Legislative Assembly of Manitoba

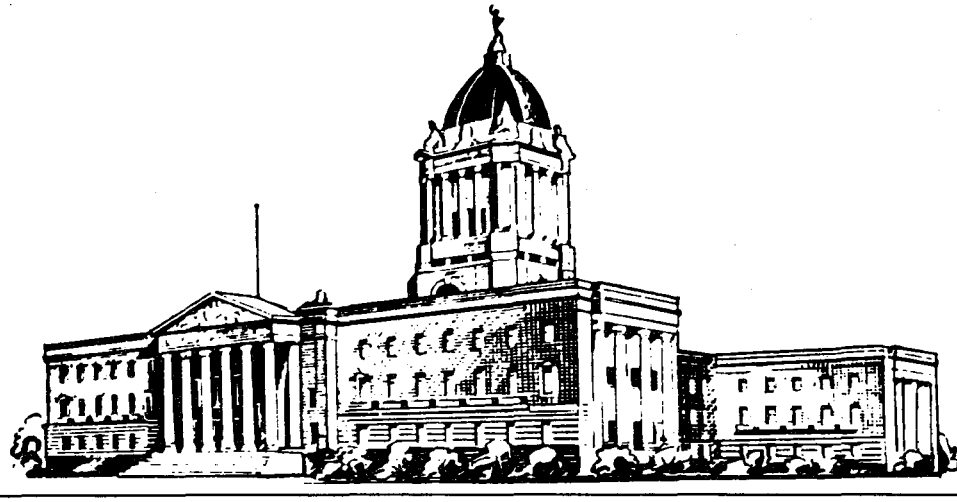
HEARINGS OF THE STANDING COMMITTEE

ON

LAW AMENDMENTS

Chairman

Mr. J. Wally McKenzie
Constituency of Roblin



Monday, December 12, 1977, 2:30 p.m.

Printed by P.N. Crosbie — Queen's Printer for the Province of Manitoba

Time: 3:25 p.m.

CHAIRMAN, Mr. J. Wally McKenzie.

MR. CHAIRMAN: Committee will come to order. I call Leigh Halprin. According to my figures, Madam, you have nine minutes left to make your presentation.

MS. LEIGH HALPRIN: Well, I understand that when Miss Steinbart appeared before the committee, the committee approved an extension of time, and I would request that the committee also grant such an extension in my case.

A MEMBER: That's agreeable.

MR. CHAIRMAN: Carry on. Proceed.

MS. HALPRIN: Thank you. I believe that when we adjourned I had just been discussing theoretically the possibility of a spouse requiring cancellation of a life insurance policy.

The next thing that I'd like to go on to is Section 13(5) and Section 14(4). Those sections deal with the fact that when there is a mortgage sale of either personalty or realty that half of the proceeds realized from the sale, after deducting the amount of the charge on that personalty or realty, is to be divided equally between the spouses. I think that those sections should also be amended to include any liability by the other spouse under Section 15. Section 15 are the sections which deal with your liabilities to other spouses. Before that spouse acquires half of the proceeds realized from the mortgage sale, after satisfying the mortgage charge or the personalty charge, I think that that spouse should also have to satisfy the debt to his or her spouse under Section 15.

Section 20, the Accounting and Equalization Section which deals with an accounting with respect to commercial assets. I'm of the opinion — and my opinion is shared by some of my colleagues — that the costs involved in some accountings may be considerable, and effectively eat away the pool of shareable assets. That is, an individual who has assets which must be e listed in an inventory on an accounting would necessarily have to have those assets valued for the purposes of that accounting. Now I'm sure you're all familiar — many of you are at least familiar — what the costs involved are in just having a home appraised for the purposes of sale. If all commercial assets must be assigned a value you can appreciate that when individuals have a certain amount of commercial assets they are going to have problems, financial problems getting those particular assets valued. Similarly, if one spouse has his or her assets valued the other spouse in turn may elect to have those same assets valued. They may decide that they are unhappy with the valuation. So there's another set of appraisals. And if they both can't agree, if they take issue with each other, there may be a third one involved. Now by the time that gets around with, maybe, three sets of valuations, you've effectively eaten away your pool of shareable assets. There may not be too much to share at that point.

Now, my next question is, how are assets such as professional practices to be valued? I discussed this with a number of individuals who are well acquainted with laws with respect to valuing of professional practices, and apparently there is no case law on how to value a professional practice, or at least we are unaware of any case law with respect to how to value a professional practice. There are cases on valuation of businesses. There definitely are cases. Now, these cases normally come up in the area of income tax, okay. So we have cases on how to value a business for income tax purposes, but we've never of course come across how to value a business for the purposes of an equalization. How do we do that? This is a foreign and alien concept to us. We don't know. Certainly individuals apply certain formulas with respect to sale of a practice when they sell their practices, but there's no case law in that area, and similarly there's no case law on how to value businesses for the purposes of sale. Now, just remember this is to be distinguished from income tax valuation, but this is a totally different area. For example, an individual who has a professional practice may be forced to come up with sums that he or she just doesn't have, based on what I choose to call an artificial valuation of a business, artificial valuation for purposes of equalization. You know, many professionals have said to me — I'm not in the position of having my own practice, but other professionals have said to me — "What's my practice worth if I walk out the door tomorrow? I mean, how do you assign a value to me in that going concern of a practice for the purposes of an equalization. You know, my practice may be worth nothing if I drop dead tomorrow. How are you going to assign a value to my practice?" We're not talking about cases of good will, sale, or income tax. We're talking about something totally different — an equalization.

Now, assuming we have this artificial valuation put on a practice of, let's say, of $100,000 — and in assuming that it might possibly be an artificial valuation — how's that individual, who has that artificial valuation placed on his practice, going to satisfy that judgment order in terms of an equalization? How is he or she going to come up with $50,000 if the practice is assessed at $100,000? For example, assuming a valuation is based on the possibility of incoming revenue over a number of years — the expectation that that individual would earn X number of dollars from his practice — and in that basis a valuation is made of that practice, and because the assessment on that business is such a large one he or she must pay his equalization payments by installments, and then that

individual is no longer able to practice. How is that order going to be satisfied in terms of incoming revenue?

What I foresee is in some cases individuals are going to be paying in perpetuity to satisfy equalization payments. The whole philosophy behind this legislation — as I understand the Law Reform Commission said — the philosophy behind it was to eliminate long-term maintenance, lifetime maintenance sentences, but by a long-term payment to satisfy an equalization you've in fact created a situation where you're going to have long-term maintenance. You may call it by a different name, but that's in effect what it is. You still have those payments coming in, still a problem with enforcement in large sums.

I might mention too — and this is something which I must say that I take issue with respect to the arbitrariness of the 50-50 — is that in many situations we're not going to have Murdoch cases. Murdoch, which I believe is the catalyst for this kind of legislation and the legislation which is being implemented in our sister provinces, is that in the Murdoch situation Irene Murdoch made an unusual contribution in that marriage. She not only performed her marital duties as a wife and mother, in terms of caring for the home, preparing her husband's meals, things of that nature, but she made an extraordinary contribution to the acquisition of the farm asset itself. She not only maintained that asset in terms of baling hay, assisting at harvesting, all kinds of things, but she also assisted in the productivity of that asset.

Now that's not necessarily the case in the case of an individual, for example, who earns his or her professional degree prior to marriage — perhaps even sets up a practice prior to marriage — you can't compare that kind of a situation with the Murdoch case. In that kind of the situation, the case of the individual who sets up his or her professional practice and earns his degree prior to marriage, that person's spouse does not make a contribution to the acquisition of that asset. It's an entirely different situation than the trust situation of Murdoch. I agree that the Murdoch situation demands a remedy. It cries out for a remedy. But I don't think the situation in which one earns their degree and establishes the practice prior to marriage calls for a sharing of the fruits of that asset with his or her spouse

Section 24, I think, is a reprehensible section, and that section, briefly for you all, is the section which says that when a gift is excessive you can go against the third party who received that gift, the donee of the gift, and get the value of that gift back if it's deemed to be excessive. I find it abhorren that a child of a previous marriage, whose father has gifted him or her certain funds or gifts after he's entered into a second union, I find it abhorrent that that child could be compelled to return the money or the value of the gift. Are we now going to put an obligation on children to say, "Are you sure mother, or your new wife, has approved of this gift? Let me check and see if it's all right with her." Third party rights are being affected. Now what happens if the child has spent that financial gift? Where are they supposed to come up with the moneys to satisfy that?

Now, another question I have is, when do you look to the excessiveness of the gift? At the time the gift was made or on the equalization? I realize the only time you'd be talking about excessiveness is on an equalization, but do we then say that we have to see if the gift was excessive at the exact time the gift was made, that you could only afford at that time to give a $1,000 gift as opposed to a $2,000 gift? I'm not sure.

I know that our gift tax legislation thankfully is being repealed, but assuming a gift is given on May 7th, 1977, and that individual, because, it's a gift in excess of that . . . Or let's go a little back let's say May 7th, 1977 individual, because the gift was excessive to the extent that it was not free of gift tax under the Gift Tax Act, paid tax on that gift. Let's assume the gift was given to a friend for $3,000. Gift tax has been paid. Does that individual get the gift tax back if it's deemed to be excessive, and the money has to come back? I don't know.

Section 20(2) — that is the section which allows the judge to make an order that the property be transferred in lieu of an equalization payment being made, or you can effect it partially — part money part transfer, whatever. What I suggest in that section is that third parties be given an opportunity to make representations in that if a judge should make a decision in that area. A third party should be joined as a party to those proceedings.

