Legislative Assembly of Manitoba

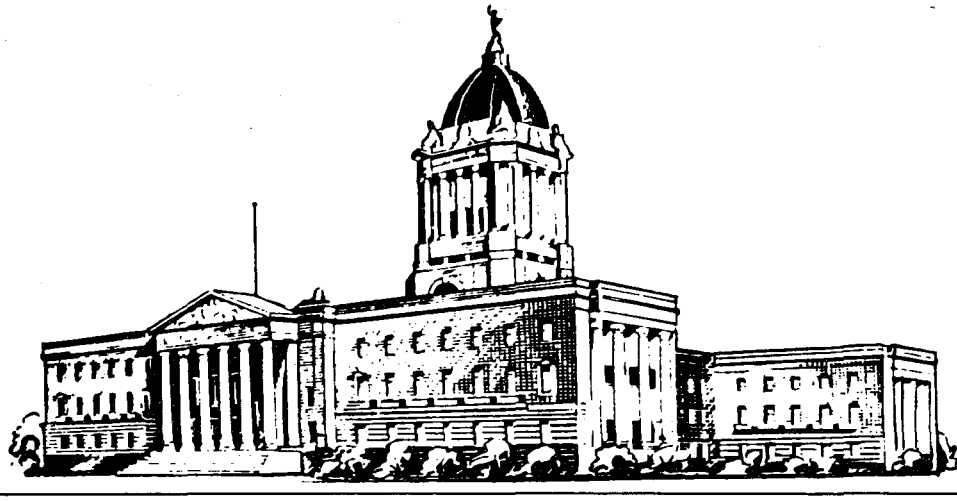
HEARINGS OF THE STANDING COMMITTEE

ON

LAW AMMENDMENTS

Chairman

Mr. J. Wally McKenzie
Constituency of Roblin



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Time: 8:00 p.m.

MR. CHAIRMAN: CHAIRMAN: Mr. J. Wally McKenziel call the Committee to order. I call Mr. Charles Lamont. Mr. Lamont, I have your name here. You want to speak on Bill 5 and Bill 6. Which one would you like to speak on first, sir?

MR. CHARLES LAMONT: I guess we better maintain the continuity and speak on Bill 5.

MR. CHAIRMAN: Bill 5, thank you. Proceed.

MR. LAMONT: Mr. Chairman, honourable gentlemen, I apologize for coming somewhat ındressed. However, I came here directly from curling and when we recessed I had certain parental ɗuties that I had to fulfil at home because my long since liberated wife had gone to Dauphin to visit ıer sister. So I was here well-dressed on Friday night, I think.

The reason I want to comment on Bill 5 is entirely in the area of the marital property section and ny feeling is that a proper perspective has not been drawn on this. I go back to two columnists, Marjorie Earl and Frances Russell, who wrote articles in the Tribune some ten days or two weeks ago, ınd they read sort of like a cracked record. It was assets, assets, assets, assets, and then it jumped for ı while and we got Murdoch, Murdoch, Murdoch and then we got assets, assets, assets, assets, ıssets.

Having been in manufacturing for 15 years, I am used to seeing on the left-hand side of the page assets" and on the right-hand side of the page "liabilities", and throughout so much of this liscussion that I've seen there has been no mention of liabilities. And in that context, let me say, first ıf all, I agree with the concept of equality in marriage and equality in sharing. The problem that I see ı the bill is I don't see how it can be made workable, although the young lady who spoke immediately ıefore me, earlier this afternoon, indicated that some states had legislation in this area.

I may add that the bill, as it currently stands, actually is very much in my favour. My wife winds up haring many thousands of dollars of personal liabilities that I have, and I wind up sharing many ıousands of dollars of a cottage that she has. My wife was liberated when I married her. We have rranged our affairs in, I think, a sensible manner. She took what she could out of a somewhat modest ımily income. We both agreed that she would stay home and raise the children and that this was as aluable a contribution to the family as my going out and working was, and in that context she bought ıe cottage, the family income paid for the cottage. I incurred various liabilities and debts as I went ıto various manufacturing enterprises.

So as it currently stands, as I understand it . . . I should also explain that I haven't read it and I aven't taken counsel but there is no shadow of a doubt that if it is enacted both my wife and I will ave to take counsel because of the implications of it. But in that context . . . And, Mr. Chairman, I ould suggest that you toss a box on the table and every time someone speaking before this ɔmmittee mentions the term "asset" without adding the term "liability" they should throw a dollar in because we can have one hell of a party at the end of this bill from the proceeds.

Now, you say, well, you're involved in commercial enterprises and that has sort of been excluded postponed in the legislation. Well, that's only partly true, because unless a business has sufficient ıssets . . . And I mean if you've got like a million and a half dollars of assets that maybe cost you a illion dollars, and if the whole place burned to the ground and you get $500,000 for it, the banker will ıd you $10,000.00. So unless you've got very considerable assets, when you go to the bank and try ıd function in the *entrepreneurial* sector, you have got to make your personal pledge that the ɔney will be repaid.

Now, I can cite not a hypothetical case; I can give you an actual example of the difficulty that I can e that could be down the road. We tendered on an over $300,000 job back in July and at the time had pledge at the bank that we would repay loans in order to put up the big security. We had to produce plant growth cabinets for Canada Agriculture in Saskatoon. We have got approximately $200,000 ɔrth of material flowing at us right now from all over North America. And as we require money to pay ppliers, or require additional money to pay suppliers, I go down and make a personal pledge that ıt money will be repaid. We're not borrowing it on the business at all. It happens to be dumped into ı business account but it is a personal liability that I have promised the bank that I will repay.

Now, if we have joint sharing of assets and liabilities — and I don't have to put my dollar in the box and I want to emphasize liabilities because I happen to be somewhat familiar with them. If we have ıt sharing of liabilities, then my wife has got to sign with me.

But it's even more complex than that because does she sign at the beginning when we tendered ı contract, that she says it's okay for us to go ahead with a $360,000 contract? Does she then sign ıay that's okay, and that covers the whole job in spite of whatever personal liabilities I may happen ıccrue during the progress of it? And I'm not sure how familiar you people are with manufacturing, manufacturing today is really an assembly; you may make something and then you buy a whole ies of components and assemble them together. So that you are dependent on other suppliers to you various pieces of a component, and so on and so forth, in order for you to complete what

you've said you will complete.

You do your planning; you do your budgeting; you do your forecasting. But if one key supplier lets you down, it means that you can't deliver the goods, invoice and get paid for them. That means that you've got to pay suppliers that you had anticipated being able to pay out of the proceeds of the delivered goods. So at the beginning of a contract you can't state definitely to your wife, "Look, I want to bid on a $360,000 contract. Our liability will only be $30,000.00." Well, you can do that, and she can say, "Well, okay, I'll sign for $30,000.00." Then some key suppliers don't deliver. The liability has got to go to $50,000, and your wife says, "No."

Now, we've talked about the tax implications, which also have implications for me from the standpoint of the summer cottage owned by my wife. But we haven't talked about asking Ottawa to make the Divorce Act such that I can get rid of her in 24 hours. Because if she says, "Well, I'm up for $30,000, and I'm not going to $50,000," I've got to get rid of her.

I've got to be able to go to the bank and say, "Now I'm clean; I'm signing the loan." Nobody has thought through the implications of the liability side of this and I don't think that you can argue that you can have it both ways — that she only shares in the assets and doesn't share in the liabilities.

Now, in that context, as I said to you before, do I get her to sign at the beginning of the contract that it's okay to go ahead with it, although she puts a contingency in only to the extent of increasing our family liabilities to $30,000, or do I have to ask her permission every time we issue a purchase order? Because every time we issue a purchase order, I am creating a position in which I may be increasing my personal liability at the bank.

We're ordering, in this job, $60,000 worth of cabinets. Now, if something goes wrong, my liability at the bank may grow enormously. Do I have to ask her permission every time I issue a purchase order? Because it may become a liability at the bank.

We talked about all these assets and it sounds great. We'll share the assets; we'll share the assets. But I can't see how this can be administered on a liability basis.

My younger brother is a partner at Richardson Securities, and also the general manager. He makes enormous commitments. The turnover of their money is fantastic. Now I don't know what his liability is; he's a partner. I don't know what his liability is but has he got to get approval from his wife every time he has a commercial transaction that may involve him in a liability?

This is my concern. I can't see how you can make it workable. Because if you argue that she has a share in the assets, the personal assets, commercial assets aside. I don't have commercial assets. I've got personal liabilities. Now some day, hopefully, I'll have personal and commercial assets. But to a fair extent what you're dealing with is liabilities. And if something goes radically wrong, you may be called to pay for them.

You can go on forever talking about assets but unless you take a realistic look at liabilities I don't see how the system can function. How can I possibly run a business when every time I want to issue a purchase order three of us — not one; three — have got to ask our wives' permission? How does the system work? And what happens if one of the wives says, "No"?

Well, I suggest to you, you know, the solution . . . This law is being passed . . . And I agree with it; I repeat I agree with the concept of sharing to the point where I think I've been taken in my marriage. I agree with the concept but when you begin to try and do the detailed application of the law, you're running into very significant difficulties.

How do I go on running my business when every time I make a move I'm making a commitment that may become a liability, and that liability becomes a liability of my wife's? Now, it's more serious than that because, in my personal case, as we set out her sort of area of rights and my sort of area of rights, she said, "Well, if you don't want to get a nice, good, soft government job with an indexed pension at the end, and you want to fiddle around in this fool *entreprenurial* world, that's your business. Leave me out of it. I'm not signing any notes for you."

And with the temperature outside, lady and gentlemen, I'm sure that you can understand my wife's position when she says: "I am not prepared to jeopardize my children's shelter for your giddy *entrepreneurial* schemes."

So the banker has phoned me this week, and he said: "Oh, by the way, I think your wife has got to sign." Now, legally he would be correct. He may have a poor lawyer, I don't know, but if he says I've got to have my wife sign, or he calls the note, I am bankrupt. That's how serious this legislation is.

The young lady commented that California has got this, and Texas has got that, and so on and so forth, and perhaps it can be made workable, but if you're going to share the assets, you share the liabilities, and my liabilities in association with my business are personal liabilities, they are not commercial liabilities. I have pledged to repay out of future income, if necessary, the money that I borrowed. How the hell do you make this think thing work? I don't know. I'm through submitting.

MR. CHAIRMAN: Thank you, Mr. Lamont. Mr. Pawley.

MR. PAWLEY: Mi. Lamont, you indicate you hadn't read either Act.

MR. LAMONT: No, all I've got is newspaper reports on it. I'm not a lawyer, I should explain that I'm an engineer. I'm involved in a very large contract, and it doesn't leave me much time . . .

MR. PAWLEY: When you referred to personal liabilites, they were liabilities that you were ɜncountering in connection with your business. Is that correct?

MR. LAMONT: hat's right.

MR. PAWLEY: And these were loans that you were obtaining from the bank, or from your creditois o assist you in your commercial operation?

MR. LAMONT: You can recognize, perhaps, Mr. Pawley, that the contract we recently received ɜpresents almost two times any one year's previous business. The cash flow is incredible as ompared to what we . . . you know, we've been limping along eating beans some days and some ays not eating beans for years, and we finally got a contract now that we can get our teeth into. But ıe cash flow requirements are very large.

MR. PAWLEY: Are you aware, Mr. Lamont that this legislation wasn't to take effect until anuary1st?

MR. LAMONT: My banker is asking me about it now.

MR. PAWLEY: Could you explain why your banker would want you to sign this past week . . .

MR. LAMONT: No, he didn't ask me to sign, he suggested that we would likely have to get my wife in ı sign.

MR. PAWLEY: Could I suggest to you, Mr. Lamont, that commercial assets and liabilities are not ɜalt with on a shared basis until such time as there's a marriage termination. —(Interjection)— The ɜbt, as I understood you, was encountered in connection with the operation of your business.

MR. LAMONT: But if I went to you and borrowed the money instead of my bank . . .

MR. PAWLEY: When you say personal, what are you pledging, Mr. Lamont? —(Interjection)— Mr. ıairman, if Mr. Lamont would be permitted to anqer rather than Mr. Enns.

MR. CHAIRMAN: Order, Mr. Enns.

