



**Legislative Assembly of Manitoba**

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

**Chairman**

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



**THURSDAY, JUNE 2, 1977, 10:00 a.m.**

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**TIME:** 10:15 a.m.

**CHAIRMAN:** Mr. D. James Walding.

**MR. CHAIRMAN:** Order please. We have a quorum, gentlemen. The committee will come to order. Is Carol Perch present, please? If so, would you come forward? Carol Perch? Jill Oliver, would you come forward, please?

**MS. OLIVER:** Good morning, gentlemen. I am presenting most of this brief on behalf of Muriel Smith, who unfortunately is unable to be here today. However, the things that Muriel says in her brief are things with which I entirely concur. I am also slated to speak at about No. 35, I think, and I would like with the indulgence of the committee to be able to add some of those comments rather than repeating them at a later date and taking up your time—to be able to add those comments to Muriel's brief at this time.

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

**MS. OLIVER:** Thank you. I, too, wish to join the previous speakers in commending the government for bringing in such a trailblazing piece of legislation. There have been years of effort put into these reforms: First, by groups of women in Manitoba and across the country who documented beyond any question the injustice of the current laws; then by the Law Reform Commission in two successive reports followed by public hearings; then again by this committee which is now having its second round of hearings.

A great deal has been accomplished and I wish to go on record as congratulating the government and all the members of the committee for the thoughtful and thorough attention they have given and are giving this legislation. I realize that time in this legislative session is running out and that you are all reluctant to consider altering any significant components of the legislation. Nevertheless, I urge you to do just that.

I urge you to reconsider exempting income in money form from the definition of assets. By so doing you are entrenching attitudes that have for so long been at the root of the inequities between men and women in marriage. You entrench the assumption that the person whose main economic contribution to the marriage is financial. Traditionally the male is the best person who is best able to manage and control the money, whereas the person whose main economic contribution is labour and personal care, more often than not the female, is the lesser member of the partnership. In fact, you impose a labour-management model of decision-making on what should be an equal partnership co-operative model.

There is no doubt at all that in most business partnerships, as in most marriages, working relationships develop which delegate specialized decision-making to respective partners. But that is by choice not by imposition, and therein lies the crucial difference. If we are trying to strengthen an equal partnership concept of marriage in all its aspects, social, economic, emotional and moral, then it is important that each spouse, in principle, has equal rights and equal obligations. How each pair of spouses chooses to work out the practicalities of who contributes what in terms of money, labour and decision-making is up to that couple.

In practice one spouse may well delegate the prime responsibilities of financial decision-making to the other spouse who has more interest and expertise. In most cases the female may well delegate much of her authority, though not in all. But she will have the choice, not the obligation, to do so and the question of choice is the critical question.

I recognize that the legislation goes some considerable way towards recognizing the principle of equality. Information is to be shared and each spouse is to be entitled to a personal, no questions asked allowance. Once again I commend the government for having moved that far. But why the hesitation when it comes to income? Either marriage is a partnership of equals with financial and/or labour contributions being deemed equal, or it is not. Either an equal partnership is a feasible model or it is not. Exempting income from joint ownership and control suggests that the committee is not yet quite sure that unpaid labour in the home is equal in status and value to labour performed outside the home for money.

Either men and women are to be deemed equally entitled to the rights and the responsibilities of family life, including the right to share in financial management if they so wish, or they are not. I urge the committee to reconsider. Are the consequences so bad? Marriages which are already shaky may, in fact, come apart, agreed, but that might happen in any event. Marriages which are already functioning well on an equal partnership basis will feel no strain. Only those marriages where the respective rights and responsibilities are unclear will be affected by the legislation, and then only in the direction of a more just and equal sharing of rights and responsibilities.

Each couple so affected will have a bench mark for their guidance; advance notice of the principles the court would apply when hearing their case. That clarity can only be as a positive assistance to those who still want to resolve their problems in a fair and peaceable manner on their own. And in the case of those couples who go to courts, there will at least be a law to administer which

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recognizes the full adulthood with its attendant rights and responsibilities of each member of the partnership.

The practical problems are reassured by those American state jurisdictions which have shared management of all family assets manageable. Pay cheques are deemed to be equally owned and managed. There is no need for the issuing of two cheques into separate accounts. In matters of dispute the assumption is quite simply made that all moneys coming into the family are jointly owned and managed. Appeals to the courts are not made over every family purchase. A limit can be put on the frequency of appeal. Minor complaints can be rejected as frivolous. Only a persistently one-sided pattern of decision-making and spending would require court intervention. Meanwhile, the law by its very existence would have a normative prescriptive effect on existing marriages, persuading them to function as equal partnerships, because if ever there were to be a recourse to the courts, that is the basis on which the courts would make a decision.

Another objection often given to the sharing of income is that sharing would put the marriage on an economic basis, not on a social, moral or emotional one. That argument only holds water if you consider working for money in the public realm as economic while unpaid work in the private home is not economic. Yet both types of work provide needed goods and services and are essential to our overall well-being. Let's face it, marriage is not only an emotional, moral and sexual arrangement, it is an economic arrangement, too, whereby two people pool their labour and its benefits, tangible and intangible, financial and social.

The crucial economic factor is that each works and so contributes, and each should thereby be entitled to benefit. Marriage could be based on other than equality principles, ranging all the way from separate but equal spheres to male dominance, female dominance or the contract marriage where each pair designs their own style of marriage. What we are hoping from in this Family Law reform is a clear statement that marriage is presumed to be a partnership of equals and that any other form of arrangement should require specific contract.

As with most legislation intended to bring in greater equality of rights, retroactivity is assumed. Human rights legislation does not apply only to people as yet unemployed, unhoused, unserved. It applies as well to people who are currently employed, housed and serviced. Labour legislation does not apply only to new employees, it applies to all employees.

The Legislature, in its Canadian and British tradition, does have the right to change the laws. No law is deemed to be beyond the right of Parliament to examine. The principle of retroactivity is fundamental to Family Law reform. What the civil libertarians who are opposing retroactivity forget is that liberty of the individual exists in a social context and cannot be seen in isolation from the liberties of other individuals. Marriage is a social contract in which the liberties of two people are involved. There are strong arguments in favour of those rights being equal.

I would just like to mention here on behalf of the NDP Status of Women, for whom I'm also speaking, that regarding the amendments, as put out yesterday, I haven't had a really good chance of looking at them. But I was also very disturbed to see that you have extended business income as an exemption from a shared asset. I really wish you had gone the other way and hope that it can still be remedied that you will include earned income, salaried income as part of a shared family asset.

I also want to mention in terms of the retroactivity that also in the amendments I understand that you have exempted negotiated agreements, separation agreements. I agree with that entirely. I think that they should be exempted. I don't think that the legislation should include agreements that have already been settled, not only for separation but also for marriage, anti-nuptial marriage contracts. I think that where people have taken the trouble to arrange their own affairs and in legal form, I think they should be left alone.

The other principle under question is extent. Should marital property include the family farm and/or family business? I maintain that to exclude these forms of economic activity from shared control' is to maintain one member of the partnership in an inferior dependent position. It goes counter to the basic intent of the whole legislation.

Such exclusion is understandable because you gentlemen, who make up the membership of this committee and the Legislature, are probably not yet fully aware of the extent to which you still adopt a superior, paternalistic attitude towards a woman in a marriage relationship. You are kindly and well meaning in faith, but you still fear accepting a woman as a full and equal partner. Most of you still harbour the opinion that work, your work, which brings in money is superior to the unpaid work performed by your spouse at home or in the community. You are still most reluctant to share the full proceeds and decision-making responsibility of that work with the female half of the marriage partnership' to the extent that this proposed legislation still reflects that concept. You have not grasped the true spirit and underlying principle of the movement toward reform. You still have time to reconsider. I urge you to do so. You have nothing to lose but a portion of your power and your money. You have much to gain. Another pair of willing shoulders and a capable brain to share the burden. A spouse who will be stronger because a more equal member of the marriage partnership.

I would now like to go on and make some comments on behalf of the NDP Status of Women.

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One of the main criticisms that I have certainly heard since the bill has actually been published, has been on the mutual opting out and I commend this committee for including it in the bill and I do hope that you will not be changing your mind. We support it absolutely. I feel that any other system of opting out is totally untenable. It makes the reform very much meaningless for many of the people who are looking toward this reform. If marriage is an equal partnership, then surely any opting out of that marriage partnership should be on a mutual basis.

I did refer to the inclusion of income in money form as to be deemed a shareable asset. Along with that and I think missing from Bill 60 which deals with maintenance, one of the things, as I say I think is missing, is the joint management aspect. If we can't have money income as a shareable asset, then surely we should have joint management of the money income. Again the same principle exists that if we are to have a joint marriage, equal partnership relationship, then there has to be joint management of the family income. I'm assuming that people who go out to work, earning income, do so for the benefit of the family, as well as their own self-fulfillment. If that is the case, the benefits they get personally you have the self-fulfillment, the benefits the family get is from the money. Therefore it is a family asset, it should be a shared asset.

I also wanted to make mention on a couple of other points that I think caused some confusion and uncertainty yesterday. One of them was on the income tax implications on immediate sharing. I agree with Mr. Cherniack, I feel that where there is any tax detriment due to attribution, that this should be shared equally by the spouses. If we are going to have shared benefits, let us have shared detriments as well. That is what partnership, that is what sharing is all about.

However, assuming that this legislation is going to be passed, that it will be law, our next task is then to start lobbying the Federal Government to change the income tax legislation so that we get away from the attribution rule, so that we do effect the true equality between spouses in a marriage. I never liked The Income Tax Act. While the Manitoba Legislature itself cannot change it, for anybody who has looked at it, it is rather a conflicting document. On the one hand it treats both spouses as being totally separate and apart and their incomes are separate and apart, but when it comes to looking at one income and one family, all of a sudden it assumes that it belongs to the family as a whole. There are bad inconsistencies there which really must be changed, and I think that that is our next task.

Another area I just wanted to deal with briefly — when I can find it. The other aspect that did cause some confusion yesterday was the problem as to the definition of financial independence. Unfortunately the Law Reform Commission was unable to deal with this question and unable to come up with a definition. All of the discussions that we have had in connection with this legislation have also been unable to come with a definition. This Committee in the Legislature, I do not feel, should have the responsibility of also putting themselves in a position of trying to come up with a strict definition. I am not sure that there is one. I do, however, feel very strongly that there are things that can be taken into consideration. This is possibly an area where some judicial discretion could be applied. I think if that is the case, that if we do leave this to judicial discretion, that certain criteria should be established. For example, the potential earning capacity of the spouse and whether or not, assuming that the dependent spouse is the woman, that she is going to be able to maintain herself to a reasonable level of a standard of living in concordance with what she had before. I don't think that we can expect a fair standard of living to somebody who has been perhaps used to living at, say, a \$20,000 salary, to expect us her live on what is now the minimum wage; there are a very few people who are able to do. So I think that there are other considerations that have to be brought into this; that it should be made very clear in the legislation that if there is to be judicial discretion, if this Legislature does not impose a definition, then very clear and precise criteria be set down to give guidance to the courts on this question. That's all I have to say.

**MR. CHAIRMAN:** There may be some questions? Mr. Cherniack.

**MR. CHERNIACK:** I am glad to know that there is still hope for us in this group. There are certain problems that are still not resolved in my mind. They relate to both income-sharing and joint managements.

Let me put it this way — in my view, a jointly owned, jointly shared family asset of a material nature, like a piece of furniture, as long as it is in the house occupied by both members of the marital group, creates no problem as to ownership. The problem occurs when either one of the couples wishes to dispose of it or they separate and there's a quarrel as to what happens to it. So that the question of ownership arises when there is a decision to be made contrary to that of the opinion of the other.

Income. How do you see that as being something that is really meaningful since it is renewable every pay period and usually spent before the next pay period comes up. How meaningful is it in an ongoing family relationship other than declaratory and in principle?