The reason why, I think, can be illustrated in this example. Suppose you have a piece of land which is subject to a mortgage, and there's a sales clause in the mortgage which provides that the mortgage will immediately fall due on sale or transfer, so that your mortgagee is not stuck with what we refer to as a bad risk. Now obviously, in this case, you're going to have those kinds of situations where property is transferred to satisfy an equalization to a woman who wasn't originally on the mortgage covenant. That's a new mortgagor, more or less, and although the property is then charged still with the mortgage that person is not liable on the mortgage covenant. Furthermore, you may have back risk, you may have an owner who you view as a bad risk. The mortgage lender may have said at the time he gave the mortgage loan, "Yes, Mr. X, we're prepared to accept you because as mortgagor we're prepared to lend you money on the security of this piece of property because you have assets. We know you have a job and you're a good risk." But he or she may not have been prepared to give a mortgage loan to the wife because she was not employed, for example. In that case, when a judge conveys the property to the wife, there's a new person who's making the mortgage payments if the judge elects to exercise that discretion afforded under that particular section and transfer the property in lieu of an equalization payment, and in those cases I say that the mortgage lender, his feelings on whether he's prepared to accept the wife, in this case, as the individual who's paying the mortgage, be turned to to see what his opinion is with respect to the

because otherwise you're affecting the rights of third parties. That person wanted the opportunity when he made that mortgage loan to see who the new purchaser was going to be and whether that was an acceptable risk. That's why they put the sales clause into the mortgage in the first place, because they're not prepared to accept just anybody assuming that mortgage. You've got to remember that mortgages in Manitoba give you two remedies. It's not just a charge against the property, there's a mortgage covenant as well. Okay? Now that individual doesn't lose his charge on the property, but he loses the covenant and the risk Iroblem.

Again, into Section 28 — we're into Part II of the legislation. Section 28(1) and hence Section 28(5) appear on a strict reading of Section 28(1) to include individuals who have separated on May 6th, 1977 and have a valid and subsisting separation agreement as of May 6th, 1977. That is, I'm saying that a separation agreement equals the marriage contract or marital agreement. I don't know if I've lost you there. The Act originally starts off by saying under Section 2(4) that if you were separated on May 6th, 1977, the Act does not apply to you unless you resume cohabitation, otherwise you don't fall within the parameters of the standard marital regime, you don't fall within those parameters. But Section 28(1) is subject to subsection 28(5). That says that you may fall within the Act under Section 28(5), if you have entered into an agreement on May 6th or after May 6th, 1977. So what I envision happening is that as an individual who has separated on May 6th, 1977 and supposedly doesn't fall within the act, enters into an agreement which does not deal with certain issues as are outlined in section 28(5) because they entered into the agreement, they are now within the provisions of the standard marital regime. It now applies. The ramifications are that if you are separated as of May 6, 1977, don't enter into a separation agreement unless you have absolutely everything. If you've already entered into a separation agreement and were separated before May 6th — let's say November, 1976 — and you entered into a separation agreement even though you were separated on May 6, 1977, you may be into this act to the extent that you haven't dealt with the specific provision of the standard marital regime. Now I don't think that that was the intention of the previous legislature. I think the intention of the previous legislature was to have everybody who was separated as of May 6th, 1977 out.

I might say that Section 28(5) also has the result that probably virtually every agreement can be opened up to the extent that they have not dealt with the specific provision in the standard marital regime. When drafting these agreements, we couldn't possibly have anticipated certain provisions that would all of a sudden become shareable. I have never seen a separation agreement in which one specifically deals with registered retirement savings plans for example or a future pension, what Canada Pension is going to be, how's that going to be dealt with, but according to Section 28(5), because you didn't deal with it, your agreement may be opened up. I would suggest that you can clean this provision up, the problem with individuals who have separated as of May 6, 1977 but enter into agreements, by simply making Section 28(5) subject to Section 2(4).

Section 28(2) must also be reworded. Again this section seems to say that if you are separated on May 6, 1977 and you enter into an agreement on May 8th, 1977, the agreement must fall within Section 28(3) or it is invalid. For example, if we substitute a separation agreement for the words 'marriage contract or marital agreement" because undoubtedly a separation agreement is a form of marriage contract or marital agreement, then it is invalid. The Act says that no marriage agreement, no separation agreement, made between two spouses on or after May 6th, 1977, is valid, effective or binding. Again, Section 28(2) should be made subject to Section 2(4) or we may have a situation where individuals who separated on May 6th, 1977, that entered into an agreement subsequent hereto, may be in a worse position than those individuals who separated on May 6th, 1977 and never entered into a separation agreement.

There is something else that I would like to see improved upon and it is a particular situation which am facing with a client. It's a problem under Section 28(2). On May 25, 1977, one of my clients entered into what is referred to as a pre-nuptial agreement, that's a contract entered into prior to your marriage, it's entered into by the two individuals who are planning on getting married. In any case, they entered into that agreement on May 25th, 1977. At that time, the Marital Property Act was still in bill form. I had all the bills before me and I followed them scrupulously doing what I thought had to be done and in fact I conformed with the bill as it then was. The agreement that I prepared contained a recital acknowledging that the proposed legislation had been introduced into the House which dealt with the ownership and division of property owned by married persons during their lifetime, on marriage breakdown, on death, or otherwise, and it contained a covenant in which both parties agreed that neither would claim an interest in the property acquired by the other either before or during their intended marriage. I conformed with the bill as it then was; I also had affidavits, certificates of independent legal advice which were then required under the bill. The individual who acted for the other party also believed that we conformed to the bill. I believe, in fact, I think we were the first agreement contracting out of the standard marital regime. In any case, Section 28(2) now appears to make my client's agreement invalid, ineffective and not binding unless it is confirmed by an agreement under Section 28(3) for the simple reason that it was made after May 6, 1977, even though both parties contemplated this legislation, it's still no good. The parties have already contracted their marriage and they are now forced to confirm this contract but they're already married. They are going to be put to the further expense of confirming this agreement and we may have a problem if one of the parties now refuses to sign the confirming agreement.

Section 28(2) seems to even go so far as saying that even when you enter into an agreement after

May 6, 1977 and wishes specifically that the standard marital regime will not apply that this agreement because it was executed after May 6, 1977 will still be invalid, ineffective and binding unless the parties confirm it again. And I think if you read that section very carefully that's in fact what it says. It says no marriage settlement, marriage contract or marital agreement after May 6 is valid, effective or binding unless it's confirmed even though you're specific about it. So what's the situation that we have to have two agreements? Sign an agreement and immediately sign another one confirming it, that's what the section seems to say. Now, I appreciate that that's obviously not the intent. I should hope that was not the intent of the previous legislators and I am confident it's not going to be the intention of our existing government but it should be clarified.

Section 37 are discretion sections. I find those sections far too narrow and I have difficulty envisioning anything but the grossest of hardship cases falling within this section. Our key words are extraordinary, grossly unfair, unconscionable. Those are pretty strong words. Now I am confident that it was the intention of our previous legislators to restrict the discretionary section. I take issue with that. We don't have a perfect piece of legislation and even with amendments we aren't going to have a piece of perfect legislation. There has to be room to cure injustices and hardships, not only those that are unconscionable.

I might mention that I have a quote of the provision from the Ontario Family Law Reform Act of 1976 dealing with their discretion section and I might again mention that our sister provinces, their discretionary sections are chalked full of discretion. Section 4(2) of The Ontario Family Law Reform Act of 1976 provides, and by the way they only deal with family assets, not commercial assets; commercial assets are not shareable under their legislation. That section provides, "whereupon the application of a spouse the court is of opinion that a division of family assets in equal shares would be inequitable having regard to: (a) Any agreement between the spouses. (b) The duration of the marriage. (c) When the property was acquired. (d) The extent to which property was acquired by one spouse by inheritance or by gift." — This kind of a section obviously would not be applicable if we stil contain our provisions under Section 9. — "And any other circumstance relating to the acquisition preservation, maintenance, improvement or use of the property rendering it inequitable to the division of family assets to be in equal shares, the court may make a division of family assets resulting in shares that are not equal or order other property of the spouse to be transferred to or vested in the other spouse as the court considers appropriate."

That gentlemen is, I submit, the type of discretionary section we should have in our legislation Otherwise the types of cases that I envision falling within the legislation or which will be held to fal within Section 37 is where an individual has assets worth $1 million and his or her spouse has asset worth $10,000, and that individual who has the $1 million assets has assets which are not sharable the individual who has assets worth $10,000, those assets are all sharable and there it would b clearly unconscionable but that's the kind of situation I envision in the discretionary section and no much more. And I think that there should be a lot more cases falling within that section.

I think the provision which I find the most offensive is that of retroactivity. This is a view that ha been shared by many legislatures and our judiciary. I think it's reprehensible that individuals wh contracted marriages, that is they've entered into marriages prior to the enactment of this legislatior now find themselves governed by a scheme of property sharing which they never contemplated and think a lot of the problems under this legislation are a function of retroactivity. Even if both partie who entered into marriages prior to the enactment of this legislation are now prepared to contrac out, they are still obliged to pay legal fees in connection with the preparation of such an agreemen

Before advising a client to release his or her rights under the Act I would first require a rathe detailed inventory of sharable and potentially sharable assets setting out their value. Valuations mus of course then be obtained and I've already dealt with the fact that this may be a considerabl obligation. Individuals though that are not married at the date this legislation comes into force ar clearly in a better position. A single individual contemplating marriage who finds the scheme c property sharing under the legislation unpalatable may elect to contract out. If his future spous refuses then that individual has the option of not marrying. This option of course is not available t individuals who are presently married and therefore I would suggest the following amendment:

1. That the Marital Property Act be applied only to those marriages entered into after the A comes into force, and individuals married prior to the enactment of this legislation may bilaterally op in. It is far easier to opt into legislation than to opt out, because in opting out you're releasing right

My second alternative to that, to eliminate the effects of retroactivity, would be that the legislatic apply only to those assets acquired after the legislation comes into force, so that you would st touch individuals who had entered into marriages prior to the enactment of the legislation, but n those assets that they had acquired up to the enactment of the legislation — only those asse acquired after the date the legislation comes into force. That's another alternative. I don't find it preferable to the first one, but it certainly is more acceptable than complete retroactivity.

The elimination of the retroactive application of the Act would, to an extent, cure some of th problems under this legislation, particularly the estate planning scheme problem and the Section problem, where an individual now can't say that that painting never hung in our house for 20 yea and you never enjoyed the benefit of that painting that my mother gave me which I thought was goi to be mine.

I also recommend that the sharing of family assets be deferred and I think that it only tru

becomes a meaningful right on marriage breakdown, in any case.

I also strongly suggest that commercial assets not be included in this legislation. This is, I believe, the case in Ontario. I'm not sure of the other provinces. I might mention, as well, that Quebec did not have a retroactive application of their legislation. I'm most concerned about the financial burden that may be placed on some spouses satisfying an equalization payment.

