



**Legislative Assembly of Manitoba**

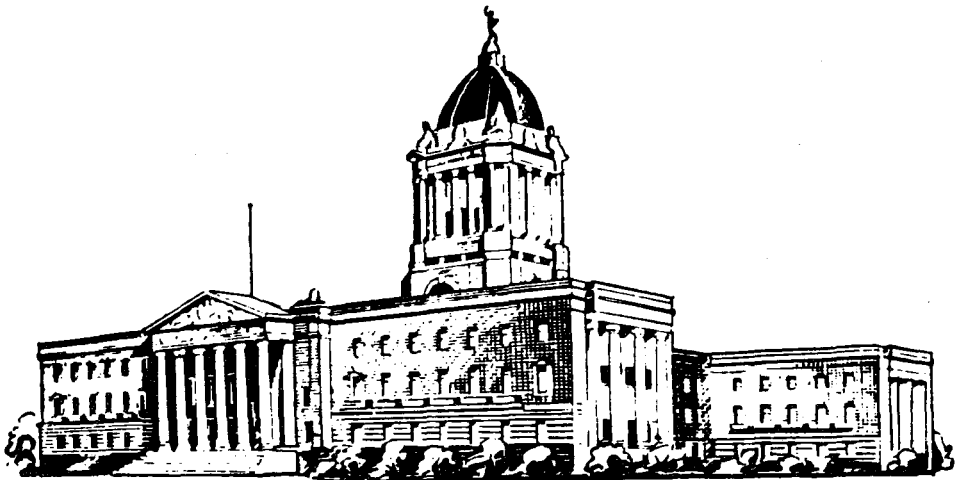
**HEARINGS OF THE STANDING COMMITTEE**

**ON**

**LAW AMMENDMENTS**

Chairman

Mr. J. Wally McKenzie  
Constituency of Roblin



**Monday, December 12, 1977, 10:00 a.m.**

# Law Amendments

Monday, December 12, 1977

Time: 10:50 a.m.

**CHAIRMAN: Mr. J. Wally McKenzie.**

**MR. CHAIRMAN:** I'll call Sharron Granove. I call Mrs. Pearl Cyncora. I call Ellen Krueger. I call Ruth Pear. I call Ralph Kyritz. I call Ann Jackson.

**MRS. ANN JACKSON:** Mr. Chairman and members of the committee, can you hear me? I don't know whether these microphones are adjusted for me.

**A MEMBER:** Push it down.

**MRS. JACKSON:** I agree with people who made submission formerly, that is, I sat here on Saturday and listened to some of the submissions, and my organization, which is the Winnipeg chapter, Congress of Canadian Woman, and its affiliates, the women's branches of the Association of United Ukrainian Canadians, the Federation of Russian Canadians, and the United Jewish People's Order, felt that we were given too short notice. In fact, we just found out Friday that we would be able to make another submission to this committee. Therefore, we had no alternative but to read the previous brief, or part of the previous brief which we submitted to the former committee, partly because we feel that it's still relevant, it's still our position, and because there are many new faces and I'm sure that some of you have not heard this brief before.

I'd like to point out that our organization is part of a world-wide organization — the Women's International Democratic Federation — with 121 member organizations in 106 countries. The WIDF holds consultative status B at the United Nations, which covers non-governmental organizations, and as such participates in the work of the UN Commission on the Status of Women which resulted in the Universal Declaration of Human Rights, the Declaration of the Rights of the Child, and the Declaration on the Elimination of Discrimination against Women. It was upon the suggestion of the WIDF, backed by other non-governmental organizations, that the United Nations decided to declare 1975 International Women's Year, which marks the beginning of a decade for women as adopted by the General Assembly of the United Nations. I might point out that we are now going into the third year of the Decade for Women. Our parent organization has made submissions to the United Nations Commission on the Status of Women, recommending democratic laws of marriage, equality in case of divorce and inheritance, equality in the right of ownership, equality in the right to work and equal pay for work of equal value, equal rights and responsibilities in matters concerning their children, eradication of all those traditional customs and prejudices which in some countries prevent women from obtaining emancipation and their full status. I bring this out to point out that this question is not merely a local or provincial matter. It is a worldwide movement on the part of women to gain equal rights in marriage. One of the purposes of our organization is to advance the stability and well-being of the family, which we consider to be the foundation of society. We welcome, therefore, the establishment of the Law Reform Commission, and we believe its report to be a big step forward in the right direction. We endorse the recommendations of the Action Coalition on Family Law in principle, as outlined in their presentation, and in addition we would like to draw attention to some areas which are of special concern to us.

The twentieth century has seen a period of accelerated change and technological advance which disrupts family to follow industry. It has also seen changing modes of living, from farm and reserves to urban centres, as well as a transition from the support of the extended family unit to the isolation of the nuclear family. We must see to it that family law changes to meet the needs deriving from these changed conditions, affect the marital child-raising environment.

While we believe that the report of the Commission is excellent in many ways in dealing with marital separation, it falls short of dealing with existing marriages. Family law in our time must address the family milieu, bolstering the harmony between husband and wife, and eliminating the inequalities which create friction and hostility. This purpose can best be served by provision for full and immediate community of property during marriage. If we concern ourselves only with the dissolution of marriage, it becomes a case of locking the barn door after the horse has been stolen. The non-earning spouse, in the vast majority of cases the woman, should not have to wait for marriage breakdown to establish her right to a fair share of the property accumulated during the marriage. It would appear to us that "if sharing takes place only on marriage break up," to reiterate an opinion expressed at the previous public hearings on family law, "the economically weaker spouse is a stronger incentive to force such a break up." Marriage can only be strengthened if the non-earning spouse is not put in the humiliating position, as many now are, of having to ask the earning spouse for money. To remedy the situation would be a positive step in creating and maintaining harmony in the home, with the resultant good mental health of all its members.

We believe that young people should be prepared for a good sharing family life. This could be gained through high school education and pre-marital counselling by well-trained, competent personnel, as well as the salutary effect of a happy home environment. At present, people go to marriage counsellors only when there is danger of breakdown, or when the marriage has already broken down. We recommend that a pamphlet explaining the new family law be issued with each

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marriage license.

In the section dealing with maintenance and necessity for training or re-training skills of the non-earning spouse on separation or divorce in order to become self-supporting in the shortest possible time, we must point out that in most cases this would be impossible without adequate child care facilities. We propose that the government make a strenuous effort to increase the number of such facilities. This applies to after-school and lunch hour supervision, as well, which at present are far from adequate.

Regarding the opting out clause, we believe it tends to negate the whole idea of partnership in marriage. We feel that opting out must be a dual agreement on the part of both partners, not just one. Furthermore, before opting out, the partners should be counselled fully about the implications of this step, and it should not be undertaken too early in the marriage. Should there not also be a provision for the pair to opt in again if they change their minds?

In attempting to reform our outdated family law, we might well be guided, as suggested by the Berger Commission in its sixth report dated March the 9th, 1975, by the following concepts:

(1) all persons should be equal under law; (2) marriage is a partnership of shared responsibilities; (3) the roles of economic provider and homemaker are of equal value to the relationship; (4) married women are equally competent.