**MS. OLIVER:** Beyond being declaratory and in principle, I don't think it makes very much difference to the way marriages now work. However, once you have established that principle, it isn't a question anymore that this is my money I can just dole out whatever I think that you should have. It's a question of saying to each other, "Look, this is our money, this belongs to both of us." You can have

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a spouse who is perhaps not receiving a fair share or is not given any opportunity to share in the spending of that money, to go to court and say, "This has to be changed, I do have some rights over it." I don't think in practice it can make a great deal of difference, but the principle is so important and that is primarily what we're dealing with in much of this legislation. We know very well that you can't interfere in the bedrooms of the nation, as one politician has said, but the point is that what we are establishing here is a very basic principle. We are saying that if we are entering this marriage relationship we each have an equal right to what comes into that marriage. We both work for it, we both have a right to it. To say to one partner, you're the one that earns the money. Okay, we may buy a fridge, or a chair, or a roast of meat or whatever and it belongs to both of us. But at the same time that spending of the money, the money that comes in is still a shareable asset. It belongs to the family.

**MR. CHERNIACK:** I guess that we're really differing only on the question of whether there's enforceability involved that should be there, or whether declaratory is a sort of a statement of declaration of human and family rights. You agree that it's not a vital part of — the concept is but the actual legislation is not crucial to a fair recognition of the rights of both people.

**MS. OLIVER:** The enforcement, I would suggest, would at all times be extremely difficult. The principle is essential, if you're going to have this legislation go through in the form that I think the majority of you intend, then you have to have the money income as a shareable asset. Otherwise, you might as well forget about the . . .

**MR. CHERNIACK:** I have the impression that the present Bill is not really declaratory in the sense of the sharing of assets, that it is pretty clear. And I frankly wouldn't want to water it down with something that would be declaratory but not enforceable or not practical and therefore maybe adversely affect those which I think are clear by lumping them into what could be more of a statement of intent or desire than law.

**MS. OLIVER:** I disagree. I think that what you are doing here actually is twofold. You are attempting on the one hand to establish throughout marriage, by bringing in the notion of instant community of property, for which I heartily applaud you. So that while that marriage is subsisting the concept of equality is supposed to be there. I think that's what you intended or at least that's what I see in the legislation. You're also dealing with the division of assets once the marriage breaks down. And by the way, I would like to also add that I wish you also would include this in marriages regardless of breakdown, that where marriages end in death as well. But that's another point.

But you have those principles there. Why is it that you leave out the basic, ongoing, every day management of that family and you say that, while we recognize reform, we want to change, when it comes right down to it we are going to continue on with the fact that we can't enforce the practical aspects of it. The principle is important, it is there. We have to change that. We have been dealing with principles in law under the common law where we have fought for change for years and years. . . . to changing the status of a woman from a chattel to now a dependent and hopefully with this legislation and in a tightened up form including principles, that that includes equal partnership.

**MR. CHERNIACK:** There will be no value in continuing this academic discussion, because it's becoming academic. I want to just confirm my impression which I received from Miss Steinbart and which I now receive from you, and that is that you do accept that already existing separations are foreclosed from participating in the rights under these bills, except maintenance which I set aside; I mean on the sharing of assets, that we have to start from something and My own concept, which I think I interpret you're in agreement with, and contrary with what Mr. Schulman said yesterday, is that it shall apply where people are still living together. It's not for me to determine how happily, but if they are still together, then it shall apply and I think that is a big step beyond that where the Law Reform Commission was prepared to go. But my impression now is that you and Ms. Steinbart yesterday agreed with that, that there had to be that kind of a cut-off.

**MS. OLIVER:** Yes we do, and I think it would be absolutely impossible to go back and renegotiate all the settlements that have previously occurred — and it's not fair.

**MR. CHERNIACK:** I want to clarify something that came up in the questioning of Ms. Steinbart yesterday in relation to income tax you referred to. Yesterday, I had the impression that a forced division might bring with it a deemed capital gain. This morning, I was informed that there is a roll-over provision and that therefore that minimizes the danger that I saw yesterday. They're still there and the attribution is still there, but the roll-over does apply, which I think is very important to know. Of course, there is still the problem of a forced sale of an asset, when you cannot, like Solomon, divide it and you have to sell it in order to divide the proceeds, then I think it is very important that we do include a netting out so that the tax cost is divided equally just as if the asset — and you agree with that.

**MS. OLIVER:** I would agree with that absolutely, yes.

**MR. CHERNIACK:** Thank you, Mr. Chairman. Oh, one more thing. On financial independence, I am glad you recognized that it is very difficult to spell out what that means. To me it means initially the standard of living which the couple had at the same time of the separation. It means variations that would occur in relation to possibly the inability of the paying spouse to maintain two households at

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the same level, which means that they both would have to come down to a lower standard. That's obvious to me. And it reaches a stage where I don't care particularly to ensure a continuing affluent dependency continuing for a long time. I do visualize that once a standard is measured in some way, that the dependent spouse would be required to earn whatever that spouse can and to supplement whatever is needed to maintain that. In other words, a person who has learned to live at, did you say \$20,000 a year level, who may not have the ability to do more than earn minimum wage, I would expect that person to earn that minimum wage and only expect the difference between the earnings. Is that acceptable?

**MS. OLIVER:** That is basically what I mean.

**MR. CHERNIACK:** All right then. Although I can see the value of maybe fleshing out the description of what is intended, I never had a problem. But the Act reads, "that the judge shall consider the financial needs of each spouse and the financial means and earning capacity of each spouse, and the That standard of living." I think I have to leave to whoever is on the spot looking at a situation to use his or her discretion — or its discretion, the court's discretion — to determine what is that independent status that has to be achieved.

**MS. OLIVER:** I think that is true, but I also think that that particular section is referring to the amount of maintenance that would be awarded during a specified period of time, which I think has been established as three years.

**MR. CHERNIACK:** Oh no. I am sorry, no. Please don't confuse that three years or correct me if I am confused about the three years. As I read it, Section 4(2) says, "Where a spouse is financially independent, the obligation ceases permanently upon the expiry of three years of the day of the separation." That means that first you have to achieve financial independence, and then it's excluded. Then it says further, "If financial independence is not achieved for 20 years," then that clause that I have read to you still applies.

**MS. OLIVER:** Okay, that's right, but at the same time they're also talking about what do we mean by financial independence when the maintenance or the payments discontinue. How are you going to determine when that person has reached the level of financial independence. I think that is the kind of thing that we were trying to get here.

**MR. CHERNIACK:** But I do think that Section 5(1) does cover that, maybe not adequately, but it gives the court jurisdiction and instruction to continue to deal it in the light of that beyond the three years, until financial independence is received.

**MS. OLIVER:** I think in that case, if that is the interpretation, that it should be clarified, because I did not so read it. I recognize that these factors are the same kinds of factors that should be incorporated into defining financial independence, but I would like to see that, in that case, clarified.

**MR. CHERNIACK:** Well, the people who are responsible for the actual drafting are listening and I suppose . . .

**MS. OLIVER:** I am glad to hear it.

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

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

**MR. PAWLEY:** Mrs. Oliver' in connection with . . .

**MS. OLIVER:** That's Ms. Oliver, Mr. Pawley. Thank you.

**MR. PAWLEY:** Ms. Oliver, in question with the . . . Now I've lost my train of thought. Oh yes, the joint check. You made reference to the California Community Property System, is the paycheck included there in the — Community Property System? the actual paycheck?

**MS. OLIVER:** I honestly couldn't give you an answer on that. I don't know precisely. I do know that they have incorporated the joint management principle which presumably would say that whatever income comes into the family, that it is jointly managed. As I said before, whichever way you do it, whether or not you include a salaried income as a shareable asset or whether you include the principle of joint management, I think you are going to achieve primarily the same goal.

**MR. PAWLEY:** I would like to just test you out in a situation that was related to me yesterday and obtain your reaction to it if I could. A lady who wrote, married since 1952 and her husband . . . they had a farm, they sold the farm and moved into Winnipeg. And while in Winnipeg, the husband had to be committed to the mental hospital six times. They had four children during this period of time. They have six children of the marriage. She had great difficulty keeping up the home and whatnot — the husband's misfortune — and the home ended up in tax sale. The court divided the net proceeds half and half between her and her husband. She said that she used the little bit — since then she has had she got from that tax sale and the proceeds two different jobs that she has undertaken in order to buy a home which at this time she has put in her own name because of her experiences before. During this period of time, her husband still suffered from the same type of problems related earlier. So that she is saying to me in this letter, "Now you are coming along and you are going to put my home which I thought I was protecting, into equal ownership again." I wonder if I could just obtain your reaction to that type of case.

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**MS. OLIVER:** My reaction on that off the top of my head — begin with, are the husband and wife living together primarily or is he continually in the . . . or are they separated?

**MR. PAWLEY:** Yes, it appears that they are living together.

**MS. OLIVER:** So they are still considered husband and wife.

**MR. PAWLEY:** Yes, it appears that they are still living together as husband and wife.

**MS. OLIVER:** But it would seem to me that in the sale of the assets, in his share of the assets, that he is still responsible for the care and maintenance of the family. There is still a dual responsibility. So surely the money that he received under that should go to . . .

**MR. PAWLEY:** Apparently he has spent the little bit that he got from that sale of the half house before so he hasn't anything at the moment at all. He's more or less now dependent upon her and has been in and out of the mental hospital repeatedly.

**MS. OLIVER:** I don't really think that this case is very much different from the reverse of that particular case where you have a woman who, for whatever reason, has remained in the home, either that she has no job training or that she is unable to earn a living, and she continues to be dependent on the husband. The marital home is still going to be in joint name. Now are we going to say that because of this particular case, that we then change the law and make the reverse and really negate all that has been discussed here over the last two years? I don't think that . . . you know, it's the same old problem. Hardship cases just don't make good law. While there are going to be some inequities, I still feel that you have enough of a discretion, that house doesn't have to be sold while the parties are still living in it. I think you have that incorporated in the Marital Property Act. So, I'm assuming that while it is still being used as a family home that the assets from that home if it were sold for example, is still going to be jointly owned.

**MR. PAWLEY:** So, you don't feel that this is a good argument here for the unilateral opting out people, that for the first six months this would relieve her of this type of situation. . . even in this type of case, you don't feel this is sufficient argument to commit someone to rearrange their affairs because of the change in law?

**MS. OLIVER:** No, I don't.

**MR. PAWLEY:** That she would say, "Well, look I've bought this home and placed it in my own name because I wanted to secure it," she refers to four children, I don't know whether they are all grown up or not, and she would say, "now you're coming along changing the law and I no longer feel secure." Of course you dealt with some of that, and of course he would have the privileges of the Dower Act at the present time to protect some interest.

**MS. OLIVER:** That's right. As I say, he's in a situation that he has no control over. I mean he does need assistance, he does need help. You have made provision in the Family Maintenance Act for each spouse to be responsible for maintaining the other and I feel that this is a situation that is so similar to the majority of reverse situations where you do have a totally dependent spouse and I'm sure many husbands have felt exactly the same way and are going to continue to do so.

**MR. PAWLEY:** I would just like to ask you specifically in connection with the Law Reform Commission's recommendation on the opting out, where they proposed that for the first six month period after this law, that there be opting out pertaining to that property acquired before the law, and that the court be granted discretion to try to determine some form of equitable basis relating to property acquired after this law . . . or the property opted out on, the discretion which they wished that the court would be able to deal on an equitable basis.

**MS. OLIVER:** Well, I'm under the impression that the legislation is dealing with assets and property that have been acquired in contemplation of the marriage and since the marriage took place, so they're marital assets. Property that was acquired before the marriage I understand, is still the property of the spouse who acquired it, and is not included in the bill and is not covered by it. So, therefore, I think all we are dealing with here is property acquired since the marriage and as I say, I feel that the principle of virtue activity should cover all existing marriages and property acquired during those marriages.

