Legislative Assembly of Manitoba

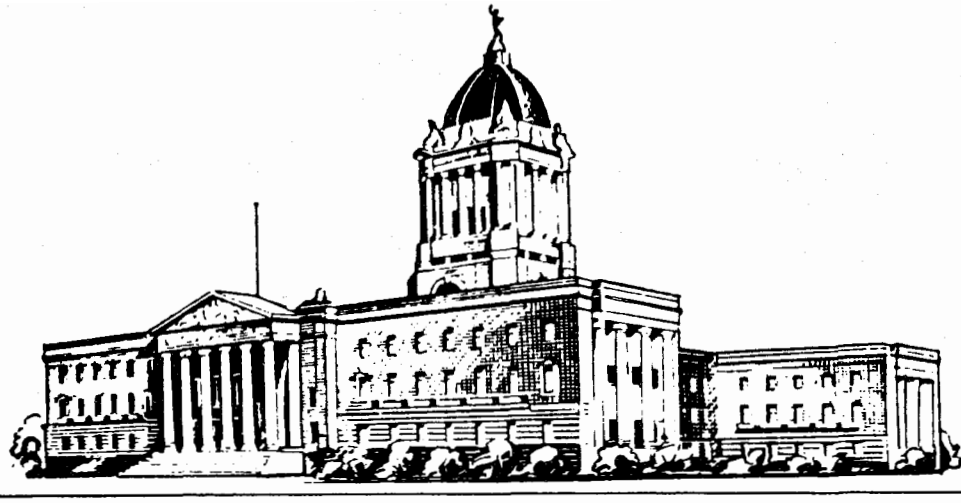
HEARING OF THE STANDING COMMITTEE

ON

STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. D. James Walding
Constituency of St. Vital



TUESDAY, February 22, 1977, 10:00 a.m.

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TIME: 10:24 a.m.

CHAIRMAN: Mr. D. James Walding

MR. CHAIRMAN: Order please. Gentlemen, we have a quorum. The Attorney-General is not with us as yet, he is expected shortly. Is it your wish to proceed — I take it that it is.

As you recall, at our last meeting the Chairman of the Law Reform Commission was with us answering a few points that members of the Committee had, and had agreed to return this morning. He has done so, accompanied by another member of the Commission, Mrs. Bowman. Perhaps Mrs. Bowman, Mr. Muldoon, you can take a seat at the end of the table, please.

Now, we were working our way through the recommendations at the end of the book and we had not yet finished them. There were a few points that we had agreed to go back to. Would it be the wish of the Committee that we go back to the beginning of those recommendations to see if you have any questions of the Law Reform Commission on those points, or do you wish to proceed from where we had got to?

MR. SHERMAN: Well, Mr. Chairman, it doesn't bother me whether we go back and start from the point we marked for re-examination from the beginning, but I suppose it is dependent to a certain extent on the time that the Committee can sit today, and the time that the Chairman and Mrs. Bowman can give the Committee because we had an examination going when the Committee adjourned the other day of the Commission's views, majority and minority, with respect to the opting out provision and it was at that point, unfortunately, that the Attorney-General had to leave to meet another commitment and I, personally, would be interested in an exchange of views between the Attorney-General and the Chairman of the Commission on that point. I think it would certainly be helpful to me, if not to all members of the Committee. We had quite a discussion with the Chairman as you will recall but the Attorney-General was not able to be here for that so I hope we could at least cover that point again this morning.

MR. CHAIRMAN: We had reached, I believe, page 133, section 31(b) which, I believe, covered the opting out provision and it was a duplicate of 27(c): Yes, the same point had occurred Mr. Paulley did you have any comment?

MR. PAWLEY: Yes, I think Mr. Muldoon is aware of my reservations. Let me say, curiously, as we were speaking here I was rushing away to catch a plane to go east and two days later I met Mr. Muldoon in Toronto and was rushing also to get the plane to return here. I met him on the street but we didn't have a chance to further our discussions. The thing that worries me, and I would certainly appreciate Mr. Muldoon and Mrs. Bowman to expand on this, — and by the way I had some opportunity to speak to Mr. McMurtry in Ontario about this about their legislation and as I understand it they are providing for the mutual contracting out too. Now, that can be confirmed although he was quite interested in the proposal on unilateral and did not dismiss that as something that maybe they should take a further look at themselves. But the concern that I had traces back to the worry that if there is unilateral contracting out that it will take place within those marriages that are the most repressive where one of the spouses in which the marriage situation is already pretty shaky, and this law comes into existence, and where the spouse is the most repressive would likely take advantage of the unilateral contracting out provision. I don't think that the contracting out will occur in the 97 - 98 percent of the good marriages that we're really not aiming this legislation at anyway. I think the vast majority of people try to organize their marriages as one economic unit, but there's that 2 or 3 percent that worries me and it is within that 2 or 3 percent that I would expect a very heavy unilateral opting out. That worries me, that we would pass legislation but provide a loophole, so to speak, for one of the parties to escape its provision within that group of marriages in which I expect the most difficulty to occur. That is basically my concern about the recommendations of the Law Reform Commission in this respect. I don't know whether Mr. Silver has obtained a copy of the Ontario legislation pertaining to this. I think it would be interesting to examine it.

Number two, if I could mention my concern, is that although we refer to the taking away of rights, I think it also works in reverse. The subservient spouse finds that his or her rights are taken away because the dominant, and in these few cases the more repressive spouse takes advantage of the unilateral contracting out in order to strip his or her spouse from the real distinct advantages from this legislation that we feel are very important to the public at large, so that in fact although we may say that we are protecting rights for some, we are in fact denying rights for others by *de facto* allowing the unilateral contracting out.

Mr. Chairman, those are my two areas of real worry about this. I would certainly like to hear comments on this. I wish my concerns and reservations could be removed as I would very much like to accept the Law Reform Commission's recommendation on this, but those are my two reservations on this.

MR. MULDOON: Thank you, Mr. Chairman. First I suppose I should say that my appearing here to express the views of the Commission which were expressed in our report in contradistinction to the Attorney-General's views has to be the true test of the independence or folly of the Law Reform Commission. I am grateful to the Attorney-General for his open-minded approach to this.

The opting-out provision was designed by the Commission, and I can speak only for the commission in this. I will attempt to winnow my remarks from any personal views because it is the commission's report we are discussing, although my personal views are those of the majority in this case. The opting-out provision is designed by the commission and was intended by the commission so that in the standard marital regime people would know what they are getting into and would not wake up some morning to find that they had gotten into something they had never planned to get into and never intended to get into. For that reason, the commission shied away from recommending retrospective legislation.

The whole object of the standard marital regime is that it is a standard marital regime and that if people don't care or don't trouble' or are satisfied with it, don't trouble to contract out of it, , then the law would in effect give it to them. But that, the commission thought, should be done with one's eyes wide open and not find that it has been imposed upon one. The recommended provision for opting out for those already married when the legislation would be proclaimed into force, or for those who in subsequent years would move into the province perhaps with some other arrangements or perhaps with no arrangements, perhaps from a common-law province which has the same kind of separation of property which Manitoba already has.

The commission, however, was concerned, just as the Attorney-General was concerned, about the possibility of repressive action. And so, although we recommended that the sharing provisions of the standard marital regime should be clinically applied without any judicial discretions, we recommended in the case of an opting out that if that marriage should break down and if those people should find themselves in a question of dispute, the court would have judicial discretion, would be accorded a discretion by the legislation to do something fair about the distribution of the value of property acquired prior to the coming into force of the legislation, or prior, if you will, to the act of opting out on the part of one spouse, so one could not shelter entirely one's estate from the effects of sharing by simply opting out. Our recommendation is that if one opted out, all the estate one had acquired prior to opting out would still be subject to judicial discretion for sharing.

There is a good reason for this. We think there is because we think that while many families are firmly founded and the marriages are solid, in our society today there is a growing incidence of marriage breakdown. We think that perhaps at the time which the law would be proclaimed into force, there may be many couples who are already separated but not divorced; that is to say, a legal state of marriage exists, if in name only. There are obviously cases there where the separation may have been of long endurance and if the parties have no opportunity to opt out, although they have had no marriage in a true sense for some time, they may find that they are required to make an equal sharing just as if their marriage had currently broken down, just as if they had been working together right up to the moment the marriage breaks down, or close to it, as if they had always been working together as a team. It seems to me that that is probably going to be a larger percentage of our population of married people (and I'm just hazarding a guess there) than those who are living in a kind of tyranny with one repressive partner who is going to opt out.

The only other thing I could add, and perhaps quite repetitively, is that the opting out would not, under our recommendations, shelter the opter from any sharing of his estate acquired up to the date of opting out. I don't know if my colleague, Mrs. Bowman, would have any observations to make on this. If you care to hear from her, Mr. Chairman, I suggest this because Mrs. Bowman is in the active practice of law, and indeed in the active practice of family law. She may have some insights for the committee which have escaped me.

MRS. C. MYRNA BOWMAN: Mr. Chairman, I think the dilemna dilemma in which / the committee and the Law Reform Commission find themselves is this: that we are changing the rules in the middle of the game as far as people who are already married are concerned. When you do that, there is no way that you can do perfect justice to all. What we have attempted to do is to find a compromise that will not perhaps be perfect but will be a workable system. Throughout the discussions that we have had on this paper, we were trying to make the thing practical, something that would work. If you impose this sharing upon people already married who have made their arrangements, for good reasons or bad, on the basis of the law as it existed when they entered the marriage, then it seems to me that you are not doing justice to them. Conversely the Attorney-General is quite right in being concerned about the oppression of people who are perhaps the weaker spouses in the marriage.

It appears to me that if you first of all give the protection of a discretionary provision as to previously acquired property you are not depriving this servient spouse, as Mr. Pawley put it, of any possibility of sharing in the previously acquired property. It seems to me very likely that as time goes on it will be the tendency of the courts to regard an equal sharing, even as to that property, as the norm, and to look more in terms of why it shouldn't be that way than to require a justification for why it should be.

Then, we have also provided that there can be no unilateral opting out, as to property acquired after the Legislation comes into force, so that even in the case of shaky marriages, I think that the servient spouse, usually the wife, is not going to be in a completely powerless position. When you say that you are not going to permit any unilateral opting out you put people already separated into a very difficult position because there is no possibility then of bargaining between the spouses in a normal way, the bitterness that often has risen and caused the separation is going to make sure that each of them will do their best to do in the other financially, and it seems to me that to permit that to occur, in a case where the marriage has already broken down, is doing a great injustice to the separated spouse, or one of them.

I think also you should bear in mind that people's financial affairs may result in people having the property concentrated in one spouse, for good reasons sometimes, and I had an example of that in fact last week in the office. A woman who was separated — her husband was unfortunately both a drinker and a gambler — and during previous marital problems she had been very concerned that the house would be lost due to his improvidence, and as a condition of trying to continue the marriage at that time the property had been transferred into her name. Well his habits didn't improve any and subsequently several years later they did separate — she has been separated now for three or four years — and was quite confident and happy that her home was secure for herm children and herself. Now her husband is still up to his old tricks, she was beside herself to think that the Legislature might be going to give back to her husband the half house that was sheltering herself and her children and upon which she had been making all the payments while he was off having a good time. Now that may strike some of you as justice but it doesn't strike me as justice and I don't think that it is really the intention that any of you have in making a change in the law. It was our opinion when we drafted this provision that we were protecting the servient spouse, but on the other hand not imposing a regime on parties who already had their difficulties which was not something that they anticipated when they got into the marriage. I don't know that there is anything further that I can add to that.