MR. LAMONT: I've pledged some personal family assets, if you like, in my name, and I've pledged ture income.

MR. PAWLEY: What are you referring to as family assets?

MR. LAMONT: Bonds, stocks, what have you.

MR. PAWLEY: Could I point out to you that they're not considered family assets in this legislation.

MR. LAMONT: Okay, they're my assets, but they don't cover the loans.

MR. PAWLEY: No, but they're not personal assets. I've heard my other colleagues mention, and I ı say the same to you, it's not unusual, I didn't find it unusual when I was in law practice for a wife to requested to sign loans, loan applications, along with the husband. .

MR. LAMONT: Well, we've been in business for four years and they haven't asked for it before.

MR. PAWLEY: But could you explain why they would be referring to bonds, stocks as security, ɜrring to it as family assets, when it's clearly defined in the legislation as being commercial assets?

MR. LAMONT: Well these aren't bonds in the company, or stocks in the company. These are assets t were acquired with family income over time. So you put up what assets you've got, and then the ı says: "Well, okay, we want the dog and the picket fence outside of your house."

MR. PAWLEY: Would it relieve you to know, Mr. Lamont, if you had the legislation to examine, that ıer the definition of commercial assets there is no inclusion of money as a commercial asset, but y house, furnishings, and the car. Would that relieve you from the predicament that you've ıressed to the committee, if you were made aware of the fact that bonds, stocks, money of any type ot icluded under the definition of family assets?

MR. LAMONT: No, I'm not worried about assets. I'm talking about liabilities.

MR. PAWLEY: Or under liabilities.

MR. LAMONT: Well, if I've got a personal loan to you, which as a lawyer you would probably tie me up pretty tightly on, , that's a personal debt, okay? I've got the same thing at the bank. It's a personal debt — it's a personal liability.

MR. PAWLEY: Well, let me just say to you, Mr. Lamont, that there's nothing in this legislation that changes your position at all in that connection.

MR. LAMONT: No, it includes my wife in it.

MR. PAWLEY: No.

MR. LAMONT: Yes.

MR. PAWLEY: Well, you haven't read the legislation, so I am not going to . . .

MR. LAMONT: Well, doesn't it say they were going to jointly share "the assets"?

MR. PAWLEY: The family assets, but the items that you mentioned to me are not family assets

MR. LAMONT: Well, presumably, when you say "assets" you include liabilities. You can't just adc up the assets and ignore all the liabilities.

MR. PAWLEY: The liabilities are liabilities in connection with the family assets. The family asset: are defined in the legislation as the house, furnishings, the car, but not liabilities that are encountere(in connection with non-family assets.

MR. LAMONT: Well, if I borrow $15,000 from you and blow it at the track, has the family nc encountered a $15,000 liability?

MR. PAWLEY: No. wish, Mr. Lamont, maybe if you had an opportunity to read the legislation yo might be relieved to find out that some of the misconceptions you have been labouring under ar possibly the same misconceptions that other Manitobans have been incorrectly labouring unde

MR. LAMONT: In other words you are saying that I can incur various liabilities that are not famil liabilities.

MR. PAWLEY: That's right, unless they are encountered in connection with the purchase of yo house, your car, your furniture in the house, things of that nature. —(Interjection)—

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I would like to explore further with Mr. Lamont, not necessarily his person situation, but the principle involved in it. Well, I am going to go right into your personal situation, let's not pretend that I can avoid it.

You've described a cottage that you say is owned by your wife by agreement.

MR. LAMONT: She bought it, she paid for it.

MR. CHERNIACK: And you have no claim over it.

MR. LAMONT: None.

MR. CHERNIACK: As I understand the existing legislation, you would acquire a half-interest in tl cottage.

MR. LAMONT: Over my wife's dead body.

MR. CHERNIACK: No, you would, Mr. Lamont, but . . .

MR. LAMONT: No, I would become the 31st percent of those who suffer marital breakdown.

MR. CHERNIACK: Well, Mr. Lamont, I didn't finish my sentence. . . . unless you felt that y marriage was in jeopardy, and you would be willing to enter into an agreement releasing your cl to the half of the cottage. What it means, therefore, is if as a family the two of you have worked har she at home, you out wherever — and you've acquired that cottage in her name out of your j efforts, then you would have the choice, under the present legislation, of asserting a right to a h

interest, or signing-off that right, and I would think the way you're speaking that you treasure your marriage enough not to endanger it by demanding the half and would therefore sign-off. Now, is that unfair in some way, giving you the option of claiming your half or signing-off?

MR. LAMONT: In that context, how do I sign off?

MR. CHERNIACK: By agreement with her. It's in the Act, you have the right, the two of you, to opt out of that portion of the law which you don't agree should apply to you. . . .

MR. LAMONT: Okay.

MR. CHERNIACK: Then, accepting that, the same could apply to the family car, but not the business car, the business car belongs to the person in the business, but the family car or the dog you mentioned, and I only refer to it because you said it, or any other assets that are not used to derive income but are used as a family asset, you would have the same right as I described you have for the cottage. How does that sound toyou, fair?

MR. LAMONT: How does it sound to you, when you have made an agreement with your wife that she is not responsible for your personal debts, and the banker says . . .

MR. CHERNIACK: I'm coming to debts, if I may come to debts —(Interjection)— I just wanted to take you along so that we could try to agree on certain things, and see where we don't. Well, so far I have dealt only with family assets, and I would say that you're right to one-half of the family assets which is not income-producing but what is used by the family for its daily ongoing, if you acquire a debt on that asset — in order to purchase it say you buy a cottage or a house and you have a mortgage – then, under the law, the debt against that asset would be shared just like the ownership is shared — just like possibly your house is owned that way. So that's a family asset.

Now the present law says two things: It says that the commercial assets are shareable only on separation and not before separation, or you can agree to opt out of that so they don't become shareable at all, so together — not unilaterally — but together you can either agree to opt out or you could leave the law as it is, which means that if you ever separate then you and your wife can each claim a half-interest in the commercial assets.

MR. LAMONT: I've got to suggest to you that all this is going to do is create a flood of money pouring into the coffers of the lawyers, we've got to draw up all these blinking agreements.

MR. CHERNIACK: Well, you only need one, you see. well, then let's talk about liabilities. . . .

MR. LAMONT: Yes, let's talk about liabilities.

MR. CHERNIACK: You are talking about a liability against your assets and your commercial asset, I presume, is worth something for the bank —(Interjection)— Well, what else do you offer? You have your future earnings — you don't need your wife to sign for your future earnings if you are pledging your future earnings.

MR. LAMONT: We've now got a history of very modest profitability over a period of four years, say, we started it off with a $5,000 loan. Well, almost anybody who is respectable looking and has some history in the community, and so on and so forth, can wind up with a $5,000 loan. You have an optional thing here that requires additional money so you stretch it to $10,000, and then maybe get to $20,000, and you float it up and down and sometimes you even pay the whole thing off — you've no liabilities. And then you hit a large job like this and you've got this sort of reasonable history here, your tender wasn't that far under your competition, so obviously you haven't sold your soul to get it, so the . bank is prepared on the basis of my face to extend the line of credit.

MR. CHERNIACK: Now, at that point, what are you risking if you can't pay the bank and the bank goes after you. What assets are you risking?

MR. LAMONT: The entire business.

MR. CHERNIACK: The business. Anything else?

MR. LAMONT: No.

MR. CHERNIACK: All right. Well then, there is no requirement. Your wife has no right to complain about the fact that you have risked your business under the present law. You are not risking anything which she has a right under the law. So that I don't see that she is . . .

MR. LAMONT: Well, my future income is somewhat suspect.

MR. CHERNIACK: That may be, but you have the right, under the present law, to risk that without referral to her. Maybe that shouldn't be the case, but that is the case.

MR. LAMONT: No, but if I can accumulate liabilities, and she shares half the whole thing, I accumulate personal liabilites, then surely she shares half the personal liabilities.

MR. CHERNIACK: No, sir.

MR. LAMONT: She only shares the assets!

MR. CHERNIACK: It is clear in the law that she . . . No, any assets she acquires are subject to the liabilities, but she does not acquire the debt that may be in excess of the value of the assets under the law. So that what you are risking when you pledge something for a commercial nature is what is yours to pledge, and you cannot pledge more than that at your wife's expense, under this law, so that she is not at risk for more than she has. I suppose that if you want to pledge what she has, then I would think the bank should have a right to ask her to sign what she risks. But under the law, there is no possibility of her having to pay your debts. That is the law as I understand it, and I'm wondering if I am correct I'm wondering . . .

MR. LAMONT: If I am entitled to share her assets . . . Okay, supposing I had the cottage and sai that she's suddenly entitled to share my assets in the cottage, then presumably she's also responsibl for some of my liabilities.

MR. CHERNIACK: No. Only to the extent of her claim against the half interest of the asset. The la is to me very clear that no spouse becomes liable for the other spouse's independent debts.

MR. LAMONT: Well, that's why I suppose the bank wants . . .

MR. CHERNIACK: That's why I was saying that if I'm correct, could you agree that . . .

MR. LAMONT: Well, you could be right, and I could be bankrupt tomorrow morning at noon. Whe the banker, in his lack of discretion or discretion, or whatever, he's not obeying a law, he's reacting hunches, and so on and so forth. And if in his considered opinion, which may be totally wrong, I says: This new law is going to make . . . you know, I've got to have both signatures here.

MR. CHERNIACK: Well, that would be if you are pledging a family asset. And if you a pledging. . .

MR. LAMONT: He can say he wants it anyway.

MR. CHERNIACK: Well of course . . .

MR. LAMONT: I mean, I'm not in a court of law, and I'm not arguing legal details, I'm talking t human being who's trying to save his soul by making sure he doesn't lose money.

MR. CHERNIACK: Right. But you said that you could go into the bank initially for $5,000 on basis of your appearance and the way you're dressed, and the banker could say "No" just as easil "Yes."

MR. LAMONT: Yes, three of them did.

MR. CHERNIACK: Well, yes, because they're in business and they want to make loans to pec who are likely to repay them.

MR. LAMONT: Right.

MR. CHERNIACK: Now, if you were able to say to the banker: "These are my own personal as which I have a right to pledge independent of my wife," and you are able to satisfy the bank to extent, would they not want to lend money to you on that basis?

MR. LAMONT: Probably, I gather . . .

MR. CHERNIACK: But they wouldn't say to you: "Go bring your brother to then that's wha thinks.

MR. CHERNIACK: Yes. Well now, I think that would be the case . . . If you have a home in your name, under the old law you could go and pledge it. You know, if you have a building, let's say the cottage, you could take the title into the bank, and you could pledge it, and the bank can accept that as a collateral.

MR. LAMONT: Right.

MR. CHERNIACK: Under the new law, we are saying that unless you and your wife sign off, opt out of it, then your wife does have half-interest in that cottage, and then the bank would have a right — it would be required — to say: "We want her signature as well, because now we are endangering her asset." Is that not fair?

MR. LAMONT: Well, we're still back on assets again, unfortunately. But in point of fact, what I'm pledging is future income.

MR. CHERNIACK: You have that right.

MR. LAMONT: Currently.

MR. CHERNIACK: You have that right, under the present law, without endangering her right for the future sharing of your asset. She does not become liable for your debt, if you pledge it against future income, she is not liable for it. If I am right, and I believe I am, would that not satisfy your concern?

MR. LAMONT: I believe in the principle of equal sharing. As long as I don't wind up in a situation whereby someone who is very relevant to me and my business dealings, suddenly determines that my wife has got to start doing a lot of signing, it really doesn't make that much difference, except in the case that I don't really think it's fair that she should assume half of my liabilities. On the other hand, I don't think it's fair that I should assume half of her assets, if she isn't going to take . . . you know . . . liabilities and assets. Let's keep talking about liabilities.

MR. CHERNIACK: Right. Well, the law does provide that liabilities are chargeable against the assets before the sharing, but not in excess of the assets. That is the present law, which the government is trying to set aside.

MR. LAMONT: Again I repeat, I have very real concerns about the reactions of the business community, and their ignorance.

MR. CHERNIACK: Well, let me conclude by pleading with you to help understand the law by reading it, and not going by newspaper . . .

MR. LAMONT: I will never read the law. I will seek counsel on it but I will never read it.

