

P R E S E N T A T I O N

O F T H E

C A N A D I A N U A W W O M E N ' S A D V I S O R Y C O U N C I L

T O T H E

L E G I S L A T I V E J U S T I C E C O M M I T T E E

J A N U A R Y 1 8 , 1 9 7 8

The UAW represents directly thousands of working men and women across this province. In addition, through its extensive family education programs and its women's auxiliary units, the union works very closely with the husbands and wives of its members.

The Canadian UAW Women's Advisory Council, formed in 1973, is appointed by the Canadian director of the UAW, and is comprised of women from all parts of the union and of Canada. The council reports directly to the director on matters affecting women in the union and in the world.

BILL 59: THE DIVISION OF FAMILY ASSETS

The Canadian UAW Women's Advisory Council supports fully the approach taken by the Ontario Law Reform Commission towards the division of family assets in the event of a dissolution of a marriage. The commission recommended that all assets acquired since marriage be considered family assets and be, quite simply, divided equally.

Anything short of such an arrangement does not recognize the marriage as an equal partnership economically. Bill 59 is guilty of this.

Section 3 of the bill defines family assets as "property owned by one spouse or both spouses and ordinarily used or enjoyed by both spouses." This is a very limited definition of the common equity accumulated during a marriage. One partner may hold property, real or personal, which is not used by both spouses. There may be money in an account which is not used by both, or in a pension plan, insurance scheme, tax sheltered savings plans, and so on.

We recommend strongly that all assets gained during a marriage be shared during and at the termination of marriage, with the exception of third party bequests or gifts as designated by the giver.

We also feel strongly that commercial or business ventures acquired or entered into after the marriage should also be considered as part of the family assets.

Only in this manner can the recognition of economic partnership be achieved. After all, every member of the family foregoes equally when contributions are made by the breadwinner to a pension plan, insurance, savings plans, etc. Whatever the marriage achieves by way of investments is a result of the division of responsibility in that marriage: because in most instances the value of the unpaid labour of one spouse is what goes towards these investments. Therefore such investments should be regarded as mutual accomplishments.

As it now stands in Bill 59, access to property other than that defined as "family assets" by the legislation, can only be made by recourse to the courts, an expensive and time-consuming exercise. Everyone recognizes that it is necessary for the courts in some cases to be able to dispose of assets in order that the special conditions of some marriages be equalized, but to require a man or woman to go to court to get their fair share as an equal partner generates bitterness, frustration, not to say overloaded courts.

Furthermore, and we say this with great gentleness and respect, most of the judges making these decisions are still men, with, presumably, all the usual male biases.

BILL 59: CONDUCT

We recommend that conduct as a criterion for determining support should be removed from the legislation. Again, too much judicial discretion is exercised in an area which at the best of times is difficult to deal with fairly. For example, very often conduct which may seem gross and in repudiation of the relationship, but which will, after all, determine the division of family wealth, happens as a result of the breakdown of a marriage, not as its cause. Another example: a dependent wife who leaves the home after fifteen years of physical or psychological bullying by her husband has no claim for support. But she worked within that partnership for years and indeed, because of its existence, was not able to develop her abilities to support herself. The nuances of wrong or right contained in human behaviour in these matters are difficult for a judge to pronounce upon with any degree of fairness or consistency and should therefore simply be taken out.

Furthermore, the legislation does not stipulate that gross conduct in repudiation of a marriage must take place while the partners are still living together. If the legislation is to continue to contain a conduct provision, then surely put behaviour taking place after the end of cohabitation beyond the purview of the courts.