MR. PAWLEY: I'll see if I can follow that last example Mrs. Bowman provided us with. Surely, insofar as the division of the assets are concerned under the recommendations, that the effective date of determining the assets and the division of assets ought to be as of the date of the breakdown of the marriage which I would assume to be the end of the cohabitation between the parties, so that in the case that you gave of the separation which continued for a period of time after the actual separation — and I don't know whether even the existing recommendations . . . should not the effective date be as of the date of the marriage breakdown rather than the date of the actual divorce proceedings. In other words we would carry on during the cohabitation period, but once cohabitation had ended then the division would take place.

MRS. BOWMAN: That would be the logical thing although the date upon which cohabitation ceased is not always that readily determinable, but the difficulty would still arise, in respect of this lady of whom I speak, because the house is the same house that they lived in during the marriage while they were cohabiting, and consequently if you made your legislation retroactive as you contemplate he would still be entitled to a half interest in the equity as it stood at the date of separation. Now the property was transferred and the wife remained in the marriage at the time because of this transfer having been made and because that gave her what she thought and what a lawyer would have told her at that time was security and the ownership of that home for herself and the children. So I think that although making the cut-off date the date cohabitation ceased is some assistance it still leaves a problem.

MR. PAWLEY: But if you were going to provide that example Mrs. Bowman, insofar as retroactive legislation, would you not then be able to use the same argument to suggest that the recommendations of the Law Reform Commission as to equal division should include an aspect of judicial discretion to cover such circumstances you mention for the future. Surely if we are going to apply it going backwards, we would then, to be consistent, it seems to me, have to apply that same concern insofar as the recommendations are concerned to future marriages.

MRS. BOWMAN: You can make make an argument for that — I don't think that it's an argument that appeals to me. I am concerned that people should have an opportunity to have an equal partnership in the marriage if that's what they choose to do. We are giving everyone a fresh start in a sense with this legislation and it seems to me that if they do not make a contract, if they don'topt out in any way, that they are accepting this legislation and they are going to have to live with it. I don't think you can protect people from the consequences of their own folly and I don't think that's desirable. The undesirable thing about the judicial discretion — and we're well aware that that undesirability of course applies in respect of the retroactive provision — is that people do not know their rights and it leads to a great deal of litigation and unpleasantness between parties if they are not aware that they are equal partners and if there is any question about it. It encourages them to litigate, to drag out all of their matrimonial linen in the hope that if they sling enough mud it will result in the other party getting less than an equal share. That's the undesirable part of the discretionary provision. In places where they have had a judicial discretion, the wife has consistently received less than half of the property and that's been the experience in England and I believe in Australia as well

and I am opposed to judicial discretion in general — we opted for that in respect of the retroactive provision simply because there was no other way that we could see to give some protection to the spouse whom you refer to as the servient spouse.

MR. PAWLEY: Now just one further question because I don't want to monopolize this discussion, but if in that example that you provided us with, Mrs. Bowman, the wife had failed to obtain the transfer of the title into her name and same traits existed but she had failed to obtain the transfer of the title and the title remained in his name, then it seems to me that, and I would suspect that probably a majority of such cases would be that in which there would be neglect to transfer the title, so you would have this same situation with the title, in this case in the husband's name, we have then the unilateral contracting out, would not he then immediately just proceed to unilaterally contract himself out of this situation, so he would be in a advantages position.

MRS. BOWMAN: If there had been no transfer into her name alone, the title previously was held jointly. What I'm suggesting to you Mr. Pawley is that this woman made a bargain with her husband as a condition of continuing the marriage and what you're suggesting is that that bargain should be nullified by the Legislature. Now, had he not been prepared to transfer the property into her name alone, she would have terminated the marriage at that point and she would be two children less. Now, she has made her bargain, she had legal advice — not from me I might say, at that point — and she relied upon the rights that she had in law at that time and now you're going to take those things away from her, giving her no option. That's what I see as an injustice.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Well Mr. Chairman I have really no, should maybe not enter into it at this time because I think the Attorney-General has taken the position which is in conflict with that proposed by the Law Reform Commission and I think he has an obligation to justify to us and to other members of the committee, the validity of this argument for the position he has taken. So far I don't think he has given us any concrete reasoning for that position and right now I think the whole matter is one of whether his position is valid and logical and I think he has an obligation to give us a greater explanation than he has so far for adopting the position he has taken.

MR. CHAIRMAN: Are there any further questions? Mr. Sherman.

MR. SHERMAN; Well, I, like Mr. Graham, I don't have further questions because I had full opportunity afforded me by you Sir, and colleagues on the Committee on last Tuesday, I believe it was, when Chairman Muldoon appeared before us. But I would just amend my colleague, Mr. Graham's challenge to the Attorney-General to say that I don't feel that the Attorney-General has any obligation to support his argument, reinforce his argument, any more than he has done so. I wanted to hear the opinions of the Chairman and Commissioner Bowman because I have taken the position, and the Attorney-General knows it, that I favor the unilateral opting-out provision and find that any other provision would be unjust on the principle of retroactivity in law, particularly in a law that is so pervasive as this. I don't think the Attorney-General has to justify his position. I simply would say to him at this point that the position he would recommend the Committee would take on this subject would be in conflict to a dissenting position that I would have to take.

MR. CHAIRMAN: Mr. Jenkins.

MR. JENKINS: Mr. Chairman, through you to Mrs. Bowman, going back to the case that you are mentioning. Would not the recommendation that the Law Reform Commission made for the dissipation of assets cover this case that you are talking about? Evidently, from what you have said, this person has been a drunkard, a gambler and everything else, and over a period of, well, I think it is six years, the recommendation of your Law Reform Commission is, that he has dissipated what assets he ever had in the marriage.

MRS. BOWMAN: Well, he would have if he had had the opportunity, but luckily my client obtained the property in her own name and he wasn't able to dissipate it, so there it is. So I don't think that that would be of much assistance to her. The recommendation that is made is, I think, one that I feel she would be quite confident in retaining the ownership of the house if she were to rely on the Court's discretion in that kind of an instance. The Court would be very unlikely, I think, to find that it would be just for any portion of that property to be returned to the husband.

MR. JENKINS: Thank you.

MR. CHAIRMAN: Are there any further questions on this point? If not, perhaps we could go back to the beginning and just touch on those points that the Committee had marked for re-examination and if any members of the Committee have questions of the Law Reform Commission on any of those points, they would have the opportunity to do so. I would like to go back then to Page 111 Section 4, Responsibility for Maintenance Up to Age 18. Were there any questions on that?

MR. GRAHAM: Mr. Chairman, dealing with the responsibility of parents for their children, the conduct of their children and the maintenance of their children, here we find the Law Reform Commission is suggesting that wherever a child has wantonly discontinued his education and training, that the parents should not be considered to be responsible. I think this is, in my own view anyway, I think that perhaps the Law Reform Commission is absolving parents of a responsibility

which I think probably still should be theirs. Perhaps we could get a little more detailed explanation from the Law Reform Commission on why they did make this exception here.

MR. CHAIRMAN: Mr. Muldoon.

MR. MULDOON: Thank you, Mr. Chairman. The Commission's rationale there was that where the parents and the child are in such a state of alienation where the child is unmanageable in effect by the parents, that the parents ought not to have to support a child who is in effect conducting his life in a way that is sort of all fun and games and not in effect maturing, not in effect continuing his training according to his parents' wishes. Now, that's a cognate provision in our recommendation with that of The Child Welfare Act recently revised and recently enacted by the Legislature which also permits a parent, upon application, to become absolved for support of a child. In such cases, an Order of Temporary Custody is frequently made so that the Children's Aid Society may take steps to intervene because obviously somebody needs to intervene there. It's intended to say to children, you may of course at the age of 16, you may not be able to be controlled by your parents and you may be on your own largely, but don't expect your parents to support your life-style if that's the way you are going to conduct it. It seemed to us from the people we saw and those to whom we spoke, that that was in accordance with their sense of the justice of the event, that if you don't have the control of the child, you shouldn't necessarily have to support the child's lifestyle. One of the realities might well be for a child in that condition that the Children's Aid Society wouldn't be making such an allowance for the support of the child as the child may be getting or extorting from his or her parents. And that's the reason, that if you don't have in effect the control and trust of the child, you don't have to support the child in whatever lifestyle the child decides to embark on.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: When you take that direction or that action, does that absolve the parents then from the legal responsibility for that child?

MR. MULDOON: We don't have a parental responsibility law in this province and never have to my knowledge. It's true that if your kid swats a baseball and breaks the neighbour's window, most parents will voluntarily pay for the window, but in law they don't have to. There is no parental responsibility law in this province.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I guess the most basic and simply-put question that came up among the members of the Committee when we were examining this point of age responsibility vested in the parent, was the question, what about the 17-year old living and working away from home and running up bills he can't handle? That was, I think, sort of a condensed, or represents condensed questions that a number of us on the Committee had when looking at the Law Reform Commission's provision that the final age of parental responsibility be 16 years, in the case of children described as they are in this section. So I would put that question to the Chairman and Commissioner Bowman. Are there not extenuating situations or extenuating circumstances leading to different specific situations such as the one that I have suggested, the 17-year old who is working but is not sufficiently skilled or schooled in terms of management of his or her own financial resources, his or her own income, to be able to control the kind of expenses, the kind of bills that accrue. Where does that leave the merchant, the landlord, the service operator who has provided goods and services to that child?

MR. CHAIRMAN: Mr. Muldoon.

MR. MULDOON: Mr. Chairman, one could try to legislate for every particular instance but if one did, I suspect that the statute would be of the same volume as all the volumes of the Encyclopedia Britannica, and I don't say that facetiously because there are extenuating circumstances in human behaviour, a myriad of them, which sometimes one cannot even foresee much less provide for. The present law is that a child is liable to pay debts incurred for necessaries of life but not other things. We foresaw exactly the kind of example Mr. Sherman has given and that is this, that here is a child who is away from home and keeps asking the parents to pick up the deficit. One would expect in the normal course of human behavious that the parents would be saying to the child, do you know how to manage your money, can we help you, can we advise you? And our view was that that would happen, that that would normally happen after a few calls for money from home, the parents would undoubtedly be telling the child, there's a better way of managing your money. Maybe you're living too high. Maybe you shouldn't be eating at restaurants. Maybe you should be cooking something on your hot-plate. Maybe you should get cheaper accommodation because we're constantly paying. You're always writing home — you write only for money. That's a typical situation. And our view was that the parents then shouldn't be the eternal gull for such a child, to be drawn upon as if they were a bottomless bank account by the child who has become alienated from his parents and won't follow their advice. It seems to me that if the child is responsive to the parents' advice, one could almost rely on the normal affection of a parent for a child to help but if time after time the child ignores the parents' advice, goes contrary to it, it seemed to the Commission that the parents shouldn't be just like a fish on a line, to be reeled in for money every time the child, who after all is on the verge of adulthood, incurs debts he cannot handle or should not have incurred. If those debts are incurred for necessaries, the law as it now stands renders the child responsible for the debts.