MR. CHERNIACK: Yes. And so would the bank because then they would know the law and and understand it.

MR. LAMONT: Yes, and depending on who they have for a solicitor, I may or may not be in real difficulty.

MR. CHERNIACK: Well, that's always the case, isn't it?

MR. LAMONT: Well, it hasn't been the case for four years.

MR. CHERNIACK: Well, I wouldn't . . . thank you, Mr. Lamont.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Is your real concern not the following: You have a commercial business which from time to time requires bank accomodation, which means that you have to sign in addition to the formal requirements, security that the business would have to provide for the bank, you would have to sign on a personal liability yourself, in your own personal involvement for payment of the debt.

MR. LAMONT: Right.

MR. SPIVAK: What you suggested is this: That while it may not have been the practice of the bank to request, because of the nature of the accomodation that was provided, a signatory of other than yourself, that because of the fact that you were in a contract where it may very well mean that you may have to have a rush, or an additional accommodation provided because of failure at one end, or a lack of cash flow because of the needs of this contract, they may at that point say: "Your personal

liability, which we were prepared to accept, is encumbering your family assets of which your wife has an interest. Therefore, you now must bring her signature here." I know, that's clear. And what you're saying is that in that kind of a situation, where your accommodation may have been provided with your personal signature without your wife in the nature of the business operation, you may in an emergency situation, or in a situation that you cannot control yourself, require that. You may not get that, and if you don't get that, then in effect the bank will realize on whatever security they have on the accommodation, putting you into bankruptcy. Now, that's really what you're describing in your own situation. You're suggesting that there are a number of people in small business in Manitoba who are in that situation.

MR. LAMONT: Yes, right.

MR. CHAIRMAN: Mr. Orchard.

MR. ORCHARD: Well, Mr. Lamont, when you first described your situation, I could appreciate that you had a real problem, but after listening to Mr. Cherniack, I think your problem can be easily solved by taking him down to the bank with you on Monday, and with the description he just gave us, the banker can't help but go along with what he's saying. —(Interjection)—

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Lamont, sir, you indicated that like many other small businessmen you have a personal note at the bank; and you indicated that the family cottage is in the name of your wife.

MR. LAMONT: I'll say that stronger than that. My wife has bought the cottage, and whatever she could glean out of the family income, she paid for it. This was done 12 years ago prior to the Income Tax Act which has some significant implications because I think we could logically argue that the was her principal residence if she ever sold it, in terms of capital gain.

MR. MERCIER: Does, sir, your liberated wife realize that if for some reason or other your business went bankrupt and the bank turned to collect on your outstanding note and you couldn't fulfill your liability to the bank, that the bank could then encumber her cottage, because by virtue of the immediate vesting of the family assets you would be entitled to a half interest of your wife's . . .

MR. LAMONT: My wife is very much against this Marital Property Act. —(Interjection)— Okay, you go down to the lawyer. Now let me say something about lawyers. Most of you know that I know something about lawyers. You can't buy an orange from a lawyer. He hypothecates the skin, the pe the pith, the seeds, the juice, the pulp and the navel. Remember the navel, the navel is very importa because he nearly forgot the navel. You get back down to your car in the parking lot and you wond to yourself, Am I going to have delivered to my house an orange, a part of the U.S. fleet or an Egypti belly dancer? I mean, we contracted with lawyers for the cottage, we did it for the house. I 've don for the business. Now I'm going to have to go round this route again and I still, from what I can gath don't really know where I'm at and I don't know where I'm at with my banker; that's what concerns r It's his reaction.

MR. GREEN: Mr. Lamont, I just want to get clear in my own mind this banking arrangem because when I borrowed money and the only thing that I had that could back me up was our ho then my wife had to come in and sign at the bank for money that we required in our business. Y understand that, do you not?

MR. LAMONT: Yes.

MR. GREEN: So the fact that if a person has no other security and the only security he has a belongs to his wife, that the bank will require the wife's signature.

MR. LAMONT: Well, let me point out to you, Mr. Green, that I know fairly well a sort of a major b manager in the city and what banks really tend to do with you is the same as lawyers do to t clients. They give the client a proposal, the banker gives the potential lender a proposal. Now you say, "No, the terms are too damned tough. I can't do this but I can do the following." And he s "Well, yes," — he asks for your arm and your leg . . .

MR. GREEN: Right, and your wife.

MR. LAMONT: Yes, and your dog.

MR. GREEN: That's right.

MR. LAMONT: Right. It's a negotiating process.

MR. GREEN: Right.

MR. LAMONT: Now in 15-odd years of having borrowed money from the bank I've never had to have my wife sign. Okay? But all of a sudden I've got a banker raising the issue.

MR. GREEN: You know, I'm not certain as to why the banker is raising the issue. I can only make certain deductions; that you have a lot of property in your own name?

MR. LAMONT: Yes.

MR. GREEN: Well, just let me carry this forward. The only reason that this law could affect your relationship with your bank is that you presently have a lot of personal home property in your own name which this law will deem to be owned by both of you.

MR. LAMONT: No. The reason the bankers talked to me about this is because he recognizes that there's two sides to the balance sheet. There's the assets and the liabilities. And if my wife is going to be standing there taking the assets she's also going to be stuck for the liabilities, and the liabilities are my personal note. That's why he's asking for it.

MR. GREEN: But Mr. Lamont, the security that the bank now holds from you without your wife's signature can only be diminished by this Act to the extent that your wife will be deemed to own part of your home property, which she didn't own before. As a matter of fact the case as you described it, would make the security stronger by this law to the extent of one-half of your cottage, which you didn't used to own, which this Act will deem that you do own, and therefore maybe . . .

MR. LAMONT: I think I have a fair number of . . . in here but you're making presumptions that don't exist. There is no property involved in my banking arrangements at all.

MR. GREEN: Well, the only thing that I can otherwise presume is that your banker doesn't understand the Act.

MR. LAMONT: This is my point, and I'm not sure that anybody else in the room understands it.

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

MR. ENNS: Mr. Lamont, just to underline again. You don't consider your situation as particularly unique. You would describe your business arrangements as being fairly normal in the scale of business that you operate.

MR. LAMONT: Right.

MR. ENNS: In fact, it would be much the same for the agricultural businesses sometimes referred to as farmers that enter into much the same kind of relationship with their banks?

MR. LAMONT: Right.

MR. ENNS: In other words, you're not pleading a special or unique case here. From your own experience you regard yourself as one of many doing business in the province in this manner?

MR. LAMONT: Well, I've heard other people suggesting that it can unduly complicate sort of commercial matters and if my assumption with respect to liabilities as sort of equating to assets is correct, then it's going to really create problems.

MR. ENNS: Thank you.

MR. CHAIRMAN: Any more questions of Mr. Lamont? Mr. Lamont, I also have your name on Bill 6, an Act to amend the Employment Standards Act, the Overtime Rate of Wages. Have you some comments you'd like to present to the committee on that matter?

MR. LAMONT: Yes, I would. The reason I want to speak to Bill 6 is not that I worry really at all about the time and three-quarters. There's a fundamental principle that I have not heard enunciated with respect to the time and three-quarter and the non-compulsory overtime, and perhaps in that context would be useful to go back a little bit.

The key issue in this area was caused by Griffin. Now I can be corrected here because my memory is perhaps faulty. But the issue at Griffin really in the initial stages was that the CAIMAW at Griffin

discovered that a loophole in the contract meant that they didn't have to work compulsory overtime. This is my understanding. They therefore requested the company reopen the contract and get a Cola clause in. When the company refused to do that they said, "Okay, no more overtime." They made such a tremendous issue of this that I guess the workers even began to believe in it themselves. But I can't really understand the position on that because I also understand that they signed a contract with Canadian Rogers Western with provision for compulsory overtime. Now if it was so damned important at Griffin, why didn't they strike Canadian Rogers?

Now CAIMAW did not in this instance have the support of many major unions and I suspect it is because some of the more senior union leaders really understand employment perhaps a bit more than the relatively new CAIMAW. I think this is a very fundamental point because the issue here really is an attack on the concept of the notion of the state itself and it certainly is contrary to anything I have ever read about unions. And that concept is that in any employment group, and in manufacturing for instance, it can be a very complex thing. Nobody rocks the raw materials out of the earth, processes it, casts it, works on it, rolls it and completes a product. We all are dependent upon other suppliers. So somebody has got to be, within this employment group, be given the responsibility for the security and continuity of employment. That responsibility, and I don't use the term right, that responsibility currently lies with management. Managements responsibility is to ensure that if we're short of these supplies here and the supplier isn't going to produce them for two weeks, they're airfreighted in a considerable extra expense. So you're trying to feed an assembly line usually, multiples of components, in order to secure not just for the shop floor, but for the entire working group, security and continuity of employment, and I think that that is a responsibility that ,in any employment group somebody has got to have. Now in that context, I suppose you could argue, well give it to the Chief Steward. on the shop floor Let him be the one that decides whether this an emergency enough that we can ask somebody to work overtime. I have got to suggest to you I don't think the Chief Steward would take the responsibility. He does not want to continue to alienate his own men, people who vote him in, by saying, no, no, you're not going for a beer now, you're going to work. It has been and continues to be a management responsibility and I've got to suggest that that responsibility has got to lie somewhere, it's currently in management and it had better remain there.

Now, to try and make it slightly more punitive by saying, well, okay, you're going to have to pay sixth more, and this will presumably increase the employment, well in many, many ways, as far as I' concerned that is an insult — that suggestion that you can take somebody in off the street and replace the skilled workers, the dozens and dozens of skilled workers, that I have known well, anything less than many months or years. Now once again, okay, you say, well if you just hire a few more guys then you wouldn't have this problem of having to work overtime. But unfortunately, once again, if everything goes well in an operation, as opposed to having a breakdown here or breakdown there or a shortage of supplies here, if everything goes well, and you've hired 15 or more workers, you begin producing at a higher rate. You overproduce the orders you've got and you lay everybody off.

There was a suggestion that the compulsory overtime rate only be made on the basis of emergency. Well, what is an emergency? Consider the position of a firm in Winnipeg, for instance who has been supplying a component to a firm in Montreal, but as time goes by and t transportation costs continue to increase, and since they've got competitors in Toronto or Windsor, or whatever have you, so they can't just jack their price everytime the transportation co go up. They would have to keep shaving profits, shaving profits, shaving profits, until this item h become somewhat marginal in terms of its production. But there's somebody in Edmonton wh building a similar product, that they might be able to pick up as a customer, so the sales manag gives a great sales pitch, makes a commitment to deliver on certain date and of course needless say, they want to supply that stuff on the date they said, to prove to the new customer that they ar reliable supplier of materials because they recognize that in terms of the security and continuity employment of the entire group, they may lose the Montreal customer, a major one, maybe percent of the volume. Well, it turns out that they like most of us are dependent on outside suppli Some of the components are delayed, they finally arrive, the product can only be completed working overtime. Now is that an emergency or isn't it an a emergency? I suggest to you gentlem in all seriousness , I don't want to appear facetious at all, I suggest to you, that any time tight- fis management is prepared to pay $15.00 dollars in overtime to get a job that it could get done for dollars on regular time, that is an emergency. I just can't agree with the time and three quarters a can't agree in any way shape or form in tossing out the notion of someone being responsible for security and continuity of employment, and in that context, I have got to suggest, that anyone starts playing around in the area, I mean we all gave up certain rights to be members of . . . , to l part of a state, and we do that to gain greater security. It is exactly the same situation in an emplo group. You gave up the right to head off for a beer immediately the bell rings in order to have so degree of security of employment by being forced to work some overtime. And I've got to sug that the suggestion that you can remove compulsory overtime from the work force, will not incre individual freedom one iota and it will subject entire working groups to the tyranny of indivi irresponsibility.

MR. ENNS: Thank you, Mr. Lamont. Mr. Green.

MR. GREEN: Mr. Lamont, we're not at this point discussing the question of how overtime is arranged. I want to tell you that I go some distance with you in what you have said on that question, although I can't travel the whole road, that's really not before the Committee. The government appears to be of the opinion that we have dealt very well with that issue because they are not changing the laws that we have enacted vis-a-vis how people arrange their overtime, as between management and employee. The only thing that they are changing is the premium rate, which was set at time and three quarters last year, and that's what we're discussing. Can I ask you, why, in your opinion, was there ever a rate of time and a half for overtime after 48 hours? What was the purpose of time and a half?