Now with respect to The Family Maintenance Act — financial independence — when the Law Reform Commission made their proposals, and I'd like to go down on record again that the Law Reform Commission's proposals bear only the remotest resemblance to the legislation, as enacted by the previous Legislature, when they made their recommendations, they made a provision with respect to financial independence in which they required under the Family Maintenance Act, or which they proposed that maintenance would not be a lifetime obligation, that there would be a cutoff period. I think it was something like three years. The reason behind that proposal was to eliminate long-term maintenance, and the idea also was that under the Marital Property Act you would be given some assets to use to generate further income to support yourself. That section dealing with the three year cut-off date has been eliminated, so we're now going to have situations where individuals, in some cases, will be paying long-term maintenance under the Family Maintenance Act, and long-term what I call maintenance under the Marital Property Act as well, in order to effect equalization payment. I have an example of where I see a problem of attaining financial independence. A waitress who has only secondary school education and no schools marries a professional who has income of, let's say, $60,000. Now ander the Family Maintenance Act, she might allege that in order to enjoy the same standard of living which she enjoyed while she and her spouse were cohabiting, she too would have to become a professional to enjoy that standard of life. Is the professional spouse — the one with the assets and the money — then bound to support her until she earns her medical degree so she can attain that financial independence? What happens if she's incapable of earning a medical degree, but is capable of, let's say, earning $600 a month as a waitress? Could it be then said that she will never gain financial independence because of her husband's previous lifestyle, or is she bound to work as a waitress and her husband make up the difference?

The second thing with which I take issue is with respect to fault in the determination of maintenance. My beliefs are shared by the family law subsection of the Canadian Bar, Manitoba Division. As a matter of fact, since we've had divorce legislation entering these discussions, the subsection reviewed at our last meeting the proposals with respect to divorce reform, and those provisions were completely rejected, one of the reasons being that the proposal recommended the elimination of fault on divorce. The family law subsection is very much in favour of fault as an issue in the awarding of maintenance, a circumstance to be considered, not a bar to maintenance, but a circumstance to be considered.

I think it was drawn to your attention in the previous meetings of the committee, but I will repeat it again, that although we have eliminated grounds with respect to separation — and please don't misunderstand me, I am not adverse to eliminating grounds with respect to your ability to get a separation, a legal separation — I don't think people should be forced to prove grounds in order to get court order saying that they are entitled entitled to live separate apart. In fact, you really don't need court order to say that you're entitled to separate. There's nothing illegal about living separate and apart while married. But, in any case, I'm not adverse to that. What I object to is the elimination of fault determining maintenance. What we can't forget though is that fault is still relevant in custody battles. If a spouse is alcoholic or is capable of violence, and those particular aspects of his or her personality may have precipitated the marriage breakdown, if a spouse is guilty of that kind of conduct, then certainly that conduct is relevant in custody proceedings. This legislation does not make it irrelevant in a custody proceeding. So the judge, if he hears a custody application, can still hear evidence of marital misconduct. It's going to come in through the back door to the custody application, if there are children involved and if there is, in fact, a custody battle. It may get in the back door. And because we don't have separate proceedings on custody versus maintenance, judges are only human, and that will still be in the back of the judge's mind. The judge, in making his determination, will still hear that kind of evidence, although it's not supposed to be relevant to that. The only way you can get around that, gentlemen, is to make two separate hearings, if you're wishing eliminate fault completely. I don't know if that's possible. It's certainly going to be more costly if you had two hearings. It's not something that I would necessarily recommend. I believe that fault could be relevant.

We've always heard that justice must not only be done, it must be seem to be done. Now, an individual . . . I'm having a difficult time explaining to clients that even though their spouse is guilty marital misconduct — beats her savagely — that that kind of conduct isn't relevant in a proceeding. Don't bleed over my counsel table, lady. We don't want to hear that thing about your husband beating you. It's not relevant. I have a difficult time explaining to a client whose wife has left him with the three children for another man, that the fact that his wife left him is not relevant. The court doesn't want to hear about that. I think it's very important for individuals to be able to have their day in court, to be able to tell their story to a judge. If a judge, of course, makes a determination after hearing the evidence, fine, but they've had their opportunity to tell their story to a judge. I think you may have situations — and I can't be sure of that — I think I can predict, at least with some of my clients, where individual who felt that he hasn't been given his say is not going to be so eager, because he's been

muzzled, to pay his maintenance payments. I didn't get a chance to tell the judge what she did. Why should I pay? She doesn't deserve this money after what she did to me. It's far more palatable to be able to pay a maintenance order if somebody's at least heard your story.

Section 6, I believe of the Family Maintenance Act — I'm not sure if I'm referring to the correct section — that section dealing with income tax returns, that they must be produced, I believe, is *ultra vires* of the Manitoba legislature. There is a provision under the federal Income Tax Act which provides that an income tax return cannot be produced by order of a judge. It's between taxpayer and the government. Those things are protected. In fact, what the situation is right now is, if you subpoena an individual from the Income Tax Department, they come armed with the income tax return, and then the judge says, "May we see the income tax return?" and the individual from the Department says, "Only if Mr. Taxpayer says so." If Mr. Taxpayer says so, then the income tax return, of course, can be introduced, but not otherwise. Now, what sometimes happens is that the judge draws an adverse ruling against that taxpayer. He has managed to alienate the court at that point, because he's refused to have his income tax return produced, but there is that protection under the Income Tax Act. They've filled that area. Now, I've spoken with Mr. Goodwin, and he backs me up on this. He believes it is also *ultra vires* of the legislature.

Section 6(2), I think, is an unwarranted intrusion into the affairs of third parties. Those cases where partners necessarily must disclose their income as well. Now it's true the legislation says that nothing in this legislation should be construed as forcing a partner to reveal his or her income. If you're a 50-50 partner, it's inevitable.

Section 9(2), I submit, is probably unconstitutional, as well, and if it's not, it should be eliminated. And if it's not eliminated, third parties should be given notice of proceedings of this nature. Now the problem is, as under our BNA Act, we have this thing called Section 96 judges, which are federally appointed judges, and those judges can deal with land. Provincial court judges have limited jurisdiction over what they can do with respect to land. As the law presently exists, if you and your spouse have titles, either as tenants in common or in joint tenancy, to a piece of land, and you wish to sell that property and your spouse doesn't wish to sell that property, you can make application to the Court of Queen's Bench for an order of what's called partition and sale. And the court hears the merits of the case, and they decide whether they should order a sale of the property. They will not order a sale of the property if the sale is factious or oppressive, and that's normally the case when you have young children living in that home. Now what this legislation does, the Family Maintenance Act says, is that before going into the Court of Queen's Bench, an individual can apply to a provincial court, to a provincial judge in one case, for an order that the home that he or she had the right to occupy that home for a certain period, and that partition and sales proceedings can't be commenced during that time period. If a judge makes that order, he's effectively prevented you from exercising your remedies under the Real Property Act in the Court of Queen's Bench, and many of my colleagues share the opinion that that would be *ultra vires* of the Manitoba legislature, because that kind of an order must come from a Section 96 judge, not a provincial judge.

I might mention that a copy of my submission is being sent to the committee and to Mr. Attorney as well. If any of you wish, I can make additional copies available. I'd like to take this opportunity at this time to commend the present government for choosing a most excellent and most qualified panel to review this legislation. I personally take exception with any remarks made against Mr. Houston, and any challenges and attacks against his professional integrity. Mr. Houston is in a client solicitor situation, just like any lawyer who has a client. In this case his client happens to be the Conservative government, the existing government of the province of Manitoba, and he must serve that client as if it were any other client, and any objections with respect to his mishandling and lack of objectivity and his ability to handle this case or file must come from the client itself. As far as I know his client does not take exception with his handling of this file to date. Thank you.

MR. CHAIRMAN: Thank you. Mr. Pawley.

MR. PAWLEY: Miss Halprin, do you support the recommendations of the family law subsection of the Manitoba Bar Association in its meeting of October the 20th.

MS. HALPRIN: Some of them, not all of them.

MR. PAWLEY: Do you support the main recommendation of the subsection that the legislation should be permitted to proceed as planned for January the 1st and November the 14th?

MS. HALPRIN: I don't support that recommendation, if it was a recommendation.

MR. PAWLEY: Were you at the meeting in question?

MS. HALPRIN: Yes, I was.

MR. PAWLEY: Were you not aware that that was a recommendation of the subsection?

ms. HALPRIN: No, I personally was unaware that that was a recommendation.

MR. PAWLEY: Do you have any question as to whether that was a recommendation?

MS. HALPRIN: I have some questions in my mind, yes.

MR. PAWLEY: You have not seen a copy of a letter, then, from Myrna Bowman to Mr. Graeme Haig indicating . . .

MS. HALPRIN: No, I haven't seen a copy of that letter.

MR. PAWLEY: . . . that to be the recommendation of the subsection?

MS. HALPRIN: I heard about that letter. I haven't seen a copy, no.

MR. PAWLEY: Could I just read to you from the third paragraph of the letter, and ask you for your opinion in connection with some further recommendations from that meeting?

MS. HALPRIN: Well, Mr. Pawley, I am not a secretary of the family law subsection of the Canadian Bar, and I don't purport to represent the subsection when I appear before you. I would suggest that if you have any questions with respect to that letter, that you deal with the secretary or the chairperson of that subsection, because the that's certainly their area. It's not mine.

MR. PAWLEY: Miss Halprin, the reason for my question is that in many of your recommendations you were proudly and quite properly indicating that they were endorsed by the subsection . . .

MS. HALPRIN: That's right.

MR. PAWLEY: . . . so that I would assume that you would be aware of the main central recommendations of the subsection at the same time.

MS. HALPRIN: I'm aware of some of them. I'm not aware of that particular — what I should say is that I don't recollect that particular recommendation, Mr. Pawley.

MS. HALPRIN: So you don't recollect also recommendations to the effect that the amendments should be made at the special session, 1977, if there were to be one, if not, then amendments to be made in the first session in 1978, and announcements should be made of intended amendments well in advance of January 1st, so at least the profession has some idea of how to advise their clients.

MS. HALPRIN: My recollection is that there was definitely a unanimity that there was a drastic need for a legislative amendment and that this should be done as soon as possible.

MR. PAWLEY: Were you aware of the recommendation that announcement as to intentions by the government be made known prior to the end of this year?

MS. HALPRIN: I don't recollect that. That doesn't mean that it wasn't necessarily so.

MR. PAWLEY: So you don't recollect the recommendation that the legislation as passed last June should be proceeded . . .

