people already separated. I don't think that I would make that a general rule. I think that the provision for the six-months' notice would apply to those people as well.

**MR. AXWORTHY:** Well but we're talking about the couples who are already separated. Under the original law it would mean that all of a sudden there would be a 50-50 split of those properties. We now have an amendment which says if you're separated, it's tough luck, you don't get anything. Now

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I'm trying to find a middle course between those two extremes.

**MS. BOWMAN:** I think the middle course is to give the spouses the opportunity to say, or one of them to say, I want the discretion. If they don't say it, then they'll get the 50-50.

**MR. AXWORTHY:** Fine, so that there would be that allowance for discretionary action, if necessary, otherwise, it goes 50-50 for those who are already separated.

**MS. BOWMAN:** As well as for those who are still together but if one of them wants that.

**MR. AXWORTHY:** People who want that kind of thing. Thank you Mr. Chairman.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** Mr. Chairman, just two things. Firstly, maybe it's a point of privilege on behalf of Mr. Carr. I just checked with him. I don't think Mr. Axworthy has interpreted him correctly, although the question and discussion is still relevant. I believe and I've confirmed with Mr. Carr, that he agreed with that proposed 2(2) as cutting off any rights of people who have already separated prior to May 6th. I'm just clarifying that — may I see if he's nodding?

**MR. CARR:** Yes you're correct.

**MR. CHERNIACK:** Well, that's just to clarify. Let me just say that Mr. Carr told me when we first came in that he was afraid that he didn't get his answer across to you, Mr. Axworthy, and by all means you should try to clarify it with him. He did confirm to me that he felt that cutting it off for people who have already separated as of May 6th was he thought the — that's my word — acceptable way. And you can clarify that. It's none of my business to do it, except that he did mention it to me at the beginning of the meeting.

Mr. Chairman, all I wanted to do is ask Mrs. Bowman if she would look at page 3 of the documents you gave us today, Item 3, and I want to invite her, for my clarification, to change the last digits to "zero to 100," if I understood her correctly.

**MS. BOWMAN:** Well, it does say, 100 to zero.

**MR. CHERNIACK:** Varying from 100 to zero to 50-50 — and I think you meant it could vary from 100 to zero to zero to 100.

**MS. BOWMAN:** Either way. You are correct.

**MR. CHERNIACK:** I'm right. I just wanted to make sure that you were visualizing the complete gamut.

**MS. BOWMAN:** That's correct.

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

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

Janet Paxton, please. Mrs. Bowman.

**MS. BOWMAN:** Perhaps, before I depart, if I may — the secretary of this section has brought me the vote as recorded at the last meeting of the section and if Mr. Pawley wanted to know the numbers, I could indicate it to him. On the Instantaneous Vesting of Family Assets, the vote was 17 to 10, with some abstentions, I believe. Does that answer the question that you had?

**MR. CHAIRMAN:** Did you get the figures, Mr. Pawley?

**MR. PAWLEY:** I'm sorry, we were caucusing an aside here.

**MR. CHAIRMAN:** Would you repeat the figures, Mrs. Bowman?

**MS. BOWMAN:** I think that you asked the vote at the Family Law Sections, and I indicated to you that the attendance was not quite the normal attendance. The vote on the Instantaneous Sharing of Family Assets was 17 to 10.

**MR. PAWLEY:** Were there abstentions?

**MS. BOWMAN:** The number of abstentions is not recorded in here but I believe there were a couple or three.

**MR. PAWLEY:** What on the other items at that meeting?

**MS. BOWMAN:** The pattern was much the same. They were 18 to 6; 19 to 10, 19 to 8. There were 8 to 10 on one side and the rest were on the other side or abstained; that seemed to be the way that the matter went.

**MR. CHAIRMAN:** Thank you, Mrs. Bowman.

**JANET PAXTON (BERKOWSKI):** Good evening, gentlemen. I'll try and be brief and you won't ask me many questions because I'm not as smart as everybody else that was up here.

First of all, I would like to say just little thoughts that have come up while Ms. Bowman was answering some of your questions. My person opinion, when there is a young couple, short-term marriage, no children and they are both healthy and their marriage breaks up, they should both be able to walk away free and clear of responsibility from each other. I don't see why a man should have to pay maintenance to a healthy young woman or vice versa. That's my feeling on responsibility in marriage. They can split down the middle their TV and chesterfield and so on, and that's it

But duration of marriage, I think is very important, particularly if a woman hasn't worked because, I know myself, if the marriage breaks up, a young woman usually can find a partner fairly easily and the man also. It seems the males can usually find a partner more easily if they are 45 than the woman can. I know when I was 20 and I used to walk down the street, fellows used to whistle; now all that

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happens is the birds whistle.

But this is the thing. An older person has a harder time making a new life for themselves and that's why I think maintenance to a woman, even if there are no children, should be considered for a longer duration of marriage. These are just off the top of my head thoughts that I have heard.

Pay cheques must definitely be thought of as a part of family assets because in the circle of people I know, that is the only asset as a rule.

I just casually mentioned what's been going on here to some friends of mine and they are just flipping over the possibilities that it opens up. One woman I know who had raised three children by herself, being abandoned by their father when they were just a young married couple, has bought a home, a little house, and fixed it up. She remarried three years ago, a very nice person, but he has become a roaring alcoholic in the last three years and the other night he came home and informed her, "Aha, half of this house is mine now." He's heard about the new law, and she says, "Can that be possible?" Can it be? Is it or isn't it? Nobody seems to know. —(Interjection)— It is possible. Okay.

Now, I do believe that there should be some recourse if there are very unusual circumstances, not meanness, not fault, but a case where a partner has contributed absolutely nothing toward an asset, somehow there has got to be a loophole for people that are caught in the middle here or you are going to have a revolution on your hands.

Anyway, these are just little thoughts. You see, I don't know how it can be done, but this is just from my point of view and people I have talked to are very upset about it.

Now, I'll start my brief.

I came to point a finger and blame you for those points which had been brought out in the November hearings and which have not been fulfilled, in my opinion. After listening to the speakers and their comments, I have nothing but praise and sympathy for you. I think you are all brilliant.

The new Marital Property Act is almost revolutionary and you are in the dilemma of knowing that while you please part of the population, you are most seriously going to displease the other. The points raised all seemed to be valid while the speakers are speaking. I believe that the Act should be put through, however, the Marital Property Act, to end the traditional subservience of the wife to the husband. I believe that the most encouraging aspect of this Act is that future marriages will be entered into with both parties having a great deal to lose if the marriage breaks up and of course they have a lot to gain if it stays together. You are going to have the freedom of the common-law marriage which apparently people say has kept them together knowing that they could each walk out on each other at any time. People will be a little nicer to each other and I think that's going to be an advantage.

Although it is not right to make sexist comments or imply that male/female are not completely equal, history has revealed that the greatest percentage of hardship in a marriage breakup usually is the lot of the female. Some of the comments made about the woman whose husband was nice enough to give her bus fare and even money for an extra little treat to come here, rang bells for many women, I believe. The whole psychology of the male/female relationship will change and I believe there will be happier marriages. People will look and think very hard before they marry now.

For those presently married, the road is shaky, particularly those who are walking a tightrope to keep their marriages together. But for those who are happy, this new law will not upset them in the least. Should we postpone this legislation for the sake of couples who may break up eventually anyway? This way, there will be a confrontation between many couples right now, perhaps, but the agony of prolonging an unhappy marriage, just because it is more expedient money-wise, will be ended. It's a very poor purpose for any people to live for, I believe.

A man who loves his wife will welcome the opportunity of making her a 50-50 partner. A man who does not, should either admit it is not a great pleasure for her either to be in this situation and gladly admit she needs and deserves the 50 percent, or should give her the freedom to live a new life away from his disregard, with her 50 percent.