**MR. CHAIRMAN:** Mr. Axworthy. Are there any further questions? Hearing none. Thank you, Ms. Oliver.

**MR. CHAIRMAN:** Mrs. Jean Carson please come forward.

**MRS. JEAN CARSON:** Mr. Chair, Members of the Committee, I have a very short statement to make. It's a purely personal one.

May I first say, as have previous speakers, how deserving of praise is this government and particularly the Attorney-General for having introduced this most progressive legislation. I'm always proud of being a Manitoban and this increases my pride.

I wish mainly to express to you the view of a citizen, a voter who is a woman, and obviously I'm years older than these other people. No personal benefit can accrue to me through the passing of this bill. I have long since paid my dues and my succession duties. It is only my conviction that simple justice requires changes in family law that brings me here today. And may I here congratulate Mr. Schulman in absentia. To find a male lawyer who understands that resentment among women is

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rising rapidly is a joy. Mr. Schulman is apt to become my idol very quickly.

In the context of explicit ideas I wish to make few comments. Only first, that the concept of marriage as full partnership has not been totally accepted in this bill. If it had been, the function of the wife working in the running of the family farm. . . And may I pause here to say that one member last night said his wife wouldn't know how to find the farm. You know, if he had had to stay home, bear and raise the children, run the house, do the washing, ironing, cleaning, gardening, whatever goes with it, I doubt if he would have had time to get out and find the farm in the first place.

Secondly, the small mama-papa business would have been also specifically recognized and dealt with. I cannot agree with the provisions under the Devolution of Estates Act, which I think should recognize the woman as a responsible person, not a ward of the state. Which is Mr. Enns?

**A MEMBER:** He is not here.

**MRS. CARSON:** Well, to Mr. Enns in absentia, I say, one reason why women are so very anxious to get the proper economic footing within the family is that they do look after their children. This is their purpose in trying to get an economic standing, because contrary to the apparent view of most legislators, most women are responsible persons, and we would like them to be so viewed.

Mr. Cherniack unfortunately is not present. I'm not going to get into any discussion of capital gains with Mr. Cherniack or anyone else. I have a hard enough time figuring out the capital gains that my accountant tells me about myself. I do know, however, that a situation which had been provided for me on the death of my husband and which was valid at the time, is no longer valid, and that I am now painted into a corner where I can't get out of it, because I have to take all of the capital gains and none of the capital losses. So tax laws change, situations change — I don't think this argument about who pays what is a valid one for preventing the passage of this law. It's just one more administrative thing, and administration is your job, principles are ours.

However, I have two points that I would like to make. I hear from this Committee over and over. . . Should we delay this law, should we defer it? The bill is poorly drafted. It is full of loopholes although our own legal advice is these loopholes can be closed and defects remedied.

Moreover, I was for three years Legislative Chair of the Provincial Council of Women. For that time I was something of an amateur expert on this place. I read Hansard, I subscribed to Votes and Proceedings, I poured over news reports and editorials, I talked with people, I thought a lot, I came to this House as much as I could. One thing that became abundantly clear is that many pieces of legislation are loosely drafted. I could quote to you from my reports to Council in which I repeatedly deplored the number of loosely formulated bills passed and later, much later, amended. I point this out not approvingly, but merely to say that we would rather have a poorly drafted bill, if it is, than none at all. We're really not prepared to wait longer.

Secondly, for three years I went about the province with two other women enacting a dramatic skit based on the Murdoch case. One of your members last night expressed himself as not being too clear on the Murdoch case. Well, again, I'm an authority. I know everything about that case. I know about the Rathwell case. I know about the Kowalchuk case. And if anyone wants to suggest judicial discretion, believe me you have only to look at the vast gap between Mr. Justice Disbury in the case Rathwell and Mr. Justice Laska in the Murdoch Case. In the Kowalchuk case, which was settled in favour of the defendant or whatever she is called, it was done in her favour for a very peculiar reason. She had brought two cows into the marriage. Is this what we think about marriage? You know, I find that deplorable.

In going about the province and doing this dramatic skit we encountered a great many women. We pointed out the inequities of our present family law and emphasized the derivative and dependent position of women in Manitoba and Canada. These women make an enormous contribution in services, not in money, at an exorbitant financial cost to themselves. They have no independent income, no private pension plan, no access to pension or disability rights under the Canada Pension Plan, except through their husbands, no unemployment insurance, no holiday's with pay. Some day I hope every woman will have a profession, a trade, a skill, to render her independent, but meanwhile, if the family decision is that she remain in the home she has no financial security. She is in fact as one feminist has put it, merely the good will of one man away from welfare.

Now I wonder if I may pause here. This is not something that I had contemplated doing, because I don't think of this arena as perhaps the appropriate one for philosophical discussion, but since last night you seem prepared to entertain quite a lengthy investigation of what marriage is. Perhaps I may be permitted to express some views on that subject.

I am just as convinced of the necessity of marriage as the basic unit in society as the women last night or anybody else can be, but let me try to describe to you what it is like to live in this derivative and dependent situation. As I said, the woman has no security. Also, her initiative is destroyed, she cannot take the initiative because there is no way that she can carry through. This lack of security, this lack of economic dependence, this destruction of initiative renders her — she has a constant feeling of inadequacy.

Now this is very difficult I'm sure for you to understand And I do wish that our system had insisted



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that there be women on, this committee; however there aren't, so I'll have to try to tell you about it. It really is a most deplorable situation.

Now some women don't stay in it. Some women get out of it, mostly younger women, some older women, and they will say to you, "Oh well, these other women, why don't they get out?" Well, they can't and the women who have gotten out, we call this the Queen Bee syndrome. I did it, everybody else should be able to.

But the women who have stayed in the home by mutual consent of themselves and their husbands, cannot get out of this situation and they are stuck with these feelings, as I say, of being derivative, of being dependent, of being ineffectual, of not being able to speak up.

Now many women you'll say, I've talked to them and they don't say that. Of course they don't say that, they don't dare. Their whole well-being consists in this dependent situation, which I am so deploring. I think if you can grasp that, it's an absolutely — well, I think it's an irrefutable argument. Obviously this is not fair and I think, obviously, it must be changed. As I say, I'm years older than these young women who are still in the thick of the fray. I have nothing to gain by it except a burning sense of injustice and this is what I wish to convey to you. That if this is going to be changed, if this bill is going to be delayed because it is not quite right, there will be a lot of enfranchised women who are going to be very disappointed and very very puzzled. I beg of you, therefore, to proceed at once. Thank you.

**MR. CHAIRMAN:** Order please. I would remind those in the audience that expressions of approval or disapproval are not permitted under our rules. There may be some questions, Mrs. Carson. Mr. Pawley.

**MR. PAWLEY:** I just wonder, Mrs. Carson, if you would comment. You have seen the proposed amendments that were distributed last night.

**MRS. CARSON:** Yes, I haven't had time to read them. I lay awake thinking of what I was going to say here.

**MR. PAWLEY:** Under our proposed amendments dealing with domestic services, financial contribution, if I could just read the proposed substitute for the existing clause that's in our proposed Family Maintenance Act, the addition. "Any housekeeping, child care or other domestic service performed by a spouse for the family, without payment and pursuant to a domestic arrangement otherwise, is deemed for the purpose of this section, to be a contribution to support and maintenance within the meaning of Section 2 in the same way as if the spouse was devoting the time spent in performing that service in gainful employment and would contribute to the earnings therefrom to support and maintenance."

I wonder, would you be in a position to comment as to your views on that proposed amendment.

**MRS. CARSON:** Well, I think basically that's what we are all saying that these contributions in service, not in money, are a valid yardstick for division of the assets of the family. Is that what you were asking?

**MR. PAWLEY:** Well, except in this particular case we're dealing with maintenance, the Family Maintenance Act, rather than the division of property.

**MRS. CARSON:** You mean after separation?

**MR. PAWLEY:** That's right.

**MRS. CARSON:** Oh, well I think that any maintenance payment must certainly take into consideration this function of the spouse who was caring for the children. There's no question of that. A maintenance payment doesn't simply feed and clothe the children, it keeps the woman there for one thing, caring for the children and all the things that go with it, the psychological support and so on and I would think that those services must certainly be considered.

**MR. PAWLEY:** Mrs. Carson, I'm sure you're very much aware of the Law Reform Commission recommendations, in particular their recommendation pertaining to unilateral opting out and a question I've asked earlier — in fairness to them, they said that they felt the unilateral opting out would be only for a six-month period — you're familiar with the general . . .

**MRS. CARSON:** Yes, yes. I would consider that . . .

**MR. PAWLEY:** I'd just like your views on that.

**MRS. CARSON:** I'm willing to give them to you. Unilateral opting out, to me, is a complete destruction of this whole concept.

**MR. PAWLEY:** Even the modified unilateral opting out that they recommend?

**MRS. CARSON:** Yes, I think there should be no unilateral opting out. People have said this is going to destroy marriages and so on and so forth. If the marriage is worth preserving the couple is going to be able to sit down and talk this thing out and decide how it should be done. The husband, of course, in many instances is going to say to the wife, "Sign here dear." And in many instances, no doubt, she will, although we would hope that the independent legal advice might give her some view of perhaps a more equitable division, but I can see no place for unilateral opting out. What you are saying is, a lot of people are going to feel threatened, do feel threatened by the loss of their power and their property as Jill put it. They would gladly have somebody sign something that says, you know, it

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doesn't apply to me, I'm home free; but that's not what we're talking about. I know you're saying these acquisitions of property were made at an earlier stage, but surely, we believe the acquisition of property was made for the partnership or are we saying people used to be miserable and now they're going to be better, you know.

**MR. PAWLEY:** You heard the example I gave earlier. This lady that wrote to me. I just would be very curious to receive your reaction to that sort of hardship case.

**MRS. CARSON:** Well, here again I agree with Jill that there are always hardship cases and sometimes it works one way and sometimes another. I have another far more pragmatic and probably not acceptable solution. The Divorce Law allows chronic insanity as a cause for divorce and if this situation is insupportable to this woman, I would think that is what she would do.

**MR. CHAIRMAN:** Are there any further questions? Mr. Cherniack.

**MR. CHERNIACK:** Mrs. Carson, I want to apologize for not being here when you started out.

**MRS. CARSON:** I'm sorry you weren't.

**MR. CHERNIACK:** Well, I will have an opportunity to read what you said.

**MRS. CARSON:** No, I'm sorry you won't. I just have a few notes that . . .

**MR. CHERNIACK:** It so happens that your pearls of wisdom about which you thought all night have been recorded and will be transcribed.

**MRS. CARSON:** Oh, good. Fame at last.

**MR. CHERNIACK:** Well, in any event, I will have that opportunity. Your pearls of wisdom have not

**MRS. CARSON:** It was just a matter of capital gains which I said I didn't care to discuss.

**MR. CHERNIACK:** Well, I won't discuss it with you. What I did want to confirm was that you appeared before this same group of people last year.

**MRS. CARSON:** The Provincial Council of Women.

**MR. CHERNIACK:** Well, I have a Mrs. Jean Carson who appeared as representative of Christ the King Parish Council Catholic Women.

**MRS. CARSON:** Christ, no.

**MR. CHAIRMAN:** Order please.

**MR. CHERNIACK:** You'll be glad to know that your name is catholic in the sense that it is shared with others.

**MRS. CARSON:** That's right and on those terms I share it willingly. I also . . .

**MR. CHERNIACK:** I should tell you that the brief presented last time by Mrs. Jean Carson was not in conflict with what you have said.

**MRS. CARSON:** Oh, I'm happy to know that the name sustains its glory. I also wanted to mention, and I don't think I did, the enforcement of the maintenance and support payment. I feel that this is a dreadful situation, that they aren't enforced. I had a little encounter with your Minister of Mines and Resources who dropped in to our Provincial Council of Women's hearing with the Premier and Cabinet and we suggested that these payments must be enforced. He said it wasn't possible. My response to that was that you seem to be able to enforce the payment of income taxes and why can't you do this. And he said there are a great many legal payments that are not enforced. But /' it seems to me that the government is not trying to enforce this and they don't take the steps that they take for the enforcement of income tax, for instance, where you're pursued *ad infinitum* and, you know, the same sort of attention we would like to see given to this.

