Legislative Assembly of Manitoba

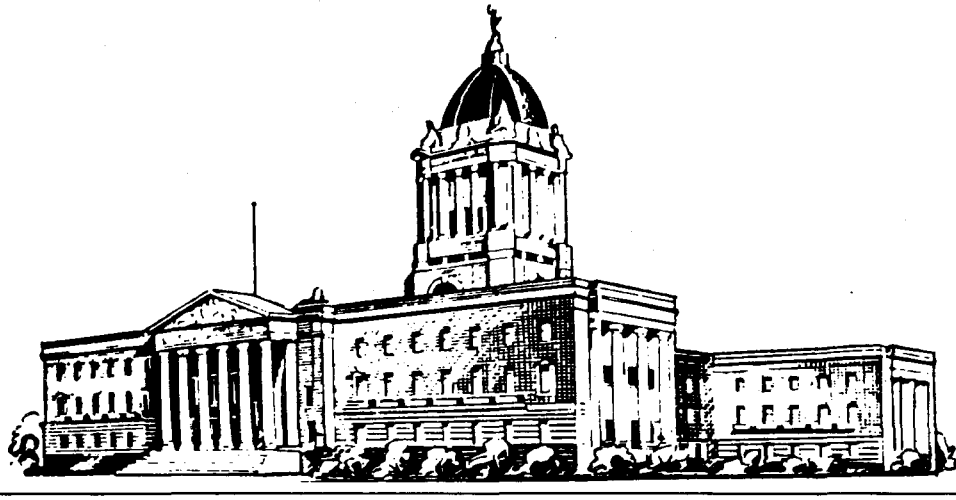
HEARINGS OF THE STANDING COMMITTEE

ON

LAW AMENDMENTS

Chairman

Mr. J. Wally McKenzie
Constituency of Roblin



Saturday, December 10, 1977, 10:00 a.m.

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Time: 10:00 a.m.

CHAIRMAN: Mr. J. Wally McKenzie.

MR. CHAIRMAN: Will the committee come to order. Is there any business?

MR. JORGENSON: Yes, Mr. Chairman, I would like to move that Mr. Einarson be replaced by the name of Mr. Ferguson on this committee.

MR. CHAIRMAN: Agreed? (Agreed) I call Sharon Granove; I call Mrs. Pearl Cyncora; I call Esther Koulack; I call Laurie Mason; I call Ruth Pear. Oh, pardon me, Laurie Mason. May I caution you that you must relate your remarks to the contents of the legislation that's before the committee.

MS. LAURIE MASON: Mr. Chairman, ladies and gentlemen. My very first words must be to my most supportive gentleman in this room this morning who has offered our organization a lot of understanding and compassion to the many traumas and dilemmas we as birth parents and the adoptees must endure for the rest of our lives because of our so-called out-dated laws concerning the adoption triangle. This gentleman has won our respect and admiration because we all know at Parent Finders he shares and cares with all of us, Mr. Howard Pawley, our past Attorney-General for Manitoba. We hope, Mr. Pawley, that you will continue to give us your support as you have in the past with all our thanks to you.

Your Honour, Mr. Gerald Mercier, our new Attorney-General, we at Parent Finders hope we too can have your support along with your understanding to realize the need is now upon us to do some further investigating in this area for a change to new and better laws for all parties concerned in the triangle of the adoption from the present day Victorian laws of yesterday. Changes in our standard of living are occurring every day. Why should this concept go unchallenged any longer? If there are Children's Aids all through Canada, why not an adult aid to accommodate the minority group of people who go around in a daze for all their lives saying to themselves, "Who am I? Where did I come from?" and for the birth mother, "I wonder if my son or daughter ever reached the age of majority? If only I knew if she or he is alive?"

MR. CHAIRMAN: Order please. I reminded you when we started the hearing this morning that you must deal with Bill No. 5 and you are straying very widely away from that subject matter.

MS. MASON: Sorry, Sir, I don't have the knowledge or the know-how like you gentlemen do. I can only speak from the heart. Okay, Sir, I will present a number of briefs that I have where we would like to see a change.

MR. CHAIRMAN: Well, we want to hear your presentation but you understand the committee is to deal with Bill 5. Go ahead then.

MS. MASON: I'm not really too sure just what to present. I have a brief from the birth parents and a brief from the adoptees. If you would like me to present them.

MR. CHAIRMAN: Go ahead.

MS. MASON: This brief is from the birth parents. This group of birth parents believes a reunion registry is required for the following reasons.

MR. MERCIER: Mr. Chairman, a point of order. This has got nothing to do with the legislation.

MR. PAWLEY: All I would say to you, Mr. Chairman, I recall very clearly listening to the brief from Parent Finders in June and though it's not strictly on Bill 5, I believe it relates to custody and children and what-not and we did listen to the brief in June. I think it was June.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Well, Mr. Chairman, Ms. Mason has come down with the expection that we will hear what she has to say and thinking that it relates to the bill. I think we would want to give her the widest latitude to speak so that in case what she has to say does tie in with the bill in any way whatsoever, I think we should want to hear it. I don't think she'll take up too much of our time and I think it's a courtesy that we could extend without too much hardship.

MR. CHAIRMAN: Proceed.

MS.MASON: We are a concerned group representing Parent Finders all through Canada, including Manitoba. Our membership is comprised of the following: adult adoptees and fostered

adults, birth families, adopted parents; all three hereinafter collectively called "the adoption triangle." Membership has grown in three years to over 2,000 through Canada with branches in nine provinces. Since our inception in Ontario one year ago, our membership is approaching 400. Our reunion rate presently stands at about 300 Canada-wide with over 140 of those taking place in Ontario, 30 in Manitoba. Our aim is to promote a feeling of openness and understanding in the minds of the general public around the whole concept of adoption and its effect on the members of the triangle, to give each other mutual support and aid in the search for our biological families and to study existing legislation surrounding the sealed records of adoption.

Since we were informed by the government that no records were kept prior to 1965 — now this is the Ontario brief that I'm reading — on the total amount of adoptions, it is impossible for us to estimate the number of adoptees in the province of Ontario or in Manitoba. However, for the 11 years from 1965 to 1975, there have been 44,251 adoptions completed through the Children's Aid Societies in Ontario. We don't have a Manitoba figure. Again, this cannot be accepted as an accurate figure of the number of adoptees as there is no way of knowing how many private adoptions have been completed. At some time in the future, these children will reach the age of majority and we feel they should have access to all their sealed records. At present, England, Scotland, Finland, Israel and several states in the United States of America have opened their files to adult adoptees upon reaching the age of majority. Several studies have been completed on the effects of record disclosure and in the majority of cases the results have been positive.

As stated in correspondence with Kansas, most adopted adults and their families have reported any information, even negative, is easier to accept than being told they do not have the right to information. Experts from the recently enacted legislation in England, amendments of Adoption Act 1958 concerning disclosure of birth registration reads as follows:

Subject to subsections 4 and 6 of this section, the Registrar-General shall' on an application made in the prescribed manner by an adopted person, a record of whose birth is kept by the Registrar-General and who has attained the age of 18 years, supply to that person on payment of the prescribed fee, such information as is necessary to enable that person to obtain a certified copy of the record of his birth.

On an application made in the prescribed manner by an adopted person under the age of 18 years a record of whose birth is kept by the Registrar-General and who is intending to be married in England or Wales and on payment of the prescribed fee, the Registrar-General shall inform the applicant whether or not it appears from information contained in the registers of live births or other records that the applicant and the person whom he intends to marry may be within the prohibited degrees of relationship for the purposes of i The Marriage Act, 1949, it shall be the duty of the Registrar-General in each local authority and approved adoption society to provide counselling for adopted persons who apply for information under subsection 1 of this section. Before supplying any information to an applicant under subsection 1 of this section, the Registrar-General shall inform the applicant that counselling services are available to him at the general registry office or from the local authority for the area where the applicant is at the time the application is made, or from the local authority for the area where the court sat which made the adoption order relating to the applicant, or if the applicant's adoption was arranged by an adoption society which is approved under Section 4 of the Children's Act 1975, from that Society.

If the applicant chooses to receive counselling from the local authority or an adoption society under subsection 4, the Registry-General shall send to the authority or society of the applicant's choice the information to which the applicant is entitled under subsection 1. The Registry-General shall not supply a person who was adopted before the date on which the Children's Act 1975 was passed with any information under subsection 1 of this section unless that person has attended an interview with a counsellor, either at the General Registry office or in pursuance of arrangement made by the local authority or adoption society from whom the applicant is entitled to receive counselling in accordance with subsection 4. In this section, prescribed meane prescribed by regulations made by the Registry-General.

Social attitudes have changed since the inception of the adoption laws in this province. In 1977 when people are looking for honesty and openness, present laws are unrealistic. In no other area of the law are we considered children. As consenting adults, we should be able to manage our own affairs and have free access to all information pertaining to ourselves. The following is a synopsis of the issues at hand.

Human Rights: As citizens of this great province, we feel we are entitled to the same rights as other citizens. At present we are not able to obtain our original birth registration which is available to other citizens upon request. The non-disclosure regulations deprive the adoptee of a natural right as a person through a convenience made at a time when it was impossible for him or her to give his or her own consent. A more open and honest approach should replace the secrecy that prevails.

Medical background: As adoptees we have minimal or no information on our birth parents or birth grandparents, either before or since our adoption. We should be able to pass on all medical knowledge to our own children since they should be in no way bound by the laws of secrecy. Open channels of information must be provided to enable adult members of the triangle to pass on and receive medical information. As suggested by the report of the committee on record disclosure for adoptees, standardized medical and background information should be mandatory in all adoptions both Children's Aid Society and private.

Our blood lines are not our adopted parents' blood lines, what people raised in natural families take for granted. The laws say we are not allowed to know. In a study completed by a gentleman in Scotland, he summed up by stating that adopted persons during their growing-up years benefit from an open approach by their parents regarding genetic background information. Therefore, the birth parent is the relevant factor in the total concept as the crucial link in a genealogical background. To be able to trace our family tree would be a fascinating experience. How beneficial it would be to know in what field our birth parents excelled — music, sports, politics, law.

Emotional well-being: Who am I? Everyone needs to develop a whole and complete identity and sense of who am I. In Sirosky's report he feels that many adoptees are more vulnerable than the population at large to the development of identity problems in late adolescence and young adulthood. It is said that adoptees who have found their biological birth parents have experienced self-liberation. We have found this to be true in reunions within our group and in other reunions known to us. This goal is achieved whether the reunion is a positive or a negative experience. As adoptees, the more knowledge we have of our background the easier it is to develop our lives to the fullest potential. Although legislation confers confidentiality with respect to birth parents, in our experience this was not requested by the birth parent and in fact, the birth parent wishes to pass on all information to the relinquished child.