MR. LAMONT: Under current Income Tax rates, time and a half doesn't even get the guy back to earning . . . on the last dollar, doesn't even get the guy back to earning his rate.

MR. GREEN: Can you tell me, why, to repeat my question, you're a man of some understanding, therefore I think you will be able to understand. What in your mind, was the reason that a government legislated that there shall be time and a half for overtime hours? What was the purpose of that in the first place?

MR. LAMONT: I suppose to encourage the 40 hour week or 44 hour week or whatever it was at the time.

MR. GREEN: Then do you regard the government who did that, which by the way was not a New Democratic Party government, as insulting all of the employers in the province of Manitoba by suggesting that time and a half would discourage overtime and that this was an insult to the employers?

MR. LAMONT: No, all they were saying was . . .

MR. GREEN: Well, why is time and three quarters an insult?

MR. LAMONT: I think, that, you know, vis-a-vis the cold outside, vis-a-vis the climate that we've got here, vis-a-vis all these various things, vis-a-vis the five percent sales tax that we've got to pay on production equipment, all these various things, all I can say is it's just another stone heaved at somebody in a purely punitive and vindictive Time manner. and a half is an established thing I would think almost all over North America. Time and three quarters is not.

MR. GREEN: Mr. Lamont, in describing this insult of time and three quarters, what you said earlier, if I may try to quote you, was not that this was just a climate problem, that this was a suggestion that if to avoid paying another sixth of an hour in wages, that you would reorganize the work force and see to it that people didn't work more than 40 hours a week, rather that you would rearrange and have your skilled people work a little less, and hire other skilled people who are in the streets working a little more, you said that was the insult. But wasn't that the original reason for legislating time and a half?

MR. LAMONT: No, as I recall, compulsory time and a half was introduced at a time of very low unemployment. It wasn't introduced to increase employment.

MR. GREEN: Well, Mr. Lamont, not more than five minutes ago you said that time and a half was introduced in order to encourage the 40 hour week, when people were working 48, not to give people eight hours more pay, but to encourage 40 hours. Therefore, it seems to me — and I guess that now it's just going to be a point of issue between you and me, that the time and three-quarter legislation had exactly the same motivation as the time and a half, and neither was an insult.

MR. LAMONT: No, the point there is that if you want to accomplish the same thing, then you would have reduced our already lowest standard work week of 40 hours. You would have reduced that to 36, rather than raising the rate to time and three quarters.

MR. GREEN: Well, it wouldn't make any difference if, as you suggested, the time and a half really doesn't cost anything now because of the income tax rates, etc.

MR. LAMONT: It certainly costs business. I didn't say that. I said all that happened was that the employee began earning somewhere close to what was supposed to be his rate after tax.

MR. GREEN: Then you disagree with the submissions that have been made and the statements that we have heard, that time and a half with the premium rate not including any of the fringes and not adding to the fixed costs is virtually the same expense to business as straight time.

MR. LAMONT: Well, we're beginning to drift slightly away, and in this context what I have to say is

that as far as I'm concerned, at source deducted tax, whether it be UIC, CPP, or income tax, has long since become a business expense and is not personal income tax or unemployment insurance tax or Canada Pension Plan tax at all. All you have to do is try raising the rate and find out how fast the shop stewards are in management's office saying "Hey, our next pay is down get it back up." Now, if you drop the rate, they are quite prepared to accept the increase, but there's no question at all that outside of wartime when you can use patriotism to convince people that they should reduce their take home pay, their standard of living while Canadian boys are dying in the fields of Europe — yes, you can do it then. Once you are into a peacetime situation which we have been now for 32 years, you've got all these at-source deducted things as business expense, not taxes.

MR. GREEN: I can remember nothing in the last 32 years except war, one war after another.

MR. LAMONT: But you've been in the legislature.

MR. GREEN: If you don't consider $30 billion a year out of the North American economy going into Vietnam as war, then you don't know the difference between war and the legislature.

MR. LAMONT: I would point out to Mr. Green that all the time the Vietnam War was going on, young Americans were being needlessly slaughtered at a much higher rate on the highways of the United States than they were in Vietnam.

MR. GREEN: That makes it okay to do it in Vietnam.

MR. LAMONT: I didn't say it did.

MR. GREEN: Well, you make it sound very light.

MR. CHAIRMAN: Mr. Orchard.

MR. ORCHARD: In the current order that you are working on right now, that's an order to go to Saskatchewan I take it? —(Interjection)—

MR. CHAIRMAN: Order please.

MR. GREEN: It was Nixon who stopped the war, not Ho Chi Minh.

MR. CHAIRMAN: Mr. Orchard.

MR. ORCHARD: The order you're currently working on that's causing some problem, it's an order to Saskatchewan, I understood?

MR. LAMONT: No, it's for DPW — for Canada Agriculture.

MR. ORCHARD: Yes. Now, when you bid in your order, did you figure any overtime into your cost of production?

MR. LAMONT: All of our employees are salaried.

MR. ORCHARD: Oh, so you're not involved with overtime then. If you had to pay overtime, would you find it difficult to obtain orders for production in Manitoba to ship elsewhere, if you had to pay time and three-quarters overtime?

MR. LAMONT: Well, I'll put it this way. We have no tariff protection. The goods we produce are classified as scientific research equipment and they can be brought into Canada by any qualified institution that is non-profit research under 69605-1 so we are competing directly, on a dollar-for-dollar basis, against . . . in Marshall, Michigan, Environmental Growth Chambers in . . . Falls, Ohio and Percival Refrigeration in Boone, Iowa. We have no tariff protection. So any penalties that you impose on us come out of our hide.

MR. ORCHARD: And then such a penalty may perchance be time and three-quarter overtime

MR. LAMONT: Well, in given situations it could be, yes.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: To Mr. Lamont through you, Mr. Chairman. The previous government took t

position which I never accepted but they took the position nontheless that the rationale for the time and three-quarter overtime measure was to discourage the imposition of overtime. Mr. Green argues and I don't accept that as the rationale for that piece of legislation but I'm not going to reopen that debate. I'll accept the fact that Mr. Green has tried to persuade everybody and the former Minister of Labour of this province tried to persuade everybody that that was the rationale for the legislation, to discourage the imposition of overtime.

MR. GREEN: That's right.

MR. SHERMAN: Mr. Lamont, you're a man, to use Mr. Green's words, "of some understanding" and also a man of some manufacturing experience and I would like to ask you whether in your experience you think that employers as a rule need to be discouraged from imposing overtime.

MR. LAMONT: Well, the most closely monitored expenses in manufacturing is overtime. It's broken out usually as a separate expense and I have seen as many battles on it as I have seen on anything in manufacturing. Why the hell can't you get it done in regular time?

MR. SHERMAN: Right.

MR. LAMONT: And I've seen edicts issued — no overtime. Manufacturing doesn't want overtime; we don't want to pay $15.00 to get something done when we should be paying $10.00 for it and we can't afford it.

MR. SHERMAN: So you wouldn't see it as an absolute No. 1 priority that any government of this province of any stripe introduce additional barriers and additional discouragements to overtime. You feel that the constraints of the profit-making exercise and the constraints of businesses' financial positions and financial commitments and requirements generally act as a disincentive to an employer to impose overtime.

MR. LAMONT: Yes, in that context. It seems to be generally recognized that Canadians can be sort of broadly divided into two groups and that is the group which depends for its living only on other Canadians and the other section is the group that perhaps depends on some Canadians but are subjected to international competition. Manufacturing, of course, of all stripes is subjected to international competition. Now, I'll try and illustrate it a little bit better. You can't import a seven-storey building from Japan; it's got to be built here by Canadians. The result is that you have, in my opinion, a cartel that is currently paying what I regard as ludicrous wages. On the other hand, if you're in a manufacturing concern, you're always subject to international competition even if you have tariff barriers at least there's a limit above that — and anything that is tossed at you, you've got to absorb because you can't pass it on to your customers. Honeywell Controls can pay their servicemen $28,000 a year because they just pass it on because if you want a serviceman to service your Honeywell Controls in this building or whatever they are, then you've got to hire Honeywell. If you don't get them you get Johnston and because it's a cartel, you pay the same rate anyway. So, it should be clearly understood that when you're talking about certain segments of our economy which are not in competition with anybody else, it's one thing. When you're talking about another segment of our economy and it's the one that everybody keeps saying that they are trying to encourage — the secondary industry — oh, boy, we've got to have more secondary industry — but secondary industry is subject to international competition and anything we get tossed at us including all the payroll deductions are an expense that we have to bear. To the extent we can pass a little bit of it on, okay, but it isn't a question of being grossly profitable or unprofitable, it's being not profitable enough. I hope I haven't rambled so far that I haven't answered your question.

MR. SHERMAN: No, that's all right, Mr. Lamont. And would you agree that in industries that continually encounter and operate within a continuous flow type of production operation, that overtime becomes a reasonable business requirement in order to maintain continuous flow operations, in the context of the whole business that overtime is really a reasonable business requirement in order for that business to retain its viability?

MR. LAMONT: Definitely. If you've got skilled mechanics or whatever have you who are responsible for the maintenance and repair of the various pieces of equipment and one of them breaks down, you just aren't going to find one out on the street and if you're going to have it rolling for the second shift or rolling for tomorrow's shift, somebody's got to work overtime. Now, I can add, it never really has been a problem, a significant problem until Griffin and CAIMAW.

MR. SHERMAN: Yes .

MR. LAMONT: And all of a sudden an awful lot of people that I know who are workmen said, "I wouldn't be forced to have to work overtime." What they don't recognize is that they're jeopardizing their own security if they refuse.

MR. SHERMAN: So, would you agree that the imposition and the development of the time and three-quarters overtime concept, though sold as a measure to discourage the imposition of overtime, was really introduced as a measure to try to effect a compromise in the specific situation that arose at Griffin Steel?

MR. LAMONT: Well, I can't read into the Leader of the Opposition's mind or the opposition members' minds but it would be a presumption that I have had for some time.

MR. SHERMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Lamont. Any more questions? Thank you, Mr. Lamont. I call Marva Smith. Terry Gray. Susan Devine.

MS. SUSAN DEVINE: Good evening, Mr. Chairman, Mrs. Price, gentlemen. I am a practicing lawyer and I am here tonight as a representative of the Manitoba Association of Women in the Law, This is an Association of practitioners, law students and general public who are concerned particularly with the law as it relates to women. Our association supports the existing family law legislation and would strongly urge that the legislature not suspend, postpone or repeal this legislation which is of such significance to the people of the province.

Our group presented submissions to the committee hearings originally and endorses the concept that there has been sufficient discussion regarding both pieces of legislation to allow them to be implemented and to have any amendments which are required made while the Acts are in effect.

As a lawyer, I can indicate that the viability of an Act and the problems posed by it only become apparent when the Act is applied and there are volumes of judicial commentary on all significant pieces of legislation, both federal and provincial, that govern us. I suggest that no piece of legislation could ever be passed in perfect form.

Turning first to The Family Maintenance Act which is in effect right now, I would like to indicate that our group is concerned that the government feels it necessary to deal with both pieces of legislation as a package. Our group can see no necessity for treating both Acts equally and dealing firstly with The Family Maintenance Act, the Act which is in effect now, we feel that it is indeed a workable Act, that it has been in effect for a month, many of the practitioners in our group have made applications under the Act and can speak from personal experience that the Act is working out very well in the family courts.

I would also point out that comments have been made about the Law Society seminar at which 500 lawyers were present and directed criticism towards both pieces of legislation. Well, I was at the seminar and to the best of my recollection the thrust of any criticism that was voiced was largely directed at The Marital Property Act and I cannot recollect any significant criticisms directed at the unworkability of The Family Maintenance Act. I am sure that I don't need to stress again to the members of the committee what a vast improvement this particular piece of legislation is over the Wives' and Children's Maintenance Act which was the piece of legislation which governed separations in the province of Manitoba prior to November 14th.