I see many problems about property sharing and I personally would recommend that where very large amounts of money are involved, there be discretionary sittings to study extraordinary cases. Perhaps an amount of over \$50,000 in total assets would warrant a special review committee?

I am not a lawyer; I do not understand all the implications of these Acts, but I feel there may be mayhem if one partner stands to lose \$100,000 unexpectedly, or so, and it should not be necessary if a special amendment were put in to try to cover those parts in the changeover.

The public is not too aware, yet, really, regardless of it being in the newspaper, just what this is going to mean to them and it's too bad you don't have more time to get feedback because it may be a problem.

And this is what I was originally going to say to you, so I'm saying it tempered down a little, that since I typed it I have been here listening to you. Okay, I have read the proposed Maintenance Act bill. It is grossly lacking in two most important requirements. It does not guarantee in any way there will be a permanent end to the present problem of unenforced and uncollected maintenance payments. It does not guarantee that a person with a child or children to care for will receive adequate never-fail, on-the-dot maintenance payments with which they must pay for the necessities of life. Multitudes of

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women, through their organizations or as individuals, have urged the government to guarantee maintenance payments. In other words, that the government will send out the monthly cheque in the amount awarded by the court just as they do for family allowance, for example, and that the government will collect the money from the paying spouse. You have all been informed that statistics indicate 75 percent of maintenance payments are unenforced and uncollected and that is shocking. Were a businessman to be robbed and 75 percent of the time no action was taken when he called for help, there would be a revolution and the government would be brought down in a hurry.

The sole-support parent is too busy to fight if they work and the welfare parent is lulled into a sense of futility. I have read the newspaper article in which it states that Mr. Pawley, the Attorney-General, stated they could not consider guaranteeing maintenance payments as it would be too costly. By this statement alone, it is a public acknowledgement that the MLAs are fully aware of the enormous amounts of payments that are never made.

The solutions offered in the present bill are a cop-out. Only the rich can benefit from the proposal that there be a security deposit. One enforcement officer or receiver will not be able to cope with all the uncollected payments or chase men across the border with a lasso. Women or men working to support young families will be so swamped with everyday duties, they will not have time or money to pursue the law.

I feel this Committee could be likened to the fable of The Emperor's Coat where his supposed tailor was enchantingly busy weaving and sewing an invisible coat for the emperor, a coat that never was. Unless that maintenance payment is guaranteed, unless there is something concrete and sensible written into the Act, then all these discussions concerning maintenance amounts, who should get them, how long they should get them, are nothing but lip-service.

What in the world can be so difficult for intelligent people to comprehend about the proposal that the court set up a payment system and a collection system. The process will be so automatic those involved will just accept the situation and pay. It will cost money administratively, granted, but then how much money are you spending on family agencies, social workers who go into the home to counsel distraught families who are living on the dregs of society's standards? When a parent can throw the children into the car and take them to the lake for the day, or out to a drive-in restaurant for dinner, there is no need for a social worker to cheer them up. Enough of moral support from agencies. What is really required is a maintenance payment from the spouse. Forget about your social agencies and use that money to pay out maintenance. That is reality and that is what is needed.

The 40 days in jail for those who default is another example of thoughtless concepts. What woman or man will take such drastic steps to the situation? It still will not provide a supplement to the macaroni and potato diet when the maintenance cheque does not arrive.

The effect on children of knowing their parents were not able to visit because "your mother had me put in jail" — and you can be sure that the father would tell them — could be devastating. That is not the solution.

I met a woman Saturday who told me she was awarded \$50.00 a month maintenance by court. The judge knew full well that her child-care costs were \$60.00 a month. The husband earned \$300 a month more than she did. Her salary was about \$500 a month clear. The husband had not paid maintenance for seven months. He did not come to see their six-year old daughter. The little girl was crying; she wanted to see her father, wondered why he hadn't come. The mother called him. She said he could forget about the maintenance payments if he would please come and see his daughter and he said if she would agree to forgo the maintenance payments, then he would. She agreed.

These little incidents of psychological blackmail could not be perpetrated upon those who care for children should the courts take the matter of payment of maintenance out of personal contact and into the government-appointed supervision of collection.

The second part of the bill which is no different from our previous and proven to be unsuccessful system, is that the judge has total discretionary power as to the amount of maintenance set. Time and again, the moneys awarded are nothing but a farce when one considers the true costs of caring for children in this day and age. There are no guidelines in this Act to show how the amount of money should be arrived at. I predict that regardless of all the criteria established by these bills, the new criteria for length of payment, financial independence, how many people will be covered, that the maintenance payment would be exactly the same anyway as it was before. What really happens in a courtroom is the judge looks at her income and he looks at his income and he says, this is how much he is able to pay.

Now, from personal conversations I have concluded there seems to be no rhyme or reason to the amount set. Different people that were at fault: the men had beaten their wives to a pulp; the women got a very very little amount of money; another time it was the nagging wife who came away beautifully, she got a huge amount of money. There doesn't seem to be any sense; there's no set criteria.

I have come to the conclusion it all depends on what judge heard the case. It depends on the eloquence of their lawyer. And that is a farce and completely inconsistent with justice. May I suggest

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that a criteria for awards could be based on the following principle, at least where there are children, and I think that it would be a very good guideline.

It is a child's birthright to live as well as either of its parents and the standard of living of the child should be no less than that of the parent who is living in the better state of affluence. Look at both parents and their standard of living and even up the balance. If he's got property at the lake and they can't even afford a vacation in five years, then there is a terrible imbalance and the child should be able to have as good a life as his father or his mother, depending on which parent the child lives with. That is one guideline.

If the judges were to use that as a criteria written into the Act, there would be some sort of guideline. Amounts of maintenance set would not be based on whether the judge had dyspepsia that morning, or if the paying spouse didn't look like the responsible kind, so payment should be set really low or he or she won't pay anything at all. There must be something more concrete to provide people with recourse to appeal the amount set.

I would also suggest that a special committee of people closely involved with day-to-day cost of living review the amounts of maintenance awards, because when I hear a judge telling a young woman with a child she requires only \$50.00 a month to supplement her \$475.00 a month salary knowing that she pays \$60.00 a month for child care, I can only assume that that judge has never tried to buy instant coffee lately, or a quart of milk, or looked at their utility bills. It is completely inane, useless legislation to allow these inadequate and sometimes exorbitant, as the case may be, maintenance amounts to be continued under the present methods.

Perhaps this special committee should all be made up as a special review committee after the court case to decide on the money. Keep the judge right out of it. With a special recommendation by the judge as to his or her own personal findings on this case, the busy judge would be relieved of a very burdensome task and snap decisions could be avoided. At the very least, give the judges a course in economics if they are to have all the discretionary powers granted by this Act. They have been totally unrealistic in the past. I am not attacking our present NDP government with these statements, because as I have heard it, these problems of non-payment of maintenance, inadequate maintenance, have existed for decades now. Before, there were very few people who were affected, but the numbers are growing rapidly as the normal family units seem to be disintegrating in our modern society. All of you are responsible. You cannot continue to let this experiment go on and just see how everyone makes out on their own. It has been proven our Maintenance Act is totally ineffectual, our welfare payments are enormous government agencies are mushrooming everywhere to take care of people raising children on their own. The only thing they can't offer is money. One speaker pointed to the need for compassion for those men who look outside their marriage and "sizzle" for a new partner, who may also have children to support, and then he has got two sets of children to support — that poor man. My compassion lies with the natural children, the parent raising those natural children while the counterpart is off "sizzling." They can "sizzle" all they want, but first look after the children they already have before creating more. They did not ask to be born, those children, and they must be considered first. If we could get back to the basics, everyone looks to their own personal happiness. They should look after their own first, and that is the natural force of life. If people want to look to their personal happiness, to let them do it at their own expense and not the taxpayers.