In this situation which the Commission has recommended, we were talking about the duty to maintain a child and it seemed to the Commission that if a child can be self-supporting at the age of 16 or 17, on the verge of majority, that the parents ought not to be forced to keep making payments for that child. No doubt in many instances parents would voluntarily. And as I said earlier, this is an exact cognate provision from that in the Child Welfare Act.

MR. CHAIRMAN: Mr. Adam

MR. ADAM: Thank you Mr. Chairman.

Mr. Muldoon, I perhaps should refer to Mr. Chairman's comments about the merchant that wants to advance monies or services to a seventeen year old child. I don't feel sorry for the merchant who wants to make money and profit by selling goods and services charged or on time to a person who is not legally responsible for them. That is up to the merchant to protect himself as far as I am concerned.

I want to refer back to your Section 4 here which says, in effect, that parents should not be responsible for a child who is unmanageable if he is sixteen years and under. I have some difficulty with this section because I know there are students who want to obtain bursaries and loans to go to university or whatever. If they happen to have parents who are well-to-do or fairly well-to-do or even marginally well-to-do in many cases they are denied the option of obtaining even a loan because they have parents who have sufficient monies perhaps or some monies to subsidize this young person who wishes to further their education. Here we have a situation where because the student or the young child is unmanageable, that he may be a child of well-to-do parents, suddenly we are saying on one hand we have a good child he's going to be the responsibility of the parents — here we have a child that is unmanageable, let the public take him regardless of the circumstances of the parents. I think this is what I interpret in this and I'll have to have a lot of arguments to accept this.

MR. CHAIRMAN: Mr. Muldoon

MR. MULDOON: Mr. Chairman, I don't think I have to argue with Mr. Adam. The sort of situation he foresaw was also foreseen by the Commission and I think that the Commission might be said to be in agreement with him. If you will note the recommendation, especially in regard to scholarships and bursaries, suggests that the parent is not responsible to support and maintain a child over the age of sixteen who has wantonly discontinued appropriate formal education and training. Well, anyone who has done that isn't going to get another bursary, surely, or scholarship. And, so here are two factors now, said. "The heck with education," and is able to be self-supporting or is beyond the control of his or her parents. So that in each case you look at a child to see if there are two ingredients there. The first ingredient is a standard ingredient. Has the child discontinued education or training? The second ingredient could be different. In one child it's one who has discontinued education or training and is able to be self-supporting, in another child it might be one who has discontinued education and is beyond the control of his or her parents. So that in both situations you have a case where the child is not going to be needing a bursary if there is no furthering of education and since is no longer attending any school or college or training institute is able to be self-supporting or is in effect thumbing his or her nose at the parents and saying, "I don't have to do anything; I don't have to be educated; I don't have to work; you'll support me". The Commission said, "Oh no, that's where we'll draw the line when the state of alienation gets to that point". Now that could well be a case, of course, for the Children's Aid Society or the provincial Department of Health and Social Development to move in because that is undoubtedly the place where the intervention of some third person is necessary if the parents cannot or have failed to rear their child so that he knows the value of work and the value of a dollar, if you will, decides just to be on a permanent vacation at the expense of his parents. That is exactly the situation which the Commission foresaw in formulating that Recommendation No. 4 on page 111 of the Report.

MR. CHAIRMAN: Mr. Adam.

MR. ADAM: Yes, on that point, Mr. Muldoon, I don't object, I wouldn't object to a third party being involved to manage the child. That is not where I am hung up. It's on the support of that child if the parents are able to support him. As far as the management is concerned, if they are unable to manage him, I think that that can be resolved. But it is the support part, I don't see why he should suddenly be thrust on to the public purse because they can't manage him. That is my only hang-up.

MR. MULDOON: The situation, Mr. Chairman, which the Commission envisaged there is exactly that where in effect the child's attitude is, I don't have to listen to my parents; I can be on a permanent vacation and they pay, because I am not going to continue my education; I am not going to work and they can't control my coming or going; it doesn't matter what time I come, what time I go, with whom I associate; I don't work and I don't study. And it seemed to us that there are institutions in society whose job it is to see to the development and maintenance of such children. They are called Children's Aid Societies and they're called the Department of Health and Social Development. I can do no more that than express the views of the Commission that it would be a great injustice to say to a parent, "here is your kid who has quit school, won't work, who perhaps is or isn't hanging around with company that . is less than desirable and you have to support the kid". You might get a request from

some other province. You might get a request from Fort Lauderdale, Florida, "send money, because I am on a permanent vacation down here and I am under eighteen". I think that the question of justice to the parents is one which is important there. One wouldn't see that arising in many circumstances. I am sure that many parents would probably be the gull for their child because of natural parental affection and many wouldn't even invoke that if they could. But it seemed to us that where the parents can't afford or be constantly drained by a child who won't study and won't work that society has institutions already to look to the maintenance of those children and they are the ones which should be invoked for the relief of the parents.

MR. SHERMAN: I am not going to get into a discussion with Mr. Adam on the subject of merchants and their ability to look after themselves although I might just note for the record that one example that we wrestled with here in earlier hearings was the position, for example, in which the Telephone System finds itself when people are placing innumerable long distance telephone calls and running up bills of that kind. I think there are examples of merchants or service operators who are not able to protect themselves in the same manner as a store keeper. I would agree with Mr. Adam that some merchants can protect themselves better than others.

My main concern with this recommendation — and I am not suggesting to you that I reject it — as a matter of fact I'd be prepared to accept it if you and Commissioner Bowman could assure me that there will not be parents who will take advantage of this opportunity to relinquish their responsibilities. Your references, if I may say so Sir, are all, it seems to me, to a world of happy parents, happy children, happy families where there is a great deal of rapport and communication and where the child runs up a bill and his father or mother bails him out. I don't think all families are like that. I think there are some families who don't like there children. I think there is some truth in the old maxim in divorce settlements or separation settlements that one or the other parties says, "I lost, I got the children". I think that we have to consider, here, a law for everybody. I'm not satisfied in my own mind that there would not be some sixteen year olds who would be thrown out of their — perhaps that is too strong a term — but who would certainly be discouraged from staying in their homes and certainly would be subjected to a certain amount of discrimination and harassment and intimidation as parents sought to take advantage of an opportunity to get rid of them because the conditions do not say through gainful employment is able to be self-supporting "and" is beyond the control. They say "or". A parent who had no particular liking for a child could hide behind one or the other of those provisions.

MR. MULDOON: Mr. Chairman, in such a case one would have to ask, would that ever come to the attention of the courts. I am certain there are cases which will never come to the attention of the courts and I am certain that there are cases where children are in effect tyrannized by their parents but that is why the first principle is there. It would seem to me that if a child cast out of his or her home by his parents went to any one of the helping agencies in the province, one would have an application for maintenance made on behalf of the child by one of those agencies to have Item 1 invoked — or 2 — that the parents couldn't, unless the matter never came to the attention of anyone, and, of course, there are all sorts of people, I suppose who can be oppressive and exploitive if no one calls them on it and I don't know how the law can correct that. The child, of course, in being cast out saying, "It's just intolerable here.", or "You put me out." could certainly end up in the reception room of the Children's Aid Society who would be entitled on the child's behalf to make an application for maintenance. It isn't a question of the child necessarily living at home. The child doesn't have to live at home in order to invoke the right to be maintained up to the age of eighteen. If the court said, Yes the parent's behaviour is irrational, it's tyrannical, this child isn't going to live in your home sir and madam but you are going to pay for the maintenance of this child until he or she is eighteen, that would still be possible. Indeed, that is how the package, if I may call it that, is designed. It is where the parents can show that the child is having a permanent vacation or in a state of , what have I heard once, "psychosocial moratorium" some young person told me.

MR. JENKINS: Come again, that's a big one.

MR. MULDOON: That's a terrible one. In those cases where if the parents can convince the court that they are just being used as the gulls for a permanent vacation for a kid who could be getting an education or could be working they would be absolved. If the situation Mr. Sherman describes were brought to the attention of the court the court would make an order of maintenance, no doubt, until the child attained the age of majority. I think that that's covered in our package Mr. Chairman.

MR. CHAIRMAN: Mr. Jenkins

MR. JENKINS: Thank you Mr. Chairman. The question I was going to ask was one quite similar to that. When we were conducting hearings in the City of Brandon we had representatives there from the Children's Aid Society and that was one of the questions that I asked them was what would happen in a case like that and what would be their opinion. And from what I understood the opinion of the Children's Aid Society group was that they would not apply for maintenance and the parents would be off scot-free.

MR. MULDOON: Would you take another opinion, Mr. Chairman, from someone from the Children's Aid Society? I have been president of one and legal counsel of another for many years and

it seems to me that the attitude suggested in Brandon would be a severe dereliction of the duty of a Children's Aid Society. Children's Aid Societies have statutory obligations imposed upon them to look to the welfare of a child, and they don't have to simply pay for the child out of the Children's Aid Society funds which are 99 percent public funds. They are entitled to take applications on behalf of a child. The child can be separated from the parents by being out of the home but the parent's responsibility to maintain the child still endures. In fact, when they do get the custody of the children on a temporary basis, the court not infrequently makes an over-order it's called, over against the parent or guardian to reimburse the Children's Aid Society for maintenance pay. That is exactly what the Commission had in mind in this case. I see my colleague, Mrs. Bowman, is making gestures to the microphone. Perhaps if I turn it over to her . . .

MR. CHAIRMAN: Mrs. Bowman.

MRS. BOWMAN: I'm in agreement with what Mr. Muldoon has said but I don't think he has emphasized enough the fact that children from sixteen to eighteen — or we call them children — don't always act like children. I have seen a number of instances of parents who are literally terrorized in their own homes by these little monsters. They not only won't go to school and won't work, they come home at any hour of the night, drunk sometimes, strung out on drugs sometimes' spend their spare time boosting cars, and to any remarks from the parents, they say, "Well, you can't boss me around. You've got to support me, like it or not." Now, I don't think that that is reasonable. school and can work, he damn well ought to work. Certainly that was the way I was brought up and it didn't seem to me to be an unusual situation in my day. If a child is completely beyond the control of the parents, if they have no authority over him, then why should they have the financial responsibility for a child who will not go to school and is uncontrollable. I don't understand the concern in this instance. I don't see any harm in a child working if he won't go to school. I mean that is what he ought to be doing and he ought not to be relying on someone else for whom he shows no respect whatever. I think the parents deserve some protection too.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Who should supply the wherewithal? Do you think it should be the state?

MRS. BOWMAN: Well, I am a taxpayer just like the rest of you and, it pains me to say this, but yes I think it must be the state. It also pains me to say this. There are institutions within our community who actually seem to encourage children in disrespect for their parents and in non-cooperation with them. It seems to me that the whole society has to bear some responsibility in the kind of young people that we are producing and when they get to the stage that is described in this particular recommendation, I think it is too much to impose on the parents.