Equality in marriage is included in the World Plan of Action adopted by the International Women's Year Conference held in Mexico, at which the Canadian government was represented. See Items (i) and (j) in the extracts from the World Plan of Action, attached here too. We therefore appeal to the Committee to recommend legislation which will enable women to achieve full equality as human beings and as citizens, without further delay. If anyone wants a copy of this, I'm sorry I don't have many, but it's in Hansard for November the 23rd, 1976. —(Interjection)— I'm not through yet.

**MR. CHAIRMAN:** Oh, I'm sorry.

**MRS. JACKSON:** When we found out what was happening to the legislation which was passed by the previous government, which we approved although it didn't achieve all the aims that we were after — we were very pleased, but then when we found out what happened, we wrote the following letter to the Premier, and I would like to read it in case some of you have perhaps mislaid it: "Premier Sterling R. Lyon, Legislative Building, Winnipeg. Dear Sir: We are writing to you in connection with the Manitoba government's intention to repeal and review the recently proclaimed legislation embodied in the Family Maintenance and Marital Property Acts. Almost 11 years ago, after decades of stalemate in which women struggled along under the outdated

' concepts of Victorian legislation, the federal government established the Royal Commission on the Status of Women, with a view to "ensure for women equal opportunities with men in all aspects of Canadian society." Four years later, this Commission made many recommendations relating to women's marital status, and particularly with property rights and maintenance — Chapter 4, Women and the Law, pages 225-290. These recommendations were further studied by the Manitoba Law Reform Commission and, after three years of study and hearing representations from individuals and organizations, from various levels of society, the two laws in question were largely based on its report. We submit that after 18 years of study and discussion, the time has come to implement legislation and to see how it meets the need. In our opinion, there is no point in delaying implementation of this legislation and adding \$60,000 in expenses for three lawyers to review these laws at this time. Such an expenditure hardly fits into the government's announced program of fiscal restraint. Nor does the appointment of a dissenting male lawyer, who obviously does not agree with the family law section of the Manitoba Bar Association, ensure that the recommendations of the Review Committee would meet with greater approval or to be more appropriate to the needs of the problem. We believe that time and experience in the functioning of the Acts as originally proclaimed will reveal the changes that may be required in the future, and that for the present the majority of women will be prepared to accept the judgment of the courts in any disputes that may result.

I would just like to give you a couple of quotations, and one of the previous submissions, that is the previous Law Amendments Committee, one which I thought really made a good point. It was, think, submitted by Bernice Sisler. She said, "Why do we need change in family law? Laws reflect the attitudes of an era in which they were formulated. Current laws governing women and family relationships are based on the common law of feudal England. It is evident that the attitudes that reflect are out of date and that change is long overdue." Further, she said "today society no longer regards wives as the property of husbands. It is unrealistic to bring expectations of a different time to bear on the present reality."

In 1968, Senator Muriel McQueen Ferguson made the following remarks in her speech to the Senate in the support of Bill C187, and Act respecting divorce: "One reason why I would like to have one law throughout Canada to govern the division of marital property on divorce is that in this Human Rights Year, I trust that Canada will sign and ratify the international covenants on human rights. One of these is the International Covenant on Civil and Political Rights which require state that ratify to ensure 'equality of rights and responsibility of spouses as to marriage, during marriage and its dissolution.'"

Saturday happened to be Human Rights Day, and I would like the members here to bear that mind. Let us assure that full human rights for Manitoba families will be attained by ensuring them that

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these two progressive Acts are not repealed. Thank you.

**MR. CHAIRMAN:** Thank you. Questions for Miss Jackson? Mr. Mercier.

**MR. MERCIER:** Where did you get your figure of \$60,000?

**MRS. JACKSON:** I can't answer that, I'm afraid.

**MR. CHAIRMAN:** Is there any more . . . Mr. Evans.

**MR. EVANS:** Just a matter of clarification, Mr. Chairman. I didn't hear entirely the organizations in Manitoba that the delegate represented. I understand the connection internationally, but . . .

**MRS. JACKSON:** Well, our affiliated members to our organization, in Winnipeg that is, are the women's branches — or I would say, in Manitoba — the women's branches of the Association of United Ukrainian Canadians, the Federation of Russian Canadians, and the United Jewish People's Order. I'd like to point out that these represent about 300 women, mainly in the working class area.

**MR. EVANS:** Another question, as a matter of information. The position you've taken is quite similar to that taken by most representation of various women's groups. So there seems to be a fair amount of consensus on the part of women who are concerned about this matter. Has your organization or your affiliated organizations, has there been extensive discussion on this question, you know, among the membership.

**MRS. JACKSON:** Yes, I would say that.

**MR. EVANS:** Well, what period of time has there been this discussion?

**MRS. JACKSON:** Well, we discussed it fairly thoroughly for, well, the last year, since we were preparing our last submission, which is a year ago.

**MR. EVANS:** So, what I would infer then is that the point of view that you're expressing on behalf of these organizations, your organization, is a point of view that very clearly represents a consensus that does exist among most women who are at all alive to this particular question.

**MRS. JACKSON:** Oh, I would say that, yes.

**MR. EVANS:** Thank you.

**MR. CHAIRMAN:** Any more questions? Thank you. Thank you, Madam Jackson.

**MRS. JACKSON:** Thank you.

**MR. CHAIRMAN:** I call Terri Gray. I call Rosemary Turner. I call

**MS. ROSEMARY TURNER:** Sorry, I gave the main copy to the clerk, so I've got the flimsy. This is a very brief brief. I only heard last night that I would have an opportunity to appear, so I typed it this morning. I may say I concur with much that was said by the previous speaker. I'm here in my capacity as Chairman of Human Rights for the United Nations Association in Canada. It's nationally.

Mr. Chairman, I do not regard this as a political matter, but a matter of human rights, equality of men and women before the law in fact as well as in word. Hence, I speak in my official capacity, rather than as a private citizen. Some years ago, I was fortunate enough to be the only visitor at a session of the Senate Committee on Divorce, as guest of Muriel McQueen Ferguson, later to become Speaker of the Senate. The main concern that day was with regard to the difficulty of collecting family maintenance in cases where the husband had moved to another province and the wife could not afford to move to the same province to gain its support in enforcing the payments. I mention this to show that we do not come idly to this hearing. Much thought has been given to these matters over the years. I regret the waste of time and energy, to say nothing of the unnecessary expense entailed by delaying the implementation of the new family law. What is to be gained by further hearings after two full years of public hearings which preceded the drafting of the three Acts involved.

Excuses have been given about the wording of the Acts. Minor difficulties occur in most legislation and none of us are adverse to having some amendments made from time to time as needs arise.

Excuses have been given about confusion over taxation involving the federal government. Apparently the latter does not feel that there would have been any great problem.

Protestations have been made that the intent of the Act will not be changed. I hope these are sincere. The choice of the committee member who came out publicly against the new family law would tend to make one doubt the sincerity. Manitoba led in allowing women to vote. Other

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provinces, and indeed other countries, look to us with envy just as they did in relation to the newly proclaimed family law in which Manitoba also showed leadership.

I've been involved personally with the Manitoba government since 1971 when I requested its consideration of the UN covenants on economic, social and cultural rights and those on civil and political rights. Manitoba again led the way in ratifying these though it was several years before the other provinces had all acceded and the Canadian government was able to sign last year at the UN. It would be very disappointing to see the family law delayed. It was disappointing too to read on the 10th of December, Human Rights Day, that this retrogressive step looked as if it would become a reality. People all over Canada are watching Manitoba's actions with concern and hope. Thank you.