Now in summary, gentlemen, about this Act, it is not good enough. As they say on that advertisement, "You can change it now or change it later." When I said that people were too busy to fight, or too lulled into a sense of futility, I should have added that this is changing momentarily, and the word is spreading that the government is ducking out of a long overdue responsibility. Your disregard for the suggestion that guarantee of maintenance payments be made by the government is similar to that disregard of Marie Antoinette who, when told the peasants were starving because they had no bread, laughed gaily and said, "Well, let them eat cake." She was not too popular. I have been told Manitoba, along with two other provinces in Canada, is one of the few provinces that does have some sort of enforcement at least. Why not go all the way in showing leadership? You'll be the top of the world. I believe your present Act will result in more administrative headaches than if you just put into action an enforced collection system and an automatic payment system. Please don't make people wait until the payment is received from the spouse — pay it out regularly on the first of the month. Have as much faith in your ability to collect maintenance payments as you do in your indisputable ability to collect sales tax from the citizens of this province.

Now here are some suggestions, things I would like to see end problems for sole support parents.

(1) We have heard this a dozen times. I will just say, set up across-Canada networks to trace the husband. I can't think why anybody can't figure out how it can't be done. Take any ten of these ladies back here and we will show you you know, if there is a problem — because it seems to me that it should be easy — income tax or motor vehicle, they should be traceable.

(2) This is something nobody has talked about, but I know from personal experience. If there is a

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family car, it should be automatically awarded to the parent keeping the children. If that parent can't drive, provide free driving lessons, give them every bit of help you can to get them on the road, because that parent is literally imprisoned with small children. There are children getting pneumonia because the mother is walking through snow storms to sitters; is happening all the time in the city right now. A car changes your whole life. I have been able to get home to my youngest son, who is eight years old, at lunch hour, and it has cut down about an hour's traveling time in the morning and evening, so that that is about three extra hours at home a day I get because of a car. Now it may seem nothing to you, but there are so many sole support parents who can't afford a car, never thought of having a car. If there is a couple there is usually a car, it's usually the man's, and I have heard people again and again in court say, the judge says, "He has to have enough money to drive his car." Just for himself. He's got four children to raise, but he needs the car. Look at that aspect perhaps.

(3) Set up an emergency loan fund from the government whereby low interest loans can be easily given to sole support parents. I am not knocking finance companies, because they serve a very necessary purpose, but maintenance amounts are usually set at bare minimum. There are no allowances for sudden, unexpected emergencies such as electrical shorts, house repairs. A young woman had her house broken into three weeks ago; windows were broken, the door was broken, the lock is off. She hasn't got any money for a carpenter. She is supporting two young children. They should be able to get a low-cost loan.

Working mothers save the government from paying out welfare moneys. Can't you help them back a little bit in this respect? Additional interest added to loans from finance companies doubles the impact of bare minimum maintenance payments and guarantees those sole support parents will not be able to keep up. Late maintenance payments have made the finance companies rich.

Have (4) evening court cases - legal aid. Many working parents are so afraid of losing their jobs, with too many absences to attend lawyers' offices, they do not even attempt to enforce their rights.

(5) Post a bond before marriage. It is a thought. It should cost as much to get married as it does to get divorced. And establish a Marriage Insurance Fund — regular monthly payments with a refund if the marriage is still together after 25 years — saves the taxpayers' money.

Somebody said they couldn't run it like unemployment insurance because people would be pretending they were broken up to get money, but I say make it individual accounts like a bank account, but you are keeping it until they have proven that they can be responsible people. And if they are, they get it back in 25 years.

As a result of having started up a Lunch and Learn group — we call it this — with the permission of the president of the Health Sciences Centre, I have started up a Lunch and Learn group for singles, full-support, widowed, divorced parents, or anybody that is interested in fact, to come and hear guest speakers on topics that might be of interest, like effective parenting of teens, new opportunity programs. Ms. Eady, the director of the Women's Bureau, came down. We have just been going for four weeks now, and I have already heard some stories that would curl your hair.

Mr. Pawley, several people were asking, "Where did we get the statistics of 75 per cent from if 75 percent were uncollected?" I don't know. I just read it because I read it in the Action Coalition. But I do know from the people I have met that you take the average up and down the street, and like the woman next door said, or next to me last night said, "Ask us; we'll tell them." Where are all these people that aren't getting maintenance? They are everywhere. But as a result of this Lunch and Learn group stories are coming my way and confirm my belief that maintenance payments are hit-and-miss things.

One woman called the office this morning where I work, just this morning, having just learned of this group. She said her husband had run off with all her furniture, some of it unpaid for. She has a huge finance loan she will be responsible for, and that was to cover that furniture. He subsequently added on to it, so she has got over \$1,500 to pay and she hasn't got the furniture that it was bought on. She has learned he is down in Dallas, Texas, I believe it was, with a stolen car. She has a thirteen-year-old daughter and cannot make ends meet — about \$150 a month less in revenue now with her income alone, then her total expenses to cover just necessities and bills. She was told she did not qualify for mother's allowance or any assistance until she gets a separation. She is worried silly. She didn't have money for a lawyer. I gave her the Legal Aid's phone number. She has no choice but to look for an additional job on the side to the one she has got right now, and needless to say is under a great financial, and it sounds like, emotional strain. She was crying at the moment.

She was concerned because she learned the courts closed for July and August. Can that not be rectified? It takes too long to get into court these days. People in situations such as this must go through unbearable mental and financial strain because they are waiting for their day in court. Meanwhile the creditors are banging on their doors, utilities are being disconnected, and a woman or man is going out of her or his mind with worry. Again some kind of evening hearings, a special committee, might be a suitable alternative to a day in court, especially if there are no-fault separations now. Why does this declaration have to be made in front of a judge? That is an awfully high-cost decision.



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Another woman keeping her children tells me her husband pays her once, part of the amount only that he is supposed to, then skips for two pay periods, then pays again, sometimes all of it but usually not. When he sees she is getting angry he pacifies her on the phone for awhile. She waits another two weeks, then he pays again. She is again under tremendous mental strain, and he is just playing games with her to see how far he can get before she will actually go to the lawyer. She knows from experience the whole process will be repeated all over. Judges seldom make the payer pay back payments, by the way — did you know? — while the payers do. And this is another very convenient way of avoiding the full maintenance payments they were ordered to pay.

A nurse told me this morning she had three teenagers and a house to keep up. When her oldest child reached eighteen just six months ago, her husband cut off the money for that boy's share, and she is struggling along on the allowance for the other two children. He lives in River Heights and is very well to do right now. She says, "My house is falling apart." She doesn't have a cent left over, with the tremendous cost of raising three teenage children, because the maintenance for each of them was based on the cost of living ten years ago. She said she does not qualify for Legal Aid because of her salary being over the limit, but actually she is now supporting three adults as well as herself, when you consider their food intake, clothing requirements, and educational requirements. Her daughter wants to go to university; doesn't know how she will do it. It should not be necessary for people to pay the expense of a lawyer every time they wish to make application for a change in maintenance awards. People are so locked into a tight budget when they are single parents, every five dollars counts.

Why can't there just be a committee of appeal who can hear cases without the big, expensive production of taking up a courtroom and the judges' time? You don't need a course in law to know that one spouse needs much more money to live on, and the other spouse can spare it. I hope I understand correctly that now a spouse will be entitled to all information about the other separated spouse's assets. Never was anything more pertinent to an application for maintenance. One slip of paper, a statement of assets and income, will tell more than a thousand words by a lawyer in the courtroom. Nobody will have to guess who is lying, who is pleading poverty when they are far from it. And if you question the accuracy of the statistics that 75 percent of the maintenance payments are uncollected and unenforced, I invite you to our group to let you talk to some of these people. They are not even included in those statistics because they have not yet even reported their spouse. The problem of the woman or man never knowing when or where the supplemental support which is so desperately needed, particularly when there is a family to raise, will arrive creating havoc and depriving people of their right to live in a peaceful frame of mind; you must do something. And I think that's it.