**MR. CHERNIACK:** I wonder, Mr. Chairman, since I used to be a tax collector if I could just make a comment that . . .

**MRS. CARSON:** You agree with Mr. Green.

**MR. CHERNIACK:** No. I must tell you that I am no longer a tax collector and therefore, just like the banks won't tell you what their incidence of collection of bad debts is, I think the Federal Income Tax people are reluctant to give the impression that some people don't pay taxes. They just as soon everybody believed they did because then they would.

**MRS. CARSON:** I see.

**MR. CHERNIACK:** And I'm not sure of how — I have no knowledge of it — I'm not sure that income tax is collected to the extent that you might think it is.

**MRS. CARSON:** Well, I would like to see at least a disposition on the part of this Legislature to collect the taxes. One day when I was in the House in the course of my legislative observations the garnishment of wages to take precedence over any other garnishment was passed; a small step, but forward. One member got up and said: "This is a dreadful thing to do to a man. It's enough to make him stop work and go on welfare." Now I don't know how prevalent that attitude is, but it does exist, and I'm asking that it cease to exist. That's all I have to say.

**MR. CHERNIACK:** Mr. Chairman, I want to correct the record, that's our own record. I am now informed that where they had Mrs. Jean Carson appearing last December 9th, before the committee, indeed it was Mrs. Stella Carson. How she changed her name, I'm not sure. But apparently I'm informed that the error was in the transcription and that I was referring to Mrs. Stella Carson who did

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appear for the Catholic Women's League.

**MRS. CARSON:** No, I gave the Provincial Council of Women's report and I'll appear later with the University Women's Club report.

**MR. CHERNIACK:** Thank you.

**MR. CHAIRMAN:** If there are no further questions — Mr. Pawley.

**MR. PAWLEY:** I just would like to pursue one other area. That is in connection with the family maintenance and the question of whether or not fault should be a factor, or should not be a factor insofar as the awarding of maintenance. As you know the bill before us does not include fault as a factor pre the hearing, pre the separation itself. Conduct — the circumstances may be examined post-separation. I'd just like to, if I could, have your reaction to that, Mrs. Carson.

**MRS. CARSON:** I totally disapprove of fault — the allocation of fault . . .

**MR. PAWLEY:** Pre or post?

**MRS. CARSON:** Pre or post — where does fault begin? It's lost in the mists of time. You know, who did what to produce this unfortunate situation? You know, I have no idea. And if you're talking about the women's sexual conduct after separation, nobody goes around seeing who the man is sleeping with. I don't really think that this has any bearing at all.

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

**MR. AXWORTHY:** Mr. Chairman, I want to come back to this question of opting out, because it does seem to be raised several times. My understanding of the proposal in the Law Reform Commission though, was that opting out would also carry with it the right for a lump sum payment for those assets that were acquired before the passage of the Act; and that presumably this Legislature, if that was the motive followed, would be able to set the guidelines by which those discretionary judgments could be made by a court. So that even though there would be an opting out if there was to be a settlement on the sharing of property, that it wouldn't be simply a matter of one spouse keeping all that was acquired up to the passage of this Act. There would still have to be a sharing set by the court. Is that not correct? What is wrong with that particular principle?

**MRS. CARSON:** These are administrative details in which I, quite frankly, have not involved myself to any great extent, but it would seem to me that if you say there has to be bilateral sharing out — with independent legal advice — surely any lawyer worth his salt would evolve for both of them a system that would not render it necessary to make the assets liquid at the time, that would involve joint ownership and this sort of thing, without going into those difficult procedures that you describe?

**MR. AXWORTHY:** Yes. Well, I guess that's the question. I'm not sure which is more difficult without bending the principle of the partnership; that if there was a high degree of complexity in trying to work out the sharing of those previous assets because there is a no opting out principle; my reading of the Law Reform Commission which again took place last night was that the opting out could take place with a degree of judicial discretion afterwards based upon guidelines set in the Act.

**MRS. CARSON:** I'm sorry, Mr. Axworthy, I'm really not familiar enough with that provision to discuss it in detail.

**MR. AXWORTHY:** I see, okay.

**MRS. CARSON:** But I come back to a phrase that I have read and that is if there is agreement in principle, administrative details will work. If there is not agreement in principle, administrative details become impossible of accomplishment. And I think if we can agree on the principle, we will manage to work out the details. Now that's the drafters of the legislations problem.

**MR. AXWORTHY:** Right. On the question of maintenance that was raised, you were suggesting and others have suggested, certainly, that there be a form of a court enforcement of maintenance orders. Can you give me an indication of where such a system is in operation and how it may be working?

**MRS. CARSON:** No, not positively, although it seems to me I can give it to you again in principle. Surely a universal garnishment that went right across the country would be the beginning. A reciprocal arrangement with the United States would be valuable but certainly if you could start with an all-Canadian garnishment it would be extremely helpful, and we all seem to feel that the Central Registry is the best system. I know this also presents administrative details in having to deal provincially before you go to the Central Registry. But if there were the Central Registry where all payments had to go, and if they didn't come the appropriate province was notified and got on to it, we'd have a much more functioning system than we have now, where the poor woman pursues the man into the next province and goes to the RCMP, who goes to the local police, who tries to find the man who has now moved on. You know, this just doesn't seem a sort of a reasonable approach.

**MR. AXWORTHY:** As I understand the concept of the Central Registry, it really is a form of pooling, is it?

**MRS. CARSON:** Well, yes. It's where all the payments are made, but it's also a constant watch on what payments are being made and what payments aren't.

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**MR. AXWORTHY:** I see. Okay, thank you, Mr. Chairman.

**MR. CHAIRMAN:** Any further questions? Hearing none, thank you, Mrs. Carson.

Miss Bernice Mayne, please. Miss Bernice Mayne, would you come forward, please? Mrs. Joyce Brazer. Is Mrs. Brazer here, please?

**MRS. JOYCE BRAZER:** Mr. Chairman, honourable members of the committee, I appear strictly on my own, as one citizen. I don't represent any group.

I would first like to take this opportunity to commend the committee again for this attempt to correct the inequities of the present system. I appreciate that today I can be here to voice my opinion without first having to obtain the consent of my husband. Nevertheless, I still had to ask him for bus fare in order to get here, which I was not only given, but as he's an indulgent man he also gave me money for a treat while I was out.

Being a housewife, I am financially dependent on my spouse. My duties are deserving of a salary only if performed outside of marriage. In spite of my personal poverty now, plus my ineligibility to contribute to the Unemployment Insurance plan, to Workers Compensation or to Social Security pension plan, and regardless of my servant status within marriage, I know now that hopefully I can look forward to equality in the event of my marriage ending by separation, dissolution or death.

Getting on to what seemed to be some of the points under discussion — and I'll try to be very brief — personally I fail to see where the option of either unilateral or bilateral agreement to opt out would serve any purpose other than to reveal the shaky status of some marriages. Most of us, both men and women, enter marriage in a state of euphoria, closely bordering on insanity. Many of the less than equal partners cross the border, therefore, I would venture that any agreement would invite the question, but was she then of sound mind when signing?

I must echo another concern that has already been brought to your attention, the lack of any real provision to ensure that the financial responsibilities of parenthood are met. I do believe that this can best be handled by the process of the court without — I'm sorry, I wrote this at four o'clock in the morning to update what I already had — what I mean is, I do not think it should be the responsibility of the spouse who is left with the care of the children to try and obtain the maintenance money. I believe that if there is an attempt at evasion that it should be recognized as an indictable offence against the court not particularly against the wife.

Mrs. Carson mentioned central registry. To me this seems like an obvious way of obtaining the means by which the court could ensure that the moneys were paid or that there was a reasonable excuse for not meeting one's responsibilities. I don't know if I have been very clear but I know what I mean. I am in favour of the suggestion of a conciliation court as put forward by the Catholic Women's League. However, like Mrs. Carson, I see no good purpose to discussing fault. Fault is lost in the sands of time. There is absolutely no purpose in bringing it up. Furthermore, I know from experience that it merely makes a mockery of the court.

It appears to me that it would be just to settle at the net worth of the assets rather than the gross, as it would seem only fair that both assets and liabilities be equally shared. I have some misgivings with regard to the immediate sharing of business assets. Where the bulk of these assets are tied up either in the building, housing, a business or in machinery, tools or stock required to operate the business, surely it is not the intention of the Committee to leave one party without means of support . . . or rather of earning an income. Would not some form of agreement extending payments of those assets over a period of time with adequate compensation, of course, such as an interest rate on the moneys then being used be more equitable?

One point I have not heard discussed at all and that is the law or the amendments as they might apply to common-law marriage. And I do feel that if at all possible such a relationship should also be included if only to prevent this type of marriage being used as a convenient method of avoiding the intent of the law. It would also appear to me that amendments to The Marriage Act should be considered as a follow-up to these amendments so that one complements the other and perhaps, at the same time, blood tests and other equalizers should be made mandatory for any two people regardless of whether it is a heterosexual or homosexual relationship if it is intended to include sexual activity and for all intents and purposes could be regarded as a marriage or a union of two people. Thank you.

**MR. CHAIRMAN:** Are there any questions? Hearing none, thank you Mrs. Brazer. Ruth Browne please.

**MS. BROWNE:** I am appearing before you a second time not because I forgot to say something last night but because I am reading a brief for Berenice Sisler who is unable to be in the city at this time.

Gentlemen, I welcome this opportunity to commend those responsible for introducing what is widely regarded as the most progressive family law legislation in Canada. Bills 60 and 61, in recognizing marriage as a partnership are a milestone in the evolution of equality in law for women.

I endorse the basic concepts of the proposed legislation in Bill 61: equal sharing of assets acquired in marriage, such equal sharing being applicable in all instances and not subject to judicial

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discretion; the exclusion of fault in assessing the division of property at marital breakdown; immediate joint ownership of the marital home; immediate sharing of family assets; the application of the legislation to all marriages whether contracted before or after its proclamation; variation to the Standard Marital Regime being permissible only when marriage partners have had independent legal advice and mutually agree to the variation.

In Bill 60: a mutual obligation to "contribute reasonably" to each other's support and maintenance; exclusion of fault as a factor affecting maintenance orders; encouragement for spouses to achieve financial independence after separation; recognition of the difficulties in achieving financial independence faced by a spouse who has remained in the home in a long term marriage; the right of cohabiting spouses to obtain information respecting the financial affairs of the marriage; application of the relevant sections re spousal support to common law unions where there are children of that union and where one or both of the persons have custody of the children; the support obligation of both parents of children of the marriage until the children attain 18 years of age; the back-up support obligation of spouses for children of the other spouse while the children are in the custody of one or both spouses and until the children reach the age of 18 years; the back-up support obligation of cohabiting persons during cohabitation to provide support for any child of either person while the child is in the custody of both or either of them until the child reaches 18 years of age; the consideration by a judge, in determining a reasonable support order of the costs of residential accommodations, housekeeping, food, clothing, recreation, supervision of children and the cost of providing a stable environment for the children.

Though I perceive Bills 60 and 61 as progressive legislation, there are some provisions which, to my mind, do not go far enough towards the recognition of marriage as a full partnership.

Firstly, I am concerned that the family business and the family farm were not given the special status they deserve. I assume that family businesses and family farms are viewed in the legislation as commercial assets and as such would be shareable only upon marital breakdown. Because the family business and family farm are worked jointly by the spouses I contend that they should be at least co-managed, if not jointly owned, during the course of the marriage. As in any other partnership, decisions regarding large expenditures should be made jointly.

