Legislative Assembly of Manitoba

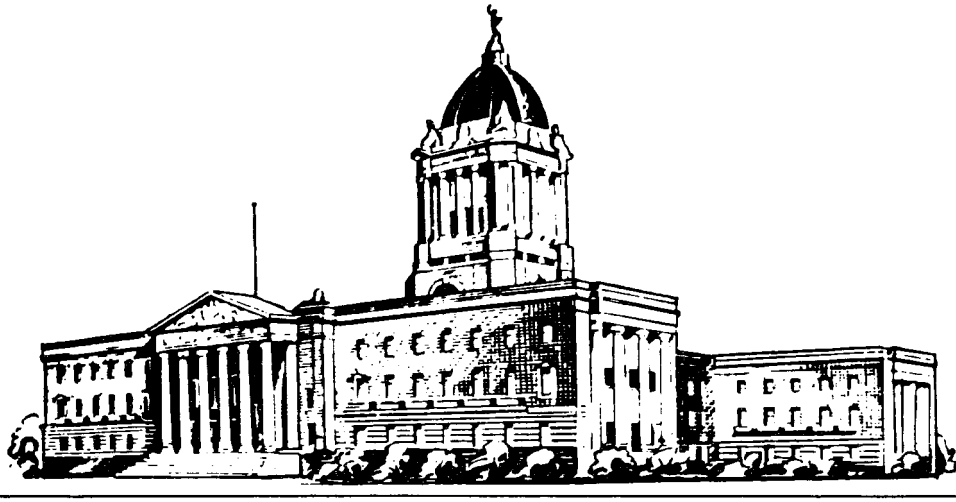
HEARING OF THE STANDING COMMITTEE

ON

STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. D. James Walding
Constituency of St. Vital



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TIME: 8:00 p.m.

MR. CHAIRMAN (Mr. D.J. Walding): Order please. We have a quorum, gentlemen, the Committee will come to order. In front of you you will find copies of two briefs, one from the Family Services of Winnipeg; the persons who were to present them were not able to be here. They've been circulated to you — is it your wish that they be printed in the record?

The other one, by the way, headed, "Widows and Widowers Group", that was simply left this morning, we have no name to go with it but it is a brief to the Committee.

MR. JENKINS: Mr. Chairman, I would move, that the two briefs circulated be included in the proceedings.

MR. CHERNIACK: Well Mr. Chairman, I don't suppose it's important I did think from the cost standpoint that if we all have it that that should suffice but I suppose if they had come they would have read it and the only thing we're missing is the opportunity to discuss their brief with them so I suppose it's just as well to leave it in.

MR. CHAIRMAN: Is it agreed then that these two briefs form part of the printed record of the committee? (Agreed) Are there any members of the public present this evening wishing to speak to the Committee who have not indicated in advance that they wish to do so? If so, would you come up to the microphone, please, and give me your name.

MS. WINNIFRED HAVELOCK: My name is Winnifred Havelock. I agree in principle with the ...

MR. CHAIRMAN: One moment please. I just want to get your name so that I can call you in turn.

MS. HAVELOCK: Oh I'm sorry.

MR. CHAIRMAN: What was the last name again?

MS. HAVELOCK: H A V E L O C K.

MR. CHAIRMAN: Thank you. I'll put you on the list. Is there anyone else present wishing to speak to the Committee?

MS. SHIRLEY MUNRO: If time permits, Shirley Munro.

JANET BERKOWSKI: B E R K O W S K I thank you.

MR. RALPH RAPHAEL: Ralph Raphael. A fellow over there recogniized that I wanted to speak to the Committee.

MR. CHAIRMAN: Is there anyone else wishing to address the Committee this evening? Is the representative of the Winnipeg Council of Self-Help here this evening? Would you come forward, please.

MS. FRANCES ROSKEVICH: My name is Frances Roskevich. I intended to present this brief as a private citizen, however, I am a member of the Winnipeg Council of Self-Help and in varying degrees, we all wear the same moccasins there. I feel I am very fortunate to be standing here presenting this brief tonight, fortunate because on any one of a number of occasions due to violence that develops within a marriage, I could have ended up six feet under.