**MR. CHAIRMAN:** Thank you. Mr. Pawley.

**MR. PAWLEY:** I would just like to make one comment. I would like to just commend you on your suggestion on Page 5, the fourth item. I think it is a very worthy recommendation, and certainly one that we will look into.

**MS. PAXTON:** The criteria for the . . . ?

**MR. PAWLEY:** No, the family court sittings, that there should be some in the evenings.

**MS. PAXTON:** Yes, oh, definitely, because people can't. . . like this woman today is crying. I have heard many women, and I don't think men realize, because— do you remember once you asked me last time I was here, "What would you do with that man that the judge said, 'Pay \$400,' and he only made \$500 and you threw him in jail?" At the time I said, "Fire the judge," on impulse. But after I thought it over, why not? When judges make stupid decisions that are hurting people so desperately, other people get fired if they make stupid decisions. You should start examining.

There has to be an appeal court, because I have been in court and I have felt that really there was no criteria. The next thing I wish I had said to you, though, was, "You take three or four children and throw them in jail with that man, and then you will know what the woman goes through." And the thing is that there are women who are actually suicidal.

Now I always receive maintenance from my ex-husband, and I believe that I am one of the . . . maybe I am an example of what you people want to see in that bill. I did become financially independent; I worked very hard to do it, and I think it was just out of spite, but if I ever hadn't gotten those maintenance payments at all — and I don't think they were adequate enough; I don't blame my husband for that, I blame the judge — but it was hard. It was very difficult, but at least I had them. If I hadn't gotten them, I guarantee that my mental condition would have gone down so badly. If I'd had to go on welfare on top of that, the shame of knowing that people were pointing at me and my children and saying we were on welfare, I think I would have probably ended up getting psychiatric treatments. But instead I went the other way. I had enough to keep me going, and I wanted to.

But there is a point where every woman has told me that I have ever talked to — it's funny. I mean, I thought it myself, and I thought, that's weird — you know, you shouldn't get that down. A lot of women have said that the only reason they didn't do away with themselves, and they were quite serious — and I was thinking many times, too, it would be so easy just to go to sleep and never have to

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wake up to these bills, and these problems. You know, it's very depressing. You have got nobody to support you. And if on top of that you don't even having the law supporting you by making this man at least support his children — you don't get your pay cheques all to yourself; have to support your kids and your family — and any man, because he is separated, shouldn't be free of that obligation, should he? So there is a real lack, there is something — and the women are — I am saying women; men, too, are going through this too now; I have met a few. But I think the natural children come first, and if they are busy paying for the natural children, they won't have time to get in trouble and start a second family, you know.

**MR. AXWORTHY:** I would just like to go back to the point you made on Page 3 where you suggested the maintenance awards that are being made are insufficient.

**MS. PAXTON:** Absolutely.

**MR. AXWORTHY:** Yes. Have any of the organizations that you belong to made any attempt to describe under what circumstances or conditions the standard of maintenance should be?

**MS. PAXTON:** No.

**MR. AXWORTHY:** Made recommendations to the courts or to the Bar Association or to the government about what it should be?

**MS. PAXTON:** No, because, you see, it is something that nobody has gone into in detail. But I am beginning to be hit by it more and more often because I have met, just in the last three months, two young women with babies that they have to carry to sitters; they have to pay \$70, \$80 a month — and the judge is looking at them and saying, "Well, you can get by with \$50 from your husband for the support of the child." And they don't even include them. They have done nothing wrong. The husband has got enough money to turn around and buy a brand new car. Now what in the world is going on? Where do the judges get their criteria from?

I would like to see a committee, and I would like to be on that committee just to sit and study what the judges are saying that women can get by with, and how much money that man has free and clear. Granted he is going to have bills to pay, but even so the man can always manage to have a really good social life, live fairly well, have a good standard of living, and the woman is going down and down and down — the sacrifices that women have to make to give to their children, and that man who said that people weren't thinking of their children doesn't know very many full-support parents, I don't think, because . . .

**MR. AXWORTHY:** I don't think he does, no.

**MS. PAXTON:** . . . they sacrifice quite a bit. It would be so easy to say to the husband, "Here you have them."

**MR. AXWORTHY:** Yes, one of the things that is not stated in your brief though is the difference being made if the legislation goes through about the sharing of property.

**MS. PAXTON:** Yes.

**MR. AXWORTHY:** The difference that would make in terms of the kind of maintenance awards that would have to be required because presumably this would provide in many cases a more equitable standard for sole support mothers.

**MS. PAXTON:** But I'm afraid of it because most couples that get separated haven't got that much behind them. And by the time there's a separation they've been fighting and the husband's been keeping all the money because he doesn't want the wife to get a separation. He doesn't want her to be able to afford to go to the lawyer and everything's pretty well gone down the drain. Who says there's going to be any money, lump sum money to divide at the time of separation. I think, Mrs. Bowman here, perhaps most of your clients may be wealthy. —(Interjection)— Well she seems to talk in different terms altogether of what is going to happen to her clients as opposed to people that I know in the average everyday situation. There's no money. There's no big lump sum. All there is is the pay cheque. That's all there is and maybe a bit of furniture they've bought and they're living in a suite. Well where in the world is there anything to start . . . And I am saying if there's any hardship on either of them because of it, — now the woman's got two jobs, she's got to work in the daytime. She comes home and she's working till midnight washing diapers, looking after her kids. The man's only got one job. Let him take a part-time job and have two jobs too, so he can provide for her for a little while to get her over the hump. Now what is unthinkable? Do / you realize that if he had to pay her for babysitting his children the way she has to pay a babysitter in the daytime that he wouldn't be able to afford his own children to be born even. It would cost him a fortune if he had to pay her for her services, although they're separated, in looking after his children. It's a big rip-off \$50.00 a month.

**MR. AXWORTHY:** Many of them have access now to the day care system.

**MS. PAXTON:** That doesn't help her in the evenings. She is tied down like a rock. She is a prisoner in her own home because she can't afford. . . This lady that phoned me was crying. I advised her to try going to the Solace Club at the YWCA. Apparently they have meetings there I've just heard about and I thought it will take her out amongst friends. She says, "I can't afford the \$2.50 to go and that is the truth." Many women cannot even afford \$2.50 to go out for an evening. If they've got children, everything goes. There's never enough to cover what those kids need.

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**MR. AXWORTHY:** That was the other thing that was taken in your report. You suggest that it is virtually impossible for a sole-support mother to get any kind of credit or loans to take care of any capital expenses.

**MS. PAXTON:** Oh, no. I got a loan without even a job — no problem — at the finance company. They were very kind to me. — (Interjection) — Don't knock them because when you're really in a spot they're the only people that help.

**MR. AXWORTHY:** Is that right?

**MS. PAXTON:** Yes, that's true. You know, it's fine if people have a lot of lucky, relatives around. Some women are they've got a lot of relatives in the family, there are ten kids or so. But there are women who don't have relatives to turn to and I sometimes feel people must be thinking, oh she'll get along. Her family will help her out. Well, sometimes there is no family. This is another thing to think about.

So, as far as loans go, no discrimination but I have heard of great discrimination in apartment renting. Women have been told, "we don't want you in here. You're separated. We don't want your husband in here fighting with you." They don't even know the girl, a -looking, pleasant, really lovely, nice decent girl and this fellow saying, "we don't want your husband in here fighting with you and we don't want your boyfriends parading up and down the halls till all hours of the morning" and she was just about ready to slash her wrists. So in this kind of thing, there are little things. . . that's away from this committee's work altogether. You've got enough things to worry about. Okay.

**MR. AXWORTHY:** Well, Mr. Chairman, I think you've given us a few more things to think about if nothing else. Thank you.