MR. CHAIRMAN: Mr. Adam.

MR. ADAM: On your last comments, Mrs. Bowman, could you clarify when you state that there are institutions that encourage children to disrespect their parents?

MRS. BOWMAN: I wouldn't want to single out any . . .

MR. ADAM: This is quite a serious charge you are making.

MRS. BOWMAN: All right, I can give you perhaps secondhand examples. I know of children who have been encouraged by social workers involved in child care agencies where they don't get along with the parent, rather than working with the parent to try and remedy the situation who have encouraged the children to ask to be removed from the home and put into a foster care situation. This is not a case — I know a number of them — these are not cases where the parent is behaving in a grossly unreasonable manner but in a case where any person with common sense would expect that there would be an attempt to work with the parent and the child to better their communication.

I have a friend who is a social worker and took employment with the public school system in Winnipeg as a guidance counsellor and was so enraged at the manner in which children were taught disrespect for their parents in the guidance material that, she not only was unable to continue that employment but she removed all her children from the public school system.

I grant you this is not going to have a terrible effect upon children from ideal homes where they get a great deal of support and encouragement in learning to live reasonably but in homes where there are already problems then this kind of situation can be very serious. I don't think I would want to be more specific or name agencies at this point but I am satisfied, and I think anyone who works in the area is satisfied, that these kinds of situations do occur. Having taken the child out of the home then the child becomes further alienated from the parent as you can well imagine. What would the procedure be now for parents who want to get out of the support for a child . . . what would they have to do in order to . . .

MR. MULDOON: Well, first of all I suppose that they would have to stop supporting their child. The child would be . . . let's go back. There are some aspects of this which I think the law will not provide for. I presume that there would be some conflict between the parent and the child first. I wouldn't imagine that one morning the child would wake up and find his or her bags packed and be told to get out. Surely there would be some tension or conflict between the parent and the child first. That's something the law isn't going to provide for or perhaps even mention, except by implication. Clearly the parents would reach some point at which they were fed up or despairing. . . the child either is

causing them agony in terms of the child's own social and moral development or the parents are being drained, bled white by a child who has expensive tastes but doesn't pay anything. Not even expensive tastes, just doesn't do anything, is a drone. Most parents are pleased to support their children if they are advancing their education, for example.

Now, at some point the parents would undoubtedly be saying to the child "this is the end, we're not going to pay your bills anymore, you have to either continue your education or get a job and you have to keep decent hours if you are going to live in our house". Those things, I think, are well known by people. The parents then, I presume, would simply stop maintaining the child. There is enough literature around at Youth Centres, at Drop-In Centres and there are enough tentacles of social agencies such as Legal Aid and Children's Aid Societies in the community, I think, even in rural communities, that the child would either accept that, I suppose and get a job, or the child would go and ask what his or her rights are , in which case it might then come to the attention of the court but the legislation doesn't operate in a context, even today, doesn't operate in a context where people are bearing their troubles and not asking for help, are not seeking help. Even today there must be situations where the parents are victimized by their children, or the children are victimized by their parents and no one knows enough to do anything, or approaches anyone. I don't think legislation can cure that, of course, but in this instance the parents stop maintaining their child, the child then has to say "I've either got the right to be maintained or by God the old man and the old lady are right. I guess I'd better get out and get some employment." That's how one would see that. Then if the child did make some approach to someone for help, as I say a Children's Aid Society would be obliged in my opinion, to find out whether the parents are justified or not and if it's considered that they are not justified in withholding support and maintenance, then a court could order them, by a judgement of the court, to do it, to maintain the child.

That, briefly, I would see is the scenario. Not all of it, of course, is written into our recommendations as to how the law ought to be because I think some of it is just beyond the scope of written law, but I would see the situation developing in that way, Mr. Chairman.

MR. CHAIRMAN: Mr. Adam

MR. ADAM: It's just on that point that I wanted to comment and I thought maybe that I would compromise my own thinking if parents who felt they were having grave difficulty with their children of a child, that they could go to some third party such as a discretionary court and say, "Well we can no longer be obligated to this, we can't manage him" and I would say that that should have to be in all cases if they want to opt out. You know that's a basic obligation of parents and if they want to opt out, this is just as bad as the marriage opting out as far as I'm concerned.

MR. MULDOON: Mr. Chairman, I wonder if I might be permitted just to make a further observation. What Mr. Adam says is quite right and that's why the Commission made reference in that recommendation to the provisions of The Child Welfare Act. Parents have that right now. If the child in effect won't move out, won't work, won't go to school, the parents now can apply under The Child Welfare Act to be relieved of the care, control of the child and, we're suggesting after the age of 16, the maintenance of the child. So that there is a mechanism for that now, it's under The Child Welfare Act and that's why the Commission made reference to it in this recommendation. Parents can go to court now to be relieved. They don't always. Sometimes the arrangement, you know, is something that's beyond the scope of the law — they have their disagreement, their alienation and they get no help from anyone and they don't seek and maybe they don't need it in many cases, I don't know. But I think that to say that the parents must go and apply to be relieved of the care, control and maintenance of their child is not much better than the present situation where I think there are injustices and that is to say, few will do it — most parents would suffer, they would be bled white, they would live in agony for their children without doing that and it seemed to us that if the people came to an arrangement, a mode if you will of behaviour and someone complains, that's fine, then a court will adjudicate. But to ask parents to make that application formally as a requisite, as an absolute requirement of being relieved from maintenance, seemed to us to be asking for over-legislation. They have the right to ask for it now, but they don't have to.

MR. CHAIRMAN: Gentlemen, we've been on this item for about an hour now and there is a danger that the questioning will become argumentative. We should move along if we are going to cover the other parts of it before 12:30 this morning. Mr. Johnston.

MR. JOHNSTON: Well, I just have two things. I think I brought this up in the meeting, Mr. Chairman, to Mr. Muldoon. There are children over the age of 16 who decided themselves that they didn't want to go to school and they are working, making a good income and living on their own, possibly because of lack of knowledge on management of money, do get into some problems and if they can run home to Mum and Dad everytime, it's not going to be the greatest help in the world. If they are out of the home and earning their own money and living on their own, it doesn't necessarily mean it's a problem child, it's a child that wants to go to work. On that basis, I think that the parents should be in the position of being able to give financial advice and probably, I would think in a lot of cases, would receive some help with some advice.

There's one other thing here though. There are some instances where we would be taking away

the parents' right to decide what is best for that child. /I like to use examples. I know of a couple that has six boys, the father had a job that put him on the road, an awful lot of travelling, and one of them was disrupting the whole household, just absolutely making life miserable for everybody in that house. She met him at the door one day with his suitcase and said, "You're on your own. I have a responsibility to the other children in this family and when you decide to learn how you can live right, you can come back here." Seventeen years old. Today he's a policeman for the Winnipeg Police Force and if you ask him what made him do the right things in the world today, he says, "If all the mothers were like mine and made the decision she made to straighten me up, it might be a different situation."

We say, sure Children's Aid or they leave, or what have you, but there will be occasions when the parent will have to decide what's the right course for this child and I don't think that we should take that away from them by saying that, as Mrs. Bowman says, there are people who say she can't do that and she should or he should have the right to say, "It's time this child learned the hard way", or, "If I can't give them the advice, maybe they had better leave here and get advice from Children's Aid." But you know there are cases where the parent should make a decision as to what the right road for that in this case that child is going to be and I think she did it — it was the right one.

MR. CHAIRMAN: If there are no further questions on that point, perhaps we could go over to page 113, Section B, under General Principles No. 2. Mr. Sherman.

MR. SHERMAN: Well, the question at issue here, Mr. Chairman, I forget who actually brought it up but the Committee was concerned I might say to Chairman Muldoon and Commissioner Bowman, that the last clause of B 2. is somewhat ambiguous, or at least unclear and what we were wondering was, does that clause,

. "a full and equal partner in the economic and financial aspects of the marriage" imply in that section Immediate Community of Property because the question as to preference for Immediate Community of Property or Deferred Sharing is one which has exercised a good deal of the Committee's time and attention and it seemed to us that the way that sub-section is worded, that there is implied inclination to Immediate Community Of Property that may not be the intention of the wording.

MR. CHAIRMAN: Mr. Muldoon.

MR. MULDOON: Mr. Chairman, that's not the intention of the wording. In fact, the final words "to the marriage or aspects of the marriage," occupied the Commission for a short time. One could have said, in the economic and financial aspects of each others estate, and that's not the recommendation. This has to do with, in effect, household, the marriage, it doesn't override the Commissions' recommendations in the property part of the Report, that there should be separation of property until the moment comes to dissolve the regime. So the short answer is there is no implication at all there that the Commission is recommending immediate instantaneous Community of Property, none at all.

MR. CHAIRMAN: Any further questions on that point?

MR. SHERMAN: Thank you Mr. Chairman.

MR. CHAIRMAN: On the next page then, No. 114, the last paragraph of 3 (1), about half way down the page, having to do with a partnership. Any questions?

MR. SHERMAN: Mr. Chairman, I think Mr. Johnston had some questions from 1 (a) down. He was concerned for one thing that the way Section 1 is worded it would permit a spouse to be able to determine, in fact, the income of her spouse's business partners.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Well, there's a small concern on the basis that if there is a partnership on a firm of three people, there is no question that the information being given about one is almost going to be the information about the other two in a partnership basis in a business situation and it concerned me that the information concerning small businesses or businesses could become public through one party.

MR. CHAIRMAN: Mr. Muldoon.

MR. MULDOON: Mr. Chairman, that speculation as to the income drawings and shares of the other partners would possibly be an accurate speculation in the case of an equal partnership. It wouldn't tell the story, of course, as to whether one partner or the others had overdrawn or were indebted to the partnership, or hadn't paid up their capital in the partnership — even in an equal partnership there can be disparities of the status of the any one time. partners at That whole recommended provision is, in a word, a spousal freedom of information provision. It's designed to permit each spouse to know the income and earnings of the other spouse — their financial status. It's a disclosure section. You know after any new law is proclaimed there is a little upsurge of litigation, people test it. One would expect that there would be pretty general compliance with such a provision after the first little upsurge of litigation if people found, in fact, the law was enforceable. So all this is designed to do is to allow spouses to know what the assets and earnings of the other spouse are' and that applies equally, it's not just designed to find out everything about the husband's business and nothing about the wives, it's a reciprocal provision, but it's a disclosure provision. It says to one

spouse you don't have to be in ignorance of what your spouse earns or what his or her assets are. That's the whole intent of that.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Just one question. In other words, the assets . . . all it would be able to do is say whether one spouse or the other had ten percent, twenty-five percent or anything else of a company, it doesn't necessarily have to put detailed information of that business into the hands of the other...

MR. MULDOON: The only details, Mr. Chairman, which the Commission has suggested are really those found in items (a), (b) and (c) and there is a provision there to say that the firm's bookkeeper or accountant is not obliged to disclose anything to do with the other partners because they may be in very desperate positions even if it's nominally an equal partnership.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: . . . just a little ahead of where we should be, I wanted to just deal with (2) to participate, that question but there may be other questions on the . . .