MS. HALPRIN: No, I don't recollect that particular one, but of course if you say that it should be done through with, implemented immediately in its present form, is inconsistent, of course, with the idea that we should eliminate immediate vesting. That's pretty substantial, the idea of eliminating immediate vesting and having family assets viewed as commercial assets in the sense that sharing would be deferredhat it taxed the philosophy of this legislation as it now exists . . .

MR. PAWLEY: Are you a member of the Manitoba Bar Association, Miss Halprin?

.. HALPRIN: Yes, I am.

MR. PAWLEY: Are you aware of any resolution passed by the Manitoba Bar Association?

.. HALPRIN: I think that you should speak with Mr. Mercury.

MR. PAWLEY: No, I was just asking you whether you were aware?

.. HALPRIN: I am not aware with respect to that. I am not aware of a lot of things.

MR. PAWLEY: Are you a member of the legal group called Women and The Law involving women lawyers?

L. HALPRIN: No, I am not, I gave up my membership last year when they took the stand they did with respect to this legislation.

MR. PAWLEY: Well, you withdrew your membership because of their position.

L. HALPRIN: That's right.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, is it a fair statement, Miss Halprin, that you don't think much of the draftsmanship of these bills.

L. HALPRIN: I am not happy with the draftsmanship of the legislation as it appears in Bill 60 and 61 I don't envy the position of the legislative draftsman, but I believe that when problems are pointed ou to a legislative body that are capable of corrections, to ignore those difficulties and say, "Well, we wil wait and see what happens"; or, "Let's take the shot-gun approach and let the pieces fall where they may and then try and put the thing back together after the damage may have been done," is a reprehensible attitude to take.

MR. CHERNIACK: Well, you've gone further haven't you? You have criticized almost every section that is, not criticized, but found problems relating to almost every section of those Acts.

L. HALPRIN: I have found a substantial number of problems in this legislation.

MR. CHERNIACK: Well, I don't intend to deal with all of them. I have a couple though that came t my attention. Under The Marital Property Act you were dealing with Section 24, dealing with a excessive gift. You pleaded earlier, I believe, for judicial discretion . . .

L. HALPRIN: That's right.

MR. CHERNIACK: . . . extended beyond what this Act allows. Would you not agree with me tha under Section 24 the Court would have complete discretion in deciding what is an excessive gift an what appears to be insufficient for the making of an equalizing payment. Would you not say that th Court would have that discretion?

L. HALPRIN: No, I wouldn't say they have that discretion because . . .

MR. CHERNIACK: Would you please elaborate?

L. HALPRIN: Because the previous government restricted and narrowed the discretion which the are allowed to exercise in those
situations.

MR. CHERNIACK: Would you please point out where the Court is restricted in any way fro applying absolute discretion to the problem raised in Se=tion 24 — where is the Court restricte

L. HALPRIN: Well, as a matter of fact, Section 37 does not deal with that particular section, it dea with Section 33.

MR. CHERNIACK: Right. So where is there a restriction on the Court exercising its comple discretion as it applies to 24?

L. HALPRIN: The Court would, I assume, have a discretion in determining what is excessive, determination of what is an excessive gift.

MR. CHERNIACK: And what about the impression or appearing that the remaining asset insufficient, would not the Court also have that absolute discretion?

L. HALPRIN: Well, not in determining whether it is insufficient. I mean something is eitl sufficient to satisfy an equalization payment or it is not sufficient.

MR. CHERNIACK: Well, before the equalization payment is determined then surely the Co would then be able to conclude whether or not the gift has made it insufficient.

L. HALPRIN: Well, that's my question. Do you look to see whether the act of giving that excessive gift at that particular time when it was given created the insufficiency or do we come further down the line and say, "Okay, at that time you were in a good financial situation and the gift, probably at that time, wasn't necessarily excessive, but now you are in a situation where you have lost some of your other commercial assets and frankly if we had that particular gift back here in the pool, you would be in better shape". I am saying that this is a problem and if the legislature has a policy with respect to this, that we should enact something there not necessarily perhaps taking issue with drafting here, but it is a function of policy, Mr. Cherniack.

MR. CHERNIACK: I would suggest to you that the legislature very clearly in relation to Section 24 had confidence in the judiciary to exercise this complete discretion in relation to Section 24. Do you not agree that is the only conclusion to which you can come by saying that the Court has complete discretion?

L. HALPRIN: I am happy to see that the NDP government at least gave the judiciary some credit in giving them some discretion.

MR. CHERNIACK: Now, Miss Halprin, I was just cautioned to be careful, you are a lady and I want you to have the same thought in mind. I am not saying the NDP government did anything, I am just reading Section 24, and I do not see any way in which the Court's judicial discretion is impinged on or restricted in any way. I want you to agree with me or otherwise.

L. HALPRIN: No, I don't challenge you with respect to putting a muzzle on the Courts with respect to their discretion, but if the government has a policy with respect to that Section then you can implement it in legislative form as a guideline for the Courts. It has happened on many occasions, Mr. Cherniack, as you must well know as a former practitioner, where the legislature seemed to have clearly meant one thing and the Courts interpreted it as something else.

MR. CHERNIACK: Well now, Miss Halprin, are you suggesting that the legislature, the government of the day, should give a guideline here which would then restrict the Court's absolute judicial discretion under Section 24.

L. HALPRIN: I am saying if the government chooses to set a policy on that, if they wanted to mean one thing as opposed to another, then they can so do.

MR. CHERNIACK: Miss Halprin, the reason I am asking you these questions is that I took this to be a criticism. You even said why a child may be required to return a gift.

L. HALPRIN: That is a possibility.

MR. CHERNIACK: I am suggesting to you that the legislature, which enacted Section 24, clearly left this to the absolute discretion of the Court, which I understood was your desire. Now I am not asking you to determine policy for government, but I am asking you to look at the Act as a practising lawyer of some experience and agree with me that in this case there is no restraint of any kind and that it is not desirable to have a restraint in your eyes.

L. HALPRIN: If it were desirable to have no restraints whatsoever, Mr. Cherniack, there wouldn't be a necessity for enacting The Marital Property Act. If we were willing to put it completely in the hands of judicial discretion . . .

MR. CHERNIACK: So you do believe that there should be restraints.

L. HALPRIN: There should definitely — why enact legislation if it is not going to put some kinds of rules to govern by?

MR. CHERNIACK: So you are saying that the judiciary should have restraints, they should not have absolute discretion, is that what you are saying now?

L. HALPRIN: The judiciary should have some restraints?

MR. CHERNIACK: Under the Act, and therefore not have absolute discretion. I am now in the dilemma of believing that you said two contradictory things, so I am . . .

L. HALPRIN: I don't think I have. The function of the judiciary is to interpret legislation and apply it to the facts of the case.

MR. CHERNIACK: What is the problem in Section 24 that you would have by suggesting the judiciary cannot make that decision?

I. HALPRIN: I can see envisioning situations where, as I said, a gift may not have been excessive at the time the gift was made, but somewhere down the line the financial liability of the unit may be in jeopardy and as a result there may be a problem with getting that money back from a child.

MR. CHERNIACK: Would that problem only occur if a Court using its absolute discretion determined that the gift was excessive, and then did order — and it says here, "the spouse may . . .

L. HALPRIN: The Court would seem to have to make the determination that the gift was excessive. But my question is, excessive when?

MR. CHERNIACK: Well it says, "and it appears that the remaining assets are insufficient." Would you not agree that that gives the Court full discretion, that is all my question is?

L. HALPRIN: I have never taken issue with the fact that you are trying to impinge the discretion of the Courts under Section 24 I am just giving you a situation which possibly could create hardships. That is all I am saying.

MR. CHERNIACK: If the Court is unreasonable, it would create hardships. Would you not agree that that is the case?

L. HALPRIN: If the Court made a determination that the key date was, let's say, two years down the line.

MR. CHERNIACK: But do you finally agree that if the Court has absolute discretion?

L. HALPRIN: I agree the Court has discretion.

MR. CHERNIACK: All right, then let me move on. I don't want to deal with all your suggestions. I am glad you sent them on to the Review Committee, so we don't have to deal with them. But under Section 20, you were talking about a mortgage on the property and the mortgagee being concerned about the covenant.

L. HALPRIN: That's right.

MR. CHERNIACK: I inferred from what you said that if a transfer of the property is made, then the covenant of the original mortgagor disappears. That is what I inferred from what you said.

L. HALPRIN: No.

MR. CHERNIACK: Well, then would you agree that there is only one mortgagor, or only the registered owner at the time of the mortgage is the mortgagor.

L. HALPRIN: It doesn't disappear any more, Mr. Cherniack, than it does when you as a vendor sell a piece of property on which you have a mortgage and the individual who purchases that property assumes obligations under the mortgage in terms of payment. It is not on the mortgage covenant.

MR. CHERNIACK: I thought you were saying that under the case of a vesting to a wife, or to a spouse, that there is a new convenantor.

L. HALPRIN: No.

MR. CHERNIACK: I think you said that, but that is not correct, is it?

L. HALPRIN: No, as matter of fact, you definitely don't have a new covenantor because the individual never signed that original mortgage, so is not liable on the convenant unless you get some kind of an assumption agreement.

MR. CHERNIACK: Right, so that you have not lost the old convenantor, have you?

L. HALPRIN: No, you haven't.

MR. CHERNIACK: And you still have the right to sue the old covenantor?

L. HALPRIN: That's right, Mr. Cherniack, but you know as well as I do that a sales clause in mortgages is very, very common, where a mortgage will fall due if sold because the future purchaser may be totally unacceptable to the mortgage company who originally gave that loan transaction. That is why we put a sales clause in, and those are, typical to find a sales clause in mortgages. In fact

every mortgage that I see has the sales clause in it at this point.

MR. CHERNIACK: And that applies whether the transfer is made to a spouse, or to another party.

L. HALPRIN: That's right.

MR. CHERNIACK: So it means that mortgagees have caught on to this cute idea of finding a way by which they can accelerate the payments under a mortgage.

L. HALPRIN: I don't think that's the reason behind it at all. It is that they may be stuck with a . . . Listen, when anybody applies for a mortgage a full credit check is done on that individual to see if they are capable of satisfying their obligations under that mortgage.

MR. CHERNIACK: But we have just agreed that that person does not get off the covenant and remains liable.

L. HALPRIN: That's right. It would be unfair for an individual who was no longer the owner of the property to be sued on a mortgage covenant when he or she was not the owner of that property.