My marriage was just one example of how badly some turn out. It took place in 1955 but there still are vows being exchanged today that will not make it to the "till death do us part".

My personal life experience as that of a lot of others relates to the other side of the tracks, married at one level then progressively decline to a lower level. I speak for the countless dewy eyed "head over heels in love" brides, past, present and future who, like myself, have not given thought beyond the "and they lived happily ever after", like the many of us who do not know what our rights are or what they hold for us, a fact I have knowledge of because I have lived it and which can also be attested by one parent families.

I am also speaking on behalf of those still out there in the various pockets of the cities and towns and especially in the rural areas who are silent at the moment, silent because this is a life society has been handing down from one generation to the next generation.

The beginnings of a marriage are under a misconception. We are quite confident that a marriage contract will cause equal shares and equal rights to be carried out by each other with the supporting comfort of a spouse. The feeling however, is very short-lived. For me it started dying fairly soon. Before the arrival of our first wedding anniversary I had reason to question the negative outcome of a lot of decisions that had been made jointly but instead were carried out according to his own immediate desires. And what became shockingly clear to me was quite "what's mine is mine and what's yours is mine". Because I acquired most of our furniture prior to marriage when suddenly, without my knowledge, the rent became extensively in arrears and I lost it through a confiscation by the bailiff. I was not allowed to protest as I silently watched everything go except the bare necessities. After all I was supposed to be satisfied my personal wardrobe wasn't touched.

There might have been someone I could have gone to for assistance at this time but my husband's word was law, I had no say in the matter, whatever conditions he created I would have to live under. Three years of marriage and three children later, responsibilities should have increased, however they declined. At this point it was necessary to resort to welfare assistance and the situation continued for approximately twelve years. Conditions became intolerable and I had to seek a separation but had to stay on public assistance now that I was alone to bring up six children. Could there not have been a better system to provide a more humane behaviour in decision-making on maintainers. If there was a better provision from the courts to enforce the

court order of maintenance to be carried out there would be no "why are there so many on welfare assistance?"

Let me quote a portion of a former brief pertaining to maintenance presented by the Winnipeg Council of Self-Help Help on another occasion. *"The parent who has the responsibility for the children must be entitled to make the final decision on the question of the family's need, for that parent to remain at home full time. Therefore we believe that a sole support parent should also be entitled to maintenance as long as the children require this adult supervision on a basis that the other parent should pay part of the time spent to provision of his or her family."*

I was successful in becoming a self-supporting parent within three years of separation and I felt quite lucky, but that took care only of the financial side of life. Harassment often becomes a daily part of that life too when the other spouse refuses to recognize separation under existence of it. And when you live on the other side of the tracks, police assistance is so often quite lacking.

As a member of the Winnipeg Council of Self-Help , I hereby state our endorsement and support to the conditions being presented by the Coalition here today.

MR. CHAIRMAN: Thank you. Are there any questions? Hearing none, thank you. Is the representative here of the Canadian Council of Women? So would you come forward, please.

MRS. ANN JACKSON: Did you say the Canadian Council or Congress?

MR. CHAIRMAN: The Canadian Council of Women. Mrs. Thorn is listed as the person concerned. No takers? Is Professor Sokoloff here?

MRS. ANN JACKSON: Excuse me, you named our secretary instead of myself. I am Mrs. Ann Jackson representing the Congress of Canadian Women. Can you hear me?

MR. CHAIRMAN: Yes, I can hear you all right, ma'am. One moment, please. I have two organizations here wishing to speak to us, one is the Canadian Congress of Women, Winnipeg Chapter, Mrs. Jackson, and the other a Canadian Council of Women, a Mrs. Thorn. Can you tell me if they are in fact two separate organizations?

MRS. JACKSON: There is just one because Mrs. Thorn is the secretary of the Congress of Canadian Women which is the correct title of our organization and I am the Chairperson, Mrs. Jackson.

MR. CHAIRMAN: Would you continue, please.

MRS. JACKSON: I am presenting this brief on behalf of the Winnipeg Chapter, Congress of Canadian Women and its affiliates, the women's branches of the Association of the United Ukrainian Canadians, the Federation of Russian Canadians and the United Jewish People's Order.