**MS. PAXTON:** Okay, thank you.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** Ms. Paxton, may I thank you for bringing much of the thinking of this Committee down to earth to recognize what is a problem for most people, not only those who have \$100,000 or a bit of land or a boat or a trailer or a summer home. Therefore, I'd like to deal more specifically with some of the matters you raised. Firstly, there was a question you asked where you seem to get two answers. I'd like you to pose that again. You gave us an example of a lady who married, I think for the second time, married a man and after three years he's become a drunk and he said, "Well I've got a half share in your house."

**MS. PAXTON:** That's right. He said that two nights ago to her.

**MR. CHERNIACK:** What did you tell us about when she acquired the house.

**MS. PAXTON:** She acquired the house after her first husband took off on her.

**MR. CHERNIACK:** Before the marriage?

**MS. PAXTON:** Before the marriage.

**MR. CHERNIACK:** Well, then the answer was no, he would not be entitled.

**MS. PAXTON:** Oh, I'm so mixed . . . You know everybody here I think is confused.

**MR. CHERNIACK:** Under this legislation. . .

**MS. PAXTON:** Under this legislation now.

**MR. CHERNIACK:** . . . under the proposed legislation the entitlement would be for the increase in value of assets between the time of the marriage and the time of separation.

**MS. PAXTON:** Very good, okay, she'll be relieved to know.

**MR. CHERNIACK:** It's not for me to give her advice and that isn't the law yet. As of now he has no rights except a wife's estate and a right to live in the house. But what I want to know from you is whether under the circumstances of her having a husband who has become a drunk in three years, would you question whether or not he is entitled to share in other assets that may have been saved in that family for that three year period.

**MS. PAXTON:** No, I wouldn't. That's going to be the way the cookie crumbles from now on. Because, if a man married a woman and she became an alcoholic, he'd have to look after her. I think there is a lot of good things in this new principle but women are going to have to share the responsibilities as well as the blessings.

**MR. CHERNIACK:** I'm not sure it's a good example anyway because I think that alcoholism is a disease and therefore it's somewhat different to other. . .

**MS. PAXTON:** One more question. If somebody is very rich, say a woman is married to a millionaire and he has willed away or signed away his business assets, put in the children's name and his name and cut her out completely and the house, however, is in her name, where will she stand under the new law. They're still married — no separation.

**MR. CHERNIACK:** I think I should be careful not to try to interfere with the rights of the lawyers who are practicing law . . .

**MS. PAXTON:** Okay, but it's just that there are so many questions.

**MR. CHERNIACK:** However, I should say that's a complicated situation you described to me. It may involve going behind the present ownership to see who is the true owner.

I want to deal with your problems and this is not your problem, the millionaire husband and

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the . . .

**MS. PAXTON:** I have no problems right now. I'm very happy.

**MR. CHERNIACK:** I mean it's not the problem you're dealing with. I'm happy you don't have a problem. It's not the problem you're dealing with. You made what I think is a valid point that the real asset in most marriages that you know of is the pay cheque.

**MS. PAXTON:** Definitely.

**MR. CHERNIACK:** You have been here throughout these hearings and you have heard the claim that the pay cheque should be jointly owned and then you've heard answers saying well how effective is it, how meaningful is it? Mrs. Bowman, you heard her. She responded quite sincerely as to what she thought would be the impact or effect or the benefit of making a declaration that that cheque belongs to both. Could you elaborate on why you think it's still important.

**MS. PAXTON:** Well, it's just the psychology of it. Whereas a woman, like her mother is phoning her long distance a lot from Selkirk, Manitoba, maybe. Her mother is not too stable or something.

**MR. CHERNIACK:** It's very cheap from Selkirk.

**MS. PAXTON:** Yes, okay. This is an example I heard of. Okay, now her husband gets the bill. "It's your mother phoning and it's my hard-earned money that's going to have to pay for your mother phoning here." Whereas, if she could say, "Listen buddy, half of your cheque is mine; I earned it too" — I mean, if it's a law maybe she is never going to be standing at the door and say, "Where's my half?" the minute he walks in. I doubt that will happen.

**MR. CHERNIACK:** Or as they sometimes say, "Where is the whole cheque?"

**MS. PAXTON:** That's right. And a lot of it. . . . You can't legislate everything but yet it's the law. will have that psychological uplift that she knows she's within her rights. Like, I was thrilled to death when I was first separated. The first thing I did when I came home from the courtroom was phone Eaton's and order one of those garbage cans that you step on it and the lid pops up because I had always wanted one. And it wasn't that my husband was mean and said I couldn't have one but I always thought that it was too much of a luxury and how would I explain it to him.

So I mean this is the psychological benefit of a woman knowing that she is legally entitled to have what he makes, whether the minute he comes in the door you sit down and say you get \$35.50 and I get \$35.50. You know, it's the psychological benefit and it's him knowing that she's legally entitled, by law, to half his pay cheque. Like I know men have run out and said, "I'll do the shopping for you." And he decides \$20 a week is plenty of money for groceries. They have no treats. They have nothing. He is out at Rae and Jerry's at lunch time. You know, this happens, believe it or not.

**MR. CHERNIACK:** Ms. Paxton, I must say that your argument on the pay cheque is the most persuasive one I have heard so far and I think you just about sold me on it so far.

**MS. PAXTON:** Okay. It's very important. The pay cheque is the most important . . .

**MR. CHERNIACK:** You said you're not as smart as the others but I think you have done quite a job on that one and that answers me. What you're saying is that a declaratory statement may not have any effect except a psychological one and it's worth it there.

**MS. PAXTON:** A psychological advantage and if you have a fight, it's a good argument.

**MR. CHERNIACK:** Henceforth I will ask people who are opposed to the pay cheque being included, what harm they see in doing it. Because you see a psychological value, I'll try and find out what is the danger involved in it.

**MS. PAXTON:** None whatsoever.

**MR. CHERNIACK:** Well, I'll try and ask those who don't agree with you. Now I must say that your description of the problems of a person who gets an inadequate maintenance order, and you think most of them do and you are blaming the judge's judgment or discretion for that.

**MS. PAXTON:** Yes.

**MR. CHERNIACK:** I'm wondering the extent to which you — have — and you don't have legal knowledge and I don't expect you to give a legal opinion — but have you looked at the criteria that are set out and the requirements that are set out relating to the manner in which the maintenance cheque should be arrived at?

**MS. PAXTON:** Yes, I have read them over; I can't remember them by heart.

**MR. CHERNIACK:** No, well, you can get a copy.

**MS. PAXTON:** Can you just call them out and I'll tell you what I think about them.

The financial needs of each spouse and of any child . . . Is that the factors affecting orders?

**MR. CHERNIACK:** Right. Yes. Pardon me, it says "shall be taken into account by the judge." He is supposed to look at all of these factors.

**MS. PAXTON:** Right. They were supposed to do that before and they didn't.

**MR. CHERNIACK:** Right. Go ahead.

**MS. PAXTON:** Okay. "The financial needs of each spouse and of any child of the marriage in the custody of the spouses or either of them." Okay. Now, when you say financial needs, I recall that they talked about bus fare and, you know, right down to the last penny. How much medicine do you think you need a month for each child? Say an average of \$2.00 and so on. But then I got home and I

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thought, son of a gun, he didn't mention Christmas presents for my mother and father or my children. They didn't mention birthday parties for my children that I have to throw. It's a terrible expense, these birthday parties for children, you know. Little things like this are overlooked in the total maintenance amounts.

Usually what happens, the husband usually gets two-thirds of his salary to himself and the wife and kids get one-third. Now, I'd say that's a rough estimate.

**MR. CHERNIACK:** Pardon me, Ms. Paxton. You were dealing with that list. I would like you to continue. But are you saying that regardless of all the requirements and all the arguments, it ends up by two-thirds/one-third?