Frequently the birth parent has no knowledge of whether or not the relinquished child is alive, healthy or in care. No allowances have been made for the updating of records pertaining to the socio-economic status of the birth parent. Information given at the time of relinquishment may tend to prejudge the current circumstances of the birth parent. Adoptive parents sometimes feel threatened or hurt when their adopted child presses the search for his or her natural identity even though all parents, be they natural or adopted, do not own their children but rather have the role of guiding them into maturity and independent citizenship. Parenting is a privilege. The child neither asked to be born or adopted so why is the burden of gratitude on him. As adoptive parents become more comfortable in dealing with the subject, we feel the parent-child relationship will be strengthened. If adopted parents accept the natural curiosity of the child with regard to his origins and lends support to him in his search, it will draw the adoptive home closer together.

We submit, through Parent Finders, and ultimately hope that through an open-record policy and with continued education on adoption, this will lead to a more honest treatment of the issues in adopted families. We are grateful for having this opportunity to speak to you and to urge your support for open legislation.

MR. CHAIRMAN: Thank you. Mr. Cherniack.

MR. CHERNIACK: Ms. Mason, I wonder if you could direct yourself to The Family Maintenance Act which deals with the obligation of the parent for the support of a child under 18. Firstly I want to clarify, is there a difference in definition between birth parent and natural parent?

MS. MASON: No, sir.

MR. CHERNIACK: No, all right. Well then, what do you consider should be the obligation of the birth parent for the support of the child after adoption?

MS. MASON: Well I feel, sir, as time goes on naturally . . . I am not saying all birth parents feel the same way, but we do feel a sense of responsibility to that child at all times, especially if there are medical problems in the family that do arise.

MR. CHERNIACK: I'm sorry. I am not asking the moral obligation, I'm asking whether the state should impose a legal obligation on the the birth parent of an adopted child.

MS. MASON: I don't understand your question, because what right would we have. I'd love to have some responsibility to my daughter.

MR. CHERNIACK: I'm sorry. I don't mean what right, I mean that if a child does not have support, should the state be able to go after the natural parent or the birth parent for support of that child?

MS. MASON: You mean after the child is given up for adoption?

MR. CHERNIACK: Yes.

MS. MASON: If the adopted home breaks down, yes, I would say definitely. I would think most birth parents would be only too happy to be able to support their child.

MR. CHERNIACK: I really want to know whether you feel there should be an obligation of the birth parent because I had the impression that in the case of an adoption the birth parent gives up all rights and all responsibilities and you're saying that there should be a responsibility. You also indicate a right.

S. MASON: I would think so, sir, if only in the case whether the adopted home breaks down or there are problems, then I think the birth parent should be contacted and then the decisions made.

MR. CHERNIACK: Do you believe the birth parent should have a right to knowledge at all times of the care of the adopted child?

MS. MASON: Yes, but not identifying information; whether or not the child is doing well in school, how he is progressing, because it gives peace of mind to the birth parent to know that they did the right thing for their child.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: Any more questions? I thank you for your presentation. I call Ruth Pear, MaryJo Quarry, Jill Oliver.

May I caution you before you start that committee is dealing with Bill No. 5, an Act to Suspend The Family Maintenance Act and to defer the coming into force of The Marital Property Act and to amend certain other Acts and to make provisions required as a consequence thereof. Would you kindly confine your remarks to the Bill that is before us if you possible can.

MS. OLIVER: I certainly will.

MR. CHAIRMAN: Thank you.

MS. OLIVER: I would also like to add that I am very sorry that I have to be here again. It seems to me that I have spent a great deal of time in this oom, before many of the same people, and I feel that this is a very unnecessary exercise. I am sorry to be here, as I said. As a matter of fact, I have been attending sessions like this for nearly three years and I feel it is unnecessary to go through this procedure again. However, I am here to speak on our position to Bill 5 and very strongly in favour of the legislature that it purports to repeal.

The Marital Property Act and the Family Maintenance Act were arrived at after two years of study by the Law Reform Commission and nearly three further years of public hearings and debate. Unfortunately many of the present critics of the legislation were never present at those public hearings although they had every opportunity to be there. I do agree, however, that there are some areas of the legislation that are poorly drafted and are unclear. This does not mean, however, that the entire legislation should be shelved; rather that the Acts can be amended for clarification only where necessary.

The main points I am going to raise are based on a discussion by The Family Law Subsection of the Manitoba Bar Assocation which, I might add, came out strongly in favour of allowing the legislation to come into force on the original appointed dates. This sub-committee, of which I am a member, is comprised of lawyers who deal extensively with family law. The discussion was prompted by a request from Mr. Graeme Haig, whom I understand is the president of the Conservative party, for the committee to present a position on the legislation. And, as far as I know, it is the only official position taken by the Bar Association. I do have a copy of the letter in my possession from the chairperson of the sub-committee, Miss Myrna Bowman, to Mr. Graeme Haig, setting out the position of the committee. I am not in complete agreement with that decision and will therefore state the position that I took at the committee meeting and which has been supported by the NDP Status of Women Committee which I represent.

The first point that I would like to make is that I again strongly concur with the recommendation that The Marital Property Act should come into force on January 1st, 1978, for the reasons that the confusion that it is going to offer by shelving or repealing, or delaying this legislation are going to be enormous. I have been advising clients for several months now to hold-off, to wait, that this is going to be the position, that when we draw up separation agreements they have to be in accordance with the Manitoba Property Act if the parties were still living together at May 6, 1977.

So many of those people, they have been waiting. They have joint agreements in accordance with those provisions. Now they don't know where they stand. I have had people coming into my office saying, "Well, we are separating, what is the law right now?" I can't tell them. And they say, "What do you mean you can't tell me /?" I say, "Because we don't know what the law is." The new government has decided in its wisdom that the new legislation is no good, and therefore it should not come in force. I can't advise anybody, right now, as to what they should do, other than maybe stay together and see it through for a little longer, and I think this situation, it has a very determinental effect on the people of Manitoba, and the people that this law intended to assist.

I feel that there have been many criticisms regarding the concept of community of property. These would be marital assets as opposed to the marital home and the commercial assets. I assume by the way, everybody has seen a copy of the legislation and therefore I don't have to go through the provisions, it would take far too much time. Suggestions have been made that the concept of community property be replaced with a deferred sharing of these assets. I disagree with that concept

I feel that where there are marital assets concerned that both parties have worked to bring together those assets, they share them, they use them as equal partners and that they should remain as such. It is basic to the principle of equality in marriage as intended by the legislation. To remove this aspect would be akin to saying equality is only a paper right, as far as the marriage is concerned, and the right is therefore only at the point of separation, which in my books is a ridiculous notion. While the concept of community of property of marital assets was not a notion recommended by the Law Reform Commission, except as a future possibility, community of property was the central theme of the majority of public representations to the Law Reform Commission hearings, to the Legislative Committee studying the Commission's report and to the Standing Orders and RegulationsCommittee of the Legislature, as a result of which the Committee members recommended that it be included as part of the Act. The Act also seems to have distinquished quite clearly between marital and commercial assets, defining the latter as those assets which produce income. If there is any further definition required, surely a simple amendment to the Act would suffice.

The marital home is normally the largest single asset a couple owns outside of commercial assets. A great deal of criticism of the concept of community of property is that creditors and spouses would be jeopardized in the sense that if somebody has a debt against one spouse that all of the assets would have to be liquidated in order to meet that debt. I suggest that that is not a proper position to take. As I mentioned, a marital home is normally the largest single asset a couple owns and is usually the only one that they can actually mortgage or use where there is a debt situation, and it seems that where both creditors and spouses are concerned there is little trouble with such jointly-owned property and there seems to be little reason why there should be any difference for lesser valued assets. The argument in this area seems to be that it would be hard on a wife, if the marital assets, including the marital home, assuming all were jointly-owned, had to be sold in order for creditors to have a claim on it. For example, the husband's half interest. However, it would appear that if a wife is to share in half of all the assets she should also be jointly responsible with her husband for half his debts and vice-versa. This may have the advantage of ensuring that spouses become more informed as to the financial dealings of the other. Further, if the one spouse still wishes to avoid his or her creditors, or to protect his or her spouse, the Act provides that the parties may opt out of the Act, and I would suggest that that is probably one of the most important provisions in this Act. If, therefore, the couple wishes to put the assets in the sole name of the non-indebted spouse, a simple opting-out clause can be inserted. That's avoiding the intent of the Act. I would also question whether or not the idea of avoiding creditors is really what we should have in this province as well.

There has also been a great deal of criticism on community of property because of the potential tax problems that would arise. But it would appear that these tax problems would arise only where there are commercial assets, again because they are interest-bearing, which again are shareable only on marriage breakdown and separation. If there are ramifications, however, in the area of income tax, it would also seem to me, that the responsibility should be equally shared, so therefore whatever tax ramifications there are, they are borne 50-50 between both parties. Again a simple amendment to the Marital Property Act. Mr. Pawley is also on record as saying, when he was the attorney-general, that the federal government is in favour of making any necessary amendments to the Income Tax Act so that most of these problems would not arise. I would suggest we've never given any opportunity to find out whether there are any problems because it would appear that the Act is never going to come into being, to make that determination.

Deferred sharing of marital assets only gives the non-owning spouse a future potential right to half the assets. It would appear, therefore, that the spouse claiming ownership during the time of the marriage would be able to leave the province taking all of the assets with him or her since technically they belong to that spouse and the remaining spouse would have little or no right of action since there would be a necessary delay between the discovery that the spouse has deserted and a court ordered division of those assets, and again the offending spouse would be free and clear and the intent of the act avoided. I submit that this is an untenable position and I would also point out that the legal profession has to deal with considerably more complex legislation than this. For example, the Income Tax Act, and if anybody has ever tried to work their way through that and figure out what the Income Tax Act states, it would never have come into being 50 or 60 years ago.

I would also suggest that rather than repealing Section 11 of the Act, which is another section that has invited some problems and I will just read out the problems that have arisen with this particular section. I would like to add that this was a recommendation made by the Family Law Subsection of the Bar Association who did actually come out in favour of repealing Section 11 because of its lack of clarity.

This section, and I'm reading from the letter by the way from Miss Bowman. This section deems shareable certain assets which are not otherwise shareable by reason of the kind of use to which they are put during the course of the marriage. A reading of the section will make apparent to you difficulties which will be caused for persons attempting to preserve as their own separate property assets which may by their nature be almost inevitably used by their spouse as well. This is in regard, by the way, to assets that were brought into the marriage by either one of the spouses and that is used during the course of the marriage as though they were equally owned. The act itself is fairly clear in stating that anything that was brought into the marriage is owned by the spouse who brought it in. The only assets that are shareable are those assets that were acquired since the time of the marriage. Section 11 states that where assets brought into the marriage, let's say a chesterfield for example or

family heirloom or something, and was actually used as though it were shared equally by the spouses, the onus is on the spouse claiming sole interest in the item to prove that it was not intended to be jointly used or owned. It all sounds very complicated but again I would hope that you have your legislation in front of you.