Under the new Act which has been in effect now for one month, separations are accessible to both men and women and this was not really true prior to November 14th. The basis on which men could apply to court for a separation were very limited indeed and only if their wives were habitual drunkards could they make an application under provincial legislation for a separation. Now both men and women have equal rights to make application to the Family Court for separation and any other relief that they deem necessary.

Another concrete improvement with respect to the separation legislation is that there is rapid interim relief available to either a man or a woman. They can make application in the Family Court and get an interim order fairly quickly. Under the old Act, there was some debate about whether or not it was possible to get interim relief and there were often delays of some months before people could get into court and relief such as immediate custody orders, immediate maintenance orders were not available. This has been clarified and has proved to be much better over the past month than the prior existing legislation. .

The media has publicized comments by the government that they endorse the principles behind both pieces of legislation and that they do concede that there should be equal sharing in marriage.

With respect to The Family Maintenance Act, again I would point out that the only apparent rationale for suspending the implementation of this Act is to insert into the Act what's not present there which is grounds for obtaining a separation. Our membership feels that it is a step forward to have the separation order itself available without having to prove fault or grounds and that the factors listed in The Family Maintenance Act will be taken into account by the trial judge in assessing the other and similar relief such as custody and maintenance, etc. I would point out to the members of the committee, as I am sure they are aware, that there can be marriage breakdown without the legal kinds of fault that are set out in the Act such as habitual drunkenness, persistent cruelty, and that there can be a marriage breakdown without one of those specific enumerated grounds and that the relief of separation should be available to both the men and women of the province.

I would also indicate that our membership endorses the concept that need rather than fault be the

criteria for assessing maintenance and any fears that this would be a possible gravy train for women, in particular I think, should be set to rest by the obligation that's enshrined in the Act for both parties to become financially self-sufficient as soon as is reasonably possible after the breakdown of a marriage. We also heartily endorse and welcome the concept that both partners have an equal obligation during the marriage to support each other in the ways enumerated in the Act and that recognition is given to the value of domestic service in the home as a contribution to marriage.

As I have indicated, our membership is in the courts every day and from personal experience there has been no difficulties that I have had over the past month encountered in this particular piece of legislation in finding it unworkable in any way. There have been numerous orders granted under it and the judges don't seem to have any problem in determining whether the Act sets out grounds or not. From the first day it came into effect most of the provincial judiciary took the position that there was no need to have grounds proved for a separation and the evidence on that particular point did not have to be led, but where there are other matters contested such as custody and maintenance, then of course evidence continues to be led by counsel for both parties in this regard.

I would like to indicate to the committee the confusion that I've encountered as a practising lawyer and that all my fellow practitioners have expressed over the constant changing of the legislation regarding separation. The legislation has been two years coming; people have been aware of it, particularly lawyers who try and keep up with what the current proposed changes in the law are, and for the past six months or eight months, we've been advising our clients with respect to both separations and with respect to The Marital Property Act that there was going to be a major and drastic change with respect to the law. Now we find ourselves facing some of those clients and saying to them, "Well, no apparently not, there may be another change though in six months." People have a hard time understanding that we're the people that are supposed to know all the answers and we're in a position of being unable to advise people in the area of family law for a potential year or year and a half. We can't give good advice even with respect to a simple issue such as a separation where there isn't a lot of property involved just because of the fact that there's the Act in effect now; it's proposed that it be suspended and perhaps come into effect at a later date. If a man comes into my office . . . I had a man in my office on Friday, his wife had a court hearing scheduled for this week and he wanted to know if she had to prove grounds and if he had any possibility of contesting it. Again, I was forced to explain to him, well, there's a bill in the House right now; at the moment she doesn't have to prove grounds; at the moment this Act governs but perhaps next week the old Act will be governing and depending on what happens in the spring, either you or she can make application. At the moment, he can make a counter-application for separation and all the ancillary relief, a right that he did not have up until a month ago. But as I have indicated, there is a great deal of confusion and the confusion with respect to The Marital Property Act I submit to the members of the committee need not transpire if this particular Act is left as existing legislation and that any amendments that become necessary are made as the Act progresses.

The allegation that the Act is unworkable, this particular Family Maintenance Act, as I said, is refuted by the fact that it has in fact been working for a month and the only significant change that might justify the Act being suspended or postponed, as I indicated, would be to insert the concept of fault grounds for a separation. I may be wrong because there is commentary and publicity from all sources and I may not have the official government position on it but I was under the impression that the government was not planning on implementing fault grounds for separation under The Family Maintenance Act. If that is so, then there is certainly no amendment that cannot be made quite nicely with the Act in effect and, as a matter of fact, there are very few amendments that practising lawyers see as having to be made to the Act at present.

With respect to The Marital Property Act, this piece of legislation, as I've indicated I think, should be dealt with as quite distinct from The Family Maintenance Act. The trend of the media coverage and the people dealing with it has been to lump both Acts together but they are quite different pieces of legislation covering different areas of the law although they both have to do with family law. Although our group does endorse the implementation of The Marital Property Act, I'm not in a position to comment as strongly on the workability of this Act because it is not in effect and I'm not working under it. I'm saying that I have no doubt that The Family Maintenance Act from my experience is a workable Act and that I can't comment from experience in the same sense on The Marital Property Act.

Our group endorses all the concepts that are set out in the The Marital Property Act that have been enumerated before, that were enumerated in our first brief to the Law Amendments Committee when the bills introducing the legislation were before the House and I would just like to repeat the stand that our association takes with respect to The Marital Property Act. We are heartened to hear that the government does endorse the concept of equal sharing and marriage as an economic partnership and we hope that this would be particularized by maintaining in the legislation the concept that the marital home be owned jointly and that this be immediately upon the Act being passed, that there also be an immediate vesting of family assets in both parties of the marriage, that commercial assets continue to be shared and continue to be shared in the deferred basis on marriage breakdown. We also feel that it is very important that the Act cover existing marriages and not only apply prospectively but cover the marriages that are in effect in the province of Manitoba as of May 6, 1976. / We also endorse the concept that there be no unilateral opting out of the legislation as this would for all practical purposes make the legislation completely useless. Although we do endorse the concept

of 50-50 sharing of assets, we also support and are glad to see that there is only the limited judicial discretion that's set out in the Act to cover the instance that may occur of gross unfairness or hardship and we figure that the judicial discretion which is set out in the Act is sufficient to deal with that.

So the Association of Women in Law urges that both Acts do go forward but we would like to stress again that there is no compelling reason at all, there's been none advanced to our knowledge, for repealing The Family Maintenance Act which is already in existence and that if the government does insist on suspending the implementation of The Marital Property Act which is recognized is a more complicated piece of legislation, that there is a firm commitment from the government for bringing this legislation back and a firm date on which it will be brought before the House.

We are very concerned that the principle of marriage as an economic partnership not only be recognized nominally by the government but that it be enshrined in our legislation in Manitoba. Thank you.

MR. CHAIRMAN: Thank you, adam. Mr. Mercier.

MR. MERCIER: Ms. Devine, let's assume you had a case where a married couple had agreed that the wife would stay home and care for the young children and not go out and work and they separated. Do you think the principle that's enunciated in The Family Maintenance Act where the spouse is supposed to become financially independent as soon as possible should interfere and deprive the children of the fulltime care of a mother?

MS. DEVINE: That's obviously a factor that's going to be taken into account in interpreting what taking all reasonable steps is and if there were a court order to be made, then the judge would have an opportunity to hear from both parties as to their wishes in that regard. If the husband did not want the wife to stay home with the children, then . . . Well, I can't conceive of a case where a man who, while he was living with his wife wanted her to stay home and look after the children and then when they became separated said, "Well now the children don't need you at home even more." It would seem to me that most men would want their wife in the home even more at that point.

MR. MERCIER: If it meant a matter of money, he might very well.

MS. DEVINE: Pardon?

MR. MERCIER: If it meant a matter of paying less money to his wife or less maintenance, he might very well say that.

MS. DEVINE: Well then that's a factor that that particular man is putting to the courts, /that he doesn't feel that it is important to him that his wife stays in the home and looks after the children. It's not the legislation that's depriving the children of having the mother in the home, it's the particular parties in that relationship and what they want. On that point, I am sure you will know, Mr. Mercier, from your experience, that for the majority of middle-class couples, a salary which is sufficient to support a family while they're living together as a unit just does not stretch when there are two persons living separately and maintaining separate households and it's my feelings that most often the woman is forced to go on welfare and a woman who does want to stay home and look after her children most often is forced to take that alternative, not because the man won't pay but in a lot of cases because he just doesn't have enough to pay to maintain her separately.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Ms. Devine, you have mentioned that you had obtained some orders under The Family Maintenance Act. I'm wondering if there are any of those orders that you obtained under The Family Maintenance Act that you might not have obtained if you had proceeded by way of The Wives' and Children's Maintenance Act.

MS. DEVINE: Yes, there is one.

MR. PAWLEY: Could you describe . . . not breaching any confidences, but just describe the nature of that order.

MS. DEVINE: Well, the difficulty, as I've indicated it, where there are grounds is that the judge has to hear not only from the particular applicant as to the grounds but most often have to have some independent corroboration. In this particular case there was some brutalizing of the woman by her husband in the home but as is the case with a lot of women, she had not ever gone to a doctor or shown any of the bruises she had to any of her family members and it would have been much more difficult to establish to a judge's satisfaction that the acts of physical cruelty had taken place. Under

this Act, it was just enough to apply for the separation and all that didn't have to be gone into and the woman didn't have to go through the painful experience of describing all the difficulties that led up to the separation.

MR. PAWLEY: Were there children involved in that example?

MS. DEVINE: Yes.

MR. PAWLEY: Now you indicate you were at the seminar, the famous seminar of 500 lawyers. Were you there throughout the entire thing?

MS. DEVINE: Yes, I was.

MR. PAWLEY: Was there at any time a resolution presented and passed at the seminar requesting a suspension or deferral of legislation before us?

MS. DEVINE: No, there was not. There was a speaker from the floor at the end of the day who proposed that there be a resolution. The Chairman of the panel said to the speaker that the body was not one which was properly constituted to accept and make resolutions, that there was a resolutions committee of the Canadian and Manitoba Bar Association and that that was the proper channel. That would be even assuming that there would be support for it, it was not allowed to be put before the floor and there was certainly no vote taken or anything of the kind. To my knowledge, there was recently a meeting of the Bar Association, a resolutions meeting, but there have been no resolutions to my knowledge because the resolutions are circulated to members of the practising Bar in order to enable us to vote on them. There's been no resolutions from the Bar as to the family law legislation and the proposed suspension.

MR. PAWLEY: How many members are there in your association?

MS. DEVINE: There are 50 paid up members for the year.

MR. PAWLEY: Fifty. Were the opinions of your association requested by the Manitoba Bar Association at any time, by Mr. Mercury of the Manitoba Bar Association?

MS. DEVINE: No, and I was somewhat surprised to see Mr. Mercury's comments in the paper because I did not quite know where he had obtained his mandate because I was certainly not . . . nothing had been publicized in any of the mail that I had received or, as I said, the forums that I know of to allow the Bar to comment on the legislation so I assumed that Mr. Mercury was speaking personally.

MR. PAWLEY: Have you made any enquiries of Mr. Mercury as to . . .

MS. DEVINE: No, I haven't.

MR. PAWLEY: You indicated that you are of the opinion that there is quite a time space, in fact I think you indicated for a year and a half, in which it would be very very difficult to advise your clients. Would it have been better, in your opinion, if the legislation that had been passed last June had been kept intact and an announcement had been made prior to the end of this calendar year by the government, as to what amendments it intended to introduce in the spring 1978 session?

S. DEVINE: Oh yes, as I've indicated, that's our association's position, that we would heartily endorse the implementation of the laws as they were proposed and that the Family Law or the Family Maintenance Act, not be suspended and that, you know, if there were amendments circulated, it would give the members of the Bar a chance to comment on them, on whether or not they're an improvement to the Marital Property Act as it stands right now.

MR. PAWLEY: Would that have provided less confusion for the members of the Bar in general, if that procedure had been followed?