**MS. PAXTON:** Yes. I really think that's what happens with the judges.

**MR. CHERNIACK:** Okay, carry on.

**MS. PAXTON:** I think that's what happens.

**MR. CHERNIACK:** Go ahead please. I don't want to take up too much time but still it's important.

**MS. PAXTON:** . . . Financial means, earnings and earnings capacity be Yes, that's a factor but the woman should be encouraged to upgrade herself, try and work. If it takes money to help her get an education . . .

**MR. CHERNIACK:** Keep on reading, you may come to some of those parts.

**MS. PAXTON:** Any existing obligation of each spouse for the support and maintenance of a person other than a spouse and other than a child, is described in clause (a). That's a problem because he's got a mother and father to support.

**MR. CHERNIACK:** Yes.

**MS. PAXTON:** That's a problem but his own child should come before even that obligation I believe. Okay.

Whether there is domestic arrangement between the spouses and to what extent each spouse is fulfilling domestic service obligations.

**MR. CHERNIACK:** Please ignore that; that really is not . . .

**MS. PAXTON:** Yes, that's for the birds, right. That's not good. "Where the spouses are or will be living separate and apart from each, the amount or likely amount of any property settlement made, or to be made, between them". . . Now, there you would have maybe a sum of money but it wouldn't happen very quickly. It would have to be sold; it might take six or seven months. What's she going to live on until then?

**MR. CHERNIACK:** Yes.

**MS. PAXTON:** Okay. "Where the spouses are, or will be living separate and apart from each other"— do you want me to read all of this to you?

**MR. CHERNIACK:** No, no. If you're satisfied now, I want to remind you that Ms. Bowman speaking on behalf of the Family Court lawyers said that she wants to include, I believe, that that would be the section where she would want to include an element of fault. Do you recall that she discussed the . . .

**MS. PAXTON:** An element of fault. Yes, I've heard that.

**MR. CHERNIACK:** The woman who has the bejusus (?) — I'm sorry, you heard that there should be an additional factor relating to the extent to which either spouse has contributed to the breakup. What do you say about that? Should it be in; should it not be in?

**MS. PAXTON:** That is a really sticky question. I've gone out of here every day with different thoughts on it after you listen to speakers and I believe that the no-fault principle is wanted because they don't want people at each other's throats. I don't think it changes the amount of maintenance. I don't think fault should come in. It will not change the amount of maintenance so why go into it? The real principle of maintenance is to survive and how much money does the woman need to raise the children, or the man, and whether or not it's his fault or whether he beat her up so she can be sorry she met him, she's had a lesson in life, but why make money out of bgetting beaten up? I mean, that's not the principle, you know.

**MR. CHERNIACK:** Well, now do you want to give us the impression that in spite of the fact that we spelled out all those things you've been reading, that in the end the judge will do much as he thinks he ought to do in line with the way he's been doing it up until now.

**MS. PAXTON:** Yes, I think he's still going to look at him; look at her; and see how much does she need to live on and how much is this guy going to pay without too much fuss and that's what he decides on. I think whether it's fault or not, whoever's fault it is, it doesn't matter.

**MR. CHERNIACK:** I want to move onto . . . I must confess that I personally am hurt to the quick on behalf of the government when you say we're ducking out of a long-overdue responsibility.

**MS. PAXTON:** Well, you weren't always here. I'm saying the government as a whole . . . .

**MR. CHERNIACK:** I know, but as the whole government . . .

**MS. PAXTON:** . . . back through the centuries, all these fellows . . .

**MR. CHERNIACK:** Well, at least you must admit that we're sitting here night after night in the . . .

**MS. PAXTON:** You sure are; I admire you; you are doing very well. . . .

**MR. CHERNIACK:** . . . to make a dramatic change but the point I want to come to specifically,

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you're making certain suggestions for improved guarantees that the maintenance amount will be paid regardless if it is paid by the spouse or by government.

**MS. PAXTON:** Yes, definitely.

**MR. CHERNIACK:** And I want to remind you to ask you if you would agree that nothing in the present legislation would preclude action such as you describe as following upon what this legislation will carry out.

**MS. PAXTON:** That's true, and Mr. Pawley has indicated they are thinking of a task force on maintenance, so I am very delighted to hear that. And as long as the idea just doesn't sort of die out, because that is the . . . Everything you are doing here is wonderful if it is followed through by that person getting their support, and if it isn't, then forget everything you have been working at here.

**MR. CHERNIACK:** Did you hear Mrs. Turnbull this morning? She was the last speaker this morning and she spoke about an enforcement procedure of a registration.

**MS. PAXTON:** Yes. And I think it could be done. I am almost willing to quit my job and offer my services at low cost to start it off, because I can see how it can be done.

**MR. CHERNIACK:** Well, that's pretty good. We got a crackerjack lawyer this morning offering to help us . . .

**MS. PAXTON:** I'm just in the office administrative side.

**MR. CHERNIACK:** . . . and now we have crackerjack administrator. Thank you, Ms. Paxton.

**MS. PAXTON:** Okay, thank you.

**MR. CHAIRMAN:** Mr. Jenkins.

**MR. JENKINS:** I would just like to ask Ms. Paxton one question. We have had numerous delegations come before the Committee here dealing with sections in Bill 60, Sections 4(2) and 4(3), stating the definition of financial independence . . . you claim that you have reached that happy state. Perhaps you could give us a better definition than all the legal people that have been here before us, and some of our own legal drafting people, of what financial independence should entail.

**MS. PAXTON:** I think that you should be able to look at your . . . unless it is a very short-term marriage, I think if it is a one, two, three . . . you know they're young couples and there are no kids . . . As I said before, I don't think the man should owe that woman maintenance at all. You know they both take their losses. Why should he have to support her because she lived with him for four or five years. It is a heartache to both of them that they broke up. Why should he have to support her? But where there are children, then you start looking at maintenance.

Okay, I call financial maintenance when she herself can afford to keep her children and herself living in the same comparative standard as their father is living. That is the criteria. Now if he is a real wastral, and some men live in a very good standard but they do it in a cocktail bar and not in the home, you see they spend a fortune out on a social life, that still is a high standard of living in a way, if you want to compare it to that. I mean she could use that as a criteria in court, that he is able to go out every night, he can fly around to Las Vegas and so on, and therefore her children and she have not reached his standard of living if they can't afford to go away on a holiday once a year.

For myself I think I have reached financial independence. I have lowered my husband's payment just to \$30.00 for my last boy, just as a token payment. I could use more, but then so could everybody, and I think he paid long enough while I had three children to raise, and there should be a termination as you say, an end of the road for them that they don't have to go on and on forever. You know I feel I am doing pretty well in society. I am living as well as can be expected for my type of work, and so on.

It is a difficult question to define, but I sure wouldn't like to see a man that was an executive, worked 30 years and made \$60,000 a month(?) and get separated from his wife when he is 50, and she gets a job as a waitress, which is about all she would be able to do, or housework, and turn around and say, "Well, she has achieved financial independence, she can afford a room of her own and to feed herself and bus fare to get back to work." I mean that wouldn't be fair, that is not financial independence in my mind when you consider his salary.

I think they should be relatively close if there has been a real, true marriage of say, over eight, ten years, there has been children . . . if there are children involved at all, then their standard of living should be relatively the same for the children, the father and the mother. Then you will say she has achieved it.

**MR. JENKINS:** Thank you.

**MS. PAXTON:** Okay.

**MR. CHAIRMAN:** Thank you, Mrs. Paxton.

Mrs. Norma McCormick, please. Mrs. McCormick.

**MS. STEINBART:** Norma McCormick is not here. She is lucky enough to be at the lake right now. However, she . . .

**MR. CHAIRMAN:** One moment, please. I have been asked who is next on the list and I should indicate that following Mrs. McCormick is Ken Houston, and following him Mr. Arthur Rich, and then B. Hilton from the Manitoba Teachers' Society.

**MS. STEINBART:** I just wanted to indicate to the Committee that Norma McCormick is gone

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because she was told that there would be no sittings tomorrow, and she left for that reason. She thought that she would be able to come on on Monday if you are going to be sitting then, but she is not here now and I do not have a presentation for her. I just advise you of this.

