ONTARIO BILL 6. OR HOW NOT TO REFORM MARITAL PROPERTY RIGHTS

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There is a tide in the affairs of men,
Which, taken at the flood, leads on to fortune;
Omitted, all the voyage of their life
Is bound in shallows and in miseries. [1]

There is a tide in the affairs of women
"Which taken at the flood, leads"—God knows where. [2]

I. INTRODUCTION

On July 3, 1975, the Province of Ontario adopted The Family Law Reform Act, 1975. [3] That statute abolished many of the remaining disabilities of coverture [4] and also made minor changes in the law applicable to marital property rights. [5] It did this both by introducing several new substantive concepts and by repealing certain of the provisions of the Married Women's Property Act. [6]

Both in structure and substance the statute was obviously a stopgap measure designed to take care of some of the more pressing needs. It was received by all concerned as such, with a clear understanding that it would be followed shortly by more comprehensive legislation. [7]

This materialized late in 1976, when Bill 140 was introduced in the Ontario Legislature. [8] However, the proposed legislation, as it affected marital property rights, fell far short of expectations. Bill 140 was withdrawn, [9] as a result of the termination of the 1976 session of the Legislative Assembly and immediate public opposition. It was recently re-introduced, in a some-

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[1] W. SHAKESPEARE, JULIUS CAESAR, Act IV, Scene 3.

[2] G. BYRON, DON JUAN, VI, ii.

[3] S.O. 1975 c. 41.

[4] *Id.* ss. 1(2), (3)(a), (b) & (d), (4).

[5] *Id.* s. 1 (3)(c).

[6] *Id.* s. 6, which repealed ss. 2 through 11 and s. 13 of the Married Women's Property Act, R.S.O. 1970, c. 262.

[7] *See* address by the Honourable R. Roy McMurtry, Q.C., Attorney General of Ontario. *See* McMurtry, *Family Law Reform in Ontario*, 10 GAZETTE 145 (1976): "Although this [the 1975 Act] is an initial step on the road to reform, it is conceded by all to be only a first step."

[8] Bill 140, 3rd sess., 30th Leg. Ont., 1976. The official name of this proposal, had it passed, would have been The Family Law Reform Act, 1976 [hereinafter cited as Bill 140]. The proposed legislation was circulated in pamphlet form, preceded by an explanation by the Attorney General [hereinafter cited as OFFICIAL EXPLANATION].

[9] *See, e.g.*, The Globe & Mail (Toronto), Dec. 10, 1976, at 1, col. 3; Windsor Star, Dec. 9, 1976, at 16.

what revised form. [10] The main thrust is unchanged and the quality of the draftsmanship has deteriorated.

The reform of marital property rights in the Province has been in the making for quite some time. The Ontario Law Reform Commission [11] had been working on the subject of marital property rights for over 10 years and submitted its report to the Attorney General of the Province in 1974. [12]

This sustained and scholarly effort of the Commission was prompted by the realization that the law of the Province was no longer responsive to the needs of society. [13] Based essentially on the Married Women's Property Act, [14] the law ignored changes in the structure of society as a whole and the institution of marriage in particular. The interest in reform was further accelerated by the decision of the Supreme Court of Canada in *Murdoch v. Murdoch,* [15] reversing a decision of the Alberta Court of Appeal which found that very substantial contributions by a farm wife in the form of actual work and supervision of the farming operations entitled her to an interest in the property. [16]

The thread of recognition that the Married Women's Property Acts approached the problem from the wrong point of view runs through most of the recent literature [17] and was certainly fully appreciated and endorsed by both the Ontario Law Reform Commission [18] and the Law Reform Commission of Canada. [19] It is because of this overwhelming rejection of that

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[10] Bill 6, 4th sess. 30th Leg. Ont., 1977 [hereinafter cited as Bill 6]. The Bill deals with matters other than marital property rights, but this article is limited to a discussion of only those provisions which directly or indirectly would affect property rights of husbands and wives.

As a result of the provincial election in June 1977, Bill 6 did not proceed beyond Second Reading. It was not re-introduced in the 1st Session of the 31st Legislature, though it appears that a new bill will be introduced in the next Session.

[11] The Commission was created in 1964, pursuant to the Ontario Law Reform Commission Act, R.S.O. 1970, c. 321.

[12] ONTARIO LAW REFORM COMMISSION, REPORT ON FAMILY LAW, PART IV, FAMILY PROPERTY LAW (1974) [hereinafter cited as ONTARIO REPORT].

[13] *Id.* at 1-8.

[14] R.S.O. 1970, c. 262. This statute was essentially the Act of 47 Vict. c. 19 (Ont. 1884), *as amended by* 60 Vict. c. 22 (Ont. 1897).

[15] [1975] 1 S.C.R. 423, 13 R.F.L. 185, 41 D.L.R. (3d) 367.

[16] *Murdoch* was discussed exhaustively in the Canadian literature, *e.g.,* Caparros, *Le travail de la femme d'un "rancher", une décision renversante de la cour suprême,* 15 C. DE D. 189 (1974); Jacobson, *Murdoch v. Murdoch: Just About What the Ordinary Rancher's Wife Does,* 20 McGILL L.J. 308 (1974); Waters, *Matrimonial Property Disputes—Resulting and Constructive Trusts—Restitution,* 53 CAN. B. REV. 366 (1975); Comment, *Murdoch v. Murdoch and the Law of Constructive Trusts,* 6 OTTAWA L. REV. 581 (1974).

[17] *E.g.,* Payne & Wuester, *Family Law: Proposals for Reform,* in STUDIES ON FAMILY PROPERTY LAW, LAW REFORM COMMISSION OF CANADA 253, 263-73 (1975) [hereinafter cited as CANADIAN STUDIES]; ONTARIO REPORT, *supra* note 12, at 9-47; Bartke, *Marital Property Law Reform: Canadian Style,* 25 AM. J. COMP. L. 46, 73 (1977) [hereinafter cited as Bartke, *Marital Property*]; Gosse, *"Hers" and "His": Fair Shares for Wives and Husbands,* 8 GAZETTE 256 (1974); Payne, *Family Property Reform as Perceived by the Law Reform Commission of Canada,* 24 CHITTY'S L.J. 289, 290-93 (1976).

[18] ONTARIO REPORT, *supra* note 12, at 55-59.

[19] *Working Paper* in CANADIAN STUDIES, *supra* note 17, at 9-12 (coloured pages).

approach and the recognition that marriage is *inter alia* an economic partnership, that Bill 6 came as such a great disappointment.