**MR. CHAIRMAN:** Thank you. Questions of the witness. Mr. Pawley.

**MR. PAWLEY:** Mrs. Turner, are you speaking on behalf of the United Nations organization? Are you familiar whether or not many other jurisdictions have legislation which is similar to that which was intended by the previous government, had been introduced.

**MRS. TURNER:** Not as yet, I think that some of them are in the works but I think that Manitoba was far ahead.

**MR. PAWLEY:** Do you know of any countries that had legislation quite similar to that which was passed in the last session of the legislature? ..

**MRS. TURNER:** Not as yet that I know of. I don't speak as an authority on this.

**MR. PAWLEY:** Thank you.

**MR. CHAIRMAN:** Questions for Mrs. Turner? Mr. Evans.

**MR. EVANS:** Mr. Chairman, just a brief question. To what extent is this — I know your organization is concerned very much with human rights in all their complexities and the range of problems involved in seeing that human rights are exercised — to what extent has your organization discussed this area of human rights, that is, extending of human rights to women?

**MRS. TURNER:** Well as you know not long ago we had International Women's Year, it's now being proclaimed as a decade. They felt that it was obviously necessary to keep the momentum going. You can't just have a year and then stop dead. A lot of things were put entrain as the previous speaker mentioned and I think that our organization did a considerable amount of study leading up to International Women's Year and has done subsequently.

**MR. EVANS:** Is your organization, is this the Winnipeg organization or is this the Manitoba Branch?

**MRS. TURNER:** No, I'm speaking for both national and the Winnipeg organizations.

**MR. EVANS:** Both for the national United Nations Organization in Canada and the Winnipeg Branch.

**MRS. TURNER:** Yes.

**MR. EVANS:** I see.

**MRS. TURNER:** I checked with our president locally this morning to see if she had any objection to anything I said as going from the Winnipeg Branch and she did not. They concurred wholeheartedly.

**MR. EVANS:** Yes, I see, thank you. So you generally would endorse the position that's taken by the coalition on family law.

**MRS. TURNER:** Yes I certainly would. We are one of the organizations that supports this coalition and I rather resented the premier's implication that this was all a political front the other day when we came to the legislature.

**MR. EVANS:** Your organization is in no way connected with a political party?

**MRS. TURNER:** No. We deal with everybody from Mrs. Jackson, here, many of whose members may be way out left unionists right through to the conservative. —(Interjection)— Any other questions?

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**MR. EVANS:** So your view is, very briefly put, that this bill that's before us should not be passed. That the legislature should turn down this bill and allow the family law that was put into place — that was put on the statute books earlier this year — allow it to stand and be given a chance.

**MRS. TURNER:** To go forward as proclaimed, right.

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

**MR. JENKINS:** Thank you, Mr. Chairman, through you to Mrs. Turner. Are you aware that the family maintenance section of the package of family law has already been in operation for nearly a month?

**MRS. TURNER:** Yes sir.

**MR. JENKINS:** Have you done any monitoring of that in your organization, how well it is working?

**MRS. TURNER:** I got the impression that most lawyers were holding off until they could see whether this curffuffle would be over with because they didn't want to get things half in and then have them rescinded.

**MR. JENKINS:** Well, we had lawyers here Saturday who have had cases under this section of the package of the family law legislation and they stated that it is working quite well for your information.

**MRS. TURNER:** Thank you very much. I might just mention, although I see the Bar Association came out against our case, the women's lawyers are not with them on this. I think there is again a question of people not yet understanding what's involved. They don't seem to see the issues. They're still being a little chauvinistic.

**MR. JENKINS:** Well, Mrs. Turner, for your information, we had members of the Manitoba Bar Association here Saturday and the letter that you saw in the newspaper from one Mr. Mercury was not one that was passed by the Manitoba Bar Association. It seems to be a personal opinion.

**MRS. TURNER:** Thank you.

**MR. CHAIRMAN:** Are there any more questions of Mrs. Turner? Thank you for your presentation Mrs. Turner.

**MRS. TURNER:** Thank you, Mr. Chairman.

**MR. CHAIRMAN:** I call Ruth Brown

**MRS. BROWNE:** Good morning and thank you for the opportunity to appear before your committee. I'm sorry that I did not have enough time to have a brief prepared so that you all might have a copy. It is my position that Bill No. 5 should not be passed. If it is we will return to the confusion and the lack of justice inherent in the old laws dealing with family maintenance and marital property.

Concerning The Family Maintenance Act, it has been in operation for a month. Orders are being made under it. It is working. I have heard no complaint from the judiciary and I have heard no complaint from a lawyer who has used. I'm not saying that there are none, I haven't heard them. I have heard from several lawyers that The Family Maintenance Act works and works well. Why then return us to The Wives' and Children's Maintenance Act? A return to this law means that we regress to the adversary system in the pursuit of maintenance. And who is maintenance for? It is mainly for children and the person who is caring for the children. The damage done by the forced assignation of fault is devastating to the parents and more especially to the children. It has long been my contention that the adversary system brings out the worst in people who find themselves in the situation of marriage breaking down. The fault principle leads to the possibility of a woman living off the fruits of vengeance for the rest of her life or to the man skipping out on the support of his family. Neither of these situations are beneficial to any of the people involved. Why not then encourage the principle of seeking independence. Assign the maintenance according to the needs of those involved and according to their financial situations. These principles were spelled out in The Family Maintenance Act. We must not return to the out-dated "me Tarzan, you Jane" concept of The Wives' and Children's Maintenance Act under which the wife owed services in the home and in the bed and the husband owed support. Mutual responsibility for each other and for the children will lead to a just consideration of a very difficult situation.

Concerning The Marital Property Act, delay of implementation of the principles outlined in this Bill would indeed be a retrogressive step for Manitobans. Manitoba has been in the forefront in advancing human rights for decades. This particular legislation is right now being used as a model by several other provinces in Canada, among them Alberta and Nova Scotia. If we accept the idea that

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marriage is an economic partnership as well as a social one everything falls into place. There are problems in the Act, there are problems in every Act. They are not insurmountable, the Act is workable.

Dealing with Mr. Mercier's letter — people I presume, like myself, who had submitted letters to Mr. Mercier's office — he outlined what I would imagine to be the Conservatives objection to the bills or their immediate concerns with implementation.

Our office, I work for the Federal Advisory Council on the Status of Women, our office has been assured by Ron Basford's office that The Income Tax Act regulations concerning capital gains penalties will be amended so that these penalties will not be a detriment to the transfer of title under a Marital Property Act. The federal cabinet has come out in support of equal rights for women in the person of Marc Lalonde and none other than the Honourable Pierre Elliott Trudeau, so I see that there could be no hesitation in this kind of implementation being aided by the federal government.

The plight concerning creditors having such transfers set aside has been made as an attempt to evade responsibility in a credit situation. I don't think that when such a transfer is made according to Manitoba provincial statute that such would be the case. However, if this would be so then we need to put in a single line in The Marital Property Act stating that such a transfer should not be considered an evasion for credit purposes. I don't feel that this is an insurmountable problem.