MS. DEVINE: Well, I don't know if I can speak for the Bar in general but from the people I've spoken to, I think that it would be more desirable because we would not be operating in a vacuum and not saying to people that we know what the proposed Act was — this is with respect to the Marital Property Act, we know what the proposed Act was as of January 1, 1978. We hear that the principles are going to remain the same but we don't know when and if they do remain the same they're going to come back into effect, so there's a lot of difficulty in advising people with respect to their affairs and with respect to the Family Maintenance Act. If people do not have grounds, and their partner was not willing to consent to the separation, there's no form for them getting into Court and obtaining necessary relief that they might otherwise need. Because I'm sure people appreciate that most or a

lot of persons don't bother getting legal sanctions before they separate. A lot of women, for instance, who may be beaten up by an alcoholic husband or something will go down to Osborne House. Well, that's probably a poor example because those are women who would have grounds if they could prove it. But if people have incompatibility, that does not amount to actual cruelty or alcoholism or one of the enumerated grounds, that does not mean that they may not separate anyway *de facto* that one or other of them may not move out of the home with the children and be unable to get into the Family Court for separation hearings as a result of not having the grounds. The other party is not willing to enter into a contract or separation agreement with him. They are forced to live in limbo or else make application under the Child Welfare Act for a custody order and maintenance for the children under that Act. But they're still not legally separated and they have no opportunity to obtain that particular relief.

MR. PAWLEY: You indicated that you had one example of a case in which there was a distinct advantage in being able to proceed under the Family Maintenance Act. Do you know of any instances or could you advise the Committee of any possible examples where inequity might occur from the fact that there are no grounds provided for in the Family Maintenance Act for the granting of a separation order.

MS. DEVINE: I cannot personally conceive of any because it's usually the ancillary matters that are contested matters between the parties. That is the custody of the children and the amount of money that is going to be paid for the maintenance of the children and possibly for the wife and the contesting of grounds is usually a tactic to encourage the other side to concede and perhaps alter their position with respect to the other matters and it's been my experience that very rarely when there is a contested separation on grounds, does the person that is contesting the separation not want the separation but is contesting it because they are afraid of all the ancillary or because they have fears with respect to the ancillary relief of custody and children. And it's the same evidence that is going to come out at the hearing in a lot of cases. The evidence with respect to means will be before the Court under either Act and the evidence with respect to what's in the sure that you answered directly, what you believe would happen in the case of people who have separated under the Family Maintenance Act, grounds or lack of grounds, and who may now find themselves in Court bound to prove whatever is required to prove under the Wives' and Children's Maintenance Act. I see that as a threat to some already commenced proceedings . Am I wrong about that?

MS. DEVINE: No, I agree that if there is an interim order in effect under the Family Maintenace Act that it's certainly open to a judge to take the position under this transitional provision that there may have to be grounds educed nowafter part of the hearing has already taken place.

MR. CHERNIACK: Well, would you not say that there's a requirement on the judge to take that into account. It seems to me if I were acting for the husband I would insist that grounds under the Wives' and Children's Maintenance Act be proven.

MS. DEVINE: Well, I agree with that interpretation but I would point to this transitional provision as with any piece of legislation is best interests of the children. Under the Family Maintenance Act there's going to be a lot less bitterness and a lot less mud slinging hopefully.

MR. PAWLEY: Are you a member of the Subsection of Family Law of the Manitoba Bar Association?

S.DEVINE: No, I'm not.

MR. PAWLEY: So you are not aware of their meeting dealing with . . .

S. DEVINE: I am aware of their meeting but only through hearsay. I was not at that meeting so I prefer not to comment.

MR. CHAIRMAN: Thank you, Mrs. Devine. Oh, Mr. Cherniack.

MR. CHERNIACK: I was trying to follow the last portion of your response but I was distracted so I want to make sure, to deal with a concern I have where you now have interim orders under the Family Maintenance Act, as I read the Section 7, the transitional section of Bill No. 5. It says, "Any application brought under the Family Maintenance Act and not completed shall be continued and as far as possible, as though it had been brought or commenced under the Wives' and Children's Maintenance Act." I now want to know, I am not always going to be open to interpretation. I think that perhaps there's some lack of clarity in the transitional provision and that itself could be argued. But I agree that if a judge is to continue a proceeding which was commenced under the new Act and revert back to the old Act that he would clearly have to hear evidence as to grounds.

MR. CHERNIACK: Which may not exist in connection with ..

MS. DEVINE: And which may prejudice the existing order which means the person who has an existing order may find themselves in a position of not having an order and not having any chance of obtaining one.

MR. CHERNIACK: I would like now to move to the question Mr. Mercier asked you. The impression that I had from his question was that he felt that the need to care for a child by a wife and the requirement that she become financially independent with reasonable time are contradictory, at least not compatible, that's the impression I had from him. I look at Section 5(1) which deals with what the Court shall consider as factors; (b) as the financial means, earnings and earning capacity of each spouse; (e) any contribution of a spouse within the meaning of Subsection 2, and I read Subsection 2, as stating that any housekeeping, child care or other domestic service performed by a spouse for the family is a contribution of support and maintenance within the meaning of Section 2 in the same way as if the spouse were devoting the time spent in performing, etc. Do you see that there's any problem of competing requirements there?

S. DEVINE: As I indicated to Mr. Mercier and perhaps I didn't make it clear enough, the recognition of the worth of work in the home would certainly be taken into account in interpreting the section for onus of becoming self-sufficient and financially independent, and I don't think that there's any incompatibility between those sections.

MR. CHERNIACK: Further, I must express my real regret that I didn't attend that Law Society Seminar so I could form my own conclusions but I want to read to you a description of that meeting and see if that conforms with your appreciation of what went on. "It became clear that there was hopeless confusion in many areas as to the intent and meaning of the Act. The coming into force of these acts in their present form would only lead to confusion and considerable litigations." Is that an accurate description of what went on when five or six hundred lawyers discussed the law.

MS. DEVINE: It was a panel discussion of prominent family law practitioners who were commenting on the meaning of various sections and I think that anybody would agree that when you get four lawyers together you have a good chance of coming up with four separate opinions. There was controversy over what certain sections of the Act meant, but I would like to indicate, I was at another law society seminar today, with respect to criminal law and again we had prominent judges and defence bar and crown attorneys trying to decide what certain amendments to the criminal code mean, and there was a variety of opinions. Different judges said,"Well, if I had to decide that question, I'd decide this way;" different crown attorneys offered different opinions and so did different defence counsel and I don't think the nature of the discussion on the Family Law Bill at the prior Law Society's Seminar was any more substantive than that.

MR. CHERNIACK: You said enough. You're damaging our profession. Thank you.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: You mentioned that meeting today. Did anyone attempt to have a resolution passed requesting that those provisions in the criminal code be repealed in Ottawa.

MS. DEVINE: No.

MR. CHERNIACK: I apologize, I did have another question. Relating to the problem that you had, once it was announced that the government was planning to suspend the present law and how you were to advise clients, you may recall that the Law Reform Commission recommended in connection with the property Act, that a six month period should be provided and the recommended legislation between Royal Assent and the coming into force of the Statute — I am glad Mr. Sherman is hearing that because he thought it was a ploy — in order to accord married couples an opportunity to consider their positions, etcetra, and you know that our legislation did indeed provide a seven month period between Royal Assent and the coming into force of the Act. Would you expect that if, as and when the government makes changes and reinstates part or all of the present Act, that you would then be faced with a problem of needing a further period of time such as was suggested to the Law Reform Commission again to have people adjust to the new law. Would that be necessary in your opinion?

MS. DEVINE: I don't know if it would be necessary but I can anticipate a reluctance of the House to implement a law that . . . effective next day, and I anticipate that there probably will be a waiting period in the legislation when it is introduced and that that is why, personally and as spokesman for our association, I regret that there is uncertainty now as to when and if the Bill will be brought back and if it is to be implemented, when it would be implemented because as I said, I anticipate that practically speaking the Act would not be proclaimed to come into effect a couple of days after it's passed based on what has gone on with respect to the Bill to this point.

MR. CHERNIACK: Would not your concern carry with it the advisability of having a clear declaration of intent as soon as possible so that it is known what is likely to be any change that may be imposed on the . . .

MS. DEVINE: Not only a clear declaration but as I indicated in my submission, a date, that a date would be very helpful and would also be a token of the government's sincerity in terms of their promises to bring this legislation back before the House as soon as possible.

MR. CHERNIACK: Thanks Mrs. Devine.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: . . . remember how many lawyers were on that panel at the Law Society Seminar?

MS. DEVINE: Well, there were different panels during the day, on different issues and with the marital, I think the afternoon panel was the same, I believe it was the same four lawyers.

MR. MERCIER: Do you remember how many questions were posed to the panel?

MS. DEVINE: No, of course not. There was a . . .

MR. MERCIER: Do you remember the subject matter of those questions?

MRS. DEVINE: Yes. Well, some of them.

MR. MERCIER: On any of those questions was there agreement among the panel?

MS. DEVINE: I can't answer that question because I can't recollect what all the questions were and whether or not there was agreement on some of the questions; two of the panel took one position, one took another, one took another position.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Mr. Chairman, you don't happen to recollect which two members of the panel most continuously were in accord with one another do you? That's an opinion but you're a lawyer and you know the rules as to opinion evidence. This Court will put that in that context, a wait will be accorded.

MS. DEVINE: I don't think it's any secret that the review committee members on the panel are two of the three review committee members who were on the panel, Myrna Bowman and Rudy Anderson and Mr. Robert Carr .

MR. CORRIN: Did Mrs. Bowman and Mr. Anderson disagree very often?

MR. CHAIRMAN: Order, Order. These kind of questions I think are out of order. I think it's not fair to ask this witness that type of opinion dealing with this matter. I think that the Committee could move along. We have one more witness to be heard and if you would bear with me, we could hear her tonight hopefully rather than ask her to come back on Monday. I just ask you, I am at the mercy of the Committee, but I think the questioning is highly irrelevant to the matter that's before us. I think we should get back to the subject and do business in this Chamber and in this Committee the way we're sent here by the people and not get into personalities at this level.

MR. CORRIN: On a point of order. The question in no aspect did it deal with personalities of the individuals. I asked whether or not, with respect to the substance of the matter before the seminar, whether those two individuals were in accord with one another, whether their opinions reflected concurrence in their interpretation of the law or whether there was a difference of opinion.

MS. DEVINE: To Mr. Mercier's question, I indicate that my recollection is not such that I would like to answer that question and I don't know that I would want to answer it even if I could recollect sufficiently well to do so.

MR. CHAIRMAN: Mr. Pawley.

MR. CORRIN: I had another question . . .

MR. CHAIRMAN: Oh, sorry.

MR. CORRIN: . . . it also emanates from the seminar that Mr. Mercier mentioned. I was at the seminar and at that time I remember that there was a discussion as to the ramifications of Section 5.1 of The Family Maintenance Act, the circumstances when a judge may or may not decide to grant an order under the Act, an order of separation, and some people felt that there was a presumption that those orders would be forthcoming *prima facie* just by virtue of the fact that you would apply. And that was on the basis of course of the concept behind the legislation itself, the no-fault concept. I'm wondering — the people said that the judges would be embroiled in difficult circumstances because of the lack of clarity — hat has been the practice in the courts?

MS. DEVINE: The first day that the Act was in, November 14th, a friend of mine appeared on the regular chambers' day and made application for an interim order, the judge said to her that there was no need to prove any grounds any more; since she had evidence there with respect to finances, why not proceed with the final order on that date. That was his opening comment on the first day of the legislation and, in his opinion, grounds did not have to be proved.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: No, mine's been covered, Mr. Chairman.

MR. CHAIRMAN: Any more questions for the witness? I thank you, Ms. Devine.

Now we're at the mercy of the committee. The committee shall rise at 10 o'clock and we have one more witness to be heard. s. Marilyn McGonigal.

MR. CHERNIACK: Mr. Chairman, I understand then we could agree that as soon as the questioning is ended, the committee will rise.

MR. CHAIRMAN: Agreed? (Agreed) Proceed.

MS. MARILYN McGONIGAL: Mr. Chairperson and members of the Manitoba Legislature, I'm Marilyn McGonigal and I represent the Manitoba Action Committee on the Status of Women. The Manitoba Action Committee on the Status of Women has been in existence since just prior to the Royal Commission on the Status of Women Report in 1967. We've been very active over these years, members of the committee have been, and I have been as part of that committee over the years attempting to see that equality for women is enacted and becomes both law and part of our culture in Canada and particularly in Manitoba. We have had much contact with government over those years on various issues and we have spent a great deal of time in the last four years discussing and developing a position on family law. We have made submissions to all the relevant meetings and committees with respect to this matter and have thought it out quite thoroughly and recommended right from the beginning various principles that we would like to see enacted, not just on behalf of women but on behalf of the equality of men and women such that there is more equality in law and more equality in family matters.