A reading of the section this will make apparent to you the difficulties which will be caused for persons attempting to preserve as their own separate property, assets which may by their nature be almost inevitably used by their spouse as well. To retain this section, according to the subsection, is an invitation to combat during the marriage and to litigation at its conclusion. We discussed the possibility of some kind of amendment to improve the operation of this section but concluded that it would be best to dispense with it altogether. The potential of injustice with the section is at least as great as that without it.

With regard to that section, I would like to suggest that it could be easily amended so that assets acquired by one spouse prior to the marriage but claimed by the other to be shareable, should be deemed nonshareable until proven otherwise by the spouse so claiming. This would require a further amendment to Section 12 entailing removal of the word "not" in line one. All I am stating is that there is no necessity actually to scrap the whole section and actually would clarify the notion of assets owned prior to the marriage. It really changes the onus of proof.

There is another provision that I feel could easily be inserted into the legislation, again by a simple amendment, and this is the concept of reconciliation. In Section 2, Subsection 4, of the Act it states that it does not apply to parties who were separated on May 6, but it does remain inapplicable only so long as they continue living separate and apart. It therefore would appear that even a reconciliation of two days might bring separated spouses totally back within the regime. We would suggest that there ought to be some provision for a trial reconciliation period, which would not have such a drastic effect. The Act as presently wordedin a number of cases known to our members of the subcommittee has actually hindered or prevented attempted reconciliation. "It certainly takes the bloom right off the rose" — and I quote — "of an intended reconciliation if you require your partner to sign on the dotted line before resuming cohabitation. "We would suggest that a 90-day period corresponding to the permissible period of attempted reconciliation under the Divorce act would be a reasonable solution to this problem.

Another problem area that was discussed was the persons to whom the Act should apply. The Act as it is presently constituted appears to apply to every married person everywhere, including those who have never set foot in Manitoba. This surely cannot have been its intention and it is essential that a definition be supplied which will define the persons to whom the Act ought properly to apply. I surely should not apply to people who have never lived in Manitoba and perhaps ought not to apply to those who have together left Manitoba to make a new home elsewhere. There are a variety of ways in which the definition could be formed. It might be considered desirable to consider a residency qualification, but in any event we feel that the defect must be filled in some manner. Another suggestion could be that actual residence or an intention to reside by the married couple would perhaps clarify that section.

The provisions of Section 3(2) of the Act ought to be amended to make it clear that in order for this section to operate one of the spouses must be a beneficial owner of some interest in the property in question. This again is a very vaguely worded section and its lack of clarity makes it difficult for it effect to be predicted. We assume that it was intended to cover a situation where title is held in trust by a third party or perhaps, for example, under an agreement for sale, where the moneys have been paid but title not transferred. It is not clear to us, however, whether it is intended to pierce the corporate veil. That is to say, to apply to cases where one spouse is the sole owner of a corporation which in turn owns the family home. I would like to add that as far as I'm concerned there is a problem here that arises that could operate as an enormous loophole — and whether or not this committee is interested in plugging or opening loopholes in this legislation I leave to your further deliberations - and that is that one spouse could establish a corporation that purchases the home which the couple operate as their principle residence. If that spouse is the principle officer and shareholder there should be a provision to pierce the corporate veil to discover true owner, otherwise it would mean that the non-corporate spouse, the non-earning spouse, would actually have no claim on that title whatsoever.

We made no recommendation regarding jointly-owned marital homes. This was mainly for the reason that I feel that the legislation itself recognizes what actually occurs in fact, and that is that the majority of homes, somewhere between 80 and 90 percent of marital homes, are jointly-owned, so therefore all the legislation is doing is recognizing what is actually occurring. Nor I might add do there appear to be any adverse tax implications. I repeat, therefore, what I said earlier and that is that with regard to marital assets, I would imagine that there would be even fewer problems, because I believe that the majority of marital assets owned by a couple are worth far less than the marital home itself.

The second act with which I wish to deal is the Family Maintenance Act and quite frankly, ladies and gentlemen, I an appalled at the decision that has been taken. This is an act that is now in operation and from what I understand from both lawyers and from judges, is operating very well. There have been no problems, other than the problem of the fact that judges and lawyers do not know what is going to happen. We are in a position of not knowing whether to advise our clients to go

court to make an application in the family court for which there is usually a waiting period of about a month before you can get in, and whether or not that application is going to be heard under the Family Maintenance Act, whether or not The Wive's and Children's Maintenance Act is going to be brought back in or whether some other act is going to come in. We have absolutely no idea and I submit that what is happening now is just an appalling situation and is also rendering considerable hardship on people who are involved.

There has appeared to be little controversy surrounding the provisions of the Family Maintenance Act, except the concept of no-fault maintenance. Again, this is a concept that was the result of an extremely strong pressure by the public at all the many hearings held on the subject. For all of the meetings that I attended, and for all of the submissions that I have heard, I can't remember very many people coming out saying that fault should be retained.

To reiterate the position taken by both individuals and the many groups making representation, marriages involve two people, and the success or failure of the marriage also depends primarily on those two people. If, because of the marriage arrangement, one spouse's ability to earn has been impaired, then provision should be made to bring that spouse into a position of relative financial independence. If maintenance is denied because the spouse has been found at fault, it is the children who suffer in that situation. The spouse not in fault is not necessarily the parent who gains custody, and if the parent who does have custody is denied maintenance because of his or her fault, the chances are that he or she will end up on welfare to the possible detriment of the family and of our social system as a whole.

The whole concept of no-fault maintenance is based on the idea of rehabilitation and self-sufficiency, not of continued dependence.

MR. CHAIRMAN: You have five minutes left.

MS. OLIVER: Thank you. In addition where fault is the issue, it is the children who are caught between the warring spouses. I would hope that we do not return to this antiquated and very distasteful concept. I would also like to add that I have heard many people come to me and say: "How can you possibly have no-fault? That would mean that a wife can just walk out on her husband and go into some other man's home, and he would have to pay maintenance." That doesn't work that way — there is no way it can work that way — because she doesn't need maintenance — she is not in need. The provision of maintenance and the award of maintenance only arises where there is need, and that is what we have to stick with.

There have been further criticisms regarding thefamily Maintenance Act, that it is difficult to establish a figure that categorically defines financial independence. Many people maintain financial independence on $6,000 a year, while others are unable to attain it on $16,000 or $60,000.00. Surely it is preferable to leave this particular decision to the discretion of the judge who has the opportunity of seeing and hearing both parties in their applications, and in addition who can study the relative positions of the parties.

I would like to suggest a further amendment, however, to the Family Maintenance Act, in that at the moment in the Act the jurisdiction to grant relief under the Family Maintenance Act is given to the County Court and the Family Court only, and not to the Court of Queen's Bench, as was provided in the original drafted bill. The result is that a party wishing to have property divided in a Court of Queen's Bench, or defending divorce petition and wishing to cross-petition for maintenance only, is put to the problem of having two sets of proceedings. The general direction in family alaw has been to consolidate jurisdiction, and to enable people to settle all of their problems in one forum. We feel it would be a distinct advantage if the Act were amended, and not repealed, to give concurrent jurisdiction to the Court of Queen's Bench.

A further criticism of the Act has been in the area of constitutionality in granting the family court the power to prevent the petition or sale of jointly-owned property. Property and civil rights is a provincial responsibility, and it would appear as though the province should be able to order it so, and appoint judges to deal with the issues falling within its jurisdiction. However, I feel that there should be greater study on this question, and I should further note, however, that petition or sale is a statutory remedy, not an equitable one as has been suggested. Provision for petition or sale is made in the Real Property Act, a provincial statute, and one that can be easily amended if necessary.

A further criticism has been in Section 6 of the Family Maintenance Act where the right is given to one spouse to obtain financial disclosure from the other spouse. We note, however, that the information is available only to spouses living together. We feel it would be an advantage to delete those two words and make it possible for spouses living apart to obtain the financial disclosure in order to determine whether or not an application for variation of existing orders, for example, might be appropriate.

The last and probably the most important amendment that is required to this Act, and I say amendment required to this Act, is one to clarify the position of a judge faced with an application for separation. It is not set out in the present Act anywhere, the grounds upon which a judge must grant or refuse a separation order. The considerations set out in Section 5 (1) are related to reasonableness of maintenance. There are no grounds per seset out in the Act, and some of the judges seem to be thinking that perhaps they're intended to go back to the old common law, to determine whether or not it is proper to grant an order of separation. It was our understanding at the time of the hearings and

listening to the discussions that preceded them, that a party had an absolute right to an order of separation upon request, without proof of any grounds or reasons for the separation. The other factors set out in the Act, I believe, were intended only to apply to the reasonableness or otherwise of granting financial release. It has been the view of the subsection and of the NDP Status of Women, previously expressed, that a party ought to have the right to live separate and apart, and to an order of the court to enable them to enforce that right without having to prove any fault or any other reasons for requiring the order.

I realize I have been very lengthy and perhaps I have gone into the Act to a greater extent than many of you were prepared for, seeing I don't see very many copies of the Act on the table. But I would suggest that what I have set out this morning, are intended as amendments, and are therefore in full opposition to any notion whatsoever, of repealing either of these acts. I think if that is what the government intends to take, I am not only appalled, I am disgusted, because these pieces of legislation have been arrived at after many years of study, after many years of meetings just like this' of submissions, of hearings. If the present critics of the legislation were not there at that time, that is their problem. It is not the time now, after the acts have been passed, to come in and repeal this legislation because they don't like it. Thank you very much.

MR. CHAIRMAN: Thank you. Mr. Pawley.

MR. PAWLEY: Ms. Oliver, you indicated that you were a member of the subsection of the Manitoba Bar Association dealing with family law, are you also a member of the Manitoba Bar Association?

MS. OLIVER: Yes, I am.

MR. PAWLEY: I was interested in reference on your part to the effect that the subsection had indicated that the legislation should be proceeded with, that there should be no suspension or deferral. On the other hand, only two or three days ago, I heard announcement from the chairman and the president of the Manitoba Bar Association supporting the suspension or deferral. Has there been a meeting of the Manitoba Bar Association which refuted the earlier position of the subsection of the Bar Association?

MS. OLIVER: There certainly has been no meeting to my knowledge. As a matter of fact, I saw the statement by the chairperson of the Bar Association in the Tribune and I phoned the Ombudsman or Thursday regarding that, and again stating that the only official position, as far as I knew it, was the one that was set out by the family law subsection, and a copy of those recommendations was passed along to the president.

MR. PAWLEY: Were you in contact with the president himself to find out why the discrepancy between the work that the subsection had done and the announcement by the president of the Ba Association?