One of the glaring omissions in the legislation concerns the sharing of income in the form of wages. Although Bill 60 provides for personal allowances, a term I find offensive because of its patronizing aspect, this does not go far enough in recognizing marriage as a partnership. Wages are the only asset in the majority of marriages. To deny equal participation in spending decisions of that income is to undermine the partnership concept.

If wages are not to be part of the family assets and hence, instantaneously shared, does the interest become a commercial asset if deposited in a savings account? Or if they are deposited in a current account do they remain the property of the spouse in whose name they are deposited?

An area in which the legislation is deficient is that of the collection of maintenance orders. Because 75 percent of maintenance orders in Canada have some measure of default it is imperative that this be seen as an area that needs immediate attention and change. It is to be hoped that under a no-fault system the percentage of maintenance orders collected will be higher than under the present fault system. However this alone will not remedy the situation and some better form of collection than currently exists must be set up. For example, this might be done by automatically requiring a security deposit from the paying spouse as the maintenance order is made, instead of an option as outlined in Section 27 of Bill 60. This could be made in advance for a specific time allotment, for example, three to four months and renewed every three to four month period until the order is dismissed. If the paying spouse does not comply with this provision, wages could be garnisheed.

The success of collection depends on knowing the whereabouts of defaulting spouses. It is essential that more effective means of tracing them be established, for example, through the income tax department. The confidentiality of information regarding income and tax would be maintained but the address of the defaulting spouse could be supplied to the proper authority in the case, through the social insurance numbering system and through the car licensing system.

I disagree with Sections 27(3) and 28 of Bill 60 as it concerns committal in gaol for default. I assume this measure is a carry-over from The Wives and Children's Maintenance Act. Incarceration solves nothing in this type of situation except guarantee a loss of income for both spouses and the children. If incarceration is to be used as a last resort, I suggest that the legislation stipulate that the time served be specified as "weekend" time or "time-off" time so that the taxpayer will not have the double expense of the support of the defaulting spouse while incarcerated, as well as the support of the injured non-receiving spouse and the children. To incarcerate in this instance would be counter-productive.

Regarding the anticipated changes in The Devolution of Estates Act, I would encourage reconsideration of the situation in which spouses die intestate. The Chairman of the Manitoba Law Reform Commission has indicated that in the majority of cases, deceased spouses who have wills leave all or virtually all of their respective estates to the surviving spouse. If this is the case, what is the

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indication for doing otherwise for those who die intestate? Why should the government interfere in a situation that is clearly the business of the spouses concerned and interfere in a way that runs contrary to the general pattern?

The government does not concern itself with the rights of children to inherit if the spouses will otherwise. Why is there concern about the children of spouses who die intestate? Is this not a case of discrimination? I suggest that the reason for this concern appearing in The Devolution of Estates Act is an historical one, tied to the concept of women as property rather than as persons who can exercise sound judgment with regard to managing a spouse's estate. Underlying this legislation is the unsubstantiated fear that a woman in grief over the death of her spouse would succumb to the first fortune hunter crossing her path, thereby neglecting her children.

If spouses want children to inherit, the onus is on them to provide for this in a will. If a will is not made, the surviving spouse should inherit absolutely.

To date, most estates of married women have been small or non-existent. Consequently, The Devolution of Estates Act has had little if any impact on married men. It has usually been the woman who has suffered hardship under this Act because moneys of the family have to be divided and either given outright or put in trust for children. For young families this presents an unnecessary burden. They need every available resource to raise the family.

With the enactment of Bill 61, women will have estates comprised at a minimum of half of the family assets. Thus, if the wife predeceases the husband, one-quarter of the assets, that is, one-half of the wife's one-half share, will go to the children. Perhaps this fact will hasten the abandonment of a law that is unjust and out of date. It is to be hoped as well that interspousal taxation and interspousal succession duties, another legacy of the woman-as-property syndrome, will be terminated.

I have concern about the loophole provided in Bill 61, Section 22(2) regarding the exceptions to sharing debts and liabilities to a zero value. In these instances the requirement of the proposed legislation is that debts and liabilities so incurred will be shared to a negative value. I agree that debts incurred in fulfilling family maintenance obligations ought to be shared in their entirety. It is the additional rider "or other financial family obligations, including obligations to maintain the family's standard of living" that concerns me as it provides far too much leeway for judicial discretion. This provision opens the door to almost any debt and liability being considered justifiable and hence shareable.

In the proposed legislation one spouse will make the decii decision to incur a debt either with wage income, which is not shareable, or with commercial, business or investment income, which is to be shared at marital breakdown. If the decision to incur the debt is not made jointly and is incurred for any other reason than for family maintenance obligations, the debt so incurred should not be shared. Changes in Family Law have been proposed to correct the inequity that exists for married women. One effect of the proposed rider would be to give creditors an advantage they do not now enjoy at the expense of married women. Clearly, legislation ought not to supply this.

Some have expressed concern about the retroactivity of the proposed legislation. It is my understanding that The Dower Act and The Married Women's Property Act apply to marriages entered into at a time when these laws were not in force. Tax laws which are in a constant state of change present another example of law affecting contracts made under different circumstances. The injustice inherent in existing marriages which were contracted at a time when the law did not recognize marriage as a partnership should now be corrected.

Gentlemen, I again commend those responsible for introducing this progressive legislation and urge you to consider the points I have raised. The difficulties to be ironed out in the implementation of the legislation ought not to be entertained as reason for watering down the principles on which the legislation is based nor as reason for delaying proclamation of the legislation.

**MR. CHAIRMAN:** Thank you. Are there any questions? Hearing none, thank you Ms. Brown. Georgia Cordes, please. If Georgia Cordes is present, would you come forward please.

**MS. CORDES:** Yes, my name is Georgia Cordes and for your clarification during a possible question period, I happen to be married, I have two preschool children and I am very proud of the fact, so if you wish to address me as Mrs. or Ms. or Georgia, that's fine with me. I am making a presentation on behalf of the YWCA of Winnipeg.

Gentlemen, the Young Women's Christian Association of Winnipeg, an organization having a membership of 4,000, has a long history of social advocacy. We have traditionally focused on the needs and rights of women, and it is out of this concern that we are today presenting a third brief to the government regarding family law reform.

The Government of Manitoba is to be highly commended for its introduction of family law reform legislation which, in principle, appears to be most progressive. The Winnipeg YWCA is very pleased that many of its views and concerns as expressed in previous briefs and hearings, have been endorsed in an enlightened enlightened manner.

We cannot reiterate too often the total YWCA premise that marriage should be an economic and social partnership of legal equals. As such each spouse has equal responsibilities and equal rights.

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The contribution of a spouse working in the home' though different, is of equal value in the marriage partnership to that of the spouse working outside of the home. It is from these premises about marriage that the broad principles, embodied in both the Marital Property and Family Maintenance legislation are being championed. And it is from these premises that we are continuing to bring to your attention those aspects of the legislation which are not yet equitable as between marriage partners.

Bill 61, The Marital Property Act:

The Winnipeg YWCA highly commends the government for proposing equal and instantaneous sharing of family assets during the course of a marriage. We strongly believe that the principle here is paramount, that as legal equals in a legal partnership, spouses have equal rights to accumulate and manage their marital assets as they mutually agree. As well, the responsibility is that of both of the spouses to mutually and constructively decide areas of responsibility for each.

For the first time, a wife will have a legal right equal to that of her husband, to the ownership and management of the properties both spouses worked for as an economic unit. It is a human right long overdue. We believe that this particular section of the legislation is just to each marriage partner and no less can be accepted without forsaking the principle. Our laws must reflect and validate that equality.

Now, the next several paragraphs have to do with the kinds of hardship examples that have been publicized and discussed previously.

Joint ownership of the marital home is a proposal with which the Winnipeg YWCA has been in past agreement. Recent publicity has promoted examples of "lazy or so-called generally undeserving" spouses absconding with their unearned portion of the marital home and family assets. Unfortunately, this has served to unduly scare segments of the public who are not fully knowledgeable of the proposals under consideration. The larger effect is one of impeding generally progressive legislations for the majority of married persons without a factual public examination and constructive response to the Act. We suggest that such examples represent a relatively small percentage of families.

Rather we all should look to the majority who would benefit from this legislation, and to the principles at stake here: equality of marriage partners and no fault considerations. If these family law reforms are amended to accommodate such examples as cited above, we are in fact perpetuating the fault principle, which many have struggled to eliminate, leaving it open to ever-widening interpretation and exploitation based upon revenge.

We are reminded that two people comprise a marriage and that spouses make their own short and long term choices. As a sustained family unit, they set their own values, goals, priorities and concerns. The law should limit itself to reflecting the equality in a marriage partnership, just as it would in any legal business partnership.

I would just like to point out that the hardship examples that have been raised in previous briefs, as a few people have suggested before, that really the reverse has been happening traditionally in the law and it's been applied mostly to women, that often it's the women who have been victims of hardship cases, and this has been seen as just fine, that legally it has been written into the law. These examples are really a commentary about feelings of revenge in our society and its perpetuation. If anything, we should have societal supports for both spouses in legitimate hardship cases. Your example about the woman whose husband has been in mental institutions at various times, you know, I think we should have equal concern for both of the partners and if anything, society should be helping that particular family unit more than it perhaps is now.

There are a number of points in Bill 61 which the Winnipeg YWCA believes require more consideration and clarification. The asset status of private and public pension plan benefits as well as that of savings accounts, should be so stipulated in the Definitions section.

Under Section 19, Accounting and Equalization, it reads: "A spouse may serve a notice in any of the following circumstances: Where the other spouse is dissipating commercial assets." We suggest that the words "may be" be substituted for the word "is."

Under Section 22(2), reading "Exception" it reads, "the commercial assets of a spouse may be accorded a negative value to the amount of any debts and liabilities of the spouse directly incurred in fulfilling family maintenance obligations or other financial family obligations including obligations to maintain the family's standard of living." We would prefer to see that the underlined portion, that is, "including obligations to maintain the family's standard of living," that this be deleted. The term "family standard of living" in this particular section allows for too much variance in interpretation and application. Too, the concept tends to support a public attitude of sustained financial irresponsibility as a positive situation, and by this I am referring to families who are together that clearly live beyond their means.

Under Section 28, Application of Standard Marital Regime regarding retroactivity, our Association is in agreement. In a previous brief we recommended that the standard regime be retroactive. To do otherwise would be less than just.

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The principles throughout the Marital Property Act advocate human equality. Just because people happen to have married before this Act becomes law is no reason for those spouses to not be able to benefit from those principles. We believe that the bill's measures for mutual opting out with independent legal advice for each spouse are sufficient to accommodate those marriage partnerships wishing to do so. And although we did not stipulate here, I believe we would be in agreement with the recent amendments that the retroactivity would not apply to people who have previously made separate contracts before the law comes into effect. Although, personally having a marriage contract myself, I think it would be wise for me as a spouse to review that contract, and hopefully I would do this with my husband in light of new kinds of legislation. I just think that's just a wise thing to do personally.

Under Section 34(1), Limitation Period, a clarification would be appreciated. There is some concern that it would be in the best interest of divorcing spouses to not allow a one year period beyond the legal severance of the marriage ties or appeals thereof. Some examples have been raised implying that this particular section would legally allow a person to some share of the former spouse's commercial assets accrued up to one year after the marriage is severed. And, is this the time to ask the question if this is in fact true, if these examples that are being cited are in fact true? Should I ask it now or leave it until the end?

**MR. PAWLEY:** When you complete your brief.

**MS. CORDES:** Well, I'll leave it till the end then.

**MR. PAWLEY:** Yes, we'll have the answer hopefully.

**MS. CORDES:** If it is true, what is the philosophy behind Section 34(1), and what would be the formula for application?

Under Section 15, No Survivorship Rights, the Winnipeg YWCA has previously recommended that when one spouse dies having left no will, that the other spouse should inherit absolutely. We also recommended that there should be no interspousal taxation and interspousal succession duties. Although these issues are covered by a number of other different existing Acts, we believe that the principles behind these recommendations are essentially the same, closely related to the essence of the Marital Property Act, and are worth noting.