MR. CHERNIACK: Would you not agree that the person who was sued in that way has immediate recourse to the person who has received the transfer?

L. HALPRIN: I beg your pardon?

MR. CHERNIACK: Would you not agree that the person who may be sued under his or her convenant has recourse against the person who acquires the property?

L. HALPRIN: Oh certainly, certainly.

MR. CHERNIACK: All right, let's move to The Maintenance Act, and that's my only one more. You referred to Section 6, Subsection 1. Could you indicate to me where in that section or in the Act itself is there the authority to subpoena an employee of the Department of Income Tax to have the department produce the income tax return of any individual. Could you point that out to me please, because I haven't found it yet?

L. HALPRIN: I didn't say that there was a provision requiring the . . .

MR. CHERNIACK: Well, did you not give us what is called a *scenario* of here an employee from the Income Tax is required to come down . . .

L. HALPRIN: Yee, to illustrate the fact that . . .

MR. CHERNIACK: Well, where could anybody bring an employee of Income Tax down to Court to give evidence, where is it?

L. HALPRIN: The Section says that "where a person fails to observe a provision of this Section", and that is referring to all of Section 6 . . .

MR. CHERNIACK: That's 5.

L. HALPRIN: . . . "a judge upon the application of spouse may make an order requiring the person to observe the provision on such terms as the judge deems proper". Ad what I am saying is, that there is no authority, at least I believe that that particular Section is *ultra vires* of the Manitoba Legislature as it applies to a judge making an order compelling the production of an income tax return by a member of the department, of the Income Tax Department of Revenue Canada, or on the individual himself.

MR. CHERNIACK: Miss Halprin, this is important when you challenge the constitutional part of this. Would you show me where in this Act or in this Section the Court has acquired the right to subpoena a member of the Income Tax Department?

L. HALPRIN: Our courts have always had the power to subpoena somebody.

MR. CHERNIACK: Not the right to subpoena a member of the Income Tax to produce income tax returns which are under the law confidential.

L. HALPRIN: The subpoena is on the individual . . .

MR. CHERNIACK: I'm sorry, Miss Halprin, now . . .

L. HALPRIN: The subpoena is on the individual from the Income Tax Department who brings the income tax return into the Court.

MR. CHERNIACK: I'm sorry, Miss Halprin, I would like to know where there is the requirement or the authority or the power to bring an income tax return in other than by demanding it from the person whose return it is or his accountant or bookkeeper. Now who else can be required to produce a return or is . . .

L. HALPRIN: But that kind of an order requiring an individual to bring in their income tax return . . .

MR. CHERNIACK: His own tax return.

L. HALPRIN: . . . is unconstitutional because the Income Tax Act says that you are not bound to disclose your income tax return to anybody. . .

MR. CHERNIACK: Miss Halprin, how long have you practised law?

L. HALPRIN: It's between the Department and that taxpayer.

MR. CHERNIACK: How long have you practised law?

L. HALPRIN: Well, you asked me that question at the last session.

MR. CHERNIACK: I know the answer too, so would you give us the answer.

L. HALPRIN: You know the answer?

MR. CHERNIACK: Yes.

L. HALPRIN: Then why ask the question?

MR. CHERNIACK: Because I would like other members present to know.

L. HALPRIN: I have been in practice now for approximately two years, not including my articles

MR. CHERNIACK: Now in that time have you not had occasion to appear in Family Court and had . . .

L. HALPRIN: Many times.

MR. CHERNIACK: . . .party produce his T-4 slips to prove what his earnings are? Have you nc had that occasion in your experience?

L. HALPRIN: To produce an income tax return?

MR. CHERNIACK: Yes.

L. HALPRIN: Where we have requested the production of an income tax return?

MR. CHERNIACK: Yes.

L. HALPRIN: Most definitely.

MR. CHERNIACK: You have.

L. HALPRIN: Yes.

MR. CHERNIACK: Well, then isn't that what this Section says, that a person may be required produce his income tax return?

L. HALPRIN: No, no, because there is nothing which can compell the production of that income t return. I take my chances in Court, and very often as I have said, once a member of the Departme comes into Court having that income tax return in his hand and a judge makes an order to produ the income tax return, the member from the Department says, "I am not compelled to produce th

return". The judge may then say, "Unless Mr. Taxpayer allows me to release that return and introduce it in evidence"; the judge may then turn to the taxpayer and say, "Mr. Taxpayer, are you going to allow this return to be introduced?" The taxpayer normally is intimidated and says, "Yes, let it be." If the taxpayer refused there is no way that income tax return can be compelled to be introduced in evidence.

MR. CHERNIACK: But, Ms. Halprin, I am trying to find out whether there is anything in this section, or in this Act, which gives the court the authority to demand that the Department of Revenue shall produce an income tax return from anybody. As I read this section, the only order that can be made is — well, I don't have to read the section to you — is to have the spouse produce his or her income tax return, or his accountant or bookkeeper. That's all I read here.

L. HALPRIN: That's right, and I'm saying that that is *ultra vires*. You can't compel those individuals to produce it.

MR. CHERNIACK: But will you agree now that there is nothing in the Act that contemplates bringing down Joe Guay to produce an income tax return.

L. HALPRIN: You didn't have to. It was the law. You could bring them down by subpoena.

MR. CHERNIACK: Under this Act?

L. HALPRIN: No, under our law you can subpoena somebody from the Income Tax Department.

MR. CHERNIACK: But you can't require them to produce anything.

L. HALPRIN: That's right.

MR. CHERNIACK: Well, you and I agree then.

L. HALPRIN: Mr. Cherniack, we always seem to go through this circle whenever I'm speaking to you.

MR. CHERNIACK: It has happened twice now, hasn't it?

L. HALPRIN: Yes.

MR. CHERNIACK: Ms. ualprin, now I gather that you are a member of the Family Law Subsection and I'm a little concerned about whether or not Ms. Bowman's integrity has been challenged.

L. HALPRIN: Most definitely not; I would never challenge Mrs. Bowman's integrity.

MR. CHERNIACK: Because this letter which was distributed in the Committee has her statement which says, "We are strongly of a view that this Act" — that's the Marital Property Act — "should proceed to come into force on January 1, 1978", and the letter also recommends a certain amendment to the Maintenance Act and says, "with or without the amendment, however, we think it essential that this Act, too, should go forward as planned and come into force on November 14th next."

Would you agree with me that that's probably the most important statement made by the Family Law Subsection as a result of that October 20th meeting?

L. HALPRIN: No.

MR. CHERNIACK: No? That is not important — to state that we strongly believe that the Act . . . ?

L. HALPRIN: Oh, that definitely is important; I don't think it's the most important statement made.

MR. CHERNIACK: And you don't remember it being discussed at the Committee?

L. HALPRIN: No, quite frankly I don't have any recollection . . .

MR. CHERNIACK: But you don't question that ?

L. HALPRIN: . . . but I will not challenge Mrs. Bowman's letter.

MR. CHERNIACK: All right. So now we've heard — at least we believe we've heard — in this letter from the Subsection of law of which you are a member, and I think you stated that the Manitoba Bar, you're not aware of any statement or decision or resolution made by the Bar; that's correct, isn't it?

I. HALPRIN: I was aware of Mr. Mercury's statement.

MR. CHERNIACK: Yes, but not of the Manitoba Bar Association, as such.

L. HALPRIN: Well, Mr. Mercury is, of course, a representative of the Manitoba Bar.

MR. CHERNIACK: Do you give him the authority to speak on your behalf in connection with marital property law — him to speak?

L. HALPRIN: It depends.

MR. CHERNIACK: Whether you agree.

L. HALPRIN: It depends, you know, pursuant to what authority.

MR. CHERNIACK: Are you aware of the position of Legal Aid lawyers, the Association of Legal Aid?

L. HALPRIN: I read the Tribune.

MR. CHERNIACK: Are you aware that they wish especially The Maintenance Act to continue?

L. HALPRIN: That's what I understood.

MR. CHERNIACK: Yes, and The Women and The Law, you have indicated you know their position

L. HALPRIN: Most definitely.

MR. CHERNIACK: Well, then, are you aware of any group of lawyers, any organized group o lawyers, who agree with your position? And the reason I ask that is that so far you are the only lawye who has come before us that is supporting the bill which suspends or moves off the . . .

L. HALPRIN: Well, it depends what you mean by a group of lawyers.

MR. CHERNIACK: I mean an organized group that has met.

L. HALPRIN: If you're talking about an organization, I believe the Trial Lawyers' Association mad representations during the last session, which called for drastic amendments with respect to th legislation. I think it might have been Mr. Stoffman — Jim Stoffman — who made representation a the last session.

MR. CHERNIACK: I'll look that up. But I'm talking now about the present bill and the presen committee, which is dealing with Acts that are on the Statute Books and the government is proposin to suspend their Act altogether. So it can't be what went on at a prior meeting, it has to be this session I was saying I don't know of any other lawyer that has expressed that concern that you hav expressed. So, I'm asking whether you represent . . .

L. HALPRIN: Well, I'm not familiar who came here, and if you're asking me do I represent particular legal organization? No, I'm speaking here personally in my own personal capacity. Th only thing that I am aware of is that some groups who have lent their name to the Coalition have no been fully informed as to the ramifications of the legislation and were quite surprised to find out tha the legislation has some of the ramifications and does some of the things that it does.

MR. CHERNIACK: That's a very important statement. Would you please tell us which groups thos are?

L. HALPRIN: Well, a particular group, for example, the president of that group advised me that the were not aware that the legislation had retroactive effect.

MR. CHERNIACK: Who was that group?

L. HALPRIN: That was the National Council of Jewish Women.

MR. CHERNIACK: And you're saying that they do not agree with . . .

L. HALPRIN: I'm not saying that; I'm saying that they weren't fully informed as to the ramification of this legislation and it wouldn't surprise me if a number of groups were unaware of the fu

ramifications of this legislation. I've heard so many individuals, both at this Committee hearing and at the last Committee hearing, speaking of adopting the principles as set forth in the Law Reform Commission proposals. Now this legislation bears only the remotest resemblance to the Law Reform Commission proposals. Individuals are talking about supporting that, but this is a totally different animal.

MR. CHERNIACK: You're quite right, Ms. Halprin. When did you learn that the National Council was not fully informed?