An amendment to implement immediate sharing upon federal government assurance and action concerning the income tax and capital gains problem would prevent any possible difficulties in the income tax area. If we feel that we must not go ahead without the federal government action being written out, and I can see some point to that, then we can implement immediate sharing of family assets to come into effect upon the federal government stating such. And I would hope that Mr. Mercier and his department are requesting such assurances from Mr. Basford. The principle would then be embodied in the law of Manitoba without risk of penalty due to federal law.

Now there's been a mention made of classification of assets being difficult, for instance, pensions and life insurance. Pensions and life insurance are income-producing, to my way of thinking, whether the incomes produce now or in the future and income-producing assets are labelled commercial in The Marital Property Act. There's no question about it as far as the Act is written. If the Canada Pension Plan can split funds I don't see any reason why other insurance companies or pension companies can-not do likewise. Maybe they don't want to, it might be hard to do, it might cause a problem but it can be done. It should be done to provide security for the non-earning spouse. In the past this non-earning spouse has come out of a broke marriage without a job, often without marketable skills, without a pension, without insurance, without savings and at the bottom of the pay scale if he or she does find a job. The abject poverty of women left to care for children needs no amplification from me. These are the women who must be supported by the public purse. Seventy eight percent of sole support families are headed by women and 45.5 percent of these families live below the poverty level which is defined as having to spend more than 62 percent of your income on basic necessities such as food, clothing and shelter. We must obtain more just settlement for the dependent spouse leaving a broken marriage.

The Marital Property Act would provide that the partners would leave the marriage on a relatively equal footing financially. The contribution of work in the home to the accumulation of assets has always been underrated. Manitoba's Marital Property Act recognizes this contribution, articulates it in the law for the first time in the western world. This Act should be implemented as proclaimed. As for creditors; the Act clearly states that creditors shall be honoured except where they participate in fraud. Liability is between the spouses. I can't see any cause for concern for third party liability. It's clearly spelled out that where the third party is acting in good interest, in good faith, then his rights are protected.

In conclusion, the present government has stated that they support the principles of equal sharing in marriage. We have those principles stated now in The Family Maintenance Act and The Marital Property Act. Make the obvious amendments now. Let the Acts work in the courts and make further amendments as they become apparent through use as is done with any other legislation. Bill 5 is unnecessary. It is retrogressive and it will put us back into the confusion and injustice of centuries old common-law which considered women to be possessions, not partners, that women must serve and men must pay. Thank you.

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

**MR. DOERN:** Mr. Chairman, to Ms. Browne. Could you again clarify that point, that you had assurances from the Honourable Ron Basford that there were no income tax problems in regard to this legislation?

**MS. BROWNE:** I didn't say that there were no problems, I said that he has assured us — and believe a member of your legislature — that the The Income Tax Act will be amended to accommodate marital property laws passed by any province. And I believe that there is in fact some doubt as far as capital gains applying to transfers that take place under The Marital Property Act, as to whether or not they would be considered a disposition.

**MR. DOERN:** So, I understand that that would be a national amendment? It wouldn't be one just

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applicable to one particular province.

**MS. BROWNE:** No, it would have to be a national one.

**MR. DOERN:** Did you have that assurance verbally or in writing?

**MS. BROWNE:** By telephone.

**MR. DOERN:** By telephone. Do you think that you could obtain a written statement or telegram?

**MS. BROWNE:** I'm trying. If I get it I'll certainly provide it for you.

**MR. DOERN:** I think that if you could obtain that today or tomorrow it could affect the outcome of this legislation.

**MS. BROWNE:** Well if this cannot be provided, what is wrong with providing for immediate sharing upon its passage by the federal government? I realize that the provincial government cannot force the federal government to act although I think they will be under some measure of force if a province does pass this kind of legislation. They'll have to deal with it.

**MR. DOERN:** Well all I'm saying is that if you could attempt to obtain this in writing . . .

**MS. BROWNE:** Oh, by all means.

**MR. DOERN:** . . . within 24 hours it could affect the outcome of the legislation because the government has indicated this is a major cause for concern as to why they're introducing this legislation. Thank you.

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

**MR. CHERNIACK:** Thank you, Mr. Chairman. Ms. Browne in connection with this Basford assurance, how long ago did you receive it?

**MS. BROWNE:** I believe it was the end of — not this past week but the one before that so that's approximately ten days ago.

**MR. CHERNIACK:** Do you know whether or not the Attorney-General has been made aware of your receipt of such assurance?

**MS. BROWNE:** I think he has been made aware verbally.

**MR. CHERNIACK:** Have you ascertained in any way whether or not the Attorney-General has made an effort to get that assurance?

**MS. BROWNE:** In my letter I asked him if he would obtain such assurance.

**MR. CHERNIACK:** Did he respond?

**MS. BROWNE:** Not directly to that.

**MR. CHERNIACK:** Have you any indication whether Mr. Basford's assurance would be accepted by the Attorney-General as being sufficient to withhold?

**MS. BROWNE:** No I haven't.

**MR. DOERN:** No. Well let's get to Mr. Mercier's letter. Is the letter you received a form letter entitled "The Family Law Legislation"? I have a copy of such a letter and it sets out certain problems that he poses to which you directed yourself but he does make the statement — which I will read, it's a short statement — "a spouse may obtain an order of separation under The Family Maintenance Act without any reasons or grounds and then require the other spouse to join in an accounting and equalization of the commercial assets under The Marital Property Act." I believe that's a correct statement, a correct description of the present law, do you agree with that?

**MS. BROWNE:** Yes, I think so.

**MR. CHERNIACK:** What would you conclude from Mr. Mercier's statement in this regard as to his own belief relating to the no-fault aspect of The Family Maintenance Act?



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**ms. BROWNE:** I would conclude that they disagree with the right of a spouse to obtain that satisfaction.

**MR. CHERNIACK:** That they — you mean the government.

**MS. BROWNE:** Yes.

**MR. CHERNIACK:** So that this to me and I'd like your concurrence, in the letter which he sent, this to me is the one indication of an intent on their part which is contrary to one of the basic principles.

**MS. BROWNE:** Yes, that's why I spoke at such length on the principle of fault. I have heard from several Conservative spokesmen that they feel some reticence about withdrawing fault as a basis for maintenance and for marital property settlements and that's why I mentioned the points that I did concerning fault.

**MR. CHERNIACK:** Does that in any way shake your faith in the statements of the government that their only intent was to correct certain obvious drafting errors.

**MS. BROWNE:** If my faith was really solid, I don't think I would be here at all.

**MR. CHERNIACK:** Thank you, Ms. Browne.

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

**MR. MERCIER:** Ms. Browne, you indicate, I think it is generally recognized that Mr. Basford is in support of amendments to the Income Tax Act which would not, in order that people who are affected by matrimonial property reform legislation would not be penalized tax-wise. Are you aware, however, that any amendments to the Income Tax Act come under the jurisdiction of the federal Minister of Finance?

**MS. BROWNE:** Yes.

**MR. MERCIER:** And are you aware that they are presently reviewing the income tax implications of this kind of legislation?

**MS. BROWNE:** Yes, I understand that the study has been completed.

**MR. MERCIER:** And who informed you of that?

**MS. BROWNE:** Mr. Basford's office, his executive assistant, whose name I can't recall at the moment but I could get it for you if you wanted it.