Our particular concern with respect to family law was that we see that there is equity with respect to property in marriage. We were also concerned that there be more avenues of equality and more avenues of justice in the on-going marriage, more access to equal power, let's say, between spouses in a marriage. Our third major concern was that of maintenance, the enforcement of maintenance which, as you have probably heard many times, is a difficult area, a difficult problem in society because so many maintenance orders are not collected. Our other concern with respect to maintenance is that maintenance orders are not adequate in the first place because of various biases in the community with respect to women.

The Manitoba Action Committee endorsed the Coalition position that was presented to the Law Amendments Committee of the prior government with respect to the legislation that you people are now dealing with. Now our very great concern with respect to this legislation is that it be enacted immediately as it was passed because we need these principles to prevail in our society. These principles are basically what people believe marriage is all about and they are long overdue. We believe in immediate sharing of the family home and family assets, and that's immediate sharing, as soon as the marriage commitment is made is when the undivided halfinterest of each spouse in The Marital Act arises. It is our position that there is much hardship being wrought on people now that there is so much uncertainty with respect to the repeal of this legislation or the delay of The Marital Property Act. People have been anticipating this legislation; they've been adjusting to the date that it was to come into force and they have been anticipating it in order to bring equity into certain bad situations, people who have not been able to separate because there's nothing that they can rely on to live on when they separate. People in on-going marriages, a great many people have approached me and are concerned about the fact that it is long overdue, that the law reflects the status of their marriage. The good marriage, that is the continuing marriage, people in continuing marriages today are just newly aware of the fact that the laws are not fair and are not equitable with respect to property.

We are also concerned that this legislation be enacted such that the deferred sharing of

commercial assets comes into force. The importance here, as I see it, is that both spouses in a marriage work together for common goals. They make a commitment when they marry and even though one party is the owner of commercial assets, this does not mean that the other party is not contributing in a very real sense to the acquisition of the assets that accrue to that party who owns them.

The third thing we are interested in is the equal application of the law and that is with respect to the unilateral opting-out, or that there be no unilateral opting out. It seems to me that if two people can agree to a certain designation of property between them, then that is all we need and that it shouldn't be enacted that one party be able to say, "Well, this law is okay for everybody else but it's not for me and it's not for my spouse."

We're concerned about retroactivity, that is the alleged retroactivity of the new law; the idea that it's applying to existing marriages some say is inequitable. It's our position that that is not so, in fact it is our position that most of the people most in favour of this new law are already married and want the law to reflect the status of their marriage.

We're concerned about judicial discretion. I know that there is wide opinion on that question. We are opposed to putting judicial discretion into the law to the extent that the questions of property are a matter of conduct or a matter of things that have heretofore in law not affected property ownership. We already have law, the law as to title to property has nothing to do with conduct and never has had, and now that we are going to assign that property more appropriately in the marriage, it is not a question of judicial discretion to look at conduct and other circumstances to say all of a sudden that someone does not have title and that is why judicial discretion doesn't belong in this law with respect to property.

We're concerned about, of course, no-fault maintenance, and that brings me to the question of The Family Maintenance Act. It's already in force and judgments have been made based on it; it has many advantages, very few, so far, disadvantages that I've ever heard discussed by anyone. I've had one action under the new law and a number of advantages were revealed right there with respect to that action. If I may, because there were questions directed to Ms. Devine with respect to examples, I would like to relate to you briefly just what were the factors in that particular action.

A week ago, I obtained an interim maintenance order under the new Act. It was a situation in which grounds were perhaps not very strong and had we had to go under The Wives' and Children's Maintenance Act, it would have been quite a fight and a lot of embarrassment and it might not have gone because it was not a situation in which you would find necessarily the kind of fault, mental cruelty and so forth. What's more important than that though is the fact that I was representing the wife in this case and she did not want to carry those grounds into court; the grounds that she had, she did not want to stir up that kind of thing. What was really relevant to the situation was the present and the future and that's what we had under the Act. Now, of course, it was an interim order that was obtained and where is a concern now, next month we go back to court and if you change this law, there will be a question of whether or not there will be grounds. I think it was Mr. Cherniack a few minutes ago mentioned the possibility that it can be utilized as a threat now, the interim maintenance orders obtained under the new Act already. If we change the Act, we go back to court on grounds and that is indeed a very real possibility. It's happening in this case, that all of a sudden we're going to go back to all the old mud-slinging rather than just simply deal with the present and future which is what really is relevant to this case.

A number of people can benefit by the new Family Maintenance Act who wouldn't otherwise and we see them all the time in the legal profession: people without grounds, people who can't proVe their grounds, people who don't want to have that kind of publicity for their situation. One woman I remember interviewing some months ago in my capacity as a legal aid lawyer taking an application had very carefully, for years, hidden the evidence of the cruelty of her husband; very carefully keeping the doors closed and very carefully making up her face and very carefully even avoiding telling the doctor how she had obtained her injuries. This woman would have to try to find corroborative evidence for this now after spending so many years being ashamed of the fact that she was living in that situation. Now that person needs this Act; that Act should come into force and it should stay in force. I don't see any disadvantage in that Act so far; it's just wonderful. We have talked to lawyers who are so glad they're not going to have to drag in all the dirt and that we can sit down and discuss what's really relevant, and that's all we have to discuss — people are looking forward to the implementation of it. I just wanted to elaborate a little bit on that fact, that Act is already in and it's perfectly all right.

With respect to marital property, I would have to say the same sort of thing that Ms. Devine said, which is that we haven't had an opportunity to work under that Act yet and it's difficult to say what difficulties are going to arise. But there is no doubt in my mind that the principles are there and that whether or not there are minor amendments necessary, there is certainly absolutely no reason why it has to be repealed and that you have to start again. We've all worked very very hard, and I'm speaking as a member of the Action Committee and someone who's been quite active in trying to enlighten various people who are responsible for legislation about the principles that we want, and the principles are there. I still haven't heard a really legitimate criticism of that Act with respect to what it's definitely going to do.

On the question of litigation' I think that in the same manner that the Divorce Act when it was enacted perhaps brought forth an increase of litigation for a short while because of a backlog of

people who couldn't get divorces prior to968, I think that that might happen in the first little while, but I think that rather than say it's going to lead to more litigation, I think it's going to lead to less. I think that when you have two parties sitting down to discuss their property rights and their maintenance responsibilities and they have to sit down and discuss it, if those two people have equal rights, then you can come to some conclusion at the bargaining table. As it is under the present law, there is no denying all the litigation we have because one party has holds all the aces and the other party is begging and pleading and looking for some way around and has to go to court in fact to get around the fact that the other party has all the rights. I think it's going to lead to a reduction in litigation and a great deal more negotiation. I might point out that in The Family Maintenance Act, we have a new right to particulars and I made use of that recently as well in order to find out income figures without having to subpeona and carry the matter to court.

Now with respect then to these Acts, I don't think there's any reason to repeal them, and I think that if there are amendments to be made, that we should hear about it and discuss it further before just holus-bolus changes are made, particularly reversing some of our very major concerns that we worked so hard on trying to get implemented.

We are very concerned about the fact that while this government has indicated that they endorse the principles in the Act, they haven't spelled out those principles and they have appointed someone to look at the Act who is neither a draftsman nor a supporter of the principles and I imagine there's been much discussion to date about the fact that Mr. Houston was appointed. If I might say so, I think that there's a blatant contradiction in saying to us there are three people now on the committee, but the front page of the Free Press and the Tribune one day announced the fact that this legislation was to be repealed, or delayed or deferred indefinitely, for this and that reason, and the very next day was the announcement that Mr. Houston was appointed to rewrite it, and those of us who are very familiar with the procedures that were taken before the Act was implemented know very well that he was not only opposed, but virtually the only person who stood up in front of the legislative committee before, as I recall, who was totally opposed in principle to everything, he was the only person who said that. Now, how can you expect us to believe that this Conservative government, you people, are acting in good faith when you say to us you're going to retain these principles, you endorse these principles, and you find the only person in Manitoba who came to the committee hearings before — to oppose and virtually rant and rave about them — and when asked point blank: "Do you believe in the principle of equal sharing?" he said: "No," and he said two or three times in his presentation that he's not a draftsman, but the law as it stands is just fine for the ladies — something like that. Now this we're very concerned about. —(Interjection)— Pardon?

MR. PAWLEY: Mr. Wilson should save his questions surely till the end.

MS. McGONIGAL: I can't express too strongly our concern that there's something not quite cricket going on. You people can either revise the legislation such that it is better legislation — I'm sure nearly all Acts that are enacted can be made better, particularly with a certain amount of hindsight, but you haven't even chosen to develop some hindsight on the matter before you decide to repeal or amend. We're concerned that it just sounds like you're saying two things to us.

Now we worked, as I said before and I'll say it again as a member of the Manitoba Action Committee, and also as a member of Women in Law, and a member of the Coalition, and someone who's been to — I don't know how many meetings and discussions, and studied the law in this matter, and put a lot of effort into it — we were more than satisfied with what happened with the legislation that was passed, and we would like to reiterate that we'd like it to stay, and that we're very concerned that this government is not really intending to keep these principles, and we'd certainly like a statement on that.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Yes. In respect to your comments about possible confusion, would it have been clearer, do you think, if the government had left the existing legislation intact, but had announced clearly prior to the end of this current calendar year 1977, its intentions insofar as legislation to be introduced in the 1978 session.

MS. McGONIGAL: Most definitely. I think that what you're asking is that they should have announced their intention to amend and what they were going to amend, and so forth?

MR. PAWLEY: Yes.

MS. McGONIGAL: Certainly they should have, and I think the public should have been aware that the Conservative government was planning to do this to the legislation before the election, too.

MR. PAWLEY: I understand that was the recommendation of the subsection of the Manitoba Bar Association, the Family Law Subsection as well. Are you aware of that?

MS. McGONIGAL: Not really, I'm not aware of that in recent days.

MR. PAWLEY: Are you a member of the Subsection of the Manitoba Bar?

MS. McGONIGAL: I have attended some of their meetings.

MR. PAWLEY: Were you present at their meeting in October '77?

MS. McGONIGAL: I think so, yes. I was there, but I arrived late, and they were discussing the family legislation.

MR. PAWLEY: Do you recall the position taken by the Subsection of that meeting?

MS. McGONIGAL: Yes, well, I'm not sure I can be absolutely accurate, but I think they were going to . recommend amendments, that it be enacted, that it be left as it is. I don't recall them asking for a repeal. You see I was late to that meeting, and I can't speak about all the discussion.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, Mrs. McGonigal , I sympathize with your position and your concerns with respect to the maintenance of the principles of the legislation, but I am a little concerned with your suggestion that the Conservative government is not acting in good faith. Did we not make our position on the legislation abundantly clear through the committee hearings and the legislative sessions of the first six months of 1977?

MS. McGMIGAL: I never ever got a clear picture of the Conservative position. I talked to Conservative women who were trying to find out what the Conservative position was going to be in a positive sense. I mean, I really did not know. I know that there was some opposition to the Marital Property Act, but it seems to me though, that there was another eight weeks before the election or more, that it could have been said to the public of Manitoba what you were planning to do with this legislation.

MR. SHERMAN: Was it not made abundantly clear through seven months of committee hearings and legislative deliberations that the Conservative party, the opposition of the day, had considerable concern about the wording of the legislation and its application, and the confusion among the general public at large as demonstrated tonight by a witness or by a delegation who was before this committee, as to how the legislation was going to operate; and was it not made abundantly clear that we believed further study was necessary so that we could get the legislation in place, but get it right. Was that not reported widely in the media to the public of Manitoba?

MS. McGONIGAL: I don't know. I think that it was clear that you were opposing the legislation, which is a logical position to find you in as government opposition, and I know that all kinds of people who had concerns right up the moment that the legislation was passed. We were all concerned about the phraseology and the drafting and all the rest, and I know that the Conservatives people were too. But they were not very articulate on exactly what they wanted to do in a positive sense, and what they did believe in, or support.