L. HALPRIN: About, let me see, about a week and a half or two weeks ago.

MR. CHERNIACK: Did you make an effort to suggest to them that they come here and disassociate themselves from the presentation?

L. HALPRIN: The idea wasn't necessarily to disassociate themselves, Mr. Cherniack.

MR. CHERNIACK: You just said they didn't know all the ramifications.

L. HALPRIN: That's what I'm saying. My point is that one is not aware. I would mention though, that it's unfortunate there has also been press coverage. For example, the National Council was said to have demonstrated before the Legislature when Bill 5 was first introduced. That is not the case, and I believe the President is writing a letter to the papers saying that that was not the case.

MR. CHERNIACK: Now, really you don't agree with The Marital Property Act at all.

L. HALPRIN: That's not so. Don't put words into my mouth, Mr. Cherniack.

MR. CHERNIACK: Well the reason I did is that you're on record as supporting the idea that there should be a change in the Married Women's Property Act and that the amendment there should say something like, "There is a presumption that spouses to a marriage should have joint ownership of the properties."

L. HALPRIN: No, not a presumption of joint ownership. At the time that I made my recommendations I believe that I had come after — or shortly after — Mr. Houston and after hearing him I found some of his suggestions very attractive.

MR. CHERNIACK: Well, he had two suggestions.

L. HALPRIN: He suggested a possible amendment to the Married Women's Property Act as I believe was done in Saskatchewan, in which physical contribution of a woman would be recognized as a valid contribution and put in the same category as financial contribution.

I might mention that since making those representations I considered that at greater length and I can appreciate that there would be some problems associated with that kind of implementation, as well. I don't think it would work very nicely if you were holding a professional practice in trust for your wife. So there are problems associated with that.

MR. CHERNIACK: Well, what is your proposed solution to this problem that we've been discussing over today?

L. HALPRIN: Well, I gave some of my proposed solution. I recommended the elimination of retroactive application of this legislation.

MR. CHERNIACK: Well, then you agree with certain provisions of this Act.

L. HALPRIN: Certain provisions, yes, but you know so many of the provisions or principles of the Act would, of necessity, have to be eliminated. Retroactivity is pretty fundamental. The idea of deferred sharing of family assets, as opposed to vesting of family assets is pretty fundamental. The elimination of commercial assets from shareable assets is pretty fundamental.

MR. CHERNIACK: Ms. Halprin, six months ago you told us that you were having difficulty discussing with clients where they stood in relation to the law and that it was in a state of limbo.

L. HALPRIN: Yes.

MR. CHERNIACK: You said negotiations have ground to a halt in this province. Nobody is moving. Everybody is holding out their goodies under the Act. That's six months ago.

L. HALPRIN: Yes.

MR. CHERNIACK: If this bill goes through — and the bill as it reads now is for an indefinite postponement — what are you going to advise your clients now?

L. HALPRIN: Frankly, Mr. Cherniack, I will have problems advising my clients; there is no doubt about it. What I'm doing though, in terms of trying to do the best possible job for my clients, is that I'm advising clients who were separated on May 6th, 1977, that there shouldn't be a problem with the legislation.

MR. CHERNIACK: You mean, if they're separated before that?

L. HALPRIN: Who separated as of May 6th, 1977, that they likely won't have any problems, but there is the possibility that they may. Mr. Mercier, at least I read in the paper that Mr. Mercier doesn't seem to find any objection with that particular except in terms of the reconciliation problem.

MR. CHERNIACK: Oh?

L. HALPRIN: He has recognized that as the problem. That was the report I read in the paper, at least of the Tribune, as an area that would require amendment but I have no knowledge of him taking issue with the May 6th state, itself, as the cut-off date to bring people in that were not formerly brought in

MR. CHERNIACK: Every separation after May 6th continues to be in limbo for you; the law is a limbo, isn't it?

L. HALPRIN: The law is in limbo to the extent that clients wanted to wait out and see. With the repeal of the Act, I'm going to govern myself on the basis that if they have separated — and I'm acting for an individual who is seized of substantial assets — that we are going to proceed right along our merry way.

MR. CHERNIACK: Yes, Ms. Halprin then you are assing that the Acts are repealed.

L. HALPRIN: I am assuming that the Acts are repealed.

MR. CHERNIACK: Yes, you know that that's contrary to the statements we have been hearing from the Conservative members of the Legislature.

L. HALPRIN: That the Acts are going to be repealed?

MR. CHERNIACK: Yes, they do not agree with your statement that the Acts are repealed.

L. HALPRIN: Well, in the sense that they are being delayed to be reworked, but will not come into force. Well, The Marital Property Act will not come into force at all. The Family Maintenance Act becomes non-operational.

MR. CHERNIACK: That's your interpretation. Well now, The Family Maintenance Act, is there anything that you said in your section-by-section review of The Maintenance Act that would indicate that keeping The Maintenance Act alive and bringing in certain amendments — even all those you suggested — would not be preferable to suspending it completely — to repealing it, in your words - and waiting for a future date, undetermined as yet, to bring it back? Then you would be operating under the old law, I assume.

L. HALPRIN: The old law, with some amendment.

MR. CHERNIACK: Yes, which amendment is that?

L. HALPRIN: Well, I believe there are two provisions that are being amended. Is that correct, Mr. Mercier? I don't recall them offhand, what they were.

MR. CHERNIACK: Well, I'll help you. There is some reference to existing orders.

L. HALPRIN: I believe it's the provision with respect to *ex-parte* orders, is that it, Mr. Attorney? Yes

MR. CHERNIACK: Interim orders, yes. And with that you're satisfied with Wives' and Children Maintenance Act, along with interim orders. That is the law that we would be reverting to once this bill passes.

L. HALPRIN: Yes.

MR. CHERNIACK: Would you say that that is preferable to keeping the Maintenance Act alive and making the amendments, if all of your suggestions were made?

L. HALPRIN: Yes, I think it's preferable rather than allowing the legislation to continue.

MR. CHERNIACK: You'd rather go back to the Wives' and Children's Maintenance Act.

L. HALPRIN: Yes, not that I'm endorsing, Mr. Cherniack, the Wives' and Children Maintenance Act.

MR. CHERNIACK: But as between the two, you prefer the old Wives and . . .

L. HALPRIN: There's no doubt about it that the Wives' and Children's Maintenance Act had to be amended. I'm not taking issue with that at all. But I would like to see, if I had my druthers — and I think I do have my druthers now — the Wives' and Children's Maintenance Act being enforced as opposed to The Family Maintenance Act, as it now stands without the amendments.

MR. CHERNIACK: I just heard the statement "It's the better of two evils". Do you believe that? The Wives' and Children's Maintenance Act is the better of the two poorly drawn Acts. Is that words in your mouth?

L. HALPRIN: Yes. And you've put it quite correctly; they are two evils, you know.

MR. CHERNIACK: It wasn't my words; I quoted words that I heard and asked you if you agreed with them and you do.

L. HALPRIN: Yes.

MR. CHERNIACK: Frankly, I should ask — since you seem to have some belief that you can have your way — have you been employed, yet, by the government to advise them on this?

L. HALPRIN: No, I have never been employed by the Conservative government.

MR. CHERNIACK: Aren't they missing a good opportunity to make use of all your expertise in these things? The Review Committee has not employed you yet?

L. HALPRIN: No.

MR. CHERNIACK: Thank you, Ms. Halprin.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: It's okay, I'll pass.

MR. CHAIRMAN: Any more questions for the witness? Thank you.

L. HALPRIN: Thank you very much, gentlemen.

MR. CHAIRMAN: I call Esther Koulack.

ESTHER KOULACK: My name is Esther Koulack. I'm representing Women's Place and Women's Liberation, which have a combined membership of about 500 people. We are active members of the Coalition on Family Law and support all of the recommendations put foward by the Coalition.

Before I go into reiterating on absolutely nothing new, you know, what our position has been in the past and continues to be, I think I'd like to just make some reference to the previous speaker's conceptions. I'm not a lawyer; I'm a lay person. I teach sociology at the University of Winnipeg. As a matter of fact I teach sociology of the family, and so you know, what I do in my professional field is really deal with something that I feel the previous speaker has somehow omitted in all this, which is what is the principle behind the existing legislation that this government seeks to suspend?

I think we really have to keep in mind — as the previous speaker was, I suppose, spending evenings dreaming up possible exceptions to the law — I think we were all aware that any law, by its nature, because it is one rule that is designed to handle the entire population will of course create some minor problems in individual cases. What we have to do is to try and get some sort of perspective on this, to look at the principles behind the legislation, and to look at who will be affected and who will not be affected.

The old law — if you'll let me reiterate once again — the old law really operated on the assumption that I think really is unfortunate, not only for women but for men as well. The assumptions to the old

law are that only one form of labour is worth anything, that form of labour which brings in the bucks, and really that is what we concentrate on and that is what we give priority on. And really, I suggest that those kind of valuations are really most unfortunate. I think it really ties up both men and women in ways that I think are destructive to both.

The proposed legislation really does try and deal with that. I had it back there but it is really stated that it operates under the principle of equality. It operates that there really are two kinds of work. There is the kind of work that brings in the money, and then there is the kind of work that does not have a dollar sign that is attached to it, but has really a tremendous importance as well.

Now I'm sure in all of our immediate experiences — like we all live in families and so we all know. I don't think I have to even refer to the emotional value of, you know, the work performed at home. But I can really get even more direct than that and look at really the stuff that is done at home as really directly connected with what happens outside in the work force. You know when there's one person, even a professional or a non-professional, that is working, making a living, who is really responsible for his or her maintenance? It is the person at home who is preparing the meals, doing the shopping, and gearing their entire lives to, you know, facilitate that person's contribution to work outside the home.

=I'm suggesting that bringing up children, taking care of children, preparing them to also become, you know, future members of the work force, to be the next generation of income earners, we don't really have to refer to, you know, well when she washes clothes if it was . . . how much money would that earn? I think we can see very directly how the work that is performed at home has a tremendous amount of importance.

Now, the existing legislation really operates on the equality of contributions of both spouses even though the non-income earning spouse, the contribution has to obviously be measured in other ways. I think that what the proposed legislation really tried to do was to recognize this and to seek to solve a tremendously important problem, namely, how do we when one spouse is at a disadvantage in terms of income earning capacity, how do we somehow compensate for that in family law when the unfortunate fact of family breakdown occurs?