II. Marital Property Regimes

Marriage, whether viewed as status or contract, or more accurately a mixture of both,[20] involves economic issues. When two persons of the opposite sex, with the sanction of the state, establish a more or less permanent relationship, they in effect constitute a rudimentary economic unit. Because of this, the law has for a long time taken cognizance of property rights incident thereto. The subject is, of course, far too large to be discussed in detail in an article of this length. All I propose to do here is to give a brief description of some of the principal ways in which various western legal systems have approached the problem. A word of caution is necessary. The description is painted with a broad brush and the fine points are obviously not considered. Furthermore, the so-called systems themselves do not exist as such. They are archetypes for a variety of actual legal provisions. Also, they are not discrete solutions, but rather shade imperceptibly from one into the other, with almost infinite varieties either existing or possible.

A. *The Common Law Approach*[21]

Under the common law of England a married woman lost most of her legal personality.[22] In the property field, to a greater or lesser extent, her husband was the owner, or at least had the use and benefit, of her property.[23] This meant that the common law treated husband and wife as an economic unit, although it did so in a way highly discriminatory to women.[24]

The above must be tempered somewhat by the fact that, at least as early as the beginning of the eighteenth century, it was possible for a married woman to have virtually complete control of her own property through the use of trusts and powers of appointment.[25] However, this applied almost exclusively to members of the nobility, where it was achieved by complex marriage settlements;[26] it certainly was not the practice to any large extent among the middle, let alone the lower, classes.

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[20] *See, e.g.*, Rieke, *The Dissolution Act of 1973 From Status to Contract?*, 49 WASH. L. REV. 375, at 375-76 (1974).

[21] For a more detailed description of the common law, *see, e.g.*, ONTARIO REPORT, *supra* note 12, at 17-19; Hahlo, *Matrimonial Property Regimes Yesterday, Today and Tomorrow*, 11 OSGOODE HALL L.J. 455, at 463-66 (1973); Johnston, *Sex and Property The Common Law Tradition, The Law School Curriculum, and Developments Toward Equality*, 47 N.Y.U.L. REV. 1003, at 1044-57 (1972).

[22] 1 W. BLACKSTONE, COMMENTARIES 430 (1765).

[23] 2 W. BLACKSTONE, COMMENTARIES 433 (1766).

[24] *E.g.*, Bartke, *Marital Property*, *supra* note 17, at 73.

[25] *E.g.*, Countess of Sutherland v. Northmore, Dick. 56, 21 E.R. 188 (Ch. 1729); Duke of Marlborough v. Lord Goldolphin, 2 Ves. Sen. 61, 28 E.R. 41 (Ch. 1750).

[26] "The daughters of the rich enjoyed, for the most part, the considerate protection of equity, the daughters of the poor suffered under the severity and injustice of the common law." A. DICEY, LAW AND OPINION IN ENGLAND 383 (2d ed. 1914).

B. *The Married Women's Property Acts*

In the nineteenth century legal reforms took place. The movement started in the United States, was followed by England, and from there the reforms were transplanted into Canada. [27] These reforms were imposed to emancipate married women economically and give them distinct property rights; however, they essentially followed the equity model. [28] That meant that under the provisions of the various acts husbands and wives became strangers in the economic sphere. Each one could, whether there was a marriage settlement or not, [29] control and enjoy his or her property. However, the system did not recognize any interest of either one in the property of the other. Although such a system or, as I prefer to call it, non-system, may seem fair at first blush, it operates very unequally. It does not recognize any contributions made by the stay-at-home spouse, who is, in most instances, the woman. It fosters the notion that "it is mine if I paid for it" or, more properly "it is mine if title stands in my name".

The basic unfairness of the approach became increasingly obvious when marriages started to end by divorce. The situation of the propertyless spouse, left without means of support by the legal termination of an economically highly successful union, came increasingly to the attention of the courts. [30]

C. *Discretionary Approaches*

Because of dissatisfaction with the results frequently flowing from the application of the separation of property concept inherent in the married women's property acts, many jurisdictions granted to their courts discretionary powers in cases of divorce. This is not truly a separate system governing marital rights; rather, a modification, superimposed under certain circumstances, but not invariably, on the non-system of separation of property. [31]

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[27] The first such statute seems to have been adopted in Mississippi in 1839, 1839 MISS. LAWS c. 26. The legislation was adopted in England in 1870, Married Women's Property Act, 33 & 34 Vict. c. 93 (1870), and completely revised and superseded by 45 & 46 Vict. c. 75 (1882). The English statutes were essentially followed in Ontario in 1872 and 1884 respectively, 35 Vict. c. 16 (Ont. 1872), 47 Vict. c. 19 (Ont. 1884).

[28] *See, e.g.,* Bartke, *Marital Property, supra* note 17, at 73.

[29] This does not mean, however, that the acts achieve equality. On the contrary, in Ontario until the repeal of 1975, a married woman could not bind herself contractually but only her property *in rem.* Similarly, the statute specifically provided that a married woman's property rights would be limited by the provisions of her marriage settlement. R.S.O. 1970, c. 262, ss. 3(1) & 10, *repealed by* The Family Law Reform Act 1975, S.O. 1975 c. 41, s. 6.

[30] *E.g.,* Murdoch v. Murdoch, [1975] 1 S.C.R. 423, 13 R.F.L. 185, 41 D.L.R. (3d) 367 (1973); Trueman v. Trueman, [1971] 2 W.W.R. 688, 5 R.F.L. 54, 18 D.L.R. (3d) 109, (Alta. C.A.); Rathwell v. Rathwell, [1976] 5 W.W.R. 148, 23 R.F.L. 163 (Sask. C.A.).

[31] *E.g.,* in the states of Texas and Washington a certain measure of judicial discretion is superimposed on systems of community property in the case of a divorce only: TEX. FAM. CODE ANN. s. 3.63 (1975); WASH. REV. CODE ANN. s. 26.09.080 (Supp. 1976).

Discretionary approaches are basically of two types. Either all the property of the spouses is before the court for distribution, [32] in which case the time of acquisition, nature of the assets and the source of the funds is basically irrelevant, or the discretion of the court applies only to "matrimonial assets", [33] however defined.