MR. CHAIRMAN: Any other questions on the paragraph we've reached? If not, Section (2), Mr. Pawley.

MR. PAWLEY: I just wonder, Mr. Muldoon, the arguments that have been raised against this provision, I would like your comments because I don't necessarily share them in this case. The arguments raised have been that we are presenting something here that can give rise to some sort of false hope, that people might anticipate that they have certain remedies when, in fact, it doesn't mean very much to participate in decisions concerning expenditure of all spousal income. In other words, a question that has been raised is how do you enforce that and does that not give rise to a lot of false hope only to be later dashed when it is discovered that such a provision doesn't really have teeth in it, effective teeth. This is the type of comment that I have received several times on this in trying to justify this provision, and I would like you to just give me your thoughts on it.

MR. MULDOON: Mr. Chairman, I too have received those comments, perhaps from the very same people who have approached the Honourable, the Attorney-General. The purpose of this is to be declaratory. You will recall that when we met before Christmas I mentioned that there are some recommendations here which are meant to be declaratory without, in effect, going so far as to make a state or provincial catechism of what marriage ought to be, because I think that would be going too far, and that such declaratory provisions are useful in cases of litigation as an interpretative guide to the tribunal. They are useful in giving people an idea of what their rights are, they describe their rights rather than providing their rights, and that says, "to participate in decisions", and that doesn't say to configure or veto or make those decisions for each other. It provides, if you will, a duty to consult and to disclose. I don't know that that would raise false hopes, or I don't know that those false hopes, I think there are some real hopes there, I don't know that the false hopes would endure after the first effect of the legislation which I think would be a minor upsurge in litigation to test it. I think the people would see then what it means, and what it means is a declaratory principle that there should be disclosure and consultation, and one could see that being a useful provision for the guidance of courts in matters of litigation between the spouses, as to the extent of their knowledge and how open one spouse has been with the other in letting that spouse indeed share in the decisions.

It may well be, you see, when you come to the property disposition, when you come to the squandering or dissipation of property, that a provision like this would be very useful in persuading the court that, indeed there has been dissipation of property, or not, because one could say, "You were consulted and you participated in these decisions, don't come complaining to the court that your spouse has dissipated the property, you've both done it, the court can't save you from your own folly." Or, on the other hand, "Yes this looks like dissipation of property, because according to that principle, you weren't allowed to participate in those decisions, you weren't even asked." So if I may refer to our humble recommendations as a package, this is part of that package and it comes to its light, if you will, and its usefulness in the other part of the recommendations to do with property disposition and the means of terminating the standard marital regime. It is a norm which the Commission is suggesting. One wouldn't expect that the buying of a new suit, or some gadget for the car, would have people running off to court. That is to say one wouldn't expect a situation like that to endure long because the courts would reject that kind of an approach as frivolous.

MR. PAWLEY: What about the other accusation that is made that we are becoming, with this type of provision, getting involved altogether in too much of a personal way in Family Law. The phrase has been used to me — which again I don't share — that we are getting into the bedrooms.

MR. MULDOON: I thought the Prime Minister had got us out of there. Let me say this, Mr. Chairman, that in reconfiguring Family Law for a new era there is a danger that the state can over-legislate and you know, some of the people who approached us would really have what I suggested as a state catechism of marriage in law. I think that is something one would want to avoid. This hardly seems to be such a radical thing of intervening, intruding into marital relationships because you see, in the later recommendations we come to the question of dissipation and one has to know whether there was an opportunity to decide on this, whether expenditures were made against the will of the other spouse, or whether the other spouse participated in the decision to make those expenditures,

and it seems to us that that is there only as a norm. One wouldn't expect the courts to entertain frivolous applications to secure that right, but one would expect that that would be of great use in interpreting the other provisions of the package. It would be possibly, certainly a help when someone came to dissolve or terminate a standard marital regime, but I think that one wouldn't expect to see too many false hopes pitched too highly on this kind of a provision for very long, but it is a useful provision in the eyes of the Commission.

MR. CHAIRMAN: Mr. Johnson.

MR. F. JOHNSTON: The wording bothers me though, "the participation in decisions concerning expenditures of all spousal income," and I was quite concerned about this when we were discussing it, and again take the position — all right take the position of a manufacturer's agent and distributor who is not incorporated, the income for the products he sells, his commission ' that's spousal income, the sale of articles that he has bought and sold is spousal income, but on the basis of making a decision to buy a product or take on other lines or drop lines, etc. and the example, if that person is in Chicago with a trade show where there are deals on a t different times, he decides to make a purchase to help the income of that family which he knows he can sell, and we are not talking about small dollars here, but he is using spousal income to buy it, he is not incorporated, let's face it, I'm going to say to you honestly I am not going to phone my wife before I make that purchase. I know you are saying that it doesn't go into that, but when it says all spousal income, you are making it very tough in certain situations.

And just one other, the farmer who has got a tractor, ready to buy it, it is the one he wants and it is a second hand one and there is a guy standing behind him ready to take it if he doesn't and he needs it on the farm, who knows best whether he needs it or not. When you make it that encompassing you've got problems.

MR.MULDOON: Mr. Chairman, I'm getting some flashes of total recall here from the year and a half my colleagues and I were debating these resolutions and recommendations, and it might have been wiser for us to add a definition of spousal income. That recommendation in its first form said, "all income", and the Commission realized that that wasn't what we meant. We didn't mean business income, we meant spousal income, and for that I suppose you might read "net income", for a person who is in business by himself, the take home income, and that is what the Commission means there. One doesn't expect that all spouses will be able to come down to the office or the shop or wherever decisions are made as to the earning of income, and participate or have the right to participate in those decisions. And, by the way, participate was carefully chosen because it doesn't mean to have the final say, it means to be consulted. But, spousal income there should be regarded as the income which is net from the business operation, after the decisions are made.

Now, in some instance, of course, one could see — and here, again, you can't over-legislate, there are surely couples in which the wife's decision or the husband's decision or one spouse's decision might even be a sounder decision than that of the one who owns the property or who is supposed to make it.

MR. F. JOHNSTON: I agree, I take my wife to those shows and sometimes she makes the purchase without calling me.

MR. MULDOON: There's a certain amount of wisdom in that, I think.

MR. CHAIRMAN: Any further questions on Section 2 on that page? If not, Section 3. Mr. Sherman.

MR. SHERMAN: Section 3, I think, Mr. Adam and I found ourselves in substantial agreement, which represents something of a watershed no doubt in these Committee meetings, no, not altogether I think we've been in agreement on a great many points. But on this one in particular we both found the clinical directions spelled out in this manner to be somewhat demeaning of marriage and of the spousal relationship, particularly insofar as they would be normally applied' I would think, to the wife. That situation may well change over the next hundred years but at the present time probably in most cases one is looking at the female spouse, and it seemed to us that the sub provisions are somewhat demeaning. It was my feeling that Section 3 would read better and would swallow better if it simply read, "to a reasonable standard of living in accordance with the family's available means." I feel that that kind of terminology, by implication, suggests that there has to be give and take in terms of entertainment allowance and clothing allowance where the family's means permit it. That would be encompassed, in my view, in the terminology, "a reasonable standard of living in accordance with the family's available means."

MR. CHAIRMAN: Mrs. Bowman.

MRS. BOWMAN: Mr. Muldoon asked me to respond to this, perhaps anticipating that the reference would be made to this being of use primarily to a female spouse. If you want to talk about demeaning consider the situation that many many women still find themselves in, women who are at home with their families and devoting themselves to that kind of career. They come into my office and to the office of many other lawyers and they will say, "My husband picked out the house that we live in, he didn't ask me, he didn't take me along, he bought the house and he said that was it. He doesn't tell me what he earns, he says it is none of my business as long as he provides for me. I don't get a grocery allowance, he buys the groceries — I make out the list and maybe he gets what I want and

maybe he doesn't. He buys the clothing he thinks I need. I have no spending money at all." Some of them don't have a dime to phone the police when they are being beaten to a pulp. Now if you ask any woman who is interested in this subject they will tell you that these recommendations have to be specific and that they are one of the most important parts of the package that we have recommended. You talk about tyranny, that's the kind of tyranny that goes on for years and that leaves a woman without resources and without any self-respect.

They have to be specific because the kind of mentality that treats a spouse that way will not respond to any general statements of principle. If you have that kind of a man, and either he goes to his lawyer or his wife goes to her lawyer, and it can be pointed out to him that it is his legal obligation to provide these particular kinds of information and this particular allowance, that has got a very compelling affect on that kind of mentality. But the present law simply says that a man must maintain his wife reasonably, it doesn't say that he has to give her any specific allowance, and they just interpret it very generally too. They say, "she's got everything she needs", but she's got no independency to the point of buying herself a magazine or getting her hair done or deciding for herself whether she wants a blue dress or a red dress. This is important and it has to be specific or it won't be workable, and I think that it will probably do more for the kind of woman that you are particularly interested in protecting than any of the other recommendations there.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I'm very glad and grateful to Commissioner Bowman for those views. I am not suggesting that the type of case to which she has alluded is not the case of a person who is being demeaned. I am fully aware of the demeaning and the disgraceful behaviour to which many women with whom Commissioner Bowman comes in contact, no doubt, are exposed day after day, week after week. I'm in favour of the principle and the concept applied here, but I think it is necessary to have her views on this wording. If she feels that strongly about the specific wording then it is obviously something we have to take very seriously into account.

I simply wanted to suggest that from one perspective subsections A and B and particularly section B can impose a rather patronizing aspect on a marriage, perhaps demeaning is too strong a term, but where Commissioner Bowman suggests that the specific wording comes to the rescue of those who now are currently demeaned, I think, it is worth considering that the specific wording injects a note of patronization into many marriages that now work effectively and well without either of the partners spelling out the fact on Friday evening that, "here is your $25 weekly allowance."

MRS. BOWMAN: Reasonable people will never come into contact with this section of the recommendations. This is the kind of section that is there for unreasonable people.

I don't suggest that we wrote this recommendation on a tablet of stone, the words don't have to be these words, but I think that the rights that it grants to a person, not necessarily a woman, they have to be spelled out very clearly. And, as I said, you can tamper with the wording to some extent, but I think that that to me is not a demeaning or patronizing thing. To give a person the right to a personal allowance is something that we shouldn't have to say, but to the extent that some people don't know that that is an obligation they have to the person who is sharing their life, means that we've got to spell it out.

MR. CHAIRMAN: Mr. Muldoon.

MR. MULDOON: Mr. Chairman, I should be quick to point out that that is not only Mrs. Bowman's strong feeling, that is the strong feeling of the whole Commission. If one can read in some, perhaps only semantic patronization there, then it seemed to us that that's a trade-off and we don't think that is that patronizing, but that's a trade-off for some norm, some reasonable norm, because there are people who don't want to get separated and don't want to get divorced, but who are in effect tyrannized by their spouses. Even at the risk of sounding, and I think it only sounds at the very worst, patronizing, it is a better provision than none at all, and that's the trade-off the Commission very solemnly recommends to the Legislature.