MS. OLIVER: No, I'm afraid I wasn't at that time. I was not aware of this until late on Thursday, and unfortunately by the time I got around to doing it, I . . .

MR. PAWLEY: Well, who is the present president of the subsection of the Bar Association?

MS. OLIVER: Miss Myrna Bowman.

MR. PAWLEY: Do you know whether she has been in contact with Mr. Mercury in view of th statement which is in conflict with that of the subsection?

MS. OLIVER: I'm sorry — I couldn't tell you that — I don't know. But I do know that it was she wh forwarded a copy of her letter to Mr. Haig, , to the president.

MR. PAWLEY: Do you intend to contact the president of the Bar Association yourself, to bring t his attention, in case he's not aware, of the position of the subsection?

MS. OLIVER: Yes, I do. I intend to that at the beginning of the week.

MR. PAWLEY: Do you know of any other group of lawyers that by resolution have supported an suspension or deferral of this legislation?

MS. OLIVER: No, I do not.

MR. PAWLEY: So the only group of lawyers, then, that has taken a position is the subsection of th Manitoba Bar Association dealing with family law, that in effect have indicated that the legislatic should proceed despite its imperfections.

MS. OLIVER: That's correct. And as I have said before, many of the suggestions that I have made this morning are based on recommendations and certainly discussions that took place at that meeting. It was a wide-ranging meeting, it was technical in detail, I admit, because we were literally going through the act, and we felt that there was no problem in forwarding these recommendations to be used as the basis for amendments to the act, and that these could be dealt with very easily.

MR. PAWLEY: Now, you have referred several times to a letter that has been forwarded to Mr. Haig. How would the letter come to have been forwarded to Mr. Haig from the subsection?

MS. OLIVER: Mr. Haig contacted Miss Bowman, approximately a month ago, and requested that a discussion take place at the next meeting of the family law subsection of the Bar Association to discuss the family law legislation. As a result of that, the discussions did take place, and it was felt at that time that there were a number of main areas of concern, that we should be looking at and could be dealt with quite easily. But the request for the discussion . . . Because these discussions we had felt were closed last May — that was the last time that I remember the subsection discussing the legislation — there seemed to be no reason to make any further discussions on them, certainly not for a while, and the request was a personal request from Mr. Haig to the subsection to hold these discussions.

MR. PAWLEY: You indicated in your submission that there were no adverse tax implications. I was wondering what basis, or what authority you had for making that statement, in view of the counter-statements that have been made by the Attorney-General that there are tax implications.

MS. OLIVER: Well, I am not a tax expert, and income tax is not my field, obviously. I have been in a position of having to look at the income tax implications as they relate to married couples, or couples who are divorcing or separating, but I certainly could not claim to be any kind of an expert whatsoever. As I understand it, and we have contacted other lawyers who are somewhat more expert in the field, that the feeling generally is that where there are roll-over provisions, or where there are dispositions between married couples, there is a roll-over provision whereby the disposition or the income tax implications of the provision actually come back on the spouse who has donated the gift or provided the . . . It is regarded as a gift; whereas where you have separating or divorced couples who are no longer living together, that those implications no longer exist. So that if you don't have any disposition until after the couple have actually split up, then, from the way I understand it, there are no roll-overs. Now, I admit I can be wrong, but that is my understanding of it.

MR. PAWLEY: What about the reference to tax implications under Part II — that dealing with immediate vesting of community property?

MS. OLIVER: Well, as I mentioned before, there may be tax implications, and again, we really don't know, because it can either come in under the Gift Tax Act . . . I don't think it would come in under the Income Tax Act because the Income Tax Act really only deals with income bearing assets, so therefore we are dealing here with primarily marital assets, and in that situation, it really only comes in under the Gift Tax Act — which is of course a provincial piece of legislation — and I would think can be easily amended to conform to the Marital Property Act. In that situation, in any case, it would seem to me that if there are, and where there are any tax implications, that they should be equally shared by the parties.

MR. CHAIRMAN: Mr. Orchard.

MR. ORCHARD: Ms. Oliver, you indicated some concern over Section 11.

MS. OLIVER: Yes, I did.

MR. ORCHARD: Would you care to indicate, as the existing legislation stands, what the position would be, and I'm dealing strictly here with a farm situation, where the husband or the wife came into the farm — but I suppose I'm meaning primarily the husband coming into the marriage with farm land and — would that become an asset deemed sharable in the interpretation of the law as it stands now.

MR. OLIVER: Not unless it was specifically intended to be by the husband who owned the farm. However, you would also have to understand that any increase in value, any increase in assets of the family farm from the time of the marriage would themselves be sharable, not the farm itself. So if you have a farm that at the time of the marriage is, let's say, worth $100,000, and by the time that the marriage splits up, it was worth $200,000, the amount of $50,000 would be deemed sharable. However, that increase in value of course is also subject to any debts that may have been acquired also during the same period of time. So if you have an increase in assets from the time of the marriage to the break-up of the marriage of $100,000, and you have acquired debts of $80,000, the only actually sharable amount is $20,000, giving $10.000 to each.

MR. ORCHARD: Then, your interpretation would be assuming that we have the identical parcel of land prior to marriage, and that identical parcel of land, having no improvements made on it, and separation occurs, the only increase in value on that land would be the inflationary increase in the price of the land itself, and that particular increase in value would be shared on a 50-50 basis?

MS. OLIVER: Yes.

MR. ORCHARD: Now, another question to that. If we have a situation where there's a marriage and the father of the husband, in this particular case — let's deal with the husband here — transfers specifically to his son, the home farm, which the father was living on — does that become part of assets deemed sharable at separation of the marriage.

MS. OLIVER: Can we just go over that again?

MR. ORCHARD: There's a marriage. The marriage takes place. After the marriage the husband's father willed the husband the father's land, okay? Does that become part of assets being shareable?

MS. OLIVER: No, and if you will take a look at the legislation, it does specifically exclude gifts, bequests, inheritances, so in that situation, no, the farm again would not be deemed shareable, it would only be the assets on the farm that were gained during the time of the marriage.

MR. ORCHARD: Then the situation would not apply as in the first series of questions where the piece of property willed after marriage had increased in value on account of inflationary pressures similar to the land brought into the marriage, then the increase in value due to inflation on that willed land would not become a shareable part of the . . . ?

MS. OLIVER: No, because it's still producing assets and to that extent any increase in value, as I understand it to be, would be shareable but the land itself is certainly not shareable. Now if the land had been bought by let's say the husband after the time of the marriage, that land itself would be shareable, or the full value, but it's just the value that was increased from the time it was acquired or willed.

MR. ORCHARD: I'm sorry I missed a portion of your reply. The land that is willed to the husband after marriage, are you indicating that with the interpretation of the law we have now, that increase in value in that parcel of land would also be shared?

MS. OLIVER: Is shareable, yes.

MR. ORCHARD: On willed . . .

MS. OLIVER: On willed land.

MR. ORCHARD: After the marriage?

MS. OLIVER: Yes, as I understand it.

MR. ORCHARD: Okay. Now, you indicated some concern with Section 11. Do you have any specific amendments that might clarify this section?

MS. OLIVER: Excuse me one moment while I try and find it on my papers here.

MR. ORCHARD: If it's lengthly, I would just read them over with you after if you would care to save the time.

MS. OLIVER: I have it right here. In my opinion, rather than repealing Section 11 it could easily be amended so that assets acquired by one spouse prior to the marriage but claimed by the other to be shareable should be deemed non-shareable until proven otherwise by the spouse so claiming. Let's say, for example, somebody had a house prior to the marriage — and probably that's not a good example but we'll basically illustrate what I'm trying to say — if one spouse has a house before they were married and it was not purchased in contemplation of marriage and both spouses used that as their principal residence and used it as though it belonged to both, at the time of the breakup of the marriage, the non-owning spouse of that property could try to claim it as a shareable asset. In that situation, they would have to prove that it was intended to be shared. As I said, a house really isn't very good idea. Let's say a car then. One spouse owned a car before they came into the marriage and after the marriage, they both used it as though it was jointly owned and the marriage broke up and the other spouse tried to claim that as a shareable asset and tried to include it in all of the marital asset

there would have to be an onus on that particular spouse to prove that it was intended to be shared. That's really the amendment I'm suggesting. As it is now, by the way, the spouse who owns the asset, the car, prior to the marriage has to prove that it was not intended to be jointly owned.

MR. ORCHARD: So then basically, if I recall from your presentation, what you would indicate in section 12 is deletion of "not"; turn the onus around on the person claiming that it was a shareable asset to prove it and not vice versa.

MS. OLIVER: Yes, I think otherwise that there could be a number of inequities that could arise in that situation.

MR. ORCHARD: This is the one section of the Act, in my limited knowledge of it, that is in specific reference to farming situations that can become subject to a lot of litigation.

MS. OLIVER: It could be problematic.

MR. ORCHARD: Very problematic.

MS. OLIVER: I think so.

MR. ORCHARD: Because when we talk about valuation of the farmland asset upon separation, you know, there's a number of ways you can go about it. You go market value, you have a very substantial onus placed on the husband assuming he wants to maintain the unit as a viable unit. If you use productive value, productive value is always about one-third of market value. You run into problems there.

MS. OLIVER: I would just like to point out, however, that I think that what you're doing here is confusing marital assets and commercial assets. The family-owned farm is a commercial asset and therefore is treated somewhat separately as a marital asset. In that situation, any commercial assets owned prior to the marriage do not fall within the marital regime so really what you're dealing with again is the increase in asset and family farms would not be included in that.

MR. ORCHARD: Thank you.

MR. CHAIRMAN: More questions? Mr. Cherniack.

MR. CHERNIACK: Your little discussion here about Section 11, where you are suggesting a shift in onus is only a shift in the opinion of the legislators as to which should be automatically accepted . . .

MS. OLIVER: Yes.

MR. CHERNIACK: . . . and in effect there could still be as much quarrelling and differences and court litigation either way, couldn't there?

MS. OLIVER: It could work out that way, there's no question, and again it would have to be weighed. It's just that I would like to see that other consideration made and I'm putting it forward as a proposal. In my opinion this has been discussed fairly extensively too in a . . .

MR. CHERNIACK: Yes.

MS. OLIVER: . . . number of areas, that the person who wants to claim a share of the particular asset perhaps should be put to the proof that it is a shareable asset if it was owned by one spouse prior to the marriage. That's the only asset that would be considered.

MR. CHERNIACK: Now, over-all, would you that all the amendments suggested by you and by the Subsection of the Family Law of the Bar Association are such that do not make the Act too difficult to operate with until after the next session when these amendments could be brought in?