MR. SHERn; Well, were we not articulate on the point that we felt the legislation was still imperfect, and we felt it required several months of further study in order to perfect it, and in fact that we called for continuing inter-sessional study of the legislation so that proper legislation could be brought in in the 1978 session, which is still ahead of us?

MS. McGONIGAL: I don't recall that. I recall that there was some discussion, in fact, that you wanted to see it studied further.

MR. SHERMAN: And on the night of Friday, June the 17th, which was the final night of the last session of the legislature, the last legislature, when both bills were before the legislature for third reading, did the Conservative party not make its position abundantly clear by the votes that were held on that evening, and by the things that were said on that evening, that we still had misgivings about the imperfection of the legislation?

MS. McGONIGAL: Yes, that was clear that evening. Or course certain elected members at that time were in favour of the Family Maintenance Act.

MR. SHERMAN: Of the Marital Property Act.

MS. McGONIGAL: Was it the Marital Property that was split? Oh, yes, I'm sorry.

MR. SHERMAN: Well, as I say, I sympathize with your concern over the maintenance of the principle, but I reject the suggestion that the Conservative government is not acting in good faith or is surprising anybody by the action being undertaken at the present time. I think that our position was made abundantly clear and the 1978 session of the legislature still lies ahead of us.

MS. McGONIGAL: Well why wasn't a statement made, then, during the election campaign? I've spoken to Conservative women who tried to find out what the position was, what were you going to do with this legislation? It would have been quite relevant, quite interesting and important, to so many, many people to know what your intentions were with respect to this legislation, and it was not stated, and there was nothing in the newspapers for those eight weeks. What was the last date? June 21st, you just mentioned? And when was the election? Not a word.

MR. SHERMAN: June 17th, but I remind you that we didn't decide on the election date. For all we knew, when we were opposing the legislation in May, the election might have been in June, so we might have been involved *de facto* in an election campaign right then.

MS. McGONIGAL: I don't know how relevant that is. The fact is that you had another two or three months in which to reveal a position and develop it, and get it out into the open, and I think that you owed it to the people of Manitoba to do that.

MR. SHERMAN: Well, I don't mean to be arguing with the delegation, Mr. Chairman, but our position was made abundantly clear, we called for inter-sessional study, the Attorney-General of the day did not see fit and did not think it necessary to continue study of the legislation through the summer. We were prepared to do that. An election was called by a government which was not our government, and the people of Manitoba knew where we stood on the basis of what was done in this House on the 17th of June, and reported widely in the newspapers the following day.

MS. McGONIGAL: Except would you please tell me what it is you do believe in. What is wrong with his legislation, point on point, and what . . .

MR. CHAIRMAN: Order, order. You can't ask questions of the members of the committee, I'm sorry. You can talk out in the halls. I'm sorry, but that's one of the rules.

MS. MCGONIGAL: . . . position has been made clear, and I would still like to see it.

MR. SHERMAN: I was responding to the delegation's suggestion that the Conservative government was not acting in good faith.

MS. McGONIGAL: And that was with reference, excuse me, Mr. Sherman, that was with reference to the fact that you, on the one hand said you believe in these principles, and on the other hand you appointed the only person in Manitoba who got up and said he was opposed to them.

MR. SHERMAN: Well, in other words, your main concern is with the composition of the Review Committee.

MS. McGONIGAL: My concern is with the credibility of the Conservative government when they go about it in that way. I think that we don't know what you're going to do, except that the indication is, on the one hand, that you are going to endorse the principle and simply make some necessary amendments. That would be good but then you have appointed someone who is not at all in favour of the principles themselves. And I'm concerned about the things; unilaterally opting out, judicial discretion, the retroactivity, and those issues that were so important to that legislation. Those things can be changed and you can still call it equalizing legislation, and it won't in fact be, and we're very concerned that those principles all stay in; and we havn't heard the statement that those are the principles that you're going to retain. You know what I mean? That's my concern.

MR. CHAIRMAN: Are you finished? Mr. Corrin.

MR. CORRIN: Mrs. McGonigal, you indicated . . .

MS. McGONIGAL: Excuse me, it's Ms. McGonigal.

MR. CORRIN: Ms. McGonigal, I'm sorry. My wife corrects me for the same error. You indicated that you had occasion to attend on October 20th thereabouts, a meeting of the Manitoba Bar Association Family Law Subsection. You indicated that you were unclear as to the reason for the meeting, but that you did discuss the question of the pertinent family legislation that we're discussing here today. This morning we were told by members of that association that the purpose of that meeting was to respond to a letter sent by a one Mr. Graeme Haig. Mr. Haig apparently had requested the view of the

Family Law Subsection on behalf of the Progressive Conservative caucus, and in view of that I would like to solicit your opinion regarding the propriety of the appointment of Mr. Haig's law partner to the Committee of Review. You've indicated that you have your reservations about Mr. Houston, and knowing that the recommendations that you sent forth that evening to Mr. Haig were of a certain nature, and you've already indicated what the group's position was, what is your opinion now that I advise you, now that you are advised and stand advised that Mr. Haig's law partner is also on the Committee of Review, and Mr. Haig was acting as liaison for the Progressive Conservative caucus in this regard?

MR. CHAIRMAN: Question please?

MR. CORRIN: I've asked the question, Mr. Chairman.

MS. McGONIGAL: The question is essentially what is my view of the appointment of Rudy Anderson. I have just basically one concern about Mr. Anderson's appointment, and that is that in all the years of work that I've been involved with , with the Family Law Reform, I've come in contact with a number of prominent lawyers who have been actively involved in law reform, and I have never seen Mr. Anderson at any of these meetings, or making any of these presentations, or making public statements, and I don't know what his public position is, It's certainly not for me to speculate as to what it is, but I think it's a conspicuous absence that he has demonstrated as far as law reform is concerned.

MR. CORRIN: Ms. McGonigal, yesterday there was a motion before this committee to the effect that all members of the Committee of Review should be brought here in order that we, the members of the committee, could possibly even explore their views with regard to this matter. Do you think now, having been advised that Mr. Anderson has this link to the Progressive Conservative caucus, and in view of the fact that Mr. Houston has, in your opinion, evinced a bias in this respect, do you think that it would be prudent, at this point, to summon those individuals before this committee in order that we could delve more deeply into this aspect of the matter?

MR. LYON: On a point of order, Mr. Chairman. What the witness's feelings are on that particular point are really not relevant because the subject matter has been dealt with and voted upon.

MR. CHAIRMAN: I rule the question out of order. Mr. Corrin.

MR. CORRIN: I have no further questions.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Ms. McGonigal, is your organization a member of the Provincial Council of Women?

MS. McGONIGAL: I don't think so. Not that I know of.

MR. PAWLEY: If I could just ask further to Mr. Sherman's question of a few moments ago, were you present last night when Mrs. Goodwin did indicate what she found to be the position of the Conservative Party during the election campaign?

MS. McGONIGAL: No, but I know what she said. I heard that she had said what she told me a while ago.

MR. PAWLEY: Did you have any similar experiences during the election campaign as to finding out what the Conservative Party's position was?

MS. McGONIGAL: I couldn't find it out, no. I was dealing with it indirectly because I was asking Conservative women what the position of the Conservative Party was.

MR. PAWLEY: But you had no opportunity of course to peruse the minutes of the Provincial Council of Women as to their report as to what the Conservative Party's position was vis-a-vis the Family Law Legislation?

MS. McGONIGAL: No, I didn't see that.

MR. CHAIRMAN: Thank you, Ms. McGonigal. I have Bill No. 5, 6 and 8 before me. Are there any more witnesses for these bills, Bill No. 5, Bill No. 6, Bill No. 8? No.

A MEMBER: On a point of order, the Transport Minister asked for the adjournment.

MR. CHAIRMAN: That's an undebatable motion and we'll vote on it. —(Interjection)— The

ımmittee rise, it is nondebatable.

. MEMBER: Committee rise is automatic at 10 o'clock and we agreed to extend it beyond . . .

IR. CHAIRMAN: It's my understanding that it's a nondebatable motion . . .

MEMBER: Mr. Chairman, I'm not debating a motion I didn't bring a motion.

IR. LYON: On a point of order then?

R. CHERNIACK: My point of order which I was starting to state, Mr. Chairman, is that under the les of the House, as I understand them, and the rules of the committee are those of the House. At 10 clock the House adjourns, committee adjourns, unless you have a speed-up motion, and therefore 10 o'clock when it was suggested that Ms. McGonigal be heard I said I thought it was in order but I sumed that we would then rise at the conclusion of her hearing. Now, if you're going to rule . . .

IR. CHAIRMAN: I'm not going to rule.

IR. CHERNIACK: Okay, well then the committee rules.

IR. CHAIRMAN: The committee rules. It's left to the committee rule.

R. LYON: On the same point of order, Mr. Chairman, I presumed that what you were going to say as that if there were no further witnesses that the next order of business before the committee ould be to proceed at its next meeting with a clause by clause discussion and if other witnesses owed up the usual courtesy would be established, an element that seems to be foreign to my nourable friend, that they would be heard. Now that's all I understood the Chairman was about to y.

R. CHAIRMAN: On the point of order, Mr. Cherniack.

R. CHERNIACK: I don't find it necessary to sling insults at Mr. Lyon in retaliation, he has his own oblems. But, I still insist and you know I'm bound to ask the House Leader whether I am wrong in ggesting that after 10 o'clock or at 10 o'clock in the normal course, committee rises. No motions e passed, no decisions are made and if you wish to make a decision then, Mr. Chairman, I will mediately challenge your ruling. And, as I understand it, if I challenge your ruling, which I don't nk I can do after 10 o'clock, then it has to go back to the House for a decision. So either way I think e logical thing is for committee to rise.

R. CHAIRMAN: I'm at the mercy . . .

IR. JORGENSON: Well, I think that's what's being suggested. All that the Chairman has ggested is that the next order of business will be consideration of clause by clause of the bills that e before us at the next meeting. At the committee's next meeting.

R. CHERNIACK: On the point of order.

R. LYON: What's your fuss all about?

R. CHERNIACK: Sterling, would you please relax and keep quiet until somebody's . . .

R. LYON: I'm totally relaxed.

R. CHERNIACK: Well then don't interrupt.

R. LYON: I'm just trying to remind you that you don't run this committee.

R. CHERNIACK: Don't interrupt. I want to remind you that you don't run it either, yet.

R. LYON: Do you want to vote and try it?

R. CHERNIACK: Mr. Chairman, Mr. Lyon is now looking for a vote and if you try to have a vote 'll challenge your right so to do. Mr. Jorgenson, I believe, has confirmed my impression of the rules the effect that after 10 o'clock committee rises. Now what he said was that you were going to state at the next order would be tue bills, but, Mr. Chairman, if that were the case then it could be erpreted that you are closing down on briefs.

R. JORGENSON: It was also stated by the First Minister that if there were delegations that

appeared before here they would be extended the usual courtset courtsey.

MR. CHERNIACK: Then, Mr. Chairman, on the point of order, and I again speak to the House Leader, is it necessary to make the statement that there is a next step in the proceedings which will be varied by courtsey.

MR. JORGENSON: There is in so far as two bills. As a matter of fact we could do those two in the time it's taken us to argue about this point of order, we could have dealt with Bill No. 6 and Bill No. 8.

MR. CHERNIACK: That's true but am I wrong in saying that the committee rises normally, you know, these rules . . .

MR. CHAIRMAN: I wish you'd speak to the Chair, sir. I'm at the mercy of the committee, I hope you understand that, and what the committee decides I do as the Chairman. Now I hope that's clear and understandable. Had you listened a little moment, Mr. Cherniack, when you raised the question you'd have heard me say . . . I asked if there were witnesses for these bills then I said that the committee will go back to the House and we'll get our instructions from the legislature as to when the committee will sit again. And that's all I was going to say and you interrupted me.

MR. CHERNIACK: I'm sorry, I apologize, so the committee has risen.

MR. CHAIRMAN: And we're at the mercy of the House.

MR. LYON: I move the committee rise, Mr. Chairman.

MR. CHAIRMAN: Committee rise.