**MR. CHAIRMAN:** She doesn't have a prepared brief . . . ?

**MS. STEINBART:** She did not leave her brief because she felt that she could come on on Monday, but if you are going to be sitting tomorrow, she will not be here.

**MR. CHAIRMAN:** I am not sure whether we will complete our hearings tomorrow or whether there will be further ones next week, but in any case Mrs. McCormack is entitled to mail in her brief and copies will be distributed to the Committee.

Ken Houston, please.

**MR. HOUSTON:** I should caution you, Mr. Chairman and members of the Committee, that I expect I will take you beyond 10:30.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** Mr. Chairman, for the information of Mr. Houston, I would like to caution him that I would be supportive of a motion about 10:30 that we do rise, so might I ask him how long he thinks he would go beyond 10:30?

**MR. HOUSTON:** Long past.

**MR. CHEIACK:** Long past. Then would he be prepared to come back to complete his brief at the 10:30 point tomorrow?

**MR. HOUSTON:** Since you threaten to cut me off at 10:30, yes, I would have no choice.

**MR. CHERNIACK:** Mr. Houston, I have made no threats I have just been giving you . . . .

**MR. HOUSTON:** You have indicated you would support such a motion.

**MR. CHERNIACK:** . . . my personal . . . .

**MR. HOUSTON:** Then I would defer to the next person on the list and come back tomorrow. I won't go to the lake.

**MR. CHAIRMAN:** Mr. Graham.

**MR. GRAHAM:** Mr. Chairman, I believe the intention that was indicated to me by Mr. Jenkins was that around 10:30 he would not cut anybody off but we would hear that brief and then move that the Committee rise after.

**MR. CHERNIACK:** Mr. Chairman, I wonder if we could . . . . I don't want to get into any disagreement with anybody, certainly not with Mr. Houston, whom I respect very much and whose opinion I want to hear. But he gave us, in all fairness he stated that he would be long past 10:30, and he also said that in the light of what I indicated as my preference — I am only one member of a large Committee — that he would be prepared to come back tomorrow. I think it is very courteous of him both to warn us and to indicate a willingness to go on. Maybe we ought to get a straw vote as to whether the Committee is willing to leave at 10:30. —(Interjections)— Let me just finish. If the Committee is willing to sit — the majority — beyond 10:30, I will sit here with the Committee for as long as it wants to sit, but in all fairness I have indicated my preference along with Mr. Jenkins because I admit to being tired after these sessions.

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

**MR. PAWLEY:** I wonder, Mr. Chairman, if we could accommodate in this way, that we could hear the brief, Mr. Houston, and then put the questioning over until tomorrow morning. I would suspect, now I don't know, Mr. Houston would have to advise us, that his brief probably would take him to a quarter to 11, 11 o'clock at the latest.

**MR. HOUSTON:** That would be a very conservative estimate, Sir.

**MR. PAWLEY:** I don't like that word so . . . .

**MR. CHAIRMAN:** Mr. Sherman.

**MR. SHERMAN:** Mr. Chairman, there is one other compromise that might be considered. Mr. Houston has been waiting, as many others have been, to get on the lectern for some time and he is next in line. I would suggest that it might be agreeable to him to be the first one on in the morning at 10 o'clock and the 20 minute period that is ahead of us right now, he might prefer to defer to someone who feels they could make their presentation within that space of time. I would respectfully suggest he should be allowed first position in the morning.

**MR. CHAIRMAN:** Mr. Graham

**MR. GRAHAM:** Mr. Chairman, I would prefer to hear this brief now and if it takes us after 10:30, we'll listen to it.

**MR. CHAIRMAN:** What's the wish of the Committee?

**MR. PAWLEY:** Let us start on it and if Mr. Houston is still talking at a quarter to eleven, ten to eleven, then we may very well adjourn at that point and request him to finish tomorrow morning.

**MR. HOUSTON:** If it please the Chairman and the members of the Committee, I am prepared to defer my position to the next person on the list and down the line until such time as you choose to rise this evening. I will come back tomorrow and make my submission. I do expect to be first.

**MR. CHAIRMAN:** Mr. Jenkins.

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**MR. JENKINS:** When I moved the motion . . . I want to say this to the delegations. I want to thank you for being here but as I stated when we started the meeting tonight, we have been here for long nights. Some of us are members of two committees, we've been on this Committee plus another committee. I sat here Monday night until after 2 o'clock; I sat here every night of this week until 12 o'clock; I'm here at 10 o'clock in the morning I don't feel that I am doing justice to you at this time of night because I cannot absorb what you're saying. You know, when it gets to 12 o'clock, we have been here a long time. I certainly don't . . .

**MR. HOUSTON:** I appreciate what you're saying, Mr. Jenkins, that's why I indicated I would be beyond 10 o'clock.

**MR. JENKINS:** I appreciate the fact Mr. Houston you made your wishes known and I think if we have anybody here that can present a brief, if it's 20 minutes, 25 minutes, I'm not going to bang on the dot of 10:30 but I think I would like to be out of here and try and get rested.

**MR. CHERNIACK:** Do you want a motion that Mr. Houston should be heard first thing tomorrow morning.

**MR. JENKINS:** Well, I would move, Mr. Chairman, that Mr. Houston be heard at 10 o'clock tomorrow morning.

**MR. CHAIRMAN:** Is that agreed? (Agreed)

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

**MR. CHAIRMAN:** Thank you, Mr. Houston. Mr. Arthur Rich.

**MR. ARTHUR RICH:** I'm in much the same position as Mr. Houston. I think I'll be much more than an hour and I think it would be unfair, personally to me, if I was to start at this late . . . I'm like Mr. Jenkins, I am tired too.

**MR. CHAIRMAN:** Would you settle for number No. 2 position tomorrow morning?

**MR. RICH:** I have a four-day trial coming up next week. I might like to have No. 1 position at 2 o'clock when you convene in the afternoon. I have a lot of witnesses to . . . I'm sorry, it's . . .

**MR. SHERMAN:** That presupposes if Mr. Houston is finished. . .

**MR. RICH:** That presupposes that he is finished, yes. I know Mr. Houston fairly well.

**MR. SHERMAN:** I think we would agree that you would follow Mr. Houston.

**MR. RICH:** I'll get down here as soon as I can in the morning.

**MR. SHERMAN:** I guess we'll have to let the chips fall where they may on the clock.

**MR. CHERNIACK:** Could we agree that Mr. Rich could be heard as soon after 2 o'clock as the person finishes at that time? Is that a fair . . .

**MR. CHAIRMAN:** Is that agreed with the Committee? (Agreed)

**MR. RICH:** Thank you very much.

**MR. CHAIRMAN:** Thank you, Mr. Rich. B. Hilton.

**MRS. TURNBULL:** Mrs. Hilton couldn't be here this evening and she asked me to tell you that she will either present a written brief or be present tomorrow. I'm not sure at this point.

**MR. CHAIRMAN:** . . . to the bottom of the list. Ruth Pear. Is Ruth Pear present? Does any one know if Ruth Pear is in the vicinity. Not known. Leigh Halparin. Is Leigh Halparin present? Would you come forward, please.

**MS. LEIGH HALPARIN:** I find myself in the same position as Messrs. Houston and Rich. I am prepared to be called at any time tomorrow however. Thank you.

**MR. CHAIRMAN:** Thank you. Charles Huband.

**MR. PAWLEY:** Ray Taylor was only going to take a couple of minutes. Why don't we . . .

**MR. HUBAND:** Well, Mr. Chairman, my position is somewhat different than the others in that I think that I could proceed in 15 minutes with difficulty but, on the other hand, I am not going to be available tomorrow. I will be out of the city tomorrow and therefore not available. I have the option of either trying to finish in 15 minutes, deferring to Mr. Taylor who will only take a few as I understand it, or coming back on Monday if the Committee meets on Monday or otherwise mailing in your submission which I have in written form. I am prepared to defer to the Committee as to which of those options should be pursued. If you would rather finish off with Mr. Taylor tonight who will be brief — at least I understand he will be — that might be acceptable.