MS. OLIVER: I feel there's absolutely no problem with the Act operating. These amendments can be made very simply and it doesn't matter whether they're made now. I would prefer to see some of them made now obviously but I can't see that there would be any problem in allowing the Act to go through as it is now and allowed to operate. Many of these things anyway are going to be ironed out. I haven't yet seen an Act that doesn't come into being without crinkles and most of those crinkles are either ironed out in the courts or are made by amendment.

MR. CHERNIACK: Isn't the word "wrinkles?"

MS. OLIVER: I like "crinkles."

MR. CHERNIACK: Ms. Oliver, I think we could assume that it is most unlikely that amendments would be made at this session and therefore if we assume that the amendments could be made at the next session, let's say by July, you are saying that there is no real impediment in the operation of the Act until those amendments are . . .

MS. OLIVER: Absolutely none. Absolutely none.

MR. CHERNIACK: . . . and since I don't see on the list of persons presenting briefs an official spokesperson on behalf of the Bar Association Subsection, can we assume that what you have said is proper interpretation of the feelings of the Subsection on Family Law?

MS. OLIVER: If it would assist this committee, I would be prepared, and I have discussed this with Ms. Bowman. Now I don't think that she had any idea I would consider this particular thing, but she said she had no objection to the letter being made public because it was a true position of this subsection and so, therefore, if the members of the committee would like a copy of the letter and perhaps a copy of the recommendations that I have made, I would be more than happy to let you have them.

MR. CHERNIACK: Well, I wanted to go into that. I wondered whether Mr. Haig has any particular persuasive powers over the subcommittee to have it meet especially at his request. How do you explain that you were willing to go to a — set up an entire meeting and review for Mr. Haig in his personal capacity?

MS. OLIVER: I would like to point out that the meeting at which this was discussed was a regularly constituted meeting. It was one that we were going to be holding anyway. I was not aware until I arrived at the meeting, that this legislation was going to be discussed. I had gone to the meeting with the assumption we were going to be discussing the reform of the divorce laws so I really had no idea that this was to be under discussion at that particular meeting. However, my understanding was that this request had been made and the offices of the subcommittee in their wisdom agreed to go along with it. Under what persuasive powers, I don't know.

MR. CHERNIACK: Are you under the impression that Mr. Haig made the request on his own behalf or on behalf of another group? .

MS. OLIVER: Again, I really . . . well, I'll read you the first paragraph of the letter if you'd like . . .

MR. CHERNIACK: Please.

MS. OLIVER: . . . from Ms. Bowman to Mr. Haig. It states, "Dear Graeme. You will recall that you phoned me on October 18th on behalf of the Progressive Conservative caucus to request the review of the Family Law Section of the Manitoba Bar Association as to what should be done by the new government with respect to The Family Maintenance Act and The Marital Property Act. The section met on Thursday, October 20th, and devoted most of the evening to a consideration of this problem. The following comments represent a view of the section only, as I do not need to remind you that we have no authority to speak on behalf of the Bar Association generally."

MR. CHERNIACK: So, Ms. Oliver, your group met at some length as a service to the Progressive Conservative caucus.

MS. OLIVER: The discussions were held at their request.

MR. CHERNIACK: Yes, you did meet for that purpose. Well then, what is the date of that letter?

MS. OLIVER: October 24th.

MR. CHERNIACK: Mr. Chairman, I wonder if I can ask the Attorney-General if that's the letter we asked yesterday if he could circulate amongst us and I think he said that he would look for it, or Mr. Goodwin said something to that effect. -(Interjection)— That is the letter. Well then Mr. Mercier . . .

MS. OLIVER: This is a copy of the letter. I don't obviously have the original.

MR. CHERNIACK: To Mr. Haig?

MS. OLIVER: To Mr. Haig.

MR. CHERNIACK: And to the Conservative caucus. So can we confirm . . . well, you don't know but is it a fair assumption that that letter dated October 24th has been in the possession of the

government for some period of time and prior to the introduction of second reading of this bill?

MS. OLIVER: I would assume so.

MR. CHERNIACK: Yes. In case Mr. Mercier does not make it possible for us to get a copy of that letter, you say you have the authority to distribute it, to make it public?

MS. OLIVER: Ms. Bowman has indicated that she has no objections to it being made public. Again, it was based on discussions that were held. We have nothing to hide.

MR. CHERNIACK: You're prepared to do so right now are you?

MS. OLIVER: Certainly.

MR. CHERNIACK: Possibly you could table it then.

MS. OLIVER: Pardon?

MR. CHERNIACK: Would you either table it . . . I'm sure that Mr. Mercier . . .

MS. OLIVER: I have no access right now to a copying machine.

MR. CHERNIACK: I believe that legislative counsel or Mr. Mercier himself could undertake to have that copied probably within the next half hour and returned to you. I'm wondering if I could appeal to the powers-that-be to make that possible.

MR. CHAIRMAN: If the witness wants to table the letter, we're prepared to accept it as the Chair.

MR. CHERNIACK: Could we then have it zeroxed, distributed and returned to her? The rest of us have copies.

MR. CHAIRMAN: I'm at the discretion of the committee. (Agreed)

MR. CHERNIACK: Thank you, Ms. Oliver.

MR. CHAIRMAN: Are there any more questions? Thank you, Ms. Oliver. I call Maxine Prystupa.

MS. MAXINE PRYSTUPA: Gentlemen, I too wish that I could say that I was extremely pleased to be here today. I have similar feelings. I have been through years of presentations to similar committees and to Law Reform Commissions. I have spent a great deal of time preparing briefs to be made to public hearings and I find that it looks like I have to do it all over again. A really, I think that I can speak for a great deal of women who feel that, you know, we put a lot of preparation, a lot of hope, a lot of tremendous amount of research into bringing in the laws that are now about to be repealed into being. It took a long time; it took a lot of effort and quite frankly, gentlemen, I resent having to do it all over again.

I also have to state my objections to the very short notice that we were given. In all of the previous hearings that were held on the law reform, whether it be by the Law Reform Commission, whether it be by the Law Amendments Committee, we all had a good deal of sufficient notice to read through the precise bills or the precise reports and come up with very studied answers. I had less than two hours notice, and I would like to state to this committee that I really feel that that's unfair; that if we are going to come to a reasoned consideration of whether or not these bills those are in fact unworkable, persons who are going to come forward and publicly state how they could be made workable really deserve more than a few hours' notice.

I also feel that we are somewhat in a position of a woman who is being asked to sign away her power rights. Trust me dear, you're going to like the alternative that I'm going to give you. I won't tell you what that alternative is; you've got to trust my judgment. One of the members last night, I believe was the Member for Wolseley said, "You're going to like it." Well quite frankly before I can decide whether or not I'm going to like it, I want to see it. But you know, the assumption that you're going to ask me to say to you that I should get rid of what I know is a solid right in the hope, in the hope, the faint hope, that what is going to come forth later maybe is going to be better, quite frankly, if we're going to be asked to say that these bills should or should not be repealed, we have to know what's going to take their place.

I have a number of questions that I think that really have to be answered before any kind of reasoned judgment can be made. For example, and I would hope that the Attorney-General can answer these questions for me today — ill the principle of retroactivity be retained? Because when we had the public hearings before, we went all the way around that question numerous times and the judgment of the majority or almost unanimity of the people who came forward at that time said that if the retroactivity principle is not maintained, then in fact we are having equality only for fuu future

marriages and that equality will not exist for the vast majority of people in this province.

Another question, will unilateral opting out be disallowed? You know, that's an importan question, because if one individual can say, "Look dear, I don't give a darn what you like, I'm going tc opt out all on my own," then in effect we have totally ineffectual legislation.

Will any new form of faulting principle in The Family Maintenance Act be introduced? That, again we don't know. If we knew what was going to be replaced, we could make a reasoned judgemen about whether or not the current Act should be suspended. But we have not been given thos answers and, quite frankly, without being given those answers, I think that the exercise that we're going through today is really quite pointless. Again, I must state that I object to that.

We've been told, for example, that the new legislation is going to be very litigious. Well, ladies anc gentlemen, the current legislation, the old legislation is extremely litigious. Nothing is more litigiou than having to go and prove that your partner is in some respects at fault in order to retain your ow rights. That's the most litigious kind of legislation available. The new Family Maintenance Act gets ri of that horrendous scene that we've seen in the separation courts, where somebody in order to ge their own bread and butter has to drag someone whom they have lived with for a long period of time and still must have at least some feelings for, and make them look just terrible. You're forced into situation where you must do that or you're going to end up with nothing and that to me would b grossly unfair, but we have not been reassured that that fault in principle will not be reintroduced. would hope that the Attorney-General would, today, reassure us that that is not the case.

Another question. Will the three-person committee be specifically instructed to study the regime which are operative in California and in Washington, the community property with full join ownership and joint access? Again, that has not been answered; we have not been told the terms c reference of the committee and if we knew the terms of reference of the committee, we would not b concerned about the composition of that committee. Ad much has been said about the compositio of that committee as well.

I'm not going to re-read any of the previous submissions that I have made, of which there hav been a number. I can say basically that they are on public record and they are available to all of you. will say, however, that the basic thrust of all my previous presentations has been that if you reall want good, simple, easy, clear legislation, nothing is simpler than the regimes which are operative i both California and in the State of Washington which are community of property with joint ownershi and joint access. They are so completely simple that you don't have to get involved in hundreds an hundreds of sub-amendments. One of the reasons I understand that legislation of that nature was nc brought forward is that they had not been sufficiently studied.

Again' I have another question. Does the Attorney-General intend to set up a committee wit specific terms of reference to study that legislation with the hope of introducing that kind c legislation at some point in the future? At the previous public hearings, the jist of almost all of th public submissions was that, yes, we will accept this form of legislation as a great step forward, a something that is much more progressive than legislation that exists anywhere else in Canada. But has not gone far enough, we would prefer another form which introduces something which is real and truly both simple and guaranteeing equality.

We have had a number of people coming forward and telling us that there are so many problems i this legislation. Well quite frankly, ladies and gentlemen, I don't see that many problems. We hav had, for example, Mr. Haig and I believe Mr. Lyon as well, saying that the 50-50 absolute splitting w be absolutely inequitable because there are all these exceptions. Well, I have to ask whether or n those gentlemen could read. The legislation clearly sets out a section which deals with th exceptions to the 50-50 splitting. I have to assume that either they can't read or they are attempting mislead, and I'm not going to make the assumption as to which is the case. But when that occurs really have to worry about what kind of legislation is going to be re-introduced. I really have to wor about it, and because of those kinds of situations, I really have to object quite strongly to th withdrawal of this legislation.