The proponents of such a solution point to the great flexibility which may be obtained by tailoring the division to the specific needs of a particular family. [34] However, several serious objections may be raised. First, in many common law jurisdictions, judges respond very grudgingly to such statutes and still predominantly favor the spouse whose income was responsible for the acquisition of the items. [35] Second, such an approach does not permit any degree of certainty in predicting results in advance and, therefore, rather than encouraging settlement, it promotes litigation. While it is possible that, when enough cases have accumulated, certain guidelines might emerge, the process is very time-consuming, uncertain and not necessarily conducive to the best results. [36] Cases decided recently under new statutes indicate some of the difficulties. [37]

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[32] *E.g.*, Matrimonial Causes Act 1973, c. 18, ss. 23-25 (U.K.); Matrimonial Property Act 1963, S.N.Z. 1963, c. 72 (*as amended* S.N.Z. 1963, c. 61); CONN. GEN. STAT. ANN. s. 46-51 (Supp. 1976); HAWAII REV. STAT. s. 580-47 (Supp. 1975); MONT. REV. CODE ANN. s. 48-321 (Supp. 1976); ORE. REV. STAT. s. 107.036 (1973).

[33] *E.g.*, COLO. REV. STAT. ANN. s. 46-1-13 (1963); DEL. CODE ANN. tit. 13, s. 1513 (Supp. 1972); MINN. STAT. ss. 518.54 (5) & .58 (Supp. 1976); MO. REV. STAT. s. 452.330 (Supp. 1975).

[34] *E.g.*, *Jacobson, Working Paper 8: Family Property*, 8 OTTAWA L. REV. 290 (1976); for a more extensive list of supposed advantages and disadvantages, *see* Payne & Wuester, *supra* note 17, at 339-42.

[35] *E.g.*, Trippas v. Trippas, [1973] 2 W.L.R. 585, 2 All E.R. 1 (C.A.); Cuzner (formerly Underdown) v. Underdown, [1974] 1 W.L.R. 641, 2 All E.R. 351 (C.A.); E. v. E., [1971] N.Z.L.R. 859 (C.A.); Bowser v. Bowser, 24 R.F.L. 394 (Sask. Q.B. 1975); Brocklebank v. Brocklebank, 25 R.F.L. 53 (B.C.S.C. 1975); Gerk v. Gerk, 25 R.F.L. 32 (Alta. S.C. 1975).

[36] *E.g.*, Gosse, *supra* note 17, at 259-61; Schroeder, *Matrimonial Property Law Reform: Evaluating the Alternatives*, 11 U.B.C.L. REV. 24, 28-30 (1977). As Mr. Schroeder correctly points out, the discretionary approach adds to the bitterness of divorce and litigation by confronting the owner-spouse for the first time with the concrete prospect of having to share some of "his property" with an estranged spouse: *id.* at 30. Professor Jacobson has also shown how niggardly courts have been in exercising their discretion and how unfair it has been to the homemaker, but surprisingly draws from this the conclusion that it is superior: Jacobson, *Recent Proposals for Reform of Family Property Law in the Common Law Provinces*, 21 MCGILL L.J. 556, 562-69 and 587-88 (1975). *See also* Turner, *Confusion in English Family Property Law—Enlightenment from Australia?*, 38 MODERN L. REV. 397 (1975) which, although it is certainly not its object, clearly shows how the discretionary approach is not working either in England or Australia.

[37] *See, e.g.*, Rowe v. Rowe, 24 R.F.L. 306 (B.C.S.C. 1975); Rusnak v. Rusnak, [1976] 4 W.W.R. 515, 24 R.F.L. 24 (Sask. Q.B.).

D. *Community Property* [38]

Community property is a concept developed in the civil rather than the common law. However, one should hasten to add that by no means all the countries with civil law systems recognize it, or have done so in the past. On the contrary, only a minority of jurisdictions have employed it. Variations of the concept are recognized in the Province of Quebec, [39] and in eight American jurisdictions which derive their systems from the law of Spain. [40]

Again, painting a very broad picture and summarizing the law of the eight United States jurisdictions, the basic assumption is that marriage is, among other things, a business partnership and that, therefore, anything which is acquired during marriage as a result of the skill and efforts of either of the spouses belongs to them jointly, as their community property. Property which the spouses own at the time of marriage, and that which they acquire during marriage by gift, devise, or inheritance, remains their separate property and neither has any interest in such property of the other. There is, however, a presumption that all property of married couples is community, [41] and one claiming an item as separate property has the burden of proof. In three of the states which follow Spanish law, the income from separate property is considered as community property; [42] in the other five, income remains the separate property of the owner-spouse. [43]

Traditionally, under the law of Spain, even more strongly under that of France, and until very recently in all of the jurisdictions mentioned here, the management of the community property was by statute to a lesser or greater extent in the hands of the husband. [44] As a result of a series of recent amendments in six of the states, there is now a kind of hybrid joint and several management scheme between the spouses. [45] As far as personalty

[38] For a more extensive discussion of community property, particularly as found in the United States, *see, e.g.*, Bartke, *Community Property Law Reform in the United States and in Canada—A Comparison and Critique*, 50 TUL. L. REV. 213 (1976) [hereinafter cited as Bartke, *Community Property*]; Johanson, *The Migrating Client Estate Planning for the Couple from a Community Property State* in U. MIAMI 9TH INST. EST. PLAN. 8-1 (1975); Payne & Wuester, *supra* note 17, at 318-29.

[39] For a discussion of Quebec law *see, e.g.*, Bartke, *Community Property*, *supra* note 38, at 239-60; Caparros, *Matrimonial Regimes in Quebec* in CANADIAN STUDIES, *supra* note 17, at 5, 119-76.

[40] The eight states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington.

[41] CAL. CIV. CODE s. 5110 (West Supp. 1975); LA. CIVIL CODE art. 2405 (1870); TEX. FAM. CODE ANN. s. 5.02 (1975); Nance v. Nance, 104 Ariz. 20, 448 P.2d 76 (1968); Bowman v. Bowman, 72 Idaho 266, 240 P.2d 487 (1952); Todkill v. Todkill, 88 Nev. 231, 495 P.2d 629 (1972); Conley v. Quinn, 66 N.M. 242, 646 P.2d 1030 (1959); Graham v. Reford, 71 Wash. 2d 752, 431 P.2d 193 (1967)

[42] Idaho, Louisiana and Texas. For a discussion see Johanson, *supra* note 38, at 8-17.

[43] *Id.*

[44] For a discussion *see, e.g.*, Bartke, *Community Property*, *supra* note 38, at 218-26.