The Congress of Canadian Women is part of a worldwide organization, The Women's International Democratic Federation, with 121 member organizations in 106 countries. The WIDF holds consultative status "B" at the United Nations which covers non governmental organizations, and as such, participates in the work of the U.N. Commission on the Status of Women which has resulted in the universal declaration of human rights, the declaration of the rights of the child and the declaration on the elimination of discrimination against women.

It was upon the suggestion of the WIDF, backed up by other non governmental organizations, that the United Nations decided to declare 1975 International Women's Year, which marks the beginning of a decade for women as adopted by the General Assembly of the United Nations.

Our parent organization has made submissions to the United Nations Commission on the Status of Women recommending democratic laws of marriage, equality in case of divorce and inheritance, equality in the right of ownership, equality in the right to work and equal pay for work of equal value, equal rights and responsibilities in matters concerning their children, eradication of all those traditional customs and prejudices which in some countries prevent women from attaining emancipation and their full status.

One of the purposes of our organization is to advance the stability and well-being of the family which we consider to be the foundation of society. We welcome therefore the establishment of the Law Reform Commission and believe its report to be a big step forward in the right direction.

We endorse the recommendations of the action Coalition on Family Law, its principle, as outlined in their presentation and in addition, we would like to draw attention to some areas which are of special concern to us.

The 20th Century has seen a period of accelerated change and technological advance which uproots families to follow industry. It has also seen changing modes of living from farm and reserves to urban centres, as well as a transition from the support of the extended family unit to the isolation of the nuclear family. We must see to it that family law changes to meet the needs deriving from these changed conditions affecting the marital child-raising environment.

While we believe the report of the Commission to be excellent in many ways in dealing with marital separation, it falls short in dealing with existing marriages. Family law in our time must buttress the family milieu bolstering the harmony between husband and wife and eliminating the inequalities which create friction and hostility. This purpose can best be served by provisions for full and immediate community of property during marriage. If we concern ourselves only with the dissolution of the marriage, it becomes a case of locking the door after the horse has been stolen.

The non-earning spouse in the vast majority of cases, the woman, should not have to wait for marriage breakdown to establish her right to a fair share of the property accumulated during the marriage. It would

appear to us that "if sharing takes place only on marriage breakup", to reiterate an opinion expressed at the previous public hearings on Family Law, "the economically weaker spouse has a stronger incentive to force such a breakup." Marriage can only be strengthened if the non-earning spouse is not put in the humiliating position as many now are of having to ask the earning spouse for money. To remedy the situation would be a positive step in creating and maintaining harmony in the home with the resultant good mental health of all members.

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

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

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

In attempting to reform our out-dated Family Law, we might well be guided as suggested by the British Columbia Royal Commission on Family Law in its Sixth Report dated March, 1975, by the following concepts: 1. All persons should be equal under the law. 2. Marriage is a partnership of shared responsibilities. 3. The roles of economic provider and homemaker are of equal value to the relationship. 4. Married women are equally competent.

Equality in Marriage is included in the world plan of action adopted by the International Women's Year Conference held Mexico at which the Canadian Government was represented. See Items I and J in the extracts from the World Plan of Action attached hereto.

We therefore appeal to the Committee to recommend legislation which will enable women to achieve full equality as human beings and as citizens without further delay. Thank you.

MR. CHAIRMAN: Thank you. Are there any questions? Hearing none, thank you Mrs. Jackson. Is Professor Sokoloff here, please? Professor Sokoloff. Is Professor Cameron Harvey here, please? Would you come forward?

MS. JILL OLIVER: I'm really not Professor Cameron Harvey. However, he apologizes for not being here and I ask the indulgence of the Committee to allow me to give his presentation.

MR. CHAIRMAN: Would you give us your name, please?

MS. OLIVER: My name is Jill Oliver.

MR. CHERNIACK: Could you answer on his behalf, too?

MS. OLIVER: I don't profess to be able to do that. I will be able to answer on my own behalf as far as I understand his position.

MR. SHERMAN: Is this, might I ask, an independent position or a representative of a group?

MS. OLIVER: No. Professor Harvey is a Professor at the Faculty of Law, and he is presenting an individual independent paper.