There are a number of really extremely important principles involved in the Family Maintenanc Act which we are going to lose and, quite frankly, we have to remember that when we lose th legislation, we go back to legislation that is almost 50 years old, and it's horrendously difficult ar inequitable. I don't have to list for you the cases and the inequities that have resulted from it. They' obvious. The right to information: Under the old legislation, a wife doesn't even have the right to knc how much money her husband earns. She doesn't have the right to even know, much less ha access to it. Independence: A man no longer, under The Family Maintenance Act, is going to be give a life-long sentence to supporting a wife from whom he is now separated. The whole concept independence is extremely important. Even the sexism implied in The Wives' and Childrer Maintenance Act. I mean, who is maintaining whom? The new Act shows that both parties have obligation to support each other, that both parties have both rights and duties, and those are firm entrenched in the law.

We have also another thing in the new legislation. It may be in the old, and perhaps I have not re the old Act accurately enough but to me it's extremely importantand that's the concept of the Inter Maintenance Order, for if you are a woman who is living in a household who is being physically mentally abused, if you cannot get access to a no-fault immediate relief order, you effectively have place to go because if you have no money, you don't have anywhere to go. I would hate to see us lo that. I have said before and I think it is important to repeat it again, that attitudes in society a

determined to a very large extent to the institutions that are in existence; that if we have laws which show gross inequities, then people's attitudes result from those institutions; that if we are going to view women as dependents for example, that comes right out of the legal situation. If we're going to change attitudes, we have to begin to change laws and, quite frankly, we've waited too long for those laws to be changed.

I think of a situation back in the late 1920s when a very famous dancer made the statement that if a woman in her right mind read the laws as they exist today and still got married, she deserves everything she gets. Well, that was 50 years ago and it is time those laws were changed. I think that it's time that it was done right now. We have the laws; they can be dealt with and they can be dealt with by amendment. I wouldn't even be quite so concerned about withdrawing this legislation if I knew what it was going to be replaced with.

A few weeks ago, I sent off a letter to the current Attorney-General voicing my objections to withdrawal of this legislation and I received a form letter back from him. In it, the difficulties with the legislation were outlined. The words are quite heavy "considerable tax implications." Well, those considerable tax implications have not been outlined for us; w're dealing in generalities. I wish that they were outlined, because perhaps if they were outlined, someone without the total legal expertise — I don't have total legal expertise, but then I could make a reasoned judgment as to whether or not the implications could be dealt with, but we haven't been told what those implications are.

The classification of assets as between family and commercial present a number of problems. I don't see those problems. Into what category do life insurance policies fit? How does The Marital Property Act affect the rights of creditors? Well, ladies and gentlemen, how does The Marital Property Act affect the rights of creditors is exactly the point. The point that we made many times over in the previous public hearings was that a woman who is classified as a dependent with no right to either income or property within a marital situation has no rights, and you can't expect a creditor, for example, to grant her credit in her own name. If a man in a marital situation has vested in him, by legislation, the ownership of all of the assets of that marriage, then by legislation he has the right to dispose of them as he sees fit. Quite frankly, it's time we changed that. I do not believe that either partner to a marriage should have the right to commit either the total income or the total assets of that marital situation without the permission of the other individual. So whose rights come first, ladies and gentlemen? Those of the third party who want access to all of the income or that part of the partnership who justly owns half of those assets? I ask you to consider that quite carefully. The third party in this instance, should come last in that series of considerations.

This next issue raised in the letter, Mr. Mercier, is legislation appears to discourage attempts at reconciliation of spouses who are living separate and apart on or prior to May 6th, 1977. You know, that assumption remains valid only if we assume that that individual should have the right to take off from the marriage with all of the assets. A spouse may obtain an order of separation under The Family Maintenance Act without any reasons or grounds and then require the other spouse to join in the accounting and equalization of the commercial assets under The Marital Property Act. If someone is about to leave a marriage' they have, in their own minds, reasons and grounds. The question is, who's going to make a judgment for them in a very paternalistic kind of way about what grounds are just and what grounds are unjust. If you're living in the situation, you very well know whether or not you can tolerate that situation.

I agree that there are some sections that require clarification. One of the sections that gave me some concern was the section on independence. I think Section 8.1 — oh, there was a simple little sexist comment in there that can be dealt with by getting it s/he instead of all judges being referred to as he — that's so simple that I don't need to comment much further on it. And then in Section 5.1(g), here there is some concern in my mind about the extent to which that spouse — I would suggest the insertion "after separation and the extent to which that spouse has contributed to the increased earning capacities of the other" to take care of the situation in which one spouse has a lost income earning ability while the other spouse has gained it, in perhaps going back to work at night in order to maintain the other spouse while he went to school or something of that nature, because I believe that one of the most important assets that a person has is their ability to earn, that's their bread and butter, and property, in my mind, is quite secondary by comparison. I think that the insertion of that would give a judge sufficient room to make some consideration: "after separation and the extent to which that spouse has contributed to the increased earning capacity of the other." Section 5.1(g). I haven't got my copy of the Act here; I hope I've got it quoted for the right section. I may have an old copy of the Act before this one. Oh, this one's worded slightly different from the one that I have. Maybe I have an old copy of the Act. Okay, I'll reconstruct this later after I've had a chance to read this and give it to you in written copy. My specific concern was the situation in which one individual had supported the other while they built up a business, went to university, whatever, and never gave similar capabilities themselves, that they be given the option of that during a brief maintenance period to regain that kind of income earning capacity themselves. Okay?

MR. CHAIRMAN: Any questions? Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I would just like to exchange perspectives on one aspect with the delegation. We're not dealing here really with the principles of The Marital Property Act or The Family

Maintenance Act, we're really dealing with the principle of suspension, deferrment and review of a piece of legislation that I think all of us would have to concede was contentious and controversial and far-ranging in its interest across the province. My question to the delegation would be whether she sees anything essentially wrong with the reasonableness of the proposition that a new governmen duly elected should review and assess legislation that was not even in force in total, only part of it was in effect; in fact none of it was in effect at the time of the election, with legislation that was not in tota in force and that had been the subject of considerable perplexity before proceeding with actua implementation and enactment of that legislation?

MS. PRYSTUPA: Well, there are a number of questions involved in that. The first one is that I see n justification for suspending the legislation while the review is taking place, (a) primarily because w go back to such an inequitable situation in the duration; and (b) the legislation came forward in spirit of non-partisanship such as this province has not seen in a long time. This committee met for a extended period of time with representatives from all parties. I was very impressed, by the way, wit the manner in which the committee did operate, that it was brought forth in a spirit of non partisanship and working together, and it was my understanding that a good deal of consensus ha been arrived at before the legislation was presented. So that's one side of the coin. The other side c the coin is that the issue was not made an issue during the election. Insofar as the people of Manitob understood, this legislation was remaining in place and nothing was said to the contrary. I, as a individual, really feel that I have quite frankly been deceived.

MR. SHERMAN: Mr. Chairman, I agree with the delegation that there was a good deal c consensus, there was certainly non-partisanship and I think there was a good deal of conscier tiousness brought to the committee deliberations late last year, and all through the early part of th year on the legislation. But would she not concede that throughout those deliberations — and sh was an active and constructive participant in them — that throughout those deliberations th representatives of the party that now forms the government in this province expressed repeated their concern with the problems that had been brought to them by members of the Bar Associatio members of the legal profession and members of the general public in terms of application of th laws, and expressed repeatedly their desire for a much deeper, much more wide-ranging review, n one that would go on indefinitely, but one that would carry on for a period of months between th legislative sessions, not knowing when the legislative session might come, or when the next electic might come. Was that position not made abundantly clear to all those participating in the hearings b the representatives of the Conservative party on the committee?

MS. PRYSTUPA: I attended the first set of hearings in their entirety. I did not attend the second s of hearings in their entirety because I was unavailable during much of the time the committee w sitting. So therefore any comment that I would make would not necessarily be entirely fair. I did n observe that, but I was not here for the whole of the second set of hearings. I did understand, a hopefully you will correct me if I'm wrong, that the sole basis, or the main basis for objection to tl Family Maintenance Act was the fact that there was not sufficient provision for enforcement. Can yc correct me on that before I proceed?

MR. SHERMAN: That was one of the basic objections, yes.

MS. PRYSTUPA: Okay, I would actually like to see greater emphasis on enforcement because whatever legislation does come forward if you have maintenance orders which cannot be enforc you have ineffectual legislation. But that does not mean that the principle should not be introduce and then means sought to bring about measures that will bring them into effect in a realistic wa understand that a committee was struck to look into ways and means to deal with the enforceme difficulties. I would hope that that committee would continue to work. Perhaps you can reassure r that it will.

MR. SHERMAN: Well, I surmise that we have a difference of opinion on the point that I'm trying make, Mr. Chairman, but certainly it was my impression that the desire for an extended review — examination — was made clear by members of the Conservative party, and I think very faithfu reported by the press, both electronic and print media, throughout the hearings, particularly in t latter stage of the session, particularly during the months of April and May. I would say that there w a veiy conscientious and faithful reportage of that position, and I certainly have kept records for own satisfaction to reinforce my view. That being the case, I just put it to you as a democratic vo and taxpayer that I think the position the government takes in seeking a review and re-examinati with a view to strenghtening the legislation where it needs strenghtening is justified. Now, I gatl that your main objection, and the main objection to the position that the government is taking on part of many people appearing before the committee at this time, is that we're looking at a *de fa* repeal of the legislation. There's never been any mention of such action. I would hope that I co dispel that anxiety.

MS. PRYSTUPA: I have two things. Perhaps, Mr. Sherman, you could show me some copies of

print reporting of those, because I think that I have a fairly complete file on all of the media print-outs, at least, of everything that was said, either in committee or in the legislature or on the hustings, and I don't recall ever seeing that, but it's possible that I missed it. If you do have copies of statements to that effect that were made in the media I would very much appreciate them. It's quite possible that I missed something but I'm a very careful reader, and I don't miss a great deal.

My main concern is that I do not see any reason why we cannot have a review, but we can have a review while the legislation is in place. I don't want to lose sigtt of what we're going back to with Bill 5.

MR. SHERMAN: Well, I don't see what would be achieved necessarily by having a review while the legislation was in place. It's our hope . . .

MS. PRYSTUPA: I just listed a number of things, Mr. Sherman — direct information, the obligation of both to support each other, the interim maintenance order which is absolutely crucial if you're being beaten, for example, if you can't get an interim maintenance order you've nowhere to go.

MR. SHERMAN: But we would have to go through the exercise anyway, as a new government we would have to go b through the exercise anyway, whether the legislation were in place or not, because it did not receive — in its finished state, or semi-finished state, depending on your point of view — it did not receive the approval in total of the party that subsequently became the government, and in addition to that there is new representation in the government, new constituency representation, that did not exist prior to the a policy orientation — and that's why I'm unhappy about the lack of clarity about the terms of reference — if the review committee is being given a policy orientation we have to be very concerned about a number of things. One is the composition: It does not include — besides lawyers — members of the public; It does not include a low-income married woman, for example. The second concern is that its hearings are not public, you give written submissions only.