MR. CHAIRMAN: Any further questions on that point? Mr. Johnston.

MR. F. JOHNSTON: If we have the — now don't get me wrong, I said to the Commission what we are basically getting at here is the guy that's at the golf course, curling club and everything all week long and his wife is sitting at home with nothing and no money and he's miserable about it and that's got to change. But if we are giving the rights of disclosure above and the disclosure is made to the spouse that's not receiving her fair share or his fair share, if it is not accompli, if they can't come to some arrangement then, really, aren't we looking at a position when that separation is pobably going to take place, or should. You are saying that they don't want to separate under the conditions that one spouse says, "I know what you're making now, and you're not being fair." And he says, "To hell with you." Isn't it time that they are looking at a separation or isn't it going to go that way once we've had the . . . I have no quarrels with the fact that their allowance and things should be made. I just get very concerned about, and I'm not a lawyer, at the way the wording becomes so final here. Mrs. Bowman says that it's not going to happen but with a lot of families, they're not going to worry about it. But maybe where it is good now, you know they're going to say, well now I have to set up an allowance for you.

MR. CHAIRMAN: Mr. Muldoon.

MR. MULDOON: Mr. Chairman, our view is that in many families where there is marital accord, those people probably won't even be aware that any such provision had been legislated, if it were to be legislated. It would be irrelevant to them. First of all comes the disclosure and then this recommendation very carefully says that a reasonable standard of living in accordance with the family's available means. Well, first you have to know what the means are in order to get to this point, so you have to have the disclosure. You know there are many people, perhaps a great percentage of the population of Manitoba who have an enormous capacity to adhere to their marriage vows and not break up the family, even if it's a hard life for them. Many people will not resort to separation or divorce and they are by their own consciences locked into their marriage. All we are saying is that this is not unreasonable, that it provides a norm. Certainly in my practice of law, I have known people whom I thought were on the verge of divorcing or separating but once the judge told them what their responsibilities were, the one who had been behaving unreasonably, abided by them. Grudgingly, willingly — I don't know. But there are many people, you see, who won't resort to separation or divorce but who still need some measure of justice and protection.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Just one more question. I think during our discussions, the legislative counsel said that in the law of Manitoba at the present time, you do not have to apply for separation to make a maintenance application. I don't care if we put it in twice, would we be putting it in twice? Is that the law now?

MR. MULDOON: This is more than just a maintenance application, in our view. You don't have to apply for separation to make a maintenance application. Maybe so, but a maintenance application is a club whereas this is a scalpel, if you will. This allows a standard which is finally adjusted to the means of the family and that's our purpose there. Not to start wielding blunt instruments, but to wield refined instruments.

MR. CHAIRMAN: Mrs. Bowman.

MRS. BOWMAN: If I could just add a point that I think that Frank didn't emphasize enough, I think that this kind of provision would be of enormous help to both lawyers who are attempting to moderate people's attitudes towards each other and to marriage counsellors in that if a person or a couple come to you and they are at loggerheads over their financial affairs, you can point to this section and say, now, you are being an idiot. Clearly you should be doing this, or you shouldn't be demanding so much. For example, many women who are not employed don't really realize the impact of income tax and other deductions. If they have an idea that their husband earns a gross of say $9.00 an hour, they don't realize what that comes to by the time he gets his pay cheque. When all that information is disclosed to them, they sometimes will recognize that he is doing the best that can be done with the kind of money that is available. Conversely, the unreasonable husband, if it can be pointed out to him clearly that he is dead wrong, is going to very often, particularly with the assistance of a marriage counsellor, moderate his views and see that he has got to bend more than he has been bending and the marriage can sometimes be preserved in that way.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, in reply to Mrs. Bowman, are we supposed to be designing law here that will assist lawyers or should it be to help people?

MR. CHAIRMAN: Mrs. Bowman.

MRS. BOWMAN: I wasn't seeking assistance in that sense. I think it would assist those lawyers who are attempting to reconcile people rather than to take their cases to court, but more importantly I think it would be of assistance to marriage counsellors and the purpose of assisting marriage counsellors would be to assist their clients, not to make life that much easier for them. I think that in fairness, if you look at these recommendations, they are intended to help people, and even lawyers are people.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: I have one further ...

A MEMBER: Mr. Graham doesn't agree.

MR. GRAHAM: Sometimes that is a debatable point. I have one further general question to ask. If we embody all these provisions here and we spell them out in statute and law, will that facilitate the preservation of the marriage, or will it facilitate the breakdown of the marriage?

MR. CHAIRMAN: Mr. Muldoon.

MR. MULDOON: Mr. Chairman, as Mrs. Bowman has said, we made these recommendations with a view to helping people, to providing some sort of rational norm for interspousal conduct without getting, as I say, into a state catechism of marriage, but some rational norm to help people. Our view, and no one is clairvoyant of course — for example, we are in an era now where marriages are breaking down at an unprecedented rate, but our view is that this would help marriages. This would give people an idea of what their responsibilities to their spouse might be. It might also give some spouses, it's true, an idea that they have married someone quite immature and it can't go on. But generally speaking, these recommendations, it's our hope and we don't claim clairvoyance, would be

to preserve marriages, to assist them, to give them a rational basis for carrying on.

MR. SHERMAN: Pass.

MR. CHAIRMAN: If there are no further questions on that point, on Page 115, I had some small question as to why Part 5 says the Crown is bound by the four provisions above? I'm not sure whether I asked about this before, Mr. Muldoon.

MR. MULDOON: Mr. Chairman, I don't mean to take up your time with whimsy, but our first draft was that Her Majesty is bound by the four provisions above and we didn't really see Prince Phillip making an application to a Manitoba court. The reason the Crown is bound by the four provisions above is that a growing number of people in our community are employed by the Crown, the Civil Service and so on, so that when one says you have a right to know, you have a right to find out what's being paid, what's being deducted, we are suggesting there that that right applies whether the person is employed in private industry, any private occupation, or is employed by the Crown. So that the Crown would be obliged to provide the kind of details that the bookkeeper or accountant of the private firm would be obliged to provide.

MR. CHAIRMAN: That would apply to Section 1, but how would that apply to Sections 2 and 3?

MR. MULDOON: It wouldn't necessarily apply to Sections 2 and 3. It wouldn't at all.

MR. CHAIRMAN: So it would then apply to Sections 1 and 4?

MR. MULDOON: Yes.

MR. CHAIRMAN: Fine. Under interspousal maintenance, Part 4, Item (c) there was some question as to why the length of marriage was a factor. Mr. Graham.

MR. GRAHAM: Mr. Chairman, I think it was not only the time of the marriage, but the extent to which each spouse has contributed and it was and it was my — I believe I raised the issue at the time that we are attempting to avoid judicial discretion as much as possible and yet I would think that when you include a section which says the extent to which each spouse has contributed, actually invites judicial discretion and possibly litigation.

MR. CHAIRMAN. Mr. Muldoon.

MR. MULDOON: Mr. Chairman, the Commission was attempting to avoid judicial discretion in the matter of the sharing of the value of the spouses' shareable estates when and if property disposition has to come into play, a termination of the standard marital regime. The Commission was not attempting to avoid the exercise of judicial discretion in terms of maintenance. Maintenance is an on-going thing. The other thing, you know, I know we live in a materialistic society and I know that things to do with property are perhaps more important to some people than they should be, but the sharing of the property can be done clinically and once for all, and that's where we suggested that there should be no judicial discretion. But maintenance has to do with people making a living, or living from day-to-day, from month-to-month, from week-to-week, and the Commission's view was that that is an area for judicial discretion — maintenance — that there ought to be factors which the court is entitled to weigh there, because the court has to come up with an Order for Maintenance if it is going to make one at all and it has to be a periodic sum and one has to know, one should be assured that these factors are taken into account, that the judge didn't just take a figure out of the air and say, that's good, but that he has weighed each one of these factors.

When we speak of the length of the marriage and the extent to which each spouse has contributed to it, we are referring back, of course, to the recommendation earlier made that a person, a spouse who stays at home and makes a reasonable home and rears children is indeed contributing to a marriage and should be deemed in law to be contributing to a marriage as much as the one who goes out and brings home the bacon. And we refer to the fact that that kind of an arrangement, that sort of classical early 20th century type of marriage where one spouse goes out to bring home the bacon and the other is the homemaker may have deprived the one who is at home of employment skills and so that is a factor in assessing maintenance which, in our view, the judge ought to take into account: "How long have you been a homemaker, O Spouse who is applying for maintenance? Has that arrangement which was satisfactory to you too, has that deprived you of employment skills? It may be that you are old and can't get a job any more." And that's a factor which the Court ought to take into consideration in determining the amount of and awarding maintenance, in our view.

MR. CHAIRMAN: Mr. Jenkins.

MR. JENKINS: Mr. Chairman, through you to Mr. Muldoon or Mrs. Bowman. The concept of interspousal maintenance, I really don't have too much argument with. The only thing that we seem to have been getting through loud and clear from the hearings that we have been having is that once a court order is made for spousal maintenance and also for maintenance of children, seems the inability of the Courts at the present time to enforce it. Really, we have not come up with anything really new here about how we are going to enforce these maintenance orders. I understand that Ontario and B.C. have set up something to do with the enforcement of maintenance. The Commission here has not really come out that strong. Really, if we look at it, this is perhaps the biggest problem where a marriage break-up has occurred and I quite agree with the conception of the Commission that there should be an end to the tunnel because I think that's one of the problems of court maintenance orders at the present time.

But there are going to be some people who, regardless if it is a three or a four or a five year period where they say, he's going to have to pay spousal maintenance. They're still not going to pay and we're still not going to be able to enforce it because I think the biggest problem we have right now is the enforcement of the court orders and we have people who go to jail, we have people who skip the province, skip the country, and I just wonder why the Commission didn't come down with a good strong recommendation for the Committee to consider on this perhaps one of the most vexatious problems, I guess in the whole situation of family law reform.

MR. CHAIRMAN: It's a matter that the Committee has not addressed itself to as yet, but since Mr. Muldoon is here, perhaps he could answer it.

MR. JENKINS: I think while the Committee is here, the Commission members are here, we should hear why.

MR. MULDOON: Mr. Chairman, this is a subject on which I gather Mrs. Bowman is also burning to express her views so I'll be brief. If you will recall my first appearance before your Committee, sir, I mentioned some of the difficulties we have in a confederated country where the writs of Manitoba courts run only to the border of the province. And I mentioned that there are pressures which personally I would recommend the province take and apply to the Federal Government because we play games so often, and they are stupid games, in the enforcement of maintenance. Once the Court has adjudicated that maintenance is due and owing, it seems to me that without being oppressive or tyrannical, we should ensure that it is paid and there are many ways I described, and I won't take your time now because it's recorded in my first appearance before you, that pressure could be brought perhaps on the Federal Government or the collection of provinces to ensure that maintenance is paid. One of the recommendations the Commission has already made, and I mentioned this before too, and the Legislature has enacted, was what we called somewhat whimsically The Everlasting Garnishing Order because, as you know, until that came into force one had to, if one were going to get court enforcement of maintenance, one had to garnish every pay period. The Legislature has enacted an amendment to The Garnishing Act so that so long as the maintenance debtor is employed by the same employer, the employer is obliged to deduct the maintenance until some further order of the court. That has been a help. I understand from members of the profession that that has been a progressive piece of legislation.