**MR. CHERNIACK:** Have you got his phone number too?

**MS. BROWNE:** Yes.

**MR. MERCIER:** I would say that's contrary to the information that I have received . . .

**MS. BROWNE:** Well, that's what I've been told.

**MR. MERCIER:** . . . that this review is not expected to be completed for two or three weeks.

**MS. BROWNE:** Well, it's at least a week since I spoke to his office and his executive assistant said that the study had been completed but the public announcement had not been drafted.

**MR. MERCIER:** Are you aware that in concluding debate on second reading to this bill, I advised the assembly that I had spoken to Mr. Basford — I don't have the exact date, I think it was a week from today — and he had indicated that, generally, amendments to the Income Tax Act are introduced through a Budget Speech which would not happen until the New Year?

**MS. BROWNE:** That's why I suggested that perhaps a clause would have to be inserted into our bill because this federal action couldn't be taken in sufficient time to make it workable by January 1 but it seems to me a small price to pay for immediate implementation of the bill to put this clause in the immediate sharing would be contingent upon the federal government making the necessary changes in their legislation.

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**MR. MERCIER:** Are you a tax expert yourself, Ms. Browne?

**MS. BROW:** No.

**MR. MERCIER:** So you wouldn't be aware of whether or not there are any tax implications even if there is just deferred sharing.

**MS. BROWNE:** The only tax implication that I'm aware of and that I have done any finding out about is capital gains in the transfer of title to property and my understanding was that it's not really too clear that this would consist of a capital gain situation, this kind of transfer, but I realize that it must be clear.

**MR. MERCIER:** Are you aware, Ms. Browne, that I indicated to the assembly that the new government will be bringing in any amendments we deem suitable to the legislation at the spring session of the Legislature?

**MS. BROWNE:** Yes, I heard that.

**MR. MERCIER:** Thank you, Ms. Browne.

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

**MR. PAWLEY:** Ms. Browne, when announcements are made as to intentions to amend the Income Tax Act and then it is followed up by the amendment itself, are the amendments generally not retroactive to the date of the announcement by the government in question?

**MS. BROWNE:** I think this has been done in connection with two or three things that I can think of at the federal instance.

**MR. PAWLEY:** So you would concur that if an announcement was made, or is on the verge of being made by the federal government that that announcement could effectively date the commencement of the tax change that is being sought by the provincial government of Manitoba.

**MS. BROWNE:** Certainly.

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

**MR. PARASIUK:** Ms. Browne, I just want to clarify this. Will you be prepared to support the suggestion of Mrs. Goodwin of the Provincial Council of Women who does have access to a tax expert, that what should be done is that this legislation should be deferred only with respect to the community property aspects and that the rest of the bill should be proceeded with? I think your suggestion is very much similar to that. Are you prepared to . . .

**MS. BROWNE:** I would prefer my own suggestion in that the whole thing be implemented and that the immediate sharing aspect be contingent upon the federal government making the necessary accommodation.

**MR. PARASIUK:** Right. That is the type of suggestion that she herself was making. Thank you.

**MS. BROWNE:** But I would like the whole Marital Property Act passed as such and then put in this order.

**MR. CHAIRMAN:** Mr. Evans.

**MR. EVANS:** Thank you, Mr. Chairman. I wasn't clear on whether Mrs. Browne represents the federal advisory office on the Status of Women or whether you work for that office or whether you are representing yourself.

**MS. BROWNE:** I'm speaking on my own behalf. I work as a researcher for the Federal Advisory Council on the Status of Women and I don't think I said anything that they would denounce me for. I believe that most of my positions are those taken by the Federal Advisory Council.

**MEMBER:** These days don't be sure of a thing.

**MS. BROWNE:** I have their definition of equity in marriage here if anyone would like to look at it and think that everything I've said can be substantiated there.

**MR. EVANS:** The Federal Advisory Office on the Status of Women, your organization is funded by a

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women's group.

**MS. BROWNE:** It's funded by the federal government.

**MR. EVANS:** It's funded by the federal government.

**MS. BROWNE:** Yes, the Secretary of States' office.

**MR. EVANS:** I see.

**MS. BROWNE:** We are not a government agency though. Win Loewen, I'm sure most of you know, is the first vice-president of the Federal Advisory Council. I was just going to say that our position is not controlled by the federal government. Our office is to criticize federal policy and suggest policy and suggest reform. Win perhaps would like to say a word about that.

**MS. WIN LOEWEN:** Well, I just wanted to assure this assembly that what Ruth has given to you has the full blessing of the Federal Advisory Council on the Status of Women. I'm sorry that I have not had the time to appear before you. I was in Ottawa and was storm-stayed there and arrived home to find that you were in Law Amendments and I gave Ruth permission to go ahead and submit her brief to you. The Federal Advisory Council, our mandate is to advise the minister in charge of the Status of Women, at the same time inform the public and that is a very large task. We are certainly not restricted to criticize any government. We are formed to implement the recommendations of the Royal Commission on the Status of Women and I am happy to say that over 50 percent of those recommendations have been implemented but perhaps one of the most important pieces of legislation is the legislation that you are dealing with now. The Federal Advisory Council has been looking at it since its inception and the equity in marriage statement that Mrs. Browne has given to you has been our policy from almost the inception of the Council. I had an opportunity to travel all across this country within the last six months and I must readily admit that I have not found any pieces of legislation more progressive than this. The Ontario bill died on the order paper as I am sure many of you are aware. We did a critique of that as a Federal Advisory Council; it was reintroduced and fault was brought back into The Maintenance Act and I believe, I'm not right up on it, but I believe that it's gone now to deferred sharing.

Alberta introduced a bill in the dying moments of the session and I understand that the women's groups there now are preparing to make submissions to the Alberta legislature when it reconvenes. We have taken a look at the bill and there's a great deal of judicial discretion in that bill.

The Law Reform Commission of Nova Scotia has reported to their government and any day now they should be introducing legislation. I must tell you that the Law Reform Commission in Nova Scotia has been in direct contact with me several times and has studied the Manitoba bills very thoroughly and I would expect similar legislation coming forward in Nova Scotia.

I don't know whether there's anything that you would like to ask me or whether I have answered your questions.

**MR. EVANS:** Mr. Chairman, again for clarification, is your organization associated with the Coalition on Family Law for your . . .

**MS. LOEWEN:** Yes, we are.

**MR. EVANS:** And essentially therefore the views of your organization has been represented and is being represented by their briefs and their particular position so there's no essential difference between your organization and the Coalition as a whole.

**MS. LOEWEN:** No, none whatsoever.

**MR. EVANS:** There seems to be quite a bit of unanimity among women in this province who are concerned about these matters.

**MS. LOEWEN:** Yes, there's a great deal of unanimity, not only in this province but all across Canada. We've been working for a long time for this kind of legislation and when it came about really I couldn't believe that we were getting such progressive legislation and I want to thank the NDF government for introducing the bills that were introduced. I don't know of anywhere else in Canada where this kind of legislation exists and I think probably the one point that I would re-emphasize that Ruth said to you was that the matrimonial property bill embodies a concept that women of Canada have been working for for years and that is the recognition of the work that is performed in the home and for the first time, that is recognized in law in these bills and I congratulate you for that because that's a very progressive step to have taken. We have talked for many years and we have tried to put a value, a dollar value, on the work of the mother in the home and it's been a very difficult thing to bring about. I firmly believe that you only change attitudes by first of all changing laws and I really am very sorry that you could not go ahead with the legislation as proclaimed and then have it tested.

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**MR. CHAIRMAN:** Order. I have some problems. I don't have this witness on my list and I have another witness that comes before. I just wonder if the committee's agreeable that we proceed in this manner. (Agreed) Because I have one Leigh Halprin that's on the list who hasn't been heard yet. I don't have this name.

**MEMBER:** Well, it's the same organization.

**MR. JORGENSON:** Well, if it's the same delegation then it's simply a duplication. There are people who have submitted their names as wanting to appear before this committee and if we're going to have just simply a repetition of the presentations we had earlier, I think it's a little bit irregular. I'm not objecting to questioning continuing but I want to know whether or not this is going to be a separate presentation or whether it's the same one.

**MR. EVANS:** Mr. Chairman, on a point of order, it seems to me that this is a presentation by an organization and the official delegate, Mrs. Browne, is being assisted in replying to some of our questions and I look upon this as one brief, that's what I would understand.

**MR. CHAIRMAN:** I'm at your guidance.

**MR. EVANS:** And I think, you know, on the matter of duplication, it's an unfortunate thing that some other women have told us, this is their third and fourth time around because we're seemingly engaged in this business of legislation three and four times around so I'm afraid duplication is almost the name of the game. I would observe this that there is nothing wrong, I would think, Mr. Chairman, as the matters that are being discussed are most relevant to the representation of the Federal Advisory Office on the Status of Women and there doesn't seem to be any undue waste of time.

**MR. CHAIRMAN:** I thank the honourable member. I just thought we were embarrassing the other witness whose name I have and hasn't been heard yet and . . . Mr. Barrow.

**MR. BARROW:** The brief is finished as such and all they're here for is to answer questions. The brief is done. I see no point in . . .

**MR. CHAIRMAN:** Okay, proceed. Mr. Pawley.

**MR. PAWLEY:** . . . Mrs. Browne or to Mrs. Loewen. In connection with commercial assets, reference was made to the Ontario and the Alberta legislation. Could you provide us with any advice as to how their legislation reads in respect to the discretion in the division of commercial assets.

**MS. BROWNE:** I'm not too familiar with the Ontario one. I believe it was mostly judicial discretion. Alberta's is entirely judicial discretion, there's nothing in it that isn't judicial discretion. Nothing is spelled out at all; there is no presumption as to any kind of division and the poor judge has 19 factors to consider in the determination in the Alberta law.

**MR. PAWLEY:** Mrs. Browne, we've discussed many times the Manitoba Law Reform Commission's commendations. The Federal Law Reform Commission's recommendations, how does our legislation compare to the recommendations of the federal Law Reform Commission?

**MS. BROWNE:** It's more progressive in a couple of areas because of its immediate sharing and management of family assets. The Federal Law Reform Commission didn't grant that.

**MR. PAWLEY:** What about the no-fault aspect in connection with maintenance?

**MS. BROWNE:** The Law Reform?

**MR. PAWLEY:** Yes, the Federal Law Reform Commission's position.

**MS. BROWNE:** I think the Law Reform Commission didn't support fault in maintenance but the federal government stand on fault, which still remains in the Divorce Act, is that they won't remove it until the provinces enact some kind of legislation which will provide a protection for non-owning spouses so this kind of legislation must come before fault will be removed from the Federal Divorce Act. Does that answer your question?

**MR. PAWLEY:** Yes, it does. Unilateral opting out, do you recall the positions from your reading of the Ontario and Alberta legislation?

**MS. BROWNE:** No, I don't think there was any discussion of unilateral opting out in either of them.

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

**MR. PARASIUK:** I would like clarification of Mrs. Loewen's statement regarding Ontario's letting their family law legislation die on the order paper. Was there any indication of what type of legislation that would be that died?

**MS. BROWNE:** Deferred sharing.

**MR. PARASIUK:** It was deferred sharing.

**MR. JORGENSEN:** Mr. Chairman, I think that question is out of order. What Ontario does is certainly not relevant to the bill that is before us.

**MR. PARASIUK:** I'm sorry, Mr. Chairman, we've heard the government indicate many times what is done in Ontario and Alberta is very relevant to what takes place in Manitoba. Therefore, if in fact we hear that type of statement from one of the witnesses, surely we should be able to ask clarification. Now, you say it's being reintroduced?

**MS. LOEWEN:** It has been reintroduced, yes. I don't know whether they have started debate on it yet or not, I haven't been able to . . .

**MR. PARASIUK:** And that would be a change in principle from the legislation that exists right now that the Conservative government is trying to change, that is, a difference in principle — is that correct.

**MS. LOEWEN:** Yes.

**MR. PARASIUK:** That means therefore, that if legislation is brought forward with deferred sharing, that that would be a change in principle from the present legislation — if this government does bring forward legislation that does have deferred sharing.

**MS. LOEWEN:** The Manitoba Conservative government?

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

**MS. LOEWEN:** If they changed family assets to deferred sharing, yes, that would definitely be . . .

**MR. PARASIUK:** That would be a change in principle.

**MS. LOEWEN:** Yes.

**MR. PARASIUK:** Thank you.

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

**MR. MERCIER:** Mrs. Loewen, are you aware of the concern that was expressed by the Attorney-General of Ontario with respect to the tax implications of their legislation?

**MS. LOEWEN:** I'm not too thoroughly aware of it, I understand that there was some discussion with respect to tax implications, yes.

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

**MR. CHERNIACK:** Thank you, Mr. Chairman. Ms. Browne, you made a statement about which I know nothing, hardly anything, and that is an attitude of the federal government in relation to the fault feature of this divorce legislation and its requiring the provinces to express themselves in the way already in the present act. Is that what you said? Could you elaborate on that?

**MS. BROWNE:** The present federal Divorce Act allows for fault in consideration of the settlement that takes place under the Divorce Act, and that will not be removed until the provinces enact legislation which will protect the non-owning spouse, because the federal government regards it as some measure of protection for particularly a woman whose husband makes off with all the assets in his name, and so on, that if he is then at fault, there is more leverage to attain settlement for her grievances. You know, it's our aim to remove fault from all of the legislation connected with family law, and unfortunately it's split provincial and federal. So the federal government has said that this is a measure of protection for some women, and it's going to stay there until all the provinces get busy

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and do something about their family law situation.

**MR. CHERNIACK:** Now, under the Divorce Act, fault is only one of the possible bases; the other was separation, on which there is no . . .

**MS. BROWNE:** In marriage breakdown.

**MR. CHERNIACK:** Yes, in which there's no-fault feature. So you must be speaking of that portion of the federal legislation which deals with distribution of property.

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

**MR. CHERNIACK:** And what you're saying is that until there is protection now in the provinces for spouses who have to allege fault in order to get their protection, that they will not remove that feature at all from the federal legislation.

**MS. BROWNE:** They won't take it out altogether, no.

**MR. CHERNIACK:** I see.

**MS. LOEWEN:** If I might just add, this has been one of the recommendations of the Federal Advisory Council to the Minister of Justice, that fault be taken out of the Divorce Act, and I believe the three-year waiting period be reduced to one year. This is the answer he has given us, that he feels that he cannot change the Divorce Act until all provinces have brought in new legislation with respect to matrimonial property, so that women will be protected.

**MR. CHERNIACK:** Well, is Manitoba the first and only one of the ten provinces that has complied in that regard?

**MS. BROWNE:** We're the closest of all. There are others under consideration, as we've mentioned: Nova Scotia, Ontario, Alberta; I think Saskatchewan is just getting started, B.C. has done something in it, and of course Quebec already has their separate acquisition, whatever it is.

**MR. CHERNIACK:** But are you suggesting that Ontario's present legislation — hazy as it is — and Alberta's, do contain sufficient elimination of fault to satisfy the federal government's requirements?

**MS. BROWN:** Yes, because there is an eventual right to property.

**MR. CHERNIACK:** I see, thank you, Ms. Browne.

**MR. CHAIRMAN:** Any more questions? Thank you, Mrs. Browne. I call Leigh Halprin.

**MS. HALPRIN:** My name is Leigh Halprin. I am a Winnipeg lawyer, and I think it should be evident to all and for the benefit of Mrs. Turner, I am a female lawyer.

I would like to deal with some of the points which I take issue with under the proposed legislation. Section 1(b)(i) and (ii), I am of the opinion that that section requires further clarification. That's the section dealing with what is a commercial asset. Is a policy of life insurance a family asset or a commercial asset?

**MR. CHAIRMAN:** Order. Order, please. Mr. Cherniack.

**MR. CHERNIACK:** The bill that the honourable member is referring to does not have a 1(b) . . . is he speaking about the . . .

**MS. HALPRIN:** I'm referring to Bills 60 and 61, I believe.

**MR. CHERNIACK:** You mean the present laws?

**MS. HALPRIN:** As they were intended to be proclaimed and have been proclaimed, The Family Maintenance Act as proclaimed on November 14th, 1977, and the Marital Property Act which was to be proclaimed on January 1, 1978.

**MR. CHAIRMAN:** May I caution you that you should try and relate your remarks to the contents of the Bill that's under discussion here today, which is Bill No. 5.

**MS. HALPRIN:** Well, they are inextricably wound up. With respect to clarification of what is a commercial asset, again I say, is a policy of life insurance a family asset or a commercial asset? Is a policy of life insurance which has been assigned to a commercial lender in consideration for a loan, a

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commercial or a family asset?

What are registered retirement savings plans, registered retirement pension plans, and registered homeownership savings plans? The last time I attended before this committee, in I believe the end of May and beginning of June, 1977, I raised those particular issues. I was advised at that time that this was not a problem. I might mention that a seminar of approximately 500 lawyers met and discussed this particular issue, and were unable to reach agreement. It's a vital issue what these particular assets are, it has grave ramifications.

Section 1, subsection (d) of Bill No. 61 — that is the section which deals with the dissipating assets. Now my question is, if an asset has been dissipated, when we decide if there has in fact been dissipation, do we look to see if the financial security of the household was jeopardized at the time the assets were dissipated, or is it relevant that the financial security of the household is in jeopardy a year or more after the assets have been squandered? That is relevant and is going to lead to all kinds of litigation, so let's clean it up now.

Section 2, subsection 1. "The Act seems to apply to everybody." That's a comment of the Manitoba Bar Association as endorsed by the Canadian Bar Association, Manitoba Division. "This Act seems to have world-wide application." You come to Manitoba and spend the night at the Holiday Inn — seems that this Act seems to apply to you, has to be tightened up.

Section 2, subsection 4 — that's the section which provides that if you were separated on May 6, 1977, the Act does not apply to you. I don't take issue with that principle; in fact, I commend the previous government for at least having a cut-off date. They worked very hard for a cut-off date. I don't recommend that repeal, but what I do say is that as it is presently worded, it discourages reconciliation. If that's not an important issue, I don't know what is, and it's enough for this legislation to be repealed so it can be corrected. The reason it discourages reconciliation is that if you do not reconcile, the Act applies to you. Now I know a number of clients — I have a number of clients — who refuse to go back to their spouses, either male or female, because they don't want this Act to apply to them. They don't want and order to affect their reconciliation, to enter into an agreement that says the Act doesn't apply to them, and that's what's holding them back. And I might mention that the Manitoba Bar Association endorses what I see as a solution, and that is to say that individuals should be given a 90-day trial period to effect a reconciliation before the regime becomes applicable to them. That is the case under the existing divorce laws — you do not lose your grounds if you try and effect reconciliation for 90 days. You still have your grounds available to you. The Divorce Act in that sense encourages reconciliation, and so should this legislation. Give individuals a trial period where they can attempt to effect that reconciliation, and the Act will still not apply to them. If they choose to stay together after that 90-day period, then they're into the Act, but if the reconciliation period results in the parties deciding that they want to remain separated, that they want to go their separate ways, then they still have the protection of not having this legislation — falling within this legislation, that is, the Act does not apply to them.

I might also mention, and this is a technical thing that can be cleaned up very nicely, is the Standard Marital Regime does not apply." Now, the Standard Marital Regime is Part 1 of the Act, it's not Part 2 of the Act, and what the Act should read is "The Marital Property Act does not apply," not "The Standard Marital Regime." Otherwise you have a theoretical situation of individuals who are separated as of May 6, 1977 not having Part 1 of the Act but the Standard Marital Regime not applying to them, but Part 2 of the Act does, and there are ramifications for that, which I will deal with at length in a few moments.

Section 3, subsection 1 — that deals with the joint ownership of marital home; Section 13, subsection 1 — that deals with family assets; and Section 14, subsection 1 . . . have the effect of invoking what's called "the attribution rules." And I might mention that is not limited just to capital gains. Attribution has ramifications for not only capital assets, but for income producing assets, revenue assets, income assets. Just because we decide that a particular asset is a family asset, and on that basis we have the federal government amend their legislation with respect to the income tax treatment of family assets, doesn't mean that the Income Tax Department is going to view a particular asset as a capital asset as opposed to an income asset. Your definition of what is an income producing asset may be substantially different from the Income Tax Department's definition of what an income-generating asset is.

In any case, those sections invoke the attribution rules. The result is that when an acquiring spouse disposes of his or her share of the acquired asset, that is, that spouse rents or sells, the income or revenue received in consequence is taxed in the hands of the transferor spouse, although the transferor spouse does not enjoy the benefits of the income or the revenue. Now, the legislature attempted to cure that inequity by introducing Section 5, subsection 4 and Section 16, and that was the section which said that you shared the tax load in that case — your spouse became liable for half of the tax; not to the government, of course, but to his or her spouse, the transferor spouse. And my question is: "Why should the transferor spouse be liable at all for half of that tax at least? That transferor spouse shouldn't be responsible for any of it."

Section 3, subsection 1, Section 13, subsection 1, and Section 14, subsection 1, effectively avoid existing planning schemes. This problem is going to be in extent cured, happily, by the repeal of the Succession Duty Act, but we still must contend with the deemed dispositions on death under the Income Tax Act, and that's something that's being ignored. I've heard a lot of women saying that we're going to have a new tax treatment for capital gains, but nobody's mentioned anything, and

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haven't heard anything from Mr. Basford about what's going to happen on deemed dispositions on death? Now if an individual has gone ahead with a view to estate planning, and has had assets transferred over to his wife, so that when he dies, there's not that deemed disposition, and then as a result of the revesting, acquires half of them back prior to any change, if there is a change under the Income Tax Act, then there's going to be a deemed disposition and a heavy tax load. Individuals have spent fortunes trying to eliminate that problem, and you're saying: "We're going to wipe it out." Now, even if they restart their estate planning, it's still going to cost money.

Section 3, subsection 1, Section 13, subsection 1, Section 14, subsection 1 may also prove to be a bonanza for creditors, as in those cases where a spouse with a view to preserving certain assets from creditors transfers or purchases some or all of the property in his wife's name. Now, that's not uncommon. I'm not saying that individuals have creditors at that time, but they may anticipate creditors — they're going into a business venture which makes them judgment prone or creditor prone — and that's not an uncommon situation where an individual speaks to a lawyer and the recommendation is made that you put assets into the name of the spouse who is going to be creditor judgment-free. When the property reverts in the debtor spouse, or the debtor spouse acquires an interest in the assets, the debtors are going to be able to attack that formerly preserved asset. Now, you haven't helped women at all by having that kind of a situation. A woman who had the home in her name now loses her home, if her husband has at that time acquired a judgment against him and the creditor decides to realize on that judgment.

Now, as I've said, a contracting-out may be viewed as a scheme to defeat or defraud the creditors, and may be set aside. I think some things should be done there. Ms. Browne suggested that possibly section be enacted that says any contracting out will not be viewed as a scheme to defeat or defraud creditors. I might have mentioned that was a suggestion that I made to Ms. Browne.

Section 5, subsection 3 should be amended to include any liability to the other spouse under section 5, subsection 4. Section 5, subsection 4, subsection (a) should be amended to conclude any prior indebtedness, and Section 5, Subsection 4, Subsection (c), should be cleaned up. That is that the tax that becomes payable under the attribution rules is as a result of the disposition and not as a result of the acquisition. That section has to be cleaned up as you may not have a spouse liable for all of the tax liability unless you do so.

Section 3, Subsection 1 may affect the rights of third parties. That's the family home section. Now particularly in those cases where the marital home is held in joint tenancy or tenancy in common with third party, that is for example, the family home, it's owned by the husband but it's also owned by his sister. They bought it together. But it falls in the category of the marital home because it's occupied by the brother and his wife. The acquiring individual, I assume, the wife who is now an owner, would probably hold in joint tenancy with her husband as to his half share, and the sister would still have her half share. The problem is that the sister now has a partner in ownership which she never anticipated and it can become more complicated in those cases where the husband predeceases his wife and the sister now owns with her sister-in-law and that can give rise to all kinds of complications. What you've done here, you're just not accepting the rights of a man and a woman as a married couple. You are ringing in third parties as well, and that section ignores the rights of third parties. It says it's automatic. You automatically get that. There is no discretion there. Nothing whatsoever.

Another further problem is this acquiring spouse is not liable on the mortgage covenant, assuming the home's been mortgaged, and this is especially significant in a case of a second or third mortgage when there's foreclosure proceedings under the first mortgage and there's not sufficient funds to satisfy the first mortgagee, then your only remedy is to sue on the mortgage covenant, but if wife isn't bound on the mortgage covenant, she didn't sign that mortgage. So again you've affected third party rights. You've affected the rights of the mortgagee.

A question that I have, is the marital home that is not subject to the standard marital regime shareable asset? Under Section 9, Subsection 1, proceeds of the sale of the home or the asset which exchanged for the home are not shareable, but the home itself may be, and in some cases Section 1 may even apply. That's the section that says that if you use the asset during your marriage even though it wasn't formerly shareable, if you both use it, it becomes shareable. I might mention at this point that the Family Law Subsection of the Manitoba Bar Association has recommended that that section be eliminated.

There are situations, as well, where a generous individual may have gifted certain assets to his or her spouse. These assets may not be shareable because they fall within, let's say, Section 9, subsection 1, Subsection (a). They're gifts. They're not shareable. The result is that on an immediate vesting or an equalization situation, the donating spouse may be worth more than the donor. I believe that a distinction should be made under Section 9(1)(a) between gifts made by an individual to his or her spouse and gifts to a spouse by a third party. So far it covers all kinds of gifts whether it was given to you by your spouse or not. And the assets which are given to you by your spouse should be shareable. I believe that Section 37(1) and (2), the discretion sections, aren't wide enough to cover this particular situation, where you have an inequity just because you were generous, and you get analyzed because you were generous.

Section 11 would be basically a good section if the Act weren't retroactive. That's the section which says that the asset becomes shareable even though it wasn't formerly shareable because it's used by both parties. And that's a function, I believe, of retroactivity. For example, you have the situation of the wife who says, "I never would have used the silver tea service that I received from my



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mother and used it when I had your boss over for dinner if I'd known you were going to share." It's a function of retroactivity. Individuals who are now contemplating marriage and enter into a marriage will of course be able to say, "This is mine. That's mine. That's yours." They'll be able to put their position on the record. But individuals who've already contracted marriage and have had that painting hanging on the wall in their home don't have that solution available to them. And that's a function of retroactivity. And I'll say again that the family law subsection of the Manitoba Bar has recommended that that section be eliminated. It just creates far too many problems.

I have another example of an individual where you can see how it can create hardships. It's where an individual, a female person — it's a case I have in the office — came into marriage with a lot of furniture. A lot of women prior to marriage collect things, furnish their homes, furnish their apartments, and bring those particular assets into the marriage. Husbands, prior to marriage, have a habit of collecting things like some stereo equipment, basically it's Salvation Army type furniture which isn't brought into the marriage, but they sometimes bring in assets, for example, like bonds, things of that nature. The inequity that is created is that those assets aren't shareable, because they don't lend themselves to necessarily being shared, those commercial-type assets, the stocks and bonds. But a woman's furniture which she brings into the marriage and is used in the home definitely is shareable.

Section 13(4) — I believe that's the joint management section and family assets. Assuming that a policy of life insurance is a family asset — and we don't know — an acquiring spouse could theoretically require cancellation of that policy of life insurance. A spouse would be very foolish to do that in some cases if she were the beneficiary, but if it was the type of policy where you could cancel your spouse as beneficiary and put somebody else in its place, that spouse may want that policy cancelled so she can get half the cash surrender value of that policy. Now you may have an individual then who's been in the situation of being uninsurable. I can foresee this happening, for example, in cases of second marriages where an individual has placed life insurance on his life and the beneficiaries are children of the previous marriage, and his new spouse isn't particularly taken with the fact that he has his life insured and the children are beneficiaries by a previous marriage. She might then require that that policy be cancelled.

**MR. CHAIRMAN:** May I interrupt you for one moment. We have a problem for the committee. The Minute Book is on the table, and we're supposed to adjourn at 12:30, and the witness still has nearly 10 minutes left. Could you return after?

**MS. HALPRIN:** Most definitely. Thank you.

**MR. CHAIRMAN:** Well then, if you understand that the House opens at 2:30 p.m., and there'll be a question period, and we'll, I guess, come in here after the question period.

**MS. HALPRIN:** Very well. Thank you.

**MR. CHAIRMAN:** Committee rise.