This is not a new position for me to take. At the time that the Law Reform Commission reported, and at the very first public hearings of the Law Reform Commission I chastised the previous Attorney-General of the province for having not included such people in the Law Reform Commission. I think that policy-orientation things happening in a body which is (a) not public; and (b) not responsible — in the sense a legislator is — has to be a very definite concern. And an even greater concern, when you look at the known attitudes of at least one member of the committee. If we are reassured that the terms of reference of that committee were simply those of cleaning up bits of amendments here and there, and that in fact the substance of the law is going to be maintained in every respect, there would not be that concern, but that has not been clarified.

MR. SHERMAN: Well, that would be a subject that I suggest you discuss with the Attorney-General, but as far as the first . . .

MS. PRYSTUPA: I have a number of questions for the Attorney-General that have not been answered.

MR. SHERMAN: . . . the first issue is concerned I would hope that if you haven't been satisfied up to this point, that you are satisfied that Bill 5, as we view it in the government, does not represent a move of repeal. It represents a move of precisely what we suggested was necessary all the time — a longer, deeper, more wide-ranging review of the legislation — because throughout the hearings that participated in — and I participated in quite a few — there was additional perplexity and additional anomalies introduced in virtually every hearing. Now, we've been told that the family law subsection of the Bar Association has taken a certain position — I'm not concerned with arguing or debating that point — but let me ask you this: Would you not concede that there has been considerable, legitimate perplexity throughout the legal profession, throughout the Bar Association, and considerable disagreement as to the application and the workability of the legislation, and should not a government be responsive to that?

MS. PRYSTUPA: A government always has to be responsive to any group that approaches it with concerns about legislation, and they have to make judgments as to whether or not those concerns are legitimate. I'm concerned when I see public statements by someone of the stature of Mr. Haig, for example, that misrepresent what the law actually is.

MR. SHERMAN: Are you concerned . . . excuse me, I don't mean to be rude, but just on that point: Are you concerned when you see public statements of someone like Ms. Leigh Halparin, for example?

MS. PRYSTUPA: I have not read Ms. Leigh Halparin's in all that much detail — I scanned it the other evening — and again, there were a number of areas in that particular piece that gave me a great deal of concern, but I would have to have it in front of me in order to be able to point them out.

MR. SHERMAN: But does that not underline the point that I'm trying to make, that there is considerable disagreement and perplexity?

MS. PRYSTUPA: I'm saying that there is some disagreement and some perplexity, some of it is legitimate and a good deal of it is not. Okay? And when you introduce new legislation there always is a period in which some grey areas require further clarification. Correct me, Ms. Halparin's concern was largely that of the third parties, was it not?

MR. SHERMAN: I think that's correct, yes.

MS. PRYSTUPA: I think I dealt with that question. One of the problems when you change legislation, when there are third parties involved, is that the ground rules change. But if you take that argument to its ultimate you would say you would never change legislation because it's always unfair to change the ground rules in midstream, and then you would stick with the legislation that originated in the 1920s. The third-party situation needs to be clarified, but I think that we were well aware of that problem when the legislation was introduced. One of the main reasons for the whole question of who owns the family assets, and who owns the family income, was the whole question of whether or not one party could utilaterally dispose of them, and that's exactly where the third party comes in. I believe that half of the partnership, the rights of the individual who is one-half of that partnership, should have prior rights to that of the third party and it seems to me totally unjust that one party should be able to commit the whole of the family assets in any situation and that a third party should have access to them.

Let's just take a wholly hypothetical situation. Just assume that my husband — which he would never do — would go out and take out a loan on the whole of our family home and commit 85 percent of his income in a lien. Well, it seems to me that the law should deal with a situation which limits the right of both that individual in the partnership and the third party to that access to the whole of that. That's crucial, you know, if you're going to start looking at prior rights of third parties you're never going to attain any kind of equity in marital law.

MR. SHERMAN: Well I accept that. That's a valid position to take. All I'm saying is that it, like many other aspects of the legislation, have been the subject of disagreement, and certainly varying interpretations as to application. Therefore, I just want to put your mind at ease on anxiety number one. As far as anxiety number two is concerned, as I suggested, you'll have to discuss that with others in the government. But as far as anxiety number one is concerned you can forget it because this bill is not a bill calling to the repeal of the legislation. It is a bill calling for a review of the legislation, and that's all.

MS. PRYSTUPA: But the Attorney-General has not answered my questions, and that gives me cause for concern. I asked the questions: When will the new legislation be introduced? I asked a number of specific questions about whether or not this principle, and this principle, and this principle will be retained, and those questions have not been answered. And if they were answered I would feel a lot less unease.

MR. SHERN: Well, we'll try to answer them, Mr. Chairman. Thank you.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: In direct consequences of the last statement, could you give me a list of those unanswered questions so that I could assist Mr. Sherman in getting answers to them, today?

MS. PRYSTUPA: Okay.

MR. CHERNIACK: Now, you mentioned a form letter which you received from the Attorney General. I have not seen that letter.

MS. PRYSTUPA: Again, if anyone wishes to xerox it I will table a copy.

MR. CHERNIACK: Maybe the Attorney-General would favour us with copies of his form letter today.

MS PRYSTUPA: It would be much neater than mine, because I have underlined and written in, and had great big exclamation marks and question marks on my copy.

MR. CHERNIACK: It would be helpful, because it seems to me in listening to it, that there was something said in the letter which I haven't heard in the speeches, and I wanted to double-check. I don't care who gives me a copy as long as I get one. Well, the Attorney-General doesn't have a secretary, so could you lend it to me?

ms. PRYSTUPA: I will lend it to you. I would appreciate it back, Mr. Cherniack.

MR. CHERNIACK: Well, you've got my Acts there.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: First, I wonder Mr. Chairman, if it would not be possible for the letter to be photocopied as the Bowman letter was.

MR. CHAIRMAN: Well, I believe, the witness suggested that she had her own comments and notes on it and she didn't want to photostat it. Is that correct?

MS. PRYSTUPA: Well, I don't object to it. It would just be much neater if it didn't have them.

MR. CHAIRMAN: It's up to you, Madam.

MS. PRYSTUPA: There's a clean copy over here.

MR. PAWLEY: Mrs. Prystupa, further to Mr. Sherman's questions, did you receive correspondence from the Provincial Council of Women during the election campaign as to the position of the Conservative Party?

MR. PAWLEY: Do you recall?

MS. PRYSTUPA: I may have, but if I did, I didn't read it and I don't remember. I'm sorry. My organization is a member of the Provincial Council of Women.

MR. PAWLEY: Are you aware whether or not your organization received correspondence from the Provincial Council of Women during the election campaign.

MS. PRYSTUPA: I am not aware of any.

MR. PAWLEY: Reverting back to Mr. Sherman's questions in connection with review. Did you at any time — because I know Mrs. Prystupa you attended most of the hearings last May and June . . .

MS. PRYSTUPA: Except the latter half of the last set.

MR. PAWLEY: Though hearing references that Mr. Sherman has made to review, did you at any time gather the impression that there was any intention to provide for any indefinite suspension of the legislation during the period of review.

MS. PRYSTUPA: No. I thought that this legislation had been brought forward in tremendous spirit of nonpartisanship and I thought that that was one of the greatest achievements of what was going on in this Committee.

MR. PAWLEY: You indicated that you have a very comprehensive press clipping file and obviously you have reviewed those clippings from time to time. Is there any indication throughout all those press clippings, any indication of an intention to, if a Conservative government is elected, to provide for an indefinite suspension of the legislation.

MS. PRYSTUPA: Not in any of the clippings that I have. I must say however that I received both major newspapers up to about mid way through the election at which point in time I cancelled one of my subscriptions in disgust, so I can't claim to have a complete file from that point on.

MR. PAWLEY: But insofar that material which you had have on hand.

MS.PRYSTUPA: No, there was no indication.

MR. PAWLEY: There was no such indication.

MS. PRYSTUPA: There was no such indication. If Mr. Sherman can provide me with copies of articles that I don't have, I'm quite prepared to retract that statement.

MR. SHERMAN: On a point of order, Mr. Chairman. Well it's really a point of clarification if Mr. Pawley doesn't mind. The term indefinite suspension was never used. The term of a longer review was the term that was used.

M though, S. PRYSTUPA: Yes. Presumably Mr. Sherman, a review can take place while the legislation is in place, which is quite different than suspending it.

MR. PAWLEY: Mrs. Prystupa, let me ask you, do you recall indications from the then attorney-general that he too was interested in a review and possible amendments in the session of 1978.

MS. PRYSTUPA: Yes.

MR. PAWLEY: Mrs. Prystupa, would it be possible for you today tO ascertain whether or not your organization had received correspondence from the Provincial Council of Women as to the representations made by the Conservative party to the Provincial Council during the election campaign.

MS. PRYSTUPA: Yes, I have a file called my Provincial Council of Women file and I can recheck it. just don't recall anything of that nature in it. I can also check with the Provincial Council of Women to see whether Or not they've sent me any correspondence.

MR. PAWLEY: If there is, would you be prepared to make that available to the committee?

MS. PRYSTUPA: If there is, I will, yes.

MR. PAWLEY: Also, are you aware of any organization which has endorsed the . . .

MR. CHAIRMAN: I don't think it's fair — awareness questions, Mr. Pawley.

MR. PAWLEY: Well, that's what the whole exercise is about, Mr. Chairman. Do you know, do you have knowledge then, Mrs. Prystupa . . .

MR. CHAIRMAN: That's better.

MR. PAWLEY: I didn't think we were in the House . . . of any organization which has endorsed the suspension or deferral of these Acts — any organization?

MS. PRYSTUPA: I don't want to speak for any one particular group . . .

MR. PAWLEY: . . . outside of the Conservative party?

MS. PRYSTUPA: No, the only group that I have heard speak publicly about major concerns as group about the legislation was the Chamber of Commerce.

MR. CHAIRMAN: Any more questions? I thank you for your presentation.

MS. PRYSTUPA: I will sit down and check that amendment through and try and put it in rational form and present it to you.

MR. CHAIAN: Mr. Cherniack.

MR. CHERNIACK: I don't recall ever having seen a representative of the Chamber of Commerc here at any of the . . .

MS. PRYSTUPA: No, this was a radio interview.

MR. CHERNIACK: Oh, I see. But other than that — and you are a student, you are almost a historia of this — I hope the history stops soon.

MS. PRYSTUPA: I've been involved in it right from the beginning, yes.

MR. CHERNIACK: But you are not aware of any organized group that has come before the legislature or the Law Reform Commission in opposition to enactment of these bills.