[45] ARIZ. REV. STAT. ANN. ss. 25-211-215 (Spec. Pamphlet 1973); CAL. CIV. CODE ss. 5100-38 (West Supp. 1976); IDAHO CODE s. 32-912 (Supp. 1976); N.M. STAT. ANN. s. 57-4A-1.12 (Supp. 1976); NEV. REV. STAT. s. 123.150 (Supp. 1976); WASH. REV. CODE ANN. s. 26.16.030 (Supp. 1976).

is concerned, either one can manage, sell and dispose thereof, but as far as realty is concerned joint action is necessary.

Upon the death of one of the spouses, the survivor continues to own his or her half share of the community in severalty, but the decedent has complete power of testamentary disposition over the other half. In case of divorce, generally each spouse receives his or her half interest in the community, although in some jurisdictions there may be superimposed a certain degree of discretion. [46]

E. *Deferred Sharing* [47]

Finally, there is in operation a system referred to as deferred sharing. [48] It is a fairly recent phenomenon which attempts to blend the best features of separation of property and community property. Again, with many local variations, the system means in essence that during the ongoing marriage relationship each spouse owns, manages and controls his or her property, which is all property acquired by him or her at any time, either gratuitously or as a result of his or her efforts. However, upon dissolution of marriage by death or divorce, a monetary balance is struck which is intended to reflect the economic fortunes of the union. This is divided in half and the more affluent spouse is expected to make a compensating payment or distribution to the less affluent, or to his or her estate. [49]

III. The Approach of the Commission

Before discussing Bill 6 and the recommendations of the Attorney General, it is necessary to outline briefly the proposals of the Ontario Law Reform Commission which were rejected by the government as allegedly unworkable. [50] This introduction is necessary because the disagreement is

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[46] Tex. Fam. Code Ann. s. 3.63 (1975); Wash. Rev. Code Ann. s. 26.09.080 (Supp. 1976).

[47] This particular regime is known by different names in various parts of the world. The Ontario Law Reform Commission refers to it as "the matrimonial property regime": Ontario Report, *supra* note 12, at 53. The Quebec legislation calls it "legal regime of partnership of acquests": Que. Civil Code, art. 1260 (1947). The term used in this article is borrowed from the Law Reform Commission of Canada and is used because it is more descriptive than the others: Payne & Wuester, *supra* note 17, at 285.

[48] The system was originally adopted in the Scandinavian countries in the 1920s. For citations and dates see Rheinstein, *The Transformation of Marriage and the Law*, 68 Nw. U. L. Rev. 463, 471 n. 21 (1973). It was adopted in Germany in the late 1950's: BGB ss. 1363 *et seq.* (Palandt 1974). It became the basic legal regime of Quebec in 1970: An Act respecting Matrimonial Regimes, S.Q. 1969 c. 77, s. 27, which added new arts. 1266c-67d to the Civil Code of that Province. For a full discussion of the incidence of this legislation, *see, e.g.*, Caparros, *supra* note 40, at 61-118, Freedman, *The Juridical Capacity of the Married Woman in Quebec In relation to partnership of acquests and recent amendments to the Civil Code*, 21 McGill L.J. 518 (1975).

[49] For examples of computation *see* Ontario Report, *supra* note 12, at 71-82; Payne & Wuester, *supra* note 17, at 285-304.

[50] Official Explanation, *supra* note 8, at 5-6.

a fundamental one, rather than representing simply a different emphasis or different individual solutions.

The Commission, after reviewing the history of marital property rights in England and in Ontario, [51] unequivocally rejected the position represented by the married women's property acts in force in various provinces and most of the American states. [52] Their rejection was based on the fact that this solution, which I have termed a non-system, [53] does not appreciate the economic nature of the relationship and fails to acknowledge the non-monetary contributions of the spouses. This non-system discriminates to a great degree against women, as society first pushes them into the role of housewives, thus denying them an opportunity to earn a living and acquire property in their own right, and then reinforces this by decreeing that they shall not have any property rights in the acquisitions of their spouses. [54]

The deferred sharing recommended by the Commission maintains separate ownership by the spouses of their respective assets, which include not only those brought into the marriage, but also those acquired during the relationship by both lucrative and onerous title. With certain exceptions, each spouse retains a free hand in the management and disposition of his or her assets. However, upon the termination of the marriage a balance is struck: the assets are totalled in monetary terms, the contributions brought to the marriage and those acquired by lucrative title during the relationship are subtracted, and the sharable amount is arrived at. This amount is divided in half and the more affluent spouse makes a compensating or equalizing payment to the less affluent. [55]

This deceptively simple approach involves all kinds of complications. One must define sharable and nonsharable assets, a definition which generally corresponds to that of community and separate property in community property jurisdictions. [56] Serious questions arise as to what extent the spouses should share not only appreciation but depreciation in value during their relationship. [57] Also, some checks must be imposed on the ability to dispose

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[51] ONTARIO REPORT, *supra* note 12, at 17-47; *see also* the extensive discussion in 1 ONTARIO LAW REFORM COMMISSION, REPORT OF THE FAMILY LAW PROJECT, PROPERTY SUBJECTS 1-51 (Preliminary Draft 1967).

[52] ONTARIO REPORT, *supra* note 12, at 5-8. *See supra* text to notes 27-30.

[53] Bartke, *Marital Property, supra* note 17, at 76.

[54] For a full discussion *see, e.g.*, Payne & Wuester, *supra* note 17, at 264-71.

[55] For the recommendations of the Ontario Commission *see* ONTARIO REPORT, *supra* note 12, at 189-95, Recommendations 3-53; Payne & Wuester, *supra* note 17, at 285-310.

[56] For a discussion of the property included and excluded from the community under Quebec law, as presently in force, *see* Caparros, *supra* note 40, at 122-41.

[57] Under the Ontario recommendations the net appreciations of property brought into the marriage should be shared, but the decreases in value should not; ONTARIO REPORT, *supra* note 12, at 190, Recommendations 8, 15 & 16; see also *Working Paper*, in CANADIAN STUDIES, *supra* note 17, at 29 (coloured pages).

of property, primarily by gift. [58]

An important consideration is whether the sharing should apply upon dissolution by both divorce and death. The Ontario Commission recommended that, upon the death of one of the partners, no equalizing payment should be required where the survivor owned the larger share. [59] This is justified on the ground that the property would probably go to the survivor anyway, by virtue of a testamentary disposition or the law of descent and distribution. While this may be true, it does not take into account the situation of children by a prior marriage, or other kinds of obligations, and indicates that the one who has devoted his or her (in most cases her) efforts to the home is not in a position to decide how the accumulations of the marriage are to be distributed. [60] Furthermore, the method of computation of the equalizing payment on death would differ from that on divorce. [61] These recommendations indicate that the Ontario Commission was not truly committed to a property approach, but was satisfied with an expectancy in case of survival.