Traditionally wives have been viewed legally as the property of their husbands. These women were often thought of as incapable of rearing a family without the presence and guidance of a spouse, and generally incapable of handling the family finances as a single parent. It is still all too often implied that a widow and her moneys are easy prey for devious suitors. And as well that she will automatically undergo an emotional and mental metamorphosis upon her spouse's death, changing her from a previously competent loving mother into a greedy woman who neglects, abuses or abandons children who were part of the family unit.

We maintain, in most cases, that the children have not contributed to the economic partnership of the marriage. Therefore, unless previous financial arrangements have been made for the children, as in the form of a trust for a handicapped child, etc., prior to a spouse's death, the surviving spouse should inherit absolutely. He or she contributed and sacrificed and was equally responsible to the partner during the course of the marriage. He/she then should have the right to the total benefits accrued by both during the course of that marriage.

We believe that the large majority of surviving spouses will continue to be adequate concerned parents and good maintainers of the family unit. We have yet to see studies and significant statistics to change this view. If anything, the surviving spouse would welcome further societal support, not the least of which is legal entitlement to the total family estate he/she helped to accrue, and personal control over it. Thus the total maturing family unit can have its needs met when relatively greater family expenditures are necessary, without undue hardship and worry.

And I would just like to digress for a moment in response to the comment last night concerning lack of concern or welfare for the children, and this is a personal comment that I believe basically it would tie in with YWCA views. Traditionally our laws, almost completely written by men, have largely reflected public attitude. It is clear to me that in law and in practice, the status of children has nearly always been considered of less priority as compared to property assets upon marriage dissolution. Why have a large number of husbands been very content to walk away with the so called "spoils" while the wives have received custody of the children. I suggest that both circumstances are not favourable. These Acts attempt to reform these inequities and in fact, Bill 60, The Family Maintenance Act, promotes the rights of children by calling for equal parental responsibility for them. I suggest that part of our family care for children includes rearing both girls and boys with feelings of equality and self-worth, and with positive conceptual examples that their mother and her contribution is as important as their father and his contribution to the family unit.

The Winnipeg YWCA is extremely encouraged that the government has attempted to eliminate all considerations of fault in both bills. As we have stated on previous occasions, it is our contention that fault, or the responsibility for the marriage breakdown, should not be a factor in marital property division or in awarding maintenance. We submit that the adversary or confrontation approach



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inherent in the fault concept is outmoded as a method of arriving at the best solution; that it is damaging to the children of the union because it gives legal backing to attributing blame; that it is detrimental to both parents in its negative emotional implications; and that separation or divorce is seldom, if ever, a result of one spouse's fault and the other spouse's innocence.

It is felt by some critics of these bills that the fault principle is still present and will be perpetuated as a result of incorrect or loose wording, lack of definition and criteria, etc. The Winnipeg YWCA strongly urges the government to further consider proposed revisions which will cease all fault considerations when legal division of marital property and maintenance awards take place. Maintenance must be awarded in consideration of financial status at separation, subject to periodic reviews. That financial status, and only those factors directly affecting it, of either divorced spouse should be the continuing focus in such reviews after divorce.

Bill N 60 - The Family Maintenance Act:

The Winnipeg YWCA strongly endorses the principle of mutual spousal support and interdependence during the marriage' a logical expectation of equality in the marriage partnership. The mutual support principle after marriage is realistic and necessary insofar as either spouse could require a period of time for readjustment toward a financially independent state. For those spouses whose earning ability has been impaired or lost due to age, health or long-term home responsibilities, we again urge that a cutoff date for the provision of maintenance is not often realistic, and if so should not be set.

There are a number of sections in Bill 60 which we believe require further consideration.

Under Section 3, Personal Allowances, to some people allowance refers to a "giving permission or granting" by one person to another. We would suggest that further consideration be given to better conveying the concept as a "mutually budgeted share."

Under Section 4 regarding Financial Independence, we have maintained that it is of importance for separated or divorced spouses to become financially independent of each other as soon as it is possible to do so.

We request that the term "financial independence" be provided with a definition and guidelines. Circumstances which will reasonably allow for or provide a sustained financial independence for a dependent spouse should be the focus for maintenance awards, and their periodic review, and this should be so stated in the Act.

Under Part II, Children, the Winnipeg YWCA has always maintained and is in agreement with the bill, that the obligation to support the needs of children be borne equally by both parents. As well, we have previously agreed with those aspects of the bill having implications for members of common-law unions where children are involved, as so specified in the Act. This position is taken out of concern for the welfare of the children.

Under Part IV, Enforcement of Orders, regarding maintenance payments, the Winnipeg YWCA urges the government to further consider more effective methods of enforcement. Considering that approximately 75 percent of the maintenance orders in Canada are in some measure of default under our current system, much needed innovative and constructive reforms are desperately required. All of the effort put into implementing the principles inherent in both the Marital Property Act and the Family Maintenance Act are merely academic if the related laws cannot be or are not enforced. The fact that women and children have been the chief victims of this non-enforcement in the past has implications which can no longer be ignored.

Under Section 28, Committal for Default Under Order, we offer a suggestion for your further consideration. As a possible and perhaps more constructive alternative to committing a negligent person to jail for a period of time not exceeding 40 days, hopefully his or her source of or opportunity for employment would be of prime consideration in setting a sentence, or in arranging the time (i.e. serving weekends) for serving a jail sentence.

In conclusion, the Winnipeg YWCA strongly urges the government to press its full resources and efforts towards implementing the Acts now under consideration before the current legislative session ends. We realize that there are technical difficulties in each, and that these should be given further consideration and revision. But, we do not believe the obstacles are so insurmountable as to rationalize impeding or virtually blocking further movement of these pieces of legislation.

The principles of legal, social and economic equality between marriage partners with attendant equal sharing of obligations' responsibilities, and rights regarding each other, children and assets are what is at stake right now. The Winnipeg YWCA believes that this premise should not have to be disputed.

Instead, all of us should be struggling with asking "how?" and making the principles workable in practice. We will not move forward by continuously focusing on the technical difficulties without an attendant responsibility to overcome them.

We urge that in your further deliberations, even more concern for and examples of how the principles in the legislation will affect the majority of families be expressed and publicized. Only in

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this way will these Acts be examined in their true nature and application.

Throughout history societies have undergone continuous change. Frustrating as they may be, such changes have had either direct or indirect implications for the entire citizenry. The Winnipeg YWCA believes that Bills 60 and 61 are a legitimate response to traditional inequality and unmet needs as observed in Manitoba and in Canada. Marriage partners should no longer have to be penalized and discriminated against as they have been in the past and still are.

**MR. CHAIAN:** Thank you. Mr. Cherniack.

**MR. CHERNIACK:** I think this is a very encouraging and supportive brief. I want to deal only with the question of taxation on interspousal transfers on death. I want to premise my comments or question with the general question, whether the YWCA believes in the taxation of the transference of wealth to a person who has not earned it but receives it in a "windfall" fashion? That is, do you believe in taxation of estates?

**MS. CORDES:** The only matters regarding taxation that we have discussed, is in relation to taxation between spouses and . . .

**MR. CHERNIACK:** So you don't have an opinion on the general principle?

**MS. CORDES:** I wouldn't say that. I think we have an opinion regarding spouses. We have an opinion, although it has not been passed by the Board, concerning taxation on moneys that go to children. In other words, we feel that the spouses have worked together and that they have earned the moneys that they have accrued themselves and should not be taxed. Some of us do not necessarily agree that the family wealth should be passed down from generation to generation to generation, but that is not official.

**MR. CHERNIACK:** Untaxed?

**MS. CORDES:** Yes, untaxed.

**MR. CHERNIACK:** But, that has not been a matter of discussion formally?

**MS. CORDES:** For purposes of responding to this legislation, no, it's not official.

**MR. CHERNIACK:** Now, the legislation that we are dealing with now in this relation recognizes the joint earning during the marital regime by excluding, exempting from taxation one half of the assets that have been acquired during the marital regime as a recognition' not that a spouse is entitled to it, but that indeed a spouse owes one-half, although the legal title is not passed, that indeed the spouse owes it, and the legislation even excludes it from calculation of the total estate. It just says, we will ignore completely, not as an exemption of an estate, but rather not forming part of the estate for purposes of succession duty taxation. So there would be no taxation for one-half of the total accumulated assets during the marital regime. For anything over and above that, it stays the same, well a slightly increased exemption, sort of inflationary increase, about \$300,000 exempt. Do you think that that takes care of the principle that you are espousing.

**MS. CORDES:** I don't think it takes care of the principle but I would say that we feel that this legislation is important enough that it should be passed now, that the kind of thing that you are citing are things that we'll have to work on in the future.

**MR. CHERNIACK:** So then what you're saying is that you do feel that although it's not before us now it could be in the future, that moneys earned or acquired by a spouse by inheritance, or earned prior or after — well really prior to the marital regime — that that too should pass free of taxation' even though the spouse did not participate in any way in the accumulation of that asset.

**MS. CORDES:** No, I think you're assuming an awful lot, I think you're talking about spouses participating financially. I think there are a lot of other ways of participation.

**MR. CHERNIACK:** I'm sorry. You misunderstood me. I'll have to rephrase this. The legislation that we are dealing with, that is being proposed in this session, already filed, says that one-half of all assets acquired, earned — and I say acquired — other than by gift or inheritance — but all assets accumulated . . .

**MS. CORDES:** During the course of the marriage.

**MR. CHERNIACK:** During the course of the marriage, are divided half and half, and that half is tax free. And in addition there is the exemption of some \$300,000 for any goods acquired other than during or as a result of the marriage. Now, I had the impression that you accepted that and said, "well, that's fine for now. We have yet to look in future years for a greater exemption." Did I misunderstand you?

**MS. CORDES:** I think the principle that I'm trying to get across, regardless of how much the total family unit accrued during the course of the marriage, that that should automatically go to either spouse upon the death of one of the spouses.

**MR. CHERNIACK:** Well, I told you, that is the legislation that is before us now, and in addition to that, is 300,000 of moneys that were not acquired in that . . .

**MS. CORDES:** Okay. Well, it's our belief that upon death that the total money should go to the spouse, any money.

**MR. CHERNIACK:** Regardless of whether or not it was earned during the marital regime.

**MS. CORDES:** This is unless a separate will or separate arrangements have not been made

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previously. I'm talking here about spouses dying intestate. Are we not referring to the Devolution of Estates Act?

**MR. CHERNIACK:** No, I'm referring to taxation. That's all I'm dealing with is taxation. And regardless of whether the estate is by will or by devolution of estates, the proposal that we have is that no matter how the assets are left, that the marital regime principle be applied, and that the half entitlement that either spouse has, that the surviving spouse has, shall be accepted as a transference without taxation and without even being calculated as part of the estate of the deceased. That's the half. Beyond that, there would be an exemption of \$300,000 if the money or assets passed to the preferred beneficiaries, who are the wife, or the widow and/or the children, or the bereaved spouse and/or the children. And it therefore does not exempt assets in excess of \$300,000 which are acquired outside of the marital regime. That is not exempt, that forms part of the taxable portion.

**MS. CORDES:** Well, obviously I'm not well versed on the taxation legislation. I do want to say that we do not believe in taxation on money between spouses.

**MR. CHERNIACK:** Regardless of when and how it's acquired?

**MS. CORDES:** I would qualify that I would say that. Personally, I would respond that way. The board has not considered this particular point that you are talking about.

**MR. CHERNIACK:** Yes, you see I could give you an example of a second marriage at age 70. Of both spouses, one is very wealthy and a year later the spouse dies leaving the entire estate to the surviving spouse, and the surviving spouse obviously had nothing whatsoever to do with the accumulation of these assets at all.