MS. PRYSTUPA: Well, it's not a matter of being aware or not aware, Mr. Cherniack. It's a matter of public record. There have not been any groups that came as a group and opposed the legislatio

MR. CHERNIACK: There has been reference to certain individuals. Miss Halparin

MS. PRYSTUPA: Well, as far as I know, in the public hearings, Mr. Houston and one oth

individual were the only two at the last set of public hearings, of which there were at least 30 representations, that had any kind of criticism for the general direction of the legislation. There were concerns about some aspects of the legislation but those concerns were basically expressed in terms of suggestions for amendment.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: I thank you, Ms. Prystupa. I am advised that awareness questions are permitted. They are not allowed in the House, and I withdraw my comments, Mr. Pawley.

MR. PAWLEY: Thank you very much.

MR. CHAIRMAN: I call Evelyn Wyrzykowski.

MRS. ?WYRZYKOWSKI: Good morning, Mr. Chairman and gentlemen of the committee. I'm representing the Catholic Women's League of Manitoba, and we have a membership of 3,179. I wish that some of our members were able to come with me this morning, because I find that this committee has called itself rather quickly. We had prepared ourselves already for the Review Committee, and submitted something, but I find that this presentation is really at a time when we are rather preoccupied. So I'll ask you to bear with me. We presented to the previous legislative committee on the reform of the Family Law as well, and I'd like to bring out some of the points we made at that time because we feel very strongly about the points that we have to make. We would like to ask your consideration that the Review Committee be somewhat altered — enlarged, in fact. We said this to the Review Committee and we've written letters to the Premier, to the Attorney-General, and to Mr. Sherman asking for that. We feel that this law requires other than legal minds. We feel that because the difficulties of the previous family law were really encountered in the carrying out of it that there were people such as social workers and policemen and women, family counsellors and church ministers, who had the greatest deal of difficulty in carrying out the law, and it seems to me that they ought to be there helping to draft a law which they feel could be properly carried out. These are the people who have also had experience in dealing with family law as it was and could really benefit the review in carrying it out in the future. We believe that their successes and/or frustrations experienced in the course of applying the law to the family court system should benefit the work of your committee. Obviously, then, we are agreeing with the concept that there should be a committee, but we are certainly not happy with the structure of it.

The other point that we are not happy about is the fact that we don't know how long this is going to take. We are not able to say to you that we know whether, in fact, it is better for the legislation to be passed as it is and the changes taken place afterward, or whether, in fact, it should be the Review Committee to do that. We're not able to tell you that. We would hope you would know the best procedure for that.

We certainly agree with the principle of equal sharing between marriage partners, and the new law does much to correct those past inequities. It really emphasizes the equality of both spouses in the marriage and recognizes the contribution made to the marriage by the person who remains in the home and we're very happy about that. No longer is the spouse's contribution to the marriage based on financial consideration only. I'd like to just say a word or two about that concept, because the emphasis on the worth of an individual can do much to enhance the self-image of the housewife, the homemaker. When she's confined within the four walls of the home, and often ignorant of her husband's work, then very quickly she is also losing exclusive control over the education of her children and more or less condemned to repeat the never-ending sequence of household chores. She's harassed and frustrated by the constant push and pull of commercial advertising. While she is the mother who has chosen to remain in the home she often ends up doubting the worth of what she is doing and seriously questioning her role as a mother and as a woman.

We're pleased that the new laws call for judicial discretion in cases where gross negligency is evident, and we draw your attention to the fact that we had presented something on the fault concept — and I'm not going to give it all to you at this time — but some of our thinking I really wish to share with you.

We believe that the law should direct people to understand why their marriage has broken down and to hopefully discover some of the realities about themselves which will ensure a sense of responsibility, enabling them then to enter into a more meaningful, realistic, personal union if that is what they choose to do afterwards. This, we believe, could be accomplished by mandatory divorce counselling or separation counselling for the sake of the broken family as well as for a subsequent family. We think that it's not realistic for society to profess that the family is its corner-stone, and then to turn around and illogically allow the family to fall apart without any concern for what's really happening to the people involved. We really are sensitive that this law should face that fact. We think that our families will progress in health and happiness when we clearly recognize the nature of married love, the meaning of mutual responsibility, and the dignity of marriage, and the duty of families to society, and the duty of society to families.

We went into this very thoroughly and discovered that what we were asking for is called conciliation counselling," and we also know that there is a pilot project proposed for the District of

St. Boniface in the family court there to have a unified family court, and that this would includ conciliation counselling. We also know that Mrs. Nora Milne has been given the responsibility t prepare what is necessary for the conciliation counselling aspect of this court. We're not aware c why this unified family court has not taken place yet. We don't know what the delays are. We woul like to know that.

We also are aware that conciliation counselling has been implemented in uamily courts in som other provinces, and I am particularly familiar with Edmonton, Alberta, where they have th conciliation counselling without the unified family court — that the court, as it exists, ha implemented conciliation counselling. I have reports on how well it is doing there. So this is anothe thing that we are asking. We don't know if you must delay the laws for that to happen, but we'r certainly asking for that to become a part of the law in Manitoba9

We are also asking for a task force — and perhaps it is a task force which could carry out some c the things we're asking for — because we believe that there should be procedures that are mad available for the collecting and reviewing ofmaintenance orders. It seems to me that the fact tha people are constantly going to have to go back to court to review the maintenance orders to see if must be changed, for the collecting if it's not being collected well, that the amount of backlog o courts is going to be unreal, and that this really causes a tremendous strain on families, and whe families are under strain, we're all under strain.

We did, in our June submission, prepare an attempt at drafting which was taken out of th California law, on how to word the procedure for spouses applying for separation, and then allowin for them to go into the court procedure, which would allow for the conciliation counselling and th drafting of that. I have it for those who would like a copy of it, but I know it has been duplicate already. I wish I had some profound closing remarks, but I'm available for questions. Thank yo

MR. CHAIRMAN: Thank you kindly. Questions from the committee? Mr. Pawley.

MR. PAWLEY: First, I would think that the Attorney-General would possibly like to respond — h doesn't need to — but respond in connection with Mrs. Wyrzykowski's question on the pilot fami court project, because the Attorney-General did give some indication in the House the other day a to where that stands.

MR. MERCIER: Well as I indicated, Mr. Chairman, the matter is under review and when a decision made, it will be announced.

MR. PAWLEY: Mrs. Wyrzykowski, you do feel that the pilot project, family court in St. Bonifac should proceed as quickly as possible?

MRS. WYRZYKOWSKI: Oh yes, I have a difficult time to understand why it hasn't done so anc would be really interested to know what the blocks are, because I understand that it's been on th drafting table quite a while.

MR. PAWLEY: I recall you were somewhat critical of the former government when we had deferre it for a few months.

MRS. WYRZYKOWSKI: Yes.

MR. PAWLEY: Under review.

MRS. WYRZYKOWSKI: Yes.

MR. PAWLEY: Mrs. Wyrzykowski, do you recall a meeting which you and others supportive of yo organization had attended with the former premier and myself in connection with the establishme of a task force?

MRS. WYRZYKOWSKI: Yes.

MR. PAWLEY: Would you agree that we had committed ourselves at that meeting to th establishment of a task force to deal with pre-marital counselling and maintenance orders, and study the community property systems in California that we had heard so much about during th hearings?

MRS. WYRZYKOWSKI: Yes, and the conciliation counselling dimension as well. I understood th the task force was about to happen, and phoned a few times to find out when that was going happen, but I'm so unfamiliar with the proceedings of the legislature — I'm learning . . .

MR. PAWLEY: You were prepared to participate or someone from your organization in that ta force?

mrs. WYRZYKOWSKI: Yes.

MR. PAWLEY: And to assist whatever government it be in their study of these various areas of concern.

MRS. WYRZYKOWSKI: That's right.

MR. PAWLEY: I wanted just to also ask whether or not it's your view that the listing of grounds — the persistent cruelty, the various items of fault — whether that is of assistance in dealing with efforts to bring about reconciliation in connection with a marriage breakdown?

MRS. WYRZYKOWSKI: We've always maintained that the way in which it was required of people to do in the past was very harmful indeed, because it caused people to blame each other and that is not a healthy situation. It was only in really pursuing that that we realized it was not for the purpose to destroy people and for them to attempt to tear each other apart, but rather for them to understand inside themselves why in fact this marriage was intended to last. Initially when people get married, it's to stay married. So, why did it not work. So that they would be encouraged to look at that, for the health of the two, for the individual person, for each of them, and for the benefit of the family. I think the law has to reflect that knowledge, that there is a responsibility to each other in a marriage situation, but not that the law should encourage them to tear each other apart. And that when in fact there is really gross negligence on the part of one or the other — and that does happen, that there would be a person who has entered into a relationship with the intention of not being a responsible partner, or finds that in the marriage is not a responsible partner — it seems to me that there has to be some consideration of that fact. And that's why we have encouraged the judicial discretion on gross negligence.

MR. PAWLEY: Unfair treatment. Thank you very much, Mr. Chairman.

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

MR. SHERMAN: Yes, I would just ask Mrs. Wyrzykowski whether she recalls — with respect to the review that is under way, whether she shares the same concerns as have been expressed by other delegations.

MRS. WYRZYKOWSKI: I really apologize to you, Mr. Sherman, because I haven't been able to come to these hearings until this morning — of this particular committee. So I really don't know what is being said. I have tried to keep up with the press releases.

MR. SHERMAN: Well the main concern is that a suspension and deferment of the legislation, pending a review, is being undertaken at all. The other concern was with the composition of the review committee. I just wondered whether you shared those feelings or had any opinions.

MRS. WYRZYKOWSKI: Well we have said, and I think I have tried to say it even this morning now, let me go back to the fact that I knew of the situation where these 500 lawyers who were studying the law ran into legal arguments about it. I couldn't even quarrel with them about that because I am not qualified to do so. But if they were having that kind of a hassle at that point then they had better straighten it out or we will be paying for that in court and I don't think that that is just to society at large.

Now I would hope that the review committee, because there are lawyers on it — though I am also one who would question the presence of one of them there — that they need to do that task but as efficiently and as quickly as possible, because I do accept that this law has been looked at for a long time. The other point is that we really would like to see other than legal persons on that committee and we feel that that would facilitate their work.

MR. SHERMAN: When you say with respect to the 500 lawyers who have some difficulty in reaching a consensus on the legislation, that — and I think your words were — they had better straighten it out or we will all be having difficulty in court, would you agree that the government of the day had better straigten it out by any means possible and available, including the review that is being undertaken.

MRS. WYRZYKOWSKI: I would have to say that yes, I believe it is your responsibility but I would add again, because I have said it before, I think with as much urgency as possible because I think the family law is overdue.

MR. SHERMAN: Thank you, Mrs. Wyrzykowski. Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mrs. Wyrzykowski. Committee rise and reassemble at 2:30. I'll call Ralph Kyritz first at 2:30 and then Charles Lamont, and the third one is Arni Peltz; if those people

would be here when we reassemble at 2:30.