Nevertheless, the proposals of the Commission are vastly superior to the non-system of the Married Women's Property Act. If adopted, they would go a long way toward rectifying past wrongs and bringing the law of Ontario into tune with the social realities of the last quarter of the twentieth century.

IV. The Approach Proposed by The Attorney General of Ontario

Unfortunately, the high hopes that the law of marital property in Ontario would finally be improved and rationalized have for the time being been disappointed. The first indication of things to come appeared in an address by the Attorney General on July 30, 1976, in which he indicated that the recommendations of the Law Reform Commission would not be followed, but that a different approach would soon be submitted. [62] This was in fact done in the fall, when Bill 140 was introduced, and continued by

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[58] Ontario Report, *supra* note 12, at 192, Recommendations 34-38. The recommendations follow the practice of some of the community property states which formerly permitted husbands and now both spouses individually, to make "reasonable" gifts of community property, by introducing the concept of "excessive gift" as defined in Recommendation 34. Despite the definition, what are or are not excessive gifts would have to be finally settled by litigation. For a short discussion of unilateral gifts of community property in the United States jurisdictions, *see*, Bartke, *Community Property, Management Powers and Trusts You Can Teach Old Dogs New Tricks*, 13 Idaho L. Rev. 133, 143-45 (1977). As there indicated, I prefer the approach of those jurisdictions which prohibit unilateral gifts altogether.

[59] Ontario Report, *supra* note 12, at 192, Recommendation 40.

[60] For a further critique, *see* Bartke, *Marital Property*, *supra* note 17, at 61. *See also*, Hahlo, *A Note on Deferred Community of Gains The Theory and the Practice*, 21 McGill L.J. 589, 593 (1975).

[61] Ontario Report, *supra* note 12, at 192, Recommendation 39. For a criticism of a different computation on divorce and death, *see* Payne & Wuester, *supra* note 17, at 308-309.

[62] McMurtry, *supra* note 7, at 148.

its re-introduction in the spring of 1977 in the form of Bill 6. The following discussion is designed to demonstrate not only that the basic approach which the new bill advocates is wrong, but that, even accepting arguendo the approach itself, the particulars are highly inequitable and largely unworkable.

The scheme envisaged by Bill 6 is that, on termination of marriage by divorce, the parties would share family assets. The official comment of the Attorney General indicates that the approach outlined has not been tried anywhere and that, if adopted, Ontario would sail on uncharted waters. [63] Although billed as a unique approach, the family assets proposal in fact consists of a collage of elements of several of the other systems discussed above. In essence, it is a discretionary approach coupled with the presumption of equal division of certain assets. However, unlike the statutes providing for a division of "marital property" of the spouses, which focus on the time of acquisition so that the sharing is limited in principle to the accumulations of the marriage, [64] the proposals of Bill 6 concentrate on the nature of the assets themselves. The touchstone of sharability, we are told, is not when or how the assets were acquired but rather their nature as items of personal use and enjoyment: [65] "[u]se during marriage is the basis of this system. Property acquired before the marriage, or given or bequeathed to a spouse, would be subject to sharing if it is used by the family." [66]

We are further told that the approach embodies a concept of marriage as an economic partnership, by introducing a presumption of equal contribution to the acquisition of "assets that are of continuing mutual benefit". [67] Presumably, this mutual benefit refers to the past, since the Bill by its own terms applies to divorce only and, upon division, the assets will be used by one or the other but certainly not by both. [68] Furthermore, it is rather difficult to see why a car or sporting equipment is considered to be of "continuing mutual benefit" to the parties, while investment securities, which either produce current income or were acquired to provide a nest egg for retirement, are not.

A business owned and operated by only one spouse is specifically excluded from sharing, on the ground that this is necessary to insure efficient management. [69] However, it is nowhere explained why the possibility of sharing in the future, when the marriage has floundered and its dissolution is before a divorce court, should interfere with the day to day operation of the business while the marriage is a going concern.

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[63] "The family assets alternative has not become law in any other jurisdiction. Ontario would be attempting a unique solution without the experience of other jurisdictions to draw on . . . . " OFFICIAL EXPLANATION, *supra* note 8, at 7-8.

[64] *See* text at note 33 *supra.*

[65] OFFICIAL EXPLANATION, *supra* note 8, at 4. The definition of "family assets" in Bill 140 and Bill 6 is the same, except for the addition of a matrimonial home in the latter. However, this addition does not bring about a substantive change.

[66] *Id.*

[67] *Id.* at 7.

[68] This point has been clarified in Bill 6, s. 3(b), by the addition of the language "while the spouses are residing together . . . ".

[69] OFFICIAL EXPLANATION, *supra* note 8, at 7.

Both the provisions of the Bill and the explanatory material attached clearly indicate that the present Attorney General is still concerned with symptoms rather than with causes of the *malaise*. Like many of the reformers in the United States, [70] he focuses on the breakdown of the family relationship and indicates that the present law does not do justice to the parties. [71] While this is true, the perception of the problem as arising only on breakdown or termination is false. [72] Property rights exist and are important throughout the relationship, however harmonious it may be; it is only on termination or breakdown that their importance becomes obvious to many persons and most of the symptoms, such as complex litigation and unjust results, are due to the non-system of the Married Women's Property Act. Any long range and satisfactory solution of the problems calls for a basic restructuring of the economic side of marriage, rather than the provision of bandaids for some of the more glaring inequities surfacing on divorce.

The scheme envisaged by Bill 6 essentially rejects a property approach. This is manifest when we are told that the proposed provisions are to apply on marriage breakdown *only* and not death. [73] The justification given is that the survivor is going to be provided for by amendments to the laws of descent or distribution and, in any event, in most cases this would be done by will. Although that may be true, it still misses the point of the difference between owning an interest in property and receiving it as the beneficiary under a will or as heir at law. More importantly, however, this applies only to the situation of the propertyless spouse surviving her or his mate. In the reverse situation where the propertyless spouse dies first, no recognition is given to her or his contributions during marriage. [74]

Looking at the proposals now from the perspective of divorce, the scheme has very little to recommend it. It has neither the alleged flexibility of a discretionary approach nor the certainty of a property regime. It con-

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[70] For citation of some of the sources, *see* Bartke, *Marital Property*, *supra* note 17, at 65-68 and 76-77.