MR. CHERNIACK: With no discredit to Miss Oliver, we've had two briefs left with us to read and if all she's going to do is to read the brief then surely we can read it ourselves and save the time of those people who are waiting to make a personal presentation, and make it possible for someone else to be heard and questioned on it. Is that unfair, Miss Oliver?

MS. OLIVER: No, I don't think it's unfair. I know Professor Harvey was hoping to be here, and as such I've brought the brief again expecting him.

MR. CHERNIACK: Well, Mr. Chairman, may I also suggest that we accept the brief but reserve the opportunity to Professor Harvey to come here at some later date when we are sitting for that purpose, ane yet hear him because I would think that not only hearing the brief but discussing it with him will be of value to us. So wouldn't that take care of both needs, one that the brief be presented, the other that he have an opportunity to appear before the Committee.

MS. OLIVER: I think that's fair. As I say I have had long discussions with Professor Harvey on this paper. As I say I can only answer as far as I understand his position, and if you'd prefer to hear it directly from him I think that's fair enough. But if prefer to hear it now I can answer as best I can.

MR. CHAIRMAN: What's the wish of the Committee?

MR. CHERNIACK: That's agreeable, Mr. Chairman.

MR. CHAIRMAN: Is it agreed then that copies of the brief be circulated to the Committee and . . .

MR. PAWLEY: Well, except Mr. Chairman, if Professor Havey will not be presenting the brief I would prefer to see Miss Oliver proceed with the reading of it since she's had discussions with him and there may be questions that we might want to present after she's completed reading it, because I notice it's rather a legal and technical brief.

MR. CHAIRMAN: The Chair has heard two different opinions. What's the will of the Committee.

MR. CHERNIACK: When in doubt, hear her.

MR. JENKINS: Mr. Chairman, it's only a three-page brief. I think that Miss Oliver could present it and if we have any questions we can ask them, and if there are some questions she can't answer she can perhaps pass them on to Professor Harvey and at a later date we could hear them.

MS. OLIVER: I'd be pleased to do that.

MR. CHAIRMAN: Is that the will of the Committee? Agreed. Would you proceed Mrs. Oliver, please.

MS. OLIVER: Thank you. I am going to address myself to the Commission's recommendations concerning Dower and Succession, pages 105 to 106, and 135 of the Commission's Report in particular; however, I do wish to state my support for the amendment of our law so as to bring about the implementation of an immediate community of property regime for married persons insofar as post-nuptially acquired property other than that acquired by gift or inheritance is concerned. Possibly there could be some alleviation of potential joint management aggravation with respect to decisions having a relatively trivial economic aspect to them by providing for sovereignty to either spouse concerning decisions involving less than $500 00. Aside from this accommodation, I see no need for stopping short in implementing community of property at deferred sharing of property. I am not persuaded in this regard by the reasons of the Commission, and in any event, we should find out for ourselves whether or not the joint management ramification of an immediate community of property regime is unworkable.

Turning to the "Dower and Succession" recommendations of the Commission, I disagree with the Commission. I read the Commission's report as recommending the continuation of separate property concept, modified by its recommended amendments to The Devolution of Estates Act and The Dower Act, for the determination of how a deceased spouse's estate is to be distributed. It seems to me that if we are going to have a community of property regime for married persons — I think he means by that deferred sharing of property regime to married persons — then the rules of that regime should be applied to dissolutions of marriages that occur by separation, divorce or death.

I agree with the Commission that upon a dissolution of a marriage by death, the law does not have to be concerned with starting both spouses upon new lives. However, in my opinion, that is not sufficient reason to interfere with both the testamentary right of persons to dispose of their property as they wish, subject to certain rules regarding accumulations and perpetuities, and the judicially enforceable obligation to provide for certain dependents, and the legitimate expectations of issue of a deceased person to share in that person's estate, again subject to judicial power to re-order the distribution of estates to take care of the need of dependents.