The other thing I would like to mention is that the commission has recommended, and I understand the government intends to proceed with, a pilot project. A Court of integrated family law jurisdiction. I think that there will be much scope there for experimentation. I know that when you set up a court like that, you are dealing with real people and their real lives, but there would still be scope for experimentation in norms and mechanisms of enforcing maintenance orders.

Finally, I would say that the commission in this study will turn its attention to the question of enforcement when we clear our program of it, but in this study we were concerned with the principles of spousal maintenance first. To the extent that that isn't a complete answer, Mr. Chairman, by your leave, here is one.

MRS. BOWMAN: I agree that this is one of the most aggravating and infuriating problems in family law. It is a problem to which I think there is no single answer. I agree with what Frank has said, that the "Everlasting Garnishing Order" is a big advantage and it has been very, very useful in enforcing orders within the province. There is not a big problem in enforcing a maintenance order against a person who is regularly employed within the province. The use of garnishing orders, of course, is one way. If he has assets, we have at our disposal all of the normal methods of enforcing any judgment. I would have to say that Manitoba is ahead of most other provinces, in fact I think all other provinces, in those facilities that we have for the enforcement of orders within the province. If a man won't work and doesn't have any assets, then the only way you can collect, put pressure on him, is to throw him in jail. Some of them won't pay even then; they would rather go to jail and I think that is a good place for them. However, those who are employed, even at jobs which are not subject to garnishment, under the threat of going to jail they will always pay. I don't think the jailhouse doors ever shut behind them. They get out their cheque books and the province has taken steps by means of employment of additional enforcement officers to try and put more pressure upon those people. The big problem is with the spouse who is out of the province, whose employment or whereabouts may be unknown. That is not a problem which I think the province can deal with alone, it has to be done through Federal-Provision negotiation and through Federal Legislation. I know that this subject is under study by the Federal Government and by the Canadian Bar Association and some recommendations are being formulated, but it is a very complex problem. I don't even mind if it's oppressive and tyranical, if they will just pay, but it is a difficult problem when you have a divided jurisdiction. Our Commission did not give specific consideration to this, because we did not feel that it was a field that we could, at that point, deal with in conjunction with the two areas that we had decided to deal with which almost finished us off.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Well, Mr. Chairman, I agree with Mr. Jenkins and with the Chairman and Commissioner Bowman that it's a subject that we are going to have to address ourselves to because

all the laws and rules and statutes on maintenance in the world are of no worth whatever if we don't have effective enforcement, but, before we even come to that, I must confess to being troubled by this entire section, Section 4, because it seems to me, and I hope that the Chairman of the Commission and Commissioner Bowman will forgive me if I suggest that it doesn't seem to represent any progress — it doesn't seem to me to represent any step forward in the area of Family Law Reform or Maintenance. The overwhelming weight of argument that has been advanced before this Committee over the past three months, has been in favour of the concept of no-fault maintenance and it's something to which all of us on the Committee have addressed ourselves and I think that we have, after examining our respective consciences and feelings and those of our colleagues on the Committee, come to a substantial consensus on the thing. I'm not going to suggest what the consensus is, but there certainly is a great deal of interest in this Committee in the concept of no-fault maintenance.

We have before us a section here which does not — in my reading of it and perhaps it's just my own low level of intelligence, but it does not admit of the concept of no-fault maintenance to me. There are specific considerations that are spelled out for judicial discretion and judicial judgement and it seems in that respect, Sir, to me, to fly directly in the face of the concept of no-fault maintenance. One either has no-fault maintenance or one has judicial discretion and I would like to put the question to the . . . in fact, the section in one of its sub-sections even specifies the consideration of "relative responsibility". I would like to put the question to the Chairman of the Commission and Commissioner Bowman as to whether in their Commission hearings they were not exposed or subjected to some weight of argument in favour of the no-fault concept and, if not, I would be interested in knowing why they think they weren't and if so, I'd be interested in knowing why they have come out with the section written the way it is?

MR. CHAIRMAN: Mr. Muldoon.

MR. MULDOON: Mr. Chairman, you see in the Commission Report a majority and a minority report. One thing on which the Commission was unanimous was that it did not favour the much bruited concept of no-fault maintenance. Certainly that concept was urged upon us and certainly we considered that concept. In our view, in our opinion it's not a just concept.

Throughout the body of the Report one can see examples of why some Commissioners, all of us, thought that no-fault maintenance is not a just concept and I won't bother reading that they are right here in the text of the Report. We live in an era when there is a great cry by social and legal reformers for both no-fault divorce and no-fault separation and it seemed to the Commission that if one were to add to those concepts no-fault maintenance, one would have constructed a perfect engine of oppression. The idea, of course, of support and starting a new life has much to do with disentangling oneself from the obligations of the previous life. One can see that a person who is driven to seek separation or divorce, who is faced with intolerable conduct, is clearly one who hasn't planned, if you will, to have the marriage break down but the marriage has crumbled around one's ears. Now the weighing of fault, we acknowledge, is difficult and yet, of course, our courts weigh fault in many other aspects of life all the time — in tort law they certainly weigh fault. It's not a subject, despite the writings of other people on this matter, that's beyond the competence of our courts and taking, of course, keeping in mind that there's probably no perfection in this world and there's no perfection in the judicial system, but the courts are accustomed to the notion of weighing fault and our view was that if a spouse who has been positively brutal, harassing and belittling and finds that the other spouse is driven to separation which usually these days, usually ends up in divorce, should then be able to saddle that other spouse with the obligation to pay what could be lifelong maintenance. Our Commission was of the opinion that that situation doesn't present anything to do with justice. Our view was that a spouse should be able to get maintenance in order to be retrained to get back into the job market, to the extent that no-fault maintenance would be of short duration, it wouldn't be entirely against our opinion, but the thought that no-fault maintenance could be awarded on a lifelong basis, to us seemed to be a most unjust concept, especially public opinion, public policy as enunciated by Parliament, as enunciated by other Provincial Legislatures, that one should be able to get out of a marriage quickly and easily bespeaks the notion that one can enter another one and usually, and perhaps I elaborated on this greatly at the former hearing, but perhaps then if one has but one income, one cannot really exercise the rights which public policy accords one to get out of one marriage, one can get into another. One income usually cannot support two families and it seems to us that there has to be some water shed, some basis of determining whether someone is going to be stuck for maintenance or not. Now, we've recommended that maintenance could be rehabilitative and, if that were so the shorter that term is it would be a useful thing, the more one might tend to say, "Well, okay, you have a little trauma here. You've dissolved the marriage or you've separated and you're going to have to see that your now separated spouse gets a fair opportunity to get back into the job market." If that were the only consideration, one might even be tempted to look more favourably upon no-fault maintenance, but the notion that it could be a of a long enduring term and be paid to one that is not doing anything to get back into the job market — and an example is given in the text of the this report of people who came before us at Brandon, who were in exactly that same situation.

The first mommy stayed at home, presumably looking after the children and baking cookies. The second mommy had to get out to work because she couldn't afford to support her child and he couldn't afford to support his child by the second marriage, his second wife, the first wife and the children by that marriage because he had only the one income. So, while one mother is allowed to stay home and look after the children and get fully maintained, the other one, the second one has to work and that seemed to us not to be a proposition which leads to justice or respect for the law.

Now I think Mrs. Bowman has something to say about this, with your indulgence, Mr. Chairman.

MR. CHAIRMAN: Mrs. Bowman.

MRS. BOWMAN: I recognize, Mr. Chairman, that the bulk of the submissions which you have received favoured the no-fault maintenance. I think I've heard those same submissions — the Commission certainly heard a great many submissions on that line. It is clear to us and I would think it should be clear to you that you are hearing from a specific and particular section of the community. I don't think that you can say that view is a generally accepted view, based upon the submissions and the source of those submissions. Now, it sounds very attractive to say no-fault maintenance. It completely overlooks the fact that although maintenance may be no fault, somebody is going to pay it. It's not going to come from the sky — it comes from a particular individual and very few men in this country, or women either — much less women, earn enough money to support two families. If a man is earning say, $1,000 a month, he is doing well to take home $750 a month after deductions. If he has got to support a family from that and live separately himself, he is going to be living at a very very low level of living. His family, of course, is not doing any better. That means that either you're telling him he can't marry again or you're putting the second marriage under a tremendous strain. No one can continue, or will continue — no one except an idiot, in that kind of situation indefinitely. That is the kind of pressure that will encourage people to avoid their maintenance responsibilities by leaving the province or leaving the country and I've known those who did. I am sure there are many that I don't know. The no-fault maintenance provision that we have included is a limited one and it's included under the minority recommendation rather than the majority one. It is limited to a period of rehabilitation or to a period when the children are pre-schoolers. It seems to us that that is something that can be justified, even to a

husband who is not anxious to pay, but if you make it a potentially lifelong obligation, then many men find themselves in this position. Now it pains me to admit this, but women are not that much more perfect than men and they are not always the victims — sometimes they are the oppressors and I've known cases, and I think every lawyer will tell you that he has seen instances where that is exactly the case — a woman has married a meal ticket and it's very easy for someone who really doesn't want to work, to make sure that she is not employable. Now, that's a very tiny proportion I grant you, but I have seen men who have been victimized by that kind of woman and I think that it's not a situation that we want to enshrine in law — it won't happen often. It seems to me that if you provide for people with very young children on virtually a no-fault basis and if you provide for the rehabilitation period that we have indicated and if you give an equal share of all that's been acquired during the marriage, that you have done all that can reasonably be done to put parties on a pretty well equal plane insofar as their future life is concerned. It does not seem to me reasonable to say to a man, for example, who may have been completely crushed by the fact that his wife left him for no reason, took the children — that is no fault on his part, she may have been just sick of him which I find is often the case nowadays. She insists on a separation because she just doesn't want to live with him anymore — although he's done his best, she has the children because she's best able to look after them and he is condemned without having done anything wrong, to an eternal payment of money if she doesn't choose to make herself employable. That's not justice and I think that if you can put that kind of example to the people who advocate no-fault maintenance, they are had hard pressed to give you an answer to it.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Well, Mr. Chairman, my question at this point has to do with the children involved in a breakdown situation and the Chairman and Commissioner Bowman have partially answered this question. It seemed to me that their initial reaction to the question was framed from the perspective of the wife or the husband, the mother or the father and the onerous obligations and unfair obligations that might be placed on either one of those two parties, but our concern, is certainly the concern of many of the submissions made before this Committee on this concept had to do with the children of a broken marriage. It seemed to me, at any rate, that what the advocates of no-fault maintenance are saying is that it doesn't matter whether there is a hardship worked upon a particular husband, that the greater evil is the hardship that's worked upon the innocent victims of that breakdown — the children, and I must confess to a subscription to that view. I would agree that there will be situations — I don't — I've said to the Attorney-General I don't think that there is one section of this law, no matter what we do, that isn't going to hurt somebody. It's not going to be perfect — somebody is going to get hurt by everything that's in here, but there are going to be more people helped, hopefully, by each section than hurt. Now there are going to be some husbands who have been victimized by their wives and let down by their wives, who are going to be hurt by having to pay no-fault maintenance and the reverse will also be true. But it seems to me that the basic consideration here is certainly the one that has been

advanced by the groups appearing before us and certainly one of which we have to take great cognizance is the position of the children and if a couple of husbands get hurt, does that matter as much as children being abandoned and left without a proper home?