[71] McMurtry, *supra* note 7, at 146-47.

[72] See discussion in Bartke, *Marital Property*, *supra* note 17, at 72-85.

[73] Bill 6, s. 4(1); *see also* OFFICIAL EXPLANATION, *supra* note 8, at 8.

[74] The proposal is sexist in effect, though not in form. Since in most instances the propertyless spouse will be the woman, the proposal denies her the ability to determine how property attributable to her contributions during marriage should be disposed of upon death. It is not enough to pay lip service to the concept of equality; it is also necessary to apply these lofty principles. It may be mentioned that for centuries by the law of Spain a wife had the power of testamentary disposition over her interest in the community, subject to general limitations, applicable equally to both spouses. W. DE FUNIAK & M. VAUGHN, PRINCIPLES OF COMMUNITY PROPERTY 453-55 (2d ed. 1971); Pugh, *The Spanish Community of Gains in* 1803: *Sociada de Gananciales*, 30 LA. L. REV. 1, at 30 (1969-1970).

centrates on the wrong assets, [75] does not distinguish between accumulations of marriage and those acquired outside of the relationship [76] and has essentially no built-in mechanism for adjusting, however roughly, for the duration of the union. [77]

Not only is the basic approach wrong, but the proposed mechanics are both inequitable and conducive to unnecessarily complex and prolonged litigation. The Attorney General tells us the purpose of the family assets approach is to exclude business assets from sharing. The policy reason given is that "[t]he family asset system does not subject business property to automatic sharing and would thus leave each spouse free to engage in business without having the other spouse's concurrence in individual transactions. However, where both spouses actually participate in the business, the contribution of each would be recognized." [78] This statement is incongruous in the context, since the scheme presupposes the continuation of separate ownership, with only a possibility of sharing in case of divorce.

The net effect of the suggestion would be to force a working man who is the principal or sole breadwinner of the family to share virtually all of his assets with his wife, irrespective of when acquired. On the other hand, the well-to-do business or professional man under the same circumstances could insulate most of his property from the claims of his spouse. This hardly seems like a politic or far-sighted provision.

The official explanation that this separation is necessary to make it easier for spouses to conduct their business affairs is less than compelling. In community property states, where the assets are owned equally, businesses

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[75] The sharing is applicable to "family assets", which are defined in s. 3(b). This seems to involve the home and household and personal use items and to exclude income-producing property. Furthermore, the definition is in terms of "ordinarily used or enjoyed by both spouses or one or more of their children while the spouses are residing together." Presumably, therefore, an item which otherwise would be sharable would thereby be automatically excluded because it is used by one of the spouses only; *e.g.*, where both are golfers, their equipment would be sharable, but if only one indulged in the pastime, it would not.

[76] The definition of family assets found in s. 3(b) applies to assets owned by one spouse or both spouses.

[77] Unlike community property or deferred sharing, which are concerned with the division of the accumulations of the marriage, the proposal in its basic outline does not differentiate between acquisitions of the marriage and those brought into the relationship or received by lucrative title. This is qualified by the provisions of s. 4(3) which gives discretion to a judge to alter the equal division of "family assets" in a number of specified circumstances, taking into account the duration of cohabitation under the marriage, the date and source of acquisition, etc. However, this simply introduces a considerable element of judicial discretion which the Attorney General tells us is undesirable and, therefore, invites litigation in every case.

[78] OFFICIAL EXPLANATION, *supra* note 8, at 7. By contrast, the Ontario Law Reform Commission recommended that the equalizing payment be based on the value of all property including businesses. Recognizing that under certain circumstances a cash payment may cause undue hardship, it wisely recommended that the debtor spouse may, in the discretion of the court, be granted a period of time to discharge the amount, with interest and subject to the provision of adequate security; ONTARIO REPORT, *supra* note 12, at 79-80. This approach, which balances the interests of both spouses and treats them fairly, is obviously superior.

have been conducted for a long time without interference by the non-participating spouse. As a matter of fact, in the recent wave of amendments which changed the prior rule of management by the husband only to a form of joint and several management by both spouses, [79] three of the jurisdictions have specifically provided that, where only one is actively engaged in a community business, he or she has the sole management thereof. [80] A similar provision could easily be inserted and no difficulty in conducting one's business affairs would be encountered.

Not only is the exclusion of property used in a business or a profession of one of the spouses completely indefensible on policy grounds, it also opens wide the doors for evasion of the statutory provisions mandating the sharing of "family assets". It is hardly a secret that in many instances persons who own businesses, particularly if they are in corporate form, place title to assets such as cars, which otherwise might be owned individually, in the business or corporate name. If Bill 6 were to become law, there would be a strong temptation on the part of a business or professional person whose object was to prevent his or her spouse from sharing, to transfer as many of these kinds of assets as possible to the business entity, and even to incorporate it and impose an additional legal person between him or herself and his or her spouse.

The provision of the Bill which permits, under certain circumstances, the reaching of assets owned by a corporation which would be "family assets" if owned by a spouse.[81] is not the answer. In each case, this would involve a factual determination, thereby inviting rather than preventing litigation. As a matter of fact, the provisions of Bill 6 which make "the value of the benefit enjoyed by the spouse in respect of the property" the touchstone of the amount shared, are even worse than the corresponding provisions of Bill 140 which read "market value equal to the value of the property". It boggles one's imagination to contemplate the kind of evidence required to show the value of the benefit enjoyed.

The definition of family assets as those ordinarily used or enjoyed by both spouses for household, educational, etc., purposes [82] would do little to solve many of the questions. Again using the example of a car, what of a vehicle used by the business or professional spouse both for family purposes and for business purposes? Would the decision whether or not it is an asset similar to a family asset depend upon the proportion of time it is utilized for one purpose or another, or the number of miles driven? This seemingly simple illustration indicates the unnecessary complexity which the Bill would force on the spouses and the courts.

This is further complicated by the separate provision dealing with a

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[79] For a citation of authorities and a general discussion, *see* Bartke, *Community Property, supra* note 38, at 230-34.

[80] CAL. CIV. CODE s. 5125(d) (West Supp. 1976); NEV. REV. STAT. s. 123.230 (f) (Supp. 1976); WASH. REV. CODE ANN. s. 26.16.030(6) (Supp. 1976).

[81] Bill 6, s. 3(b)(ii).