**MS. CORDES:** Well, I think that is a decision that the widow or the widower makes before they go into a second marriage.

**MR. CHERNIACK:** I do not quarrel with the deceased leaving the entire estate to that spouse.

**MS. CORDES:** But you're talking about a tax . . .

**MR. CHERNIACK:** I am talking only about the inheritance being taxed as being a transference onward and onward.

**MS. CORDES:** No, we do not feel it should be taxed.

**MR. CHERNIACK:** Right.

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

**MR. PAWLEY:** Yes, I wonder, Mrs. Cordes, if I could just respond to the question which you posed during the reading of your brief on Page 3. E. The answer would be that since the couple are not living together during that one-year period, are not married and living together, that the limitation period would not be applicable.

**MS. CORDES:** Well, this is what our understanding was. And I think a lot of examples are going around which are saying, if a person is divorced, that one of the spouses of that unit have up to one year to get back at . . .

**MR. PAWLEY:** Yes. No, no, that would not be the case.

**MS. CORDES:** . . . a . . . of commercial asset and our understanding was that that was not the case, which is in agreement with what you're saying.

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

**MR. AXWORTHY:** Mr. Chairman, I would just like to ask a question. On Page 6 of your brief here, you say that a cutoff date for provision of maintenance is not often realistic. If the cutoff date of two years is not given wouldn't we revert back to the system we have now?

**MS. CORDES:** Well, as I understand it, you have not suggested a cutoff date of three years, have you? You have suggested a periodic review, of three-year periods. So that's not necessarily a cutoff date. I think the reviews are healthy and that should be kept.

**MR. AXWORTHY:** What were you referring to then, in this particular item?

**MS. CORDES:** Well, I think, you know, we're referring to, as we say here, that for those spouses whose earning ability has been impaired or lost due to age, health, or long term responsibilities, home responsibilities' that there may not be a realistic cutoff . date. I'll give you the example of a woman, let's say who was married at age 20 and was married for 40 years and then she and her husband happen to separate. She's 60 years of age. Let's assume that she worked in the home all this time and did not develop any kind of so-called marketable skills, and even if she does have skills, once she goes into the labour market her chances of being hired by an employer are very slim, not many employers want to take on women or men who are age 60 thinking that they will stay in the labour market for two or five years.

**MR. AXWORTHY:** Well, I'm aware of the problem. I'm wondering how you see that this bill doesn't allow that to happen, that there can be that continual review.

**MS. CORDES:** Well, I think we found that in reading the legislation, it sounded like the legislation was agreeing with our point of view but we're just stressing this to make sure that everyone else understands that.

**MR. AXWORTHY:** So you have no objection to it, you just want to make sure that there is . . .

**MS. CORDES:** We want to make sure that that is in fact what is implied or make sure that it is there.

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**MR. AXWORTHY:** I thought that you saw something there that would provide for that kind of cutoff.

**MS. CORDES:** Well, if the majority of the committee feel that it should be so stated to make quite clear I would be in favour of that. You know, I don't want it to be left open to interpretation so that this 60-year old woman or man finds that in fact they're in a different situation.

**MR. AXWORTHY:** When you talked about it again, and we've had it come up several times, how you determine financial independence — I was just trying to reread the Act again and would it not, under Section 5, where you've set out different criteria on which an order would be given, is that not sufficient guidelines for determining degree of dependence or independence?

**MS. CORDES:** We're in personal agreement with, I think, the majority of those guidelines and I feel that if things were turned around a little bit, that if things were not quite so loosely defined, and these guidelines were said to be in definition of financial independence, that that would be one step in the right direction. One thing that we have tried to promote here is the concept of sustained financial independence. We've heard a lot of examples of people saying, oh, for instance, a dependent woman, dependent wife, if she goes out and tries to get gainful employment, and let's say she's employed for one month or six months and then, for whatever reason, she is not working, that the independent spouse can say, "Oh yes, you were financially independent for one or six months. That means you're capable of doing it, therefore I do not have to provide for your maintenance, even though you're not currently working now." I think, you know, we should look into what sustained financial independence means, and think of it in terms of a period of time that a person has to prove that they can work for a period of time and bring in gainful income and be able to sustain that family unit or that dependent spouse to an independent state.

**MR. AXWORTHY:** Mr. Chairman, going back to Page 2 of the brief where you take issue with the idea that while there may be a number of examples or a series of examples where there could be some exceptional circumstances, you suggest that they represent a relatively small percentage of families and therefore we shouldn't take them into account. Don't you think that the law should try to take them into account, don't you think there are questions of minority rights in these instances and that it is possible to work the legislation without injuring the principles, to make sure that there is proper protection for them?

**MS. CORDES:** I think the law should legislate for the majority. I do not feel that the minority should be ignored and, as I stated, I feel that it's upon us, as a society, to build in further supports for these hardship cases. For example, the husband in a mental institution or a handicapped wife, but I'm not necessarily suggesting that we have to be able to provide for those hardship cases, not necessarily in this particular piece of legislation. I think it has to be done throughout all different kinds of legislation.

**MR. AXWORTHY:** But why not in this piece of legislation?

**MS. CORDES:** Well, I think this is a start. I think we can attempt to the best that we can, to do it in this kind of legislation. But we're assuming that all the principles that we're talking about are going to be of no benefit to hardship cases and I don't think that's exactly true. I think there are some aspects of this bill that are going to be good for hardship cases in principle and perhaps even in fact. You know, why should we ignore the poor soul who is in the mental institution. Why should that person be cut off from half of, what I feel, that he or she deserved as being part of the family unit.

**MR. AXWORTHY:** Well, doesn't that then require some degree of discretion being applied?

**MS. CORDES:** I think our position has been that we would like to see extremely limited judicial discretion. We realize that laws cannot be written that are just completely black and white, but we want it to be on a very limited basis. We do not want to opt for an open kind of judicial discretion.

**MR. AXWORTHY:** Okay. But assuming that it is not one or the other but it is a combination of providing for the basic principles of this but in certain cases allowing for where discretion might be applied, is there a major objection to that point?

**MS. CORDES:** Well I think just in the fact when you discuss awarding maintenance, in the criteria listed there for a dependent spouse to be able to become financially independent, that you've listed criteria there and you are saying in the legislation that a judge will have to take these factors into account. I think that there is enough criteria and enough judicial discretion that's already inherent in this legislation to maybe be able to pick up on such kinds of hardship cases.

**MR. AXWORTHY:** Well, there is that discretion applied in the maintenance. There isn't on the sharing of property.

**MS. CORDES:** No, I don't think that there should be judicial discussion on the sharing of property.

**MR. AXWORTHY:** You don't think there should be any at all.

**MS. CORDES:** No. I feel the example that has been going through the newspapers now about the so-called alcoholic slothful husband, you know just sort of in a vegetation-state in ' marriage of 20 years, that suddenly when the children are grown up and the wife wants to end the whole affair, that suddenly he's going to be entitled to half of the marital home. You know, I think she made that decision as well, to continue living with that person and I think it's ludicrous to say that she did it for

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the sake of the children, . You know, I think most studies bear out the fact that that is not a stable kind of family environment perhaps to be raising a person in. And if the wife should happen to have stayed with an alcoholic husband maybe it was out of concern for him, a concern that maybe she might be able to help him, that in fact this person has some kind of a disease and needs to be helped, and she did it out of an ongoing concern for him, perhaps. You know, I don't think we should be penalizing that person with alcoholism.

**MR. AXWORTHY:** No, I agree that we shouldn't be penalizing but we shouldn't be making judgements one way or the other and that maybe the judgements have to be based, in some degree, upon the circumstances.

**MS. CORDES:** I believe they are in the clear minority of cases though.

**MR. AXWORTHY:** Well, no question that they would be in a clear minority but I'm just again really raising the question, shouldn't we be concerned about the minority?

**MS. CORDES:** Well how would you want to write that into the legislation?

**MR. AXWORTHY:** Well, that's what I'm trying to find out.

**MS. CORDES:** Yes, , well I wouldn't write it in.

**MR. AXWORTHY:** You wouldn't.

**MS. CORDES:** No.

**MR. AXWORTHY:** Okay. Thank you.

**MR. CHAIRMAN:** If there are no further questions. Thank you, Mrs. Cordes. Sarah Berger, please.

**MISS BERGER:** I will be reading this brief myself and Elysse McDonald will be answering any questions from the Committee. "We are pleased to have the opportunity to speak with you today on this important bill. We think many provisions of this bill are commendable improvements in the field of family law and we applaud the effort that you are making to enhance the conditions of women's lives. However, there are sections of Bill 60 which our organization, the Group in Support of Wages for Housework, would like to examine and offer suggestions for change.

We feel strongly that Part I, "Spouses" of Bill 60 is unclear and can be misleading, especially as it affects the wife.

We are concerned with subsection 4(1) that states: "a spouse has the obligation after separation to take all reasonable steps to become financially independent of the other spouse."

Our group wholeheartedly supports financial independence for women. However, we feel that the bill (1) incorrectly assumes that women have "reasonable" access to financial independence, and (2) fails to attach monetary significance to women's work in the home.

What reasonable steps can a woman take to gain her financial independence in a sexist society? If a woman wishes to take on a job in addition to her work in the home and raising children, what support systems does society offer? What support systems will assure her that her children will get proper care? What support systems will train a 40-year old woman with no so-called job skills? What society will hire a 50-year old woman who, in its eyes, is "just" a housewife with no job experience?

And then, what can a woman do if she decides she doesn't want a low-paying low status job? Does gaining financial independence mean becoming a waitress and counting on big tips?

Let's take a realistic look at our society. What do women do? According to Women in the Labour Force, Facts and Figures 1975, 80 percent of all women in the labour force work in four categories: Sales, Services, Clerical and Medicine and Health. What does this mean? It means minimum wage, no unions, forced part-time work without Unemployment Insurance and other benefits, and no job security. And it means if a woman complains about her wages or working conditions, there are many other desperate women to take her place.

In Clause (g) of the guidelines to the judge some of these problems are noted. For example, subclause (i) considers, "measures available for the dependent spouse to become financially independent of the other spouse." And subclause ii considers how, "the learning capacity and financial status of either spouse has been impaired during the course and as a result of the marriage." But then subclause iii states that the judge must also consider, "the length of time and cost involved in taking the measures referred to in sub-clauses ii and iii.

We maintain that the cost and time involved in creating the opportunities for women to participate in the work force without damage to their home life, and especially if they have children, will be enormous for the women involved. Therefore, we feel that the onus cannot be on the women to become financially independent, even if she chooses to enter the paid work force.

Therefore, we recommend that:

(1) The onus for a dependent spouse becoming financially independent in the labour force be on the state and not on the dependent spouse.

And that, in helping a spouse to become financially independent in the labour force, the state assure:

(a) adequate parent-controlled and state-funded Day Care and Luncheon and After School Programs;

(b) adequate wages;

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(c) paid upgrading courses; and

(d) full employment, so that all women who want second jobs, can get them.

We feel that these criteria should be incorporated into the section, Factors Affecting the Order.

Now, I'd like to talk about women's unpaid work in the home. One of the guides, 5 (i), namely that Part I gives judges when determining spousal maintenance and its extent says:

"w hether and to what extent the dependent spouse is complying with the requirements of subsection 4(1)," and subsection 4(1) says: "w hether the spouse is taking reasonable steps to become financially independent."

This criteria makes a basic assumption that our group vehemently opposes. It assumes that up to the point of separation, what a woman has done to build and maintain a home has not really been work. Even though she has been cooking, cleaning, nursing, shopping, advising, baby sitting, maintaining her husband sexually and emotionally and reproducing workers for the benefit of society, she has been doing nothing towards gaining her financial independence. And if she continues to do these many jobs, minus the servicing of her husband, she is still doing nothing towards gaining her financial independence. Consequently, spousal maintenance is only a stop-gap measure until a woman can find a second job outside the home.