Just to reiterate once again, the principle involved in family maintenance because the principles in the Property and the Family Maintenance Acts were very similar. You know, maintenance is really not intended to be either a reward or a punishment for good or bad behaviour. It really is an earned economic right. Furthermore, the principle of no-fault is not only just and fair because of the economic contributions and because of the considerations of really what is most important after all you know, need, but as a person who also happens to be a single parent, mother, and has been through this process myself, also at the other end, presumably to have gained from this idea of fault. think that any practising lawyer with any iota of sensitivity will know that only in the most extreme c circumstances that you can even say, "Okay, here's 100 percent fault on this side and here's th innocent angel and queen." Again, having lived that role I know now, some years later, what mistaken assumption that is.

Now, I'll just really reiterate the Women's Liberation position. We are just simply opposed to th suspension of The Marital Property Act and the repeal of the Family Maintenance Act. Along wit many other groups we've been involved in attempts to reform Family Law for three years and it' really time to do that. The reason that these efforts developed in the first place is because there is tremendous discrepancy between what people think they're getting into when they get married an what the law says. Like people are no longer operating on the assumption that he is the breadwinne and she is to be the weak dependent one. People are operating under assumptions of equality and c the ability of men and women to really create the kinds of lives that will be perfectly satisfactory t both of them.

We've appeared before the Law Reform Commission and both legislative hearings and ou position has been stated clearly, and I'm not going to go back into the details of it. If you like, pleas reread our previous position papers and just all the other pages documenting, as has been indicate in the question period, just exactly where public support for Family Law Legislation lies, which is i terms of the existing legislation which this government really seeks to appeal, where along with th unwillingness of this government to publicly state its intentions regarding Family Law legislation, w not support any increase in judicial discretions. Judges are not gods, they're human beings.

Nor will we support unilateral opting out. We insist that all family assets, including wages, b immediately shared and all commercial assets shared in the event of divorce. Maintenance must b based on need, not fault. As is the case with all other legislation, of course amendments may b necessary after the legislation has been tried in the courts. But I think that we must not forget to loo at the forest through all the little trees, or use the trees as some sort of excuse to really throw th whole thing away.

The laws just passed in the spring session were progressive laws, models for other Canadia provinces. The old laws were unjust and archaic. We're unalterably opposed to the propose suspension of these newly formed and progressive family laws. Thank you.

MR. CHAIRMAN: Questions? Thank you kindly. Are there any other citizens wishing to make presentation before this committee on Bills 5, 6 and 8?

MR. JORGENSON: I'm going for clause by clause consideration of 5, 6 and 8 now and I wonder i

would be agreeable to members to take 8 and 6 first and dispose of them before we go on 6, or do you want to go on to Bill 5 right away? My preference would be to go on 6 and 8.

MR. CHAIAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'm just wondering if I may, I personally have no objection because I am here. I'm wondering if some of our members who wanted to have particular input on 6 and 8 wanted to be called, and I'm wondering if we could just walk down. Aren't all MLAs presumably in the building? I don't know what my colleagues feel. We haven't discussed it. But possibly we could send word down to the caucus room or take a few minutes to see if we can find out if there is any objection. I have none. I don't know if my colleagues have.

MR. CHAIRMAN: I can suspend the committee for five minutes. —(Interjection)— Very good. Agreed.

MR. JORGENSON: There will be no problem with Bill 8, could we not while we're waiting for the members to come in, dispose of it? The Summary Convictions Act?

MR. CHAIRMAN: Bill No. 8, Clause 9 (1.1)—pass. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I want to remind you that when the Attorney-General introduced this I asked him about the retroactive features and he stated that he would be prepared to consider a limited form of retroactivity. I'd like to know if he's reconsidered possibly the whole question of retroactivity.

MR. MERCIER: I think, Mr. Chairman, I indicated that it was a matter that could be discussed when we arrived at this position. Although the bill is very widely worded and the only people that it would apply to would be people within the last 30 days or so that have a right to appeal, the concern would be basically that those persons right to appeal would be on a technical ground as a result of the decision of His Honour Judge Philp and not particularly on any question of merit ; and if the appeal was on a question of merit they still have the right to apply by way of trial de novo to the County Court. So that I don't see any particular reason for any change in the proposed bill.

MR. CHERNIACK: What bothers me here is that somebody was astute enough to come to a conclusion that the law was deficient, appealed, went to court, had a Judge confirm his impression, and as I read this section, it is proposed that that very person shall lose his right. I would like clarification. It says, "shall be deemed never to have applied." Now is the Crown not required, without this bill, to refund any fine paid by that person and will the Crown now not have the obligation not to make the refund?

MR. MERCIER: That case will not be affected by this bill.

MR. CHERNIACK: Well, I must ask. I don't know enough about the law, Mr. Chairman. It seems to me that here we have a man who appealed and was found right and now we're told that his grounds for appeal have disappeared retroactively. Now, is it that he has succeeded because he appealed and others who may have wanted to follow his example are now being denied the opportunity? Is that justice and is it important? I really wonder if it's important because one thing I gathered from the discussion in the House was that the Attorney-General made a sort of a commitment that there will be reporters available in the event they are requested, and some may have had the right to request and didn't know they had to because maybe they thought that they had a right to succeed.

So I'm just wondering how important is it to the government to go retroactive? What will the government lose? Is it $500, $15,000? There's no principle at stake because in fact it's henceforth the law will be as the law is being enacted, and this is something that we could do any time we pass a law. So the retroactive feature should have a particularly strong argument in favour of it and I believe the only argument I can think of is people who have acquired a right because of the court's decision, are having that right taken away from them by retroactive legislation.

MR. MERCIER: Mr. Chairman, I may make the point again, that this legislation is only confirming the practice of the past few years, in which anyone who wanted to appeal was advised or directed by the County Court to appeal by way of trial de novo because there had been no court reporters in attendance. And it wasn't until this case came about and this decision was made that it was found that appeals could be made on this technicality. So we're merely confirming the previous practice again and anyone, as the Member for St. Johns indicates, who wishes to have a court reporter, the court reporter will be supplied upon request. And again, anyone who wishes to appeal a decision, who has a right of appeal in the past while, can still appeal by way of trial de novo, which was the practice.

MR. CHERNIACK: I'm sorry, Mr. Chairman. I don't think Mr. Mercier has really answered my

concern. I think he'll agree that the phrase, "that shall be deemed never to have applied," is a very extraordinary section, and it goes all the way back to, I suppose, 1877, and that we are now saying that a right that existed but was not recognized — he said it was a practice and I'm sure it was a practice — a right that existed but was not known to have existed, is now being abrogated. And I question him again as to what is the consequence to government administration or government revenue if this were not made retroactive but made effective as from the date of assent? What is the danger?

MR. MERCIER: Well, the only people who would be affected would be then those people who wish to appeal on it, t technicality, that a court reporter was not in attendance. And in view of that decision they would succeed and that would be completely without merit. Well, then what would be the estimated number of —(Interjection)—

MR. CHERNIACK: A few hundred. How much money is at stake?

MR. MERCIER: That's probably difficult to estimate in the amount of fines and in the effect of demerit points on a person's licence.

MR. GOODWIN: May I comment?

MR. CHERNIACK: If the Chair will let you, I wouldn't object.

MR. GOODWIN: Why should someone who appeals, if that's the case, Mr. Cherniack, it seems to me that we should just refund every fine that has been imposed in the last month, or since that decision, and just say, "Well, it's unfair." We shouldn't have a law which says, "Okay, if you're bright enough and clever enough, now you saw this decision here, get in, your appealit's an automatic acquittal; but if you don't tough-o," and I just don't see that that's a consistent or fair approach.

MR. CHERNIACK: Well, Mr. Chairman, we operate on the basis that a person is innocent until proven guilty, and there is an appeal right, on any right whatsoever, and usually legislators as well as the courts lean over backward to protect the accused.

It seems to me here if we're dealing with a few hundred people and some fines they have paid and if the problem is that they may ask for a refund and get it, then should we sacrifice what we think is the principle of affecting people adversely or retroactively for the few hundred people and the few thousand dollars? I'll bet the biggest fine is $25.00 and the biggest threat is the loss of points which is a very serious thing. Then they have a right, the courts have recognized their right. They always had the right apparently, Mr. Chairman. Apparently they've always had the right but it was not known to be a right until a court found it to be a right. The government has not appealed that decision, so the government must agree that they've always had that right.

I'm going to stop discussion, Mr. Chairman, because I think I've said all there has to be said about it. I just think it's wrong.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Chairman, what we are now doing is making people who have a right to get a declaration that they are innocent, we are finding them guilty.

There are people now who can appeal their decision and be acquitted immediately, as this man was. Are we making his acquittal a conviction as well? —(Interjection)—

Well, if they are doing that, Mr. Chairman, then I find that reprehensible that a man has got himself acquitted and that the Legislative Committee is going to convict him. And by the way, I really think that and I appeal, Mr. Chairman, with respect to Legislative Counsel, — this is not his concern. His concern is to tell us this will be the result of proceeding one way; this will be the result of proceeding the other way. How we proceed and how we should proceed I really don't think that that's his province. —(Interjection)— No, but Mr. Goodwin says what equity there is in the . . . – (Interjection)— Well, the same thing, the same thing. I don't know whether we're seeking political advice. I think what we are seeking here is, that if we proceed in accordance with the bill, it will not only convict that man who has been found acquitted by a Judge, well if it won't convict him then it shouldn't convict anybody in his same position. We shouldn't have one person innocent on those grounds and everybody else guilty on those grounds.

What we are doing now is saying that from this point on there will be new laws and those laws will convict some and acquit others. But up until now — and I would venture to say and I'm not talking about the equities of it — some will appeal, some will not appeal, that's the way the ball bounces. That is the case with every single aspect of the law, and I think, Mr. Speaker, I mean the Attorney-General can go ahead and push this through if he wants to. He has got the votes and he will have to decide in his mind whether that is the way to proceed. I think he will be making a mistake. This is not Bolshevism that I'm talking about; this is the kind of law that I learned from the most conservative oriented people, that you do not retroactively convict people.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, again, these people still have a right of appeal by way of trial *de novo* on the merits of their case.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I have very limited experience in the criminal court but I believe that it is a principle in criminal law to take advantage of every technical and other means whereby one makes the law honest, and I use that expression only in terms of making it work. Many lawyers of great prestige will use a technical means to get around a conviction of a man or a person who is absolutely, obviously guilty, but because of the need for the integrity of law, there is a recognition that a lawyer must fight on behalf of the client no matter how guilty he knows that client to be. That's to keep the law in a sense of integrity. You know, I'm dealing about criminal law about which I don't have much experience but I think criminal law is much more important in this respect, so that's my point.