[82] Bill 6, s. 3(b)(ii).

home partly used for business or professional purposes.[83] To give an example: the husband owns a two-storey building the first floor of which is used for a grocery store and the second for the family's living quarters. In case of divorce, what is sharable? What about a lawyer who uses a study in his house to work evenings and weekends and sometimes to see his clients? The Bill seems to call for an actual separation of portions of the premises on the basis of use.[84] This will again increase the potential for litigation, particularly in view of the fact that Bill 6 added personal property to the definition of the matrimonial home.[85]

The proposal subjects to sharing only those assets which are owned by one or both of the spouses, or over which a spouse, having made a transfer, has retained a power to revoke or consume.[86] There are no limitations or safeguards against gratuitous transfers by the spouses similar to the suggestion by the Ontario Law Reform Commission in connection with deferred sharing.[87] Since the Bill does not include any provisions similar to the doctrine of fraudulent conveyances,[88] it should be quite easy for a recalcitrant spouse, faced with the breakdown of the family relationship, to dispose of the bulk of his or her "family assets" by collusive or other gifts.

Finally, a whole host of assets are not covered by the Bill at all, and the courts are left to struggle as best they can with the problems. Take, for example, investment assets, such as stocks, bonds or realty. They do not fall within the definition of family assets, nor do they come easily under the rubric of a business. The Bill gives no guidelines whatsoever as to how they are to be treated. Once again, this omission favors the well-to-do and the rich, since they are the ones who are likely to have this kind of assets. Furthermore, if these assets are not to be shared, as they almost certainly are not, the scheme works a great injustice on the spouse who has no corresponding wealth because she, or he, stayed at home. The income-producing property will be denied to her or him and the means of main-

[83] *Id.* s. 39(4).

[84] *Id.* s. 39(4):

> Where the property that includes a matrimonial home is normally used for purposes other than residential only, the matrimonial home is only such portion of the property as may reasonably be regarded as necessary to the use and enjoyment of the residence.

Here again there is a change from the provisions of Bill 140, s. 36(4), which spoke in terms of land and, presumably, addressed itself to situations such as farms.

[85] *Id.* s. 38; *compare* s. 35 of Bill 140.

[86] *Id.* s. 3(b)(iv):

> property disposed of by a spouse but over which the spouse has, either alone or in conjunction with another person, a power to revoke the disposition or a power to consume, invoke [*sic*] or dispose of the property, if the property would be a family asset if it were owned by the spouse.

[87] ONTARIO REPORT, *supra* note 12, at 192, Recommendations 34-38. While the safeguard is a welcome one, it is not as effective as a prohibition against unilateral gifts would be with a provision for the recapture of the transferred property; *cf.* CAL. CIV. CODE s. 5125 (West Supp. 1976); NEV. REV. STAT. s. 123-230(b) (Supp. 1976); WASH. REV. CODE ANN. s. 26.16.030(2) (Supp. 1976).

[88] The concept was first introduced by statute, 13 Eliz. c. 5 (1571), as construed in Twyne's Case, 3 Coke 80b, 76 E.R. 809 (Star Chamber 1601).

tenance will not be available.[89] In addition, the scheme penalizes the generous spouse who provides for the family, and thus acquires substantial "family assets", and rewards the selfish one who invests in his or her own name. It may also add insult to injury in the situation where one of the grounds of the marital discord is the failure of the earning spouse to provide properly for the family, while busily feathering his or her own nest.[90]

The whole scheme is impolitic, ill-conceived and essentially unworkable. It will not ameliorate the conditions which it is ostensibly designed to correct. It treats poor and middle-income persons differently than those in the upper portion of the economic spectrum, in that it would force those at the lower end of the scale to share all or most of their wealth on the breakdown of their marriage with their mates, while permitting the well-to-do and the rich to insulate the bulk of their property from the claims of their spouses.

V. Recommendations and Conclusion

Bill 6 fails to come to grips with the underlying reasons for the dissatisfaction with the present state of the law, by accepting the limited context of divorce. It is thus directed to symptoms rather than causes. Further, by accepting neither a property nor a discretionary approach, but a confused and ill-defined mixture of both, it invites rather than prevents litigation. If the Province were to be satisfied with a minimum revision, applicable to dissolution by divorce only, it might consider some of the models proposed or adopted in the United States, such as efforts of the commissioners on uniform state laws[91] or some recent statutes.[92]

I consider an approach which deals with symptoms rather than causes inadequate.[93] Measured by this standard, the recommendations made by the Ontario Law Reform Commission are certainly superior to the proposals

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[89] It would seem by definition that items falling under the rubric of "family assets" as stated in the Bill are all personal use and non-income producing. This is strengthened by s. 3(b)(i), which includes bank accounts within "family assets" only if they are "ordinarily used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes". This provision is an open invitation to the recalcitrant spouse to maintain more than one account.

[90] Bill 6 has added s. 4(4), not found in Bill 140, which reads in part as follows: "Where in the opinion of the court, a spouse has unreasonably impoverished [*sic*] the family assets . . . the court may make a division of any property that is not a family asset." This may enable a court to rectify particularly outrageous situations. However, while it may apply in case of dissipation of assets (I do not know how one can "impoverish" an asset), it is not at all clear whether it would also apply in the case of failure to provide them in the first place.

[91] Uniform Marriage and Divorce Act 1971, s. 307 and amendment in 1973, alternative A.

[92] *E.g.*, Alaska Stat. s. 09.55.210(6)(1973); Colo. Rev. Stat. Ann. s. 46-1-13 (1963); Del. Code Ann. tit. 13, s. 1513 (Supp. 1972); Ky. Rev. Stat. Ann. s. 403.190 (Supp. 1975); Me. Rev. Stat. Ann. tit. 19 s. 722-A (Supp. 1975); Mo Rev Stat s. 452.330 (Supp. 1975).

For a more extended discussion of the approaches of the common law states of the United States to division of property on divorce, *see* Bartke, *Marital Property*, *supra* note 17, at 65-68.

[93] Bartke, *Marital Property*, *supra* note 17, at 75-81.

of the Attorney General. The recommendations of the Ontario Commission, which would make increases but not decreases in value of non-sharable property sharable, [94] are correct. On the other hand, the position of the Law Reform Commission of Canada that sharing take place in every instance of termination by death or divorce, irrespective of which one of the spouses it is who dies, and that the method of computation be the same, [95] is preferable. Therefore, the approach suggested by the Ontario Law Reform Commission, with this modification, would be a great improvement over the present law of the Province and over the ill-judged recommendations of the Attorney General.