**MR. PAWLEY:** I know something of Mr. Huband's brief and I think it will probably result in quite a bit of questioning and I am just wondering if we shouldn't. . . Mr. Taylor has indicated his brief won't take long — (Interjection) — Pardon? Oh, there are other names before Mr. Taylor, I see.

**MR. CHERNIACK:** Mr. Chairman, dealing with Mr. Huband. I personally feel that it would be unsatisfactory just to read his brief. I would much sooner both hear it and discuss it. I think that we're pretty sure we're not going to finish tomorrow and I think that could be recognized. The only thing we would tell Mr. Huband is we don't know ourselves whether we're sitting Monday, that we will be sitting after tomorrow I believe and . . .

**MR. HUBAND:** I think that would be a preferable solution, Mr. Cherniack.

**MR. CHAIRMAN:** Mr. Jenkins.

**MR. JENKINS:** There doesn't seem to be anyone — unless there is someone here. Is there



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someone . . .

**MR. CHAIRMAN:** It's been indicated to the Chair that Mr. Taylor is present and has a fairly modest brief.

**MR. SAM MALAMUD:** Mr. Chairman, my name is Malamud. I have a brief brief. If I might proceed?

**MR. CHAIRMAN:** Well, before you do I have a procedural problem. It has been indicated to me that Mr. Taylor wanted to speak. We did call his name earlier and he did not appear. The normal manner then is that the names go to the bottom of the list. The next name on my list then is Mary Jo Quarry.

**MS. MARY JO QUARRY:** I'll defer to Mr. Malamud.

**MR. CHAIRMAN:** It's Mr. Malamud, is it? Would you proceed.

**MR. SAM MALAMUD:** Yes, thank you. My submission deals basically with the jurisdictional aspects of Bill 61 in reference to the Family Court. Bill 60 — the Family Maintenance Act — defines a judge as one of the Queen's Bench County Court or the Provincial Judges Court Family Division. The Marital Property Act Bill 61 in Section 33 states that the application by the party goes to either the County Court or Queen's Bench. On any dissolution of marriage now, I think any lawyer would be derelict in his responsibilities to his client to proceed only on a separation and not bring on a concurrent property application, because my understanding of the Marital Property Act is that a chosen action which is a debt is also included as a family asset so that would be a proper consideration at the time of dissolution. Even the most indigent client has assets as defined by the Act. Basically the poorest people have furniture in their home and perhaps some debts to the finance companies but these are things that merit some consideration. Now, if the jurisdiction as indicated in the two — well in the Marital Property Bill — remains the same, then in effect the legislation well, basically makes a eunuch out of Family Court because they would no longer be a Family Court — a lawyer would not want to proceed there. It would be an improper step because one would have to take two proceedings which could not be heard concurrently or have the evidence apply equally to both in any court, well in the Family Court, one could do it in Queen's Bench and one could do it in County Court. So no one would be inclined to go to the Provincial Judges Court. There would be simply no reason to it.

My proposal as far as my reading of the Canadian Constitution British North America Act, and my consultation with the Chairman of the Manitoba Law Reform Commission, there is no particular impediment to that sort of decision being made by reference to a referee-type person as we have analogous to the referee of the Queen's Bench. It would come solely within the jurisdiction of the Province and it wouldn't be that much of a drastic step to give the Family Court limited jurisdiction perhaps by reference to deal with property.

I particularly point out how it could be done. I have proposed wording for an amendment. That would be an amendment to section 31(1) of the Marital Property Act. Well, down the page, towards the latter half of the paragraph after the semi-colon, it could read as follows, after the semi-colon, five lines up from the bottom of 33(1) and that would say, using the wording of the section, "and the judge may, upon a hearing or" — (Interjection) — five lines up from the bottom of section 33(1), 33(1), I'm sorry, 33(1), yes, after resides, there's a semi-colon, "and the judge" — and that's referring to a section 96 judge — "may, upon a hearing or upon a reference to a judge of the Provincial Judges Court, Family Division, make such order."

So that type of amendment, although it creates somewhat of an administrative difficulty, it certainly is not insurmountable. It would therefore enable parties who — and the parties who go before Family Court are generally indigent and would appreciate some relief — go to a court of summary jurisdiction by application to the Family Court — perhaps the mechanics of filing a reference in the County Court can be worked out, and I have a proposal on that if you'd be willing to hear it — therefore the Family Court would have the jurisdiction to make an order under the Family Maintenance Act and at the same time deal with the assets, although not be the court that makes the ultimate disposition and that's the only constitutional bar. It therefore makes the Family Court something other than a Child Welfare Court, which this Act would inevitably turn it into, and that's merely my submission.

**MR. CHERNIACK:** Mr. Chairman, I wonder if I could put a suggestion in the form of a question? I would think, Mr. Malamud, that you would be prepared to expand somewhat on what you have told us in a more precise way and send it direct to the Attorney-General who could then review that with his officers and advise the Committee later on because this is quite a technical proposal you make and I would think that it's one that I, as an individual member of the Committee, is not too greatly concerned with as long as it's effectively done.

**MR. MALAMUD:** Well, it has a great deal of validity to it. If I might indicate that by my count — and I was counting today in my office — I think that you have in the province, about 16 or 17 Section 96 judges whereas the number of provincial judges, I think, doubles or trebles the number of Section 96 judges. This type of amendment would deal with the problems earlier raised before this Committee of remote areas — judges flying in — provincial judges visit but Section 96 judges don't. It gives relief to

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all residents of Manitoba; it gives it in a summary way. I would be more than happy, if the Committee would wish, to submit a written proposition on that point.

**MR. PAWLEY:** Yes, if you would, please.

**MR. MALAMUD:** Certainly.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** Well, no, I am happy with the answer.

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

**MR. PAWLEY:** I just wondered if I could ask you a general question in principle as to just whether or not you feel these bills, as a practicing lawyer, should proceed or not.

**MR. MALAMUD:** I am an active member of the Family Law Subsection. I endorse what has been said by Mrs. Bowman. I feel the Marital Property Act should proceed immediately. If the amendments can be made to the Family Maintenance Act, I see no reason why it should be held back. It's a major step in the right direction as towards reform in Family Law and I endorse the Act, not as it now stands, but the concept behind it. As a practicing lawyer, I have difficulties with it as it now stands but I don't see that the recommendations proposed by my subsection and the Manitoba Bar are that great that the implementation could not be as planned and as scheduled by this government.

**MR. PAWLEY:** And what about the Maintenance bill?

**MR. MALAMUD:** The Maintenance Bill, to be quite frank with you, just opens the flood gates. It is imprecise and that creates litigation. If it were to be more precise, I see no problem in its operation. — (Interjection)— Well, more precise in the definitional sections. As far as I can see, the reading of 5(1)(e) brings in through the back door the concept of fault which has to be let in through the back door, it's a convoluted process in court; it takes time. Without going through it, well, all the issues that have been raised by Mrs. Bowman, I have considered and I endorse them and I don't think they're insurmountable. I think they can be dealt with by amendment to the existing legislation.

**MR. CHERNIACK:** I'm sorry, I just want to make the . . . the existing legislation., I think you must mean the proposed . . .

**MR. MALAMUD:** The proposed bill.

**MR. CHERNIACK:** Yes, thank you.

**MR. CHAIRMAN:** If there are no further questions, thank you, Mr. Malamud. Mr. Jenkins.

**MR. JENKINS:** Mr. Chairman? I move that Committee rise and would thank the delegations for their presence here this evening.

**MR. CHAIRMAN:** Committee rise and report. Committee will reconvene at 10 a.m. tomorrow morning.