MRS. BOWMAN: I don't think that any of us would ever have recommended that children be abandoned and left without a proper home. If you will refer to the recommendations on maintenance of children, you will see that we've recommended that the level of support for children ought to be increased and additional factors taken into account.

Also, in the recommendations of the minority, and I think this would be also the way the other recommendations would be interpreted, maintenance of preschool children takes priority over any question of fault. That is, the maintenance of the mother or custodial parent who cares for them, in addition to their own maintenance, is given priority over any question of fault. The children's maintenance of course would continue.

It is relatively rare these days for the mother of school age children not to be employed. What you are doing, if you are increasing the age beyond around seven or eight years old at which the mother is absolutely entitled to remain in the home with them, you are certainly making a difference between what most people who are living together can manage to do and that which a separated mother can do. I don't know that it is necessarily - in fact, my own experience tells me that is not necessarily a good thing for the mother to be remaining in the home after the children are well-established in school, that is, not a good thing for the mother or necessarily for the children. That is a personal view, of course. But I don't think that those recommendations, either set of them, could possibly be interpreted as encouraging the abandonment of children without a proper home. I think rather they would encourage the payer to abide by the terms of an order because he can see the end in sight. As you say, the mother may remain in the home fulltime for sixteen years until the children reach the age of say, eighteen. I think you've pretty well put "paid" to her opportunities or incentive to re-establish herself in the employment market. If she's going to go back to work, then as soon as the children are in school, then that's the time for her to start thinking about that and relying upon the limited no-fault maintenance provisions that are recommended. In any event, at that point, her obligation to look after herself, I think, should be put into effect.

MR. PAWLEY: I'd like to just make a number of comments and I don't know when you wish to resume this because obviously we're not going to wrap up this area because I think it's another area that we have considerable reservation with the Law Reform Commission's report. One, I want to say to Mr. Muldoon that I wouldn't use tort law and traffic accidents as a good sound basis because I, for one, think that is another area that we should be looking at — The Law Reform Commission. I think other jurisdictions are examining the old tort law as to possible change.

To Mrs. Bowman, I just want to indicate that I don't know how narrow one can suggest the submissions were because we have a tabulation of the different groups who did deal with this and there were a lot of groups that do have very substantial membership and certainly not restricted to just groups that one would normally identify with women's activist causes. There are some pretty general large size groups such as MARN assume and others that the same position that are advanced now. But I would like to just say and I would like thoughts on this, we did propose at our last meeting that rather than totally ignore the circumstances, which I agree, I think would be somewhat irresponsible, that we could have situations by which, as mentioned by both Mrs. Bowman and Mr. Muldoon, circumstances in which one would have no regard whatsoever to one's responsibilities but just continue to grab the maintenance, that we ought to try to guarantee against that. I agree on that.

I think one can do that without necessarily accepting the fault concept, however, to the extent that I think the central aim ought to be for maintenance, surely, to obtain self-sufficiency; to be released, either from the responsibility of continued maintenance

payments or from continued payments from the state. Each individual should try to reach a point where they are able to sustain themselves and that should be the aim. Now, if we did do that and we did provide for a provision by which all the circumstances could be examined by a court to ascertain whether or not that individual is really making all reasonable steps to obtain self-sufficiency, the court could examine that. Then in the type of examples that you have given, the court would be free to certainly examine that unless the individual was an invalid or decrepit through age or other circumstances totally beyond any control of the individual his or herself then the court would certainly expect that that individual would be making all reasonable effort to obtain self-sufficiency, subject of course, to there not being a large family still at hand that the spouse would have to raise. I think that in that way we can avoid some of the concerns that I share with you that some would make no effort whatsoever. They would just grab maintenance payment on the no-fault principle without any returning responsibility.

I just want to mention too — and I know that you have examined the Federal Law Reform Commission's report, they take a very opposite point of view from yourselves in this regard and give forth, I think, some very strong arguments on this subject — but I would like to just say that I think there is a way which this can be dealt with without necessarily going the full extent of the Federal Law Reform Commission's report or the full direction of the normal expected total no-fault approach by

accompanying that with a responsibility on the part of the spouse receiving that support to obtain self-sufficiency to get off the public dole; to get off the maintenance, to permit the court to examine whether every reasonable effort is being attempted by the dependent spouse in that regard. That is the sort of direction that I would like and we discussed this at the last meeting and I don't know really whether we have a consensus but I think, well I think we had a that we would like to aim toward some alternative such as that rather than continuing fault or going all the way to just saying there will be no regard to the responsibility of the dependent spouse which I agree does have the pitfalls that you have mentioned.

MR. CHAIRMAN: Perhaps on that point of consensus it might be . . .

MR. MULDOON: Mr. Chairman, may I exercise my chairman's prerogative and perhaps have a few words before Mrs. Bowman, who is burning to answer, speaks.

The Commission has been by many misunderstood. Now that's the kind of plaint one hears frequently in domestic crisis. First of all it should be remembered that the Commission has recommended that child maintenance be, and it is almost absurd to apply the label to it, no fault, that no one should be entitled to evade the responsibility to maintain the child which he or she has brought into the world. That is clearly set out. I am not looking at the back but on page 10 where one sees that the ingredients of child maintenance are set out and that that's an inescapable obligation. When we come to the consideration of fault or no fault we are talking about spousal maintenance and not child maintenance. Now, there has been a tendency in our courts, I acknowledge, to diminish the amount of child maintenance and inflate the amount of spousal maintenance. Of course the Commission has recommended that the parent who has custody of the child should be entitled to receive maintenance virtually on a no-fault basis until the children are in school.

The Honourable Attorney-General comes perilously close to the recommendations enunciated by the minority of the Commissioners in his suggestion that there ought to be an examination as to whether a person is able to support himself or herself in regard to continuing or not continuing the maintenance.

The thing that was raised by Mr. Jenkins comes into this. What makes people what makes maintainers, people who are maintenance debtors, what makes them eager to evade paying maintenance skip? It is the prospect of paying someone, a spouse whom they are morally certain has caused the break-up, maintenance for an indeterminate period of time. How often lawyers, at least, who see these people and social workers too, hear: "I don't mind paying for the kids but I'm not going to pay for that . . . " and I can delete the expletive. That's what I suggested to you, Mr. Chairman, at the first meeting. Really one should canvass the feelings of one's constituents in this because there are probably no more natural adversaries than people whose marriage has broken down; people who feel aggrieved by the behaviour of their spouse and that seems to accord with a desire on the part of the people that one shouldn't be obliged to pay for the maintenance of a spouse who no longer has to stay home to look after preschool children; a spouse who has, in effect, ruined one's life. That's why the Commission, of course, adhered, both the majority and the minority, to the fault concept.

That's a word of explanation about the Commission. I think Mrs. Bowman probably would like to make some comments on what the Attorney-General has said if she may, Mr. Chairman.

MR. CHAIRMAN: Mrs. Bowman.

MRS. BOWMAN: I think we agree on the objective in terms of the Attorney General's statement that it is to help people to attain self-sufficiency as soon as possible. If I thought that his suggestion was a workable one I could live with it but I don't think that it is. The vast majority of women are going to make themselves self-sufficient as soon as they can with or without the legislation because they don't like being dependent on a mman they don't even like any more.

It is the others that I am concerned about. More and more now you find that women are not as tolerant as they used to be of the vagaries of marriage and they will when they feel their children are pretty well grown up they will separate, not because the other spouse has done something to justify them in terms other people's view in leaving, but because they don't want to live there anymore. That's all right. There's nothing wrong with that if they want to do it that way, but the reasons are often, to other people at least, very trivial. For example, many of you gentlemen might be at risk because your employment as politicians takes you away from home a lot in the evenings and your wives, no doubt, have complaints about that. Some people are prepared to split up the marriage at that stage and go. Okay, take your half of the property acquired. But, I know, that it would not be difficult for me if I were a housewife, and I'm forty-four years old now, if I didn't want to work in that situation, I could damn well see to it that nobody would employ me. I could have so no many aches and pains and back problems — oh, all kinds of things — I could make sure that I wasn't employed if I didn't want to be.

I have noticed in dealing not only with women, but with men, that motivation is the primary factor. I can think, for example, of a man who was a client of mine who had a conviction for manslaughter, he served time in jail, he was a former alcoholic, and had defective eyesight but that man really liked to work and he had four different jobs in the first four months that he was out of the penitentary, each one better than the last. Because he was motivated. And I've seen women with no formal education to

speak of, but women with a lot of independence and spirit who were able to go out and do very well for themselves because they were motivated. I've seen others with University degrees who just damn well wouldn't, either because they were afraid to take the plunge or because, out of spite, they wanted to make their husbands pay. And, I think, that that small minority of people are going to flourish on the kind of recommendation that the Attorney-General feels will solve the problem.

MR. PAWLEY: Yes. But the Court, in all the examples that you have provided us, Mrs. Bowman, the Court under our proposal would still have the right, as they do in the well vaunted or the question of damages for injuries and Court would certainly have the right to examine whether or not there was reasonable failure to obtain self-sufficiency. Was there malingering involved? Were there phoney aches and pains? Certainly medical testimony would be available in that type of situation, just as any other court action. The court would have the right and would be expected to examine all the circumstances under the alternative which we propose which isn't written down here but which we had dealt with last time. So the central theme would still be that principal one that we're interested in: not getting into the issue of whether one person contributed 52 percent to the breakdown and the other 48 percent, but the central theme being whether every reasonable effort was being made to resume active employment and all the circumstances would be examined. Now, sure there's cheats and there's phonies in every court case that fool the court. It will happen here, as in any other matter, I'm sure, but I don't know of any other better approach of dealing with it.

MRS. BOWMAN: Well, I'm merely commenting that I think that any woman with two brains could fool the court on that kind of issue.

MR. SHERMAN: It opens up a whole new vista for re-examination. We need the Chairman and Commissioner Bowman back before the Committee on this point, I think.

MR. CHAIRMAN: The Chair would suggest that perhaps next Tuesday morning at 10 o'clock would be a suitable date and time for our next meeting. Would that be convenient for the two commissioners? It's March 1st.

MRS. BOWMAN: I'm sorry, Mr. Chairman, I wouldn't be available on that date. I'm in court that day.

MR. CHAIRMAN: Mr. Muldoon.

MR. MULDOON: My diary is embarrassingly virginal on that date Mr. Chairman; 10 o'clock?

MR. CHAIRMAN: 10 o'clock on Tuesday, March 1st. The Committee is accordingly adjourned.