As I stated above, I think that the rules regarding shareable property and the division of that property, which comprise the community of property regime made standard for married persons should be applied to dissolutions of marriage by death. This should be the first step in the determination of what happens to the marital asset as a result of the death of one of the spouses. Then, insofar as the deceased spouse's share of the marital assets is concerned, the law could, in the interest of the surviving spouse, in the interest of encroaching no further than absolutely necessary on testamentary freedom, etc., be written to embody one of the following four mutually exclusive rules:

1. That the surviving spouse succeeds to the deceased spouse's share of the marital assets by operation of a doctrine of survivorship, similar to that which operates with respect to real property held in joint tenancy.

2. That the surviving spouse has a life interest in the deceased spouse's share of the marital assets, similar to the potential interest of a surviving spouse currently pursuant to Section 14(1) of The Dower Act in the homestead.

3. That by fixed forced sharing the surviving spouse is entitled to a percentage of the deceased spouse's share of the marital assets.

4. That the deceased spouse's Will, or The Devolution of Estates Act, amended as recommended by the Commission, if the deceased spouse dies intestate, govern the distribution of the deceased spouse's share of the marital assets.

It could also be provided, regardless of what rule was embodied in the legislation, that the Court of Queen's Bench have a discretion, similar to that which it has currently under The Testators Family Maintenance Act, to intervene to re-order the otherwise distribution of an estate to take care of the need of (a) dependent(s).

My preference, based as it is upon my inclination for testamentary freedom and my dislike of fixed forced sharing rules which operate without regard to particular circumstances, is for the operative rule to be (4) as outlined above, with The Testators Family Maintenance Act continued generally as it now exists. Of course, my suggestion involves the repeal of current Section 15 and so on, of The Dower Act.

My disagreement with the Commission's recommendations concerning "Dower and Succession" and especially regarding The Dower Act, is founded not only upon my dislike of forced sharing, but also because the Commission's recommendations do not require any accounting, so to speak, regarding the respective

spouses' shares of the marital assets. In its desire to provide for the new life of the surviving spouse, it provides for a potential over-compensation. This is not necessary, so long as the Court of Queen's Bench pursuant to The Testators Family Maintenance Act has the same kind of discretionary power to intervene upon dissolution of the marriage by death as it has to intervene to order maintenance upon dissolution of the marriage by separation or divorce.

Regarding The Testators Family Maintenance, I think that it should be amended so as to open its relief to not only lawful spouses and legitimate children, as the situation is currently, but also to any dependent and to the parents of the deceased. Also I think that Section 22 of the Act should be repealed.

I agree with the Commission's recommendation concerning the amendment of The Wills Act, contained on pages 106 to 108 of the Report. Respectfully submitted.

MR. CHAIRMAN: Are there any questions? If there are none, thank you Mrs. Oliver.

MS. OLIVER: Thank you.

MR. CHAIRMAN: Is the representative of Women's Place and Women's Liberation present, please? So would you come forward.

MS. LINDA TAYLOR: My name is Linda Taylor and I'm here today to speak on behalf of Women's Place and Women's Liberation.

We are participating members of the Coalition on Family Law and we support all the recommendations put forward by the Coalition this morning.

Women's Place is a meeting centre for approximately ten women's groups involved in activities and education designed to improve the conditions of women. Our Walnut Street Centre also acts as a service and referral agency for all Manitoba women in need of our support. Women's Liberation, the political arm of Women's Place, has a subscription of 500 individuals to its monthly newsletter, in publication for more than six years. Although our operating expenses exceed $5,000 a year we operate without any government assistance.

We would like to begin our presentation with a statement of principle. We are committed to the full equality of all citizens in a society based on co-operation and democracy; free of poverty, exploitation and discrimination. We see the reforms proposed by the Coalition not as an answer to the needs of women but as a step forward, a beginning.

Until society recognizes its responsibilities towards children and no longer defines them primarily as women's responsibility; until women have control over if, when and how many children they will bear; until all adults are independently economically secure and the value of the work women perform given full recognition; until women participate in all aspects of our society and are no longer trained to be subservient and docile, the full equality of women inside or outside the family will not be achieved.

We remind the legislators here today of their continued responsibility to press for changes to remove discrimination in all areas of public life and we ask for the support of all parties for the proposed changes in family law.

We will address ourselves to only three areas of the Coalition recommendations: child maintenance, interspousal maintenance during marriage and the