It is submitted that a system of true community property, where the spouses enjoy equal management powers, [96] as is in force now in several of the United States jurisdictions, [97] is superior to that of deferred sharing. Although such a system is not without complications, my experience and that of many others indicates that the problems tend to be exaggerated. [98] Furthermore, in the Canadian literature there is an understandable tendency to equate community property with the system as found in the Province of Quebec, [99] forgetting that its antecedents are French, whereas those of the community property systems found in the eight United States jurisdictions are Spanish. [100] It is true that the statistical data indicate that the vast majority of couples contemplating marriage in Quebec opted, even before 1969, for separation of property. [101] However, it is my belief that this was due, not to the basic defects of the approach, but rather to the failure of the judges, lawyers and legislators of Quebec to put their system into the framework of the twentieth century. [102]

Undoubtedly, no system of marital property rights can or will satisfy all couples under all circumstances. [103] Therefore, the efforts of the Attorney General to provide for considerable freedom of choice to married couples though antenuptial and post-nuptial agreements [104] are to be applauded. The proposal is a good one, but it does not go far enough in that it fails to

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[94] ONTARIO REPORT, *supra* note 12, at 190, Recommendations 7, 8, 15, & 16.

[95] Payne & Wuester, *supra* note 17, at 308-09.

[96] Bartke, *Community Property, supra* note 38, at 260-64; Bartke, *Marital Property, supra* note 17, at 76-81; *see also* Schroeder, *supra* note 36, at 30-33.

[97] The states are Arizona, California, Idaho, Nevada, New Mexico and Washington.

[98] *See, e.g.*, discussion in Johanson, *supra* note 38.

[99] *E.g.*, Hahlo, *supra* note 21; Jacobson, *supra* note 34; *but see* Schroeder, *supra* note 36.

[100] *E.g.*, Bartke, *Community Property, supra* note 38, at 219, 239-40.

[101] *See, e.g.*, Rivet, *La popularité des différents régimes matrimoniaux depuis la réforme de 1970*, 15 C. DE D. 613 (1974).

[102] Bartke, *Community Property, supra* note 38, at 258-60; *accord* Schroeder, *supra* note 36, at 34 n. 6.

[103] *E.g.*, Légaré, *Réflexion sur les régimes matrimoniaux*, 77 REV. DU N. 575, at 582 (1975).

[104] Bill 6, ss. 50-59. For an official comment *see* OFFICIAL EXPLANATION, *supra* note 8, at 29-35. It should be pointed out, however, that these provisions are not original with the Attorney General but, on the contrary, are derived largely from the recommendations of the Ontario Law Reform Commission: ONTARIO REPORT, *supra* note 12, at 197-98, Recommendations 72-85.

provide a framework for certain optional property regimes such as that of a true community. [105] Such a regime could not be adopted by voluntary agreement of the parties, with the full implication of sharing by operation of law, simply because the law of Ontario does not recognize this type of co-ownership.

Professor Peter Jacobson, in a recent contribution to the pages of this review, [106] took to task the Law Reform Commission of Canada for its efforts in the field of matrimonial property rights. Whether one agrees or disagrees with the Commission's paper, and I do not agree with everything said therein, [107] it is a very serious effort undertaken by a distinguished panel and it deserves a considered response.

At the end of his rather brief contribution, Professor Jacobson poses the following question: "In the light of this experience [the experience of Quebec discussed above], why would a province consider the adoption of the complex regime of community, either on an optional or mandatory basis, as a solution to the problems of the system of separate property?" [108] Assuming that Professor Jacobson is asking a serious question, a response is in order.

I believe the community property system is superior to the others for a number of reasons. First, it is essentially neutral with respect to the individual and private choices of the spouses as to how to allocate their respective responsibilities within and outside the home. I do not conceive it to be the role of property law to force spouses into or out of the labour market.

Second, the quantity and value of community property in most cases reflects fairly accurately the economic fortunes of a marriage. This means that, other things being equal, the longer the duration of the marriage, the more community property will have been accumulated by the parties. In this respect, for instance, Bill 6 falls far short because it does not really distinguish between a marriage of long duration and one of short existence. Admittedly, there are provisions for exercise of judicial discretion, [109] but these can only result in additional litigation and uncertainty. Furthermore, since the Bill specifically directs an equal division of "family assets", [110] an unequal division or an award of assets which are not "family assets" would be an exception, again penalizing the stay-at-home spouse.

Third, community property approximates more closely the way in which many or most married couples conduct their affairs. [111] During the existence

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[105] *Cf.* my recommendation for the common law states of the United States that they adopt on an experimental basis a conventional as distinguished from a legal community: Bartke, *Marital Property*, *supra* note 17, at 84-85.

[106] Jacobson, *supra* note 34.

[107] See discussion in Bartke, *Marital Property*, *supra* note 17.

[108] Jacobson, *supra* note 34, at 293.

[109] Bill 6, ss. 4(3) & (4).

[110] *Id.* s. 4(5).

[111] This is, for instance, fully recognized and stressed by the Royal Commission of British Columbia: SIXTH REPORT OF THE ROYAL COMMISSION (BRITISH COLUMBIA) ON FAMILY AND CHILDREN'S LAW, REPORT ON MARITAL PROPERTY at 5 (1975).

of an harmonious relationship, most married persons talk and act in terms of "our property", "our home", "our furniture", "our investments", and so forth. Therefore, a legal system which recognizes this reality and gives it legal effect is to be commended.

Fourth, community property is the only system which truly effectuates the concept of marriage as a partnership. [112] It is also the one which best protects and gives the greatest psychological boost to the stay-at-home spouse.

The reforms of 1975 in Ontario were obviously short range. Now is the time for a far-sighted and statesmanlike approach to these pressing problems. Bill 6 does not meet the need. The Legislative Assembly of Ontario would do well to ponder again the recommendations of its own Law Reform Commission, look at the conclusions of the Royal Commission of British Columbia, [113] and, as soon as possible, adopt either a system of deferred sharing with amendments suggested here or, preferably, a true form of community property. Otherwise, Lord Byron's whimsical parody of Shakespeare's famous lines will acquire a brand new and highly distressing significance.

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[112] *See, e.g.,* my discussion in Bartke, *Community Property, supra* note 38, at 260-64; also, Schroeder, *supra* note 36, at 30-32.

[113] *Supra* note 111, at 48 and 49-55.