So, are we to presume that if a woman is not beating the pavement looking for a job, she will not be regarded as taking all reasonable steps towards financial independence and therefore, be cut off from spousal maintenance?

Society and the courts can assume that if a woman is not out looking for a job, she is not taking reasonable steps towards gaining her financial independence, because it does not regard a woman's work in the home as worth wage labour, and therefore it does not pay her.

What it does not recognize is that even if a woman does go out into the work force, her first job, that of homemaker, does not cease, but still must be done especially if she has children. And as the Act states, that the onus is on her to become financially independent, she has no choice but to enter the work force. You see, she has not the choice of staying home and doing her first job with the support of a regular pay cheque.

We are certainly not against a woman obtaining a job outside the home and becoming financially independent; but we are against the assumption that a woman's work in the home is not worth any financial remuneration, and that going into the work force is the only mechanism towards financial independence.

Whereas the work of a spouse maintaining the home should be recognized as wage labour, we recommend that:

(1) After separation, if the dependent spouse chooses to remain a homemaker, or has been a homemaker with a family in the past, that spousal maintenance be paid to the dependent spouse on a basis determined by the length of marriage; and

(2) The state should take responsibility for collecting and paying out maintenance, and if it cannot collect maintenance, then a state should pay it out of public funds.

(3) We recommend the removal of subclause 5(1)(i) in Part I, Spouses, which says that one of the criteria for judges should be, that the woman is taking reasonable steps to gain financial independence.

**MR. CHAIRMAN:** Thank you. Mr. Cherniack. Order please.

**MR. CHERNIACK:** Miss Berger, I agree with much of what you said, but I want to understand and I want to spell it out a little more clearly, so I really can grasp your recommendations. Firstly, I think it's the second page — the second last page anyway, third page — you describe what appears to me to be your thought of the work of a homemaker.

**MS. BERGER:** Yes.

**MR. CHERNIACK:** And I think I suspect sort of a bias when it seems to me to describe as part of the work of a homemaker, the task of maintaining her husband sexually and emotionally, and you later described about servicing of her husband. Are you suggesting that that is a task which is assumed as part of the workload of the homemaker? Are you seriously putting that in as an obligation that is something that one has to consider as being part of the work for which she is to be paid?

**MS. BERGER:** I think that a woman — I mean, maybe the words to you, you know, sound a little harsh or whatever . . .

**MR. CHERNIACK:** No, pejorative.

**MS. BERGER:** Well, okay. I think that in a lot of relationships — well, I'll have to think about that.

**MS. McDONALD:** I think the answer to your question would be yes. I think that it is assumed in our society that a part of the obligation of the woman in a marriage, is to service her husband sexually and emotionally.

**MR. CHERNIACK:** Does your organization subscribe to that concept?

**MS. McDONALD:** What do you mean?

**MR. CHERNIACK:** Well, I mean that you are describing that her task is cooking, cleaning, nursing,

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shopping, advising, baby sitting, reproducing workers for the benefit of society. These are things that you believe they do and I believe you justify their doing it. Therefore, I have — (Interjection) — well, let me finish, Ms. Berger. Therefore, I have to ask whether, by including this sexual and emotional maintenance and servicing of the sexual needs of the husband is also considered by your society, your organization, to be the normal task of woman.

**MS. BERGER:** Okay it's what women do as a function as part ' of the marriage, and men may maintain women sexually and emotionally also. You know, we're not arguing that.

**MR. CHERNIACK:** So women do do that as a sort of a work?

**MS. BERGER:** Yes, it's work. Sure, emotional relationships are work. I think that's not pejorative.

**MR. CHERNIACK:** Well, to you it may not be. All right, then, accepting that, now that I know that your description of what you consider to be a homemaker, then I come to your first recommendation where you say, "after separation if the dependent spouse chooses to remain a homemaker." Now, at this stage she is separated and I'm assuming that she has no children, because if she has children then she has an obligation to the children, which I think is recognized in the bill. Then she is cooking for herself, cleaning for herself, nursing herself, shopping for her own needs, advising whomever needs or wants her advice, baby sitting for someone else — for gain I suppose — and not reproducing workers nor servicing her husband. Do you then feel that that, in itself, is an entitlement for recognition of independence, financial independence? And I'm very serious about this.

**MS. McDONALD:** Can I ask a clarification? I'm not sure why you are assuming that we are talking about women who don't have children.

**MR. CHERNIACK:** Because you are saying, if a dependent spouse chooses to remain a homemaker, or has been a homemaker with a family in the past . . .

**MS. McDONALD:** Yes.

**MR. CHERNIACK:** . . . that spousal maintenance be paid on the basis determined by the length of marriage. In other words I am saying, that after a family group has grown to the extent where the two spouses are dependent on each other only, and have no other dependents on them — the children have grown up, have left the nest and are financially independent — and then we find a separation taking place. Recognizing that the bill tries to provide that a dependent spouse shall be supported at a standard — at a decent standard — I believe that the important feature here, which somebody stressed last night, is that that dependent spouse, it is desirable for that dependent spouse in society, to become financially independent as quickly as possible . . .

**MS. McDONALD:** We would agree with that.

**MR. CHERNIACK:** . . . helped partially by the sharing of assets where, up to now — and today's law does not give the spouse any legal entitlement to share in the assets, but once that spouse does then there may be income generating assets — and the possibility that that spouse can do the kind of work that will bring in money which will help support her. And therefore, I would go on to say — and I think I said it earlier today — that if that spouse can by working as a waitress somewhere — you speak of it as a demeaning profession and I'm afraid that it often is — that indeed if that spouse can do that kind of work, why should she not do that kind of work, not to be dependent on that, but to augment or supplement the costs that are needed for her to do that? Rather than the suggestion I get from your recommendation is, that she can relax, sit back and say, "Keep sending in that cheque," because that is what I think has been opposed by most of the women's organizations we've heard, and by legislators generally. That's the point I'm making.

**MS. McDONALD:** Unfortunately the way that we have read the bill and the way we've understood it as we've discussed it in our group, we have not seen the bill as talking about the financial independence of seeking activities of a dependent spouse being a supplementation of maintenance, but rather almost a condition for maintenance; and this is what we are having problems with. One of the things that we're having problems with in the bill is, that it appears that the bill would allow the court to say, "Unless you are out there taking whatever crummy, low status, low paying job you can get your grubby fingers on, then we're not going to rule very favourably for your maintenance."

**MR. CHERNIACK:** Well, let me then ask you just about those "grubby fingers" on that job — crummy job — what you think of my suggestion, that if a standard of living is established at the level which they had before which, let me guess, would be a single family dwelling . . . Well, let's put a dollar figure on it, a \$15,000 income for that single spouse — dependent spouse — would be sufficient to maintain a standard. Would you not think that those "grubby fingers" could be doing that — I forget your description of the kind of job . . . "crummy" job — if in doing so, that person can bring in, let's say, \$4,000 a year and then the \$11,000 difference would be all that is required from the providing spouse. Would that be an unfair situation in your eyes?

**MS. BERGER:** I think that depends on what the woman is doing in the home, if she does have children.

**MR. CHERNIACK:** Oh, well, I'm discounting children.

**MS. BERGER:** That's different, okay.

**MR. CHERNIACK:** If she has children, her first obligation under the bill itself is to look after the

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children if she has custody, and that is a real job, nobody questions it.

**MS. BERGER:** Okay.

**MR. CHERNIACK:** But I'm saying if she does not — I'm really trying to get at what is a fundamental thing in this bill — and that is the change from the present law, as I understand it, where we are saying that under the present law if the wife leaves the husband and can put faults on the husband, then she is entitled to maintenance. That's the law today, as long as she is not at fault and he is at fault. This is a tremendous change in philosophical approach to the whole thing. And it says now, on a separation we don't know who is at fault, we don't care really to lay blame. All we're saying is, it is healthier for society that the two of you be separated not only physically, but also emotionally and economically to the extent possible. Now, what's wrong with that?

**MS. BERGER:** Okay. There's nothing wrong with that. I think it's really important to incorporate the factors of making a woman, if she does not have dependents and she can go out and work, but she doesn't have to take a low-status job even if she does get money from her husband, she doesn't have to work in a job that she is just doing because the court says she should go out and do it to earn money.

**MR. CHERNIACK:** No, but suppose she is doing it . . .

**MS. McDONALD:** In addition to that, I think that what we're trying to say is, that we feel that a woman who has invested, who has worked unwaged in the home, raising children or simply as a homemaker maintaining herself and her husband and their home for five, or ten, or forty years has, at least, a comfortable future coming to her, if not an affluent one.

**MR. CHERNIACK:** Well, then I'm beginning to think that you really mean what we discussed before and that is, how do you describe what is financially independent? Because to me there need not be a low-status job in those quotation marks as long as the standard of living is a decent living, then the nature of the job is low-status only in the eye of the beholder, surely.

**MS. BERGER:** Yes, but you know, it's easy for you to say that from where you are, you know, to tell a woman. I know people who are waitresses.

**MR. CHERNIACK:** Well, you tell me from where you are, whether as a spouse separated, dependent on an earning husband, whether you don't think that as long as your standard of living is maintained, maintained for what it was, supplemented if necessary, whether there's something wrong with your going out and earning some money at even what you call a low-status job.

**MS. McDONALD:** The point we want to make is that that's a second job.

**MR. CHERNIACK:** A what?

**MS. McDONALD:** That that is a second job.

**MR. CHERNIACK:** Well, what if it . . . What do you mean, a second . . . You mean first.

**MS. McDONALD:** A woman going out and being a waitress or getting whatever kind of job she can get to earn additional money to the maintenance she's getting from her ex-husband, is a second job. Her first job is as a homemaker. That's just a fact of . . .

**MR. CHERNIACK:** But, just a minute. We've just established that the homemaker portion of her job is to look after herself. We've already discounted the children because they are already away from the household. We have discounted the man whom she has to service, according to your concept, he's out. Now that homemaking is the normal looking after a person — any single person looks after himself or herself — and I'm really trying to know whether you say that that person shouldn't go out and get the best job, or equip herself to get the best job she can get — and I say "she" because we're talking about the woman — and if she can go to a Tec-Voc school and acquire a skill that gives her a higher income, or if she can take the time to become a professional, you know — you say it's all right for me to say it and I used to be a professional — so become a professional, become the highest a doctor even rather than a . . .

**MS. BERGER:** Okay. I think what we are objecting to is that the onus is on her to sort of pull herself up by the bootstraps and get cracking, you know, that type of mentality.

**MR. CHERNIACK:** Do you believe that that is the reading of this bill, because the bill says that she shall be maintained and assisted to acquire that kind of skill which will give her economic independence.

**MS. BERGER:** Okay. But in answer to your question, you asked us what our point of view is about women taking so-called low-status jobs and it's only in her eyes. But I know a lot of women who tell me that they'd much rather stay at home than go and work in a crummy job.

**MR. CHERNIACK:** I would too.

**MS. BERGER:** Okay. There's one point that I don't think we've brought out clearly, and I think this is our last point. You had trouble understanding about a homemaker with a family in the past, and being maintained. We're not saying that's necessary, what's preferable. We're saying that the woman should have the choice, because we feel that a lot of women have worked without wages as housewives for a long time, if they've been married twenty years, and that they deserve the rest, or they deserve the free time, or the leisure or whatever after that point. And that's why we feel that women who have had a family in the past . . .



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**MR. CHERNIACK:** But you do realize that that very same husband who has been out in that rough world, at grubby jobs, is expected to continue at that grubby job, supporting himself, supporting his estranged spouse — or divorced spouse — and whatever other dependents . . .

**MS. BERGER:** Well, we're not necessarily saying it's the husband who has to pay, we are saying it's the state's job to take care of people.

**MR. CHERNIACK:** Thank you.

**MR. CHAIRMAN:** Are there any further questions? Hearing none, thank you. The hour of adjournment having arrived, Committee rise and report. Committee will reconvene at 8:00 p.m. this evening.