MR. CHAIRMAN: Any further comments? Subsection 9—pass?

MR. CLERK: You'll have to call for Yeas and Nays, Mr. Chairman.

MR. CHAIRMAN: Yeas and Nays. All those in favour of Subsection 9(1.1).

A COUNTED VOTE was taken, the result being as follows:
Yeas 13, Nays 10.

MR. CHAIRMAN: Pass. Section 468 9(1.1)—pass; Section 1—pass. Section 2—pass; Preamble—pass; Title—pass; Bill be Reported—pass. Same division?

Bill (No. 6) - An Act to amend the Employment Standards Act (Overtime Rate of Wages). Clause 29(a)(1) Section 1—pass; Section 2—pass; Clause 29(c)(2)—pass.

MR. CHERNIACK: 29(c)(2)?

MR. CHAIRMAN: Yes.

MR. CHERNIACK: No, you mean 2(c).

MR. CHAIRMAN: 2(c). Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I just want to record my opposition to the passing of this section.

A MEMBER: Do you want a recorded vote?

MR. CHERNIACK: No, well, I don't know. Other colleagues may want to speak on it. This is the change from one and three-quarters to one and one-half and I just made my speech. I'm opposed to the deletion.

MR. CHAIRMAN: 2(c)—pass. Yeas and Nays.

A COUNTED VOTE was taken, the result being as follows:
Yeas 13, Nays 10.

MR. CHAIRMAN: Pass. Section 3.

MR. JORGENSON: Mr. Chairman, I have an amendment to Section 3. I move that Section 3 and 4 of Bill 6 be struck out and the following section be substituted therefor: Commencement of Act - 3. This Act comes into force on the day it received Royal Assent but it is retroactive and shall be deemed to have been in force on, from and after December 1, 1977.

MR. TALLIN: Perhaps I could explain. The purpose of this is just to remove the section which dealt with the amendments that came into force from Chapter 50 of the Statutes of Manitoba 1977 which came into force on December 1st. This was a two-way bill. Because of the time that it was introduced in the House, it had to deal with the problem of the possibility of enactment before December 1, in which case it would be a repeal of the provisions in Section 1 of Chapter 50 of the Statutes of Manitoba 1977, or if it came into force after December 1, it was by way of what you have just been considering in Sections 1 and 2 of this bill, amendments to the Employment Standards Act as it stood as of December 1.

Now that we have passed December 1, there is no need to repeal Section 1 of the Employment

Standards Act because that will be dealt with in Sections 1 and 2, the same effect. This is to simplif this for people so that when they finally look at the chapter, they won't have to look back at Chapte 50, 1977 Statutes. It's just to simplify the appearance of the Act when it is finally produced.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: May I ask Mr. Tallin to remind me of what is Section 1, that is, what is referred t in Section 3 of the bill?

MR. TALLIN: Section 1 of the 1977, Chapter 50 Act was the provision which enacted Clause 29(a). of The Employment Standards Act and 29(c) A Definition of Overtime which made it one and three quarters times . . .

MR. CHERNIACK: So it's no longer necessary then to repeal that?

MR. TALLIN: It came into force. If this bill was enacted before December 1, then you could hav cancelled out those provisions before they came into force.

MR. CHAIRMAN: Proposed amendment to Sections 3 and 4 of bill—pass; Preamble—pass; Title- pass; Bill be Reported—pass. Yeas and Nays.

A COUNTED VOTE was taken, the result being as follows:
Yeas 13, Nays 10.

MR. CHAIRMAN: I declare the motion carried.

Bill (No. 5) - An Act to suspend The Family Maintenance Act and defer the coming into force o The Marital Property Act and to amend certain other Acts and make Provisions required as Consequence thereof. Mr. Pawley.

MR. PAWLEY: Okay, we can carry on until 5:30, we may have some amendments.

MR. CHAIRMAN: Section 1(a). Mr. Cherniack.

MR. CHERNIACK: In connection with Section 1, I would like to hear whether the Attorney-Gener is now prepared to make a statement limiting the time by which this suspension may last, in view o the statements that have been made in the House since the bill was introduced.

MR. MERCIER: It depends how long Law Amendments will take next spring.

MR. CHERNIACK: Mr. Chairman, all I asked was for a date, a limit. Right now it's indefinite ar forever therefore. Is there a time by which he would guarantee to have this dealt with?

MR. MERCIER: Mr. Chairman, I think I indicated to the House at closing debate on the bill that w would bring in our amendments to the spring session of the 1978 Legislature.

MR. CHERNIACK: Well, then may I ask the Attorney-General if he is prepared to make a amendment to this section to indicate the fact as he stated it, that amendments will be brought in ar that means that an Act will be passed by the end of the spring session.

MR. MERCIER: I would suggest, Mr. Chairman, that when I make that commitment, that is what w will do.

A MEMBER: It may end up being a summer session.

MR. CHERNIACK: Mr. Chairman, I assume from that that the Attorney-General is not prepared make the necessary change in this Act which would result in the Act being dealt with by whatev government is in at the next session. He is not prepared to do that by legislation?

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I would just point out to the Attorney-General that certainly when he introduced tl bill, there was some question as to whether or not a new bill would be presented to the Legislature the spring session, but in closing we did note that the Attorney-General indicated that there would l amendments in the spring session, 1978. Now I do think it would remove a great deal of concern if view of that — I think there was a change in entering the debate firming up of the intention to retu with the legislation in the spring session — that rather than leave the section time indefinite, whic must say believe created some of the concern that was expressed generally, that a time definite l inserted. Now, we're not insisting that it be April 1 or May 1 but that it be a clear time definite insert

nto the clause. I would think from the Attorney-General's position that he would prefer also, in view of the statement which he made in concluding his remarks on second reading, would prefer to see a ime definite so that there can't be any question as to the intention of the government in this regard. And I believe it will remove a great deal of the concern and the doubt that exists as far as the government's intention is concerned.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, when I make that commitment, I don't see any reason why there should be any doubt.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, could we explore that? The attorney-general says he has made a commitment that the amendments will be brought in at the next session of the House. Is he prepared to make a commitment to the people of Manitoba that the amendments will be passed and there will be a new Act on the Statute Books by the end of that session? —(Interjection)— Well, the session will end, won't it? Then it doesn't depend on the opposition. If the Attorney-General believes that he can stand by his commitment and I believe he can — I think he's got the power with which to do it— is he prepared to extend that commitment to say that there will be not only amendments brought in but enacted and a new Act will be in place by the end of that session?

MR. MERCIER: I wouldn't see any reason why that wouldn't happen.

MR. CHERNIACK: Well, then, are you prepared to say it in a positive way rather than a negative way?

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: I don't think that the Attorney-General ought to be asked to predetermine what will happen in the next legislative session. Frankly, I don't know how long we will be sitting; I don't know the nature of even the membership at the next session. Illness, anything could affect it and may very well affect directly what would take place with respect to a government proposal. I think he has given a commitment and I think he has given an indication —(Interjection)— Well, I think he has pretty well given you an assurance and I think that that assurance is sufficient for this purpose at this time. We have already witnessed three or four days of debate. I don't know what the experience will be next session but if it's anything of the experience we have had so far, no matter what happens, no matter what is proposed, I would suspect that we will be in session for a substantial period of time examining the various presentations. I think that it is unnecessary for anything more than has been given by the Attorney-General to be brought forward.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Chairman, I think that the manner in which this has been spoken to indicates in a very very clear way that the Conservative Party, the government, has no intention that this law will be in effect unless it has changes to it which are acceptable to the Conservative government. Because if they did, if they were concerned with getting the law into effect and then changing it, they would have brought — not Mr. Cherniack — but they would have brought in a bill which said this law is suspended until July 1, 1978 and that way they would have had a legislative session to deal with their changes but if those changes were not accomplished, the law would be in effect as of July 1, 1978 or June 1, 1978 or May 1, 1978. Now it's obviously not their intention and I am sorry that anybody suspects that really that's what they say mainly, that they are really suspending the law, that anybody believes that that is so. What they are doing is repealing the law that was passed and intend to bring in new law and what that new law will be, we will see when the legislative session comes into being.

Mr. Chairman, that's not something that should surprise me. I am quite partisan about wanting to bring in laws or not wanting to bring in laws and I recognize the right of the Conservative government to say that they are going to deal with this matter differently than the New Democratic Party dealt with it. What I object to, Mr. Chairman, and what I want to underline at this point is them suggesting not only that they are doing it, but it's our fault. I mean, when will they start accepting responsibility for their own positions? What they have now said is that if it wasn't for this session, that if it wasn't for having to call the legislation to deal with the AIB, that law would have gone into effect and that all of these changes are not the responsibility of the Conservative government which is in power but that because of the opposition having passed a law which didn't work, they had to bring in this session. And now, Mr. Chairman, the logic which I am unable to determine — because they had to have a session to deal with AIB, which I'm not certain of but let's accept the first half of it— because they had to have a session to deal with AIB, *ipso facto* they had to at this session bring in Bill 5. Now, I don't know what parliamentary or other authority they advance for that proposition except, Mr. Speaker, their unwillingness to accept responsibility for what they are doing. What they are doing can make

very good legislative sense if they believe in it, but once they say that this is not their doing, this is ou doing, Mr. Speaker, then I want the people of Manitoba to look at a government that has been ir power for eight or nine weeks, only eight or nine weeks, and has indicated at every step along the wa not that they are a responsible government but that everything that they do and all of their ideas the are ashamed of, will not hold them forth, and are looking for somebody to blame for them. The Attorney-General knows that he didn't need this bill during this session, that the AIB did not requir these amendments this session; that if he wanted this legislation to come into being, he could hav brought this bill in this session. If it was a suspension it would have had an operative date. It's not suspension, it's a repeal of the laws passed at the last session, which is perfectly legitimate. It's a enactment of the laws as they existed before the last session, which is perfectly legitimate if that i their point of view. But my God, gentlemen, have the guts to stand up and say, "Yes, that's what we'r doing." Don't say, "It's the opposition's fault."

MR. CHAIRMAN: It's 5:30 p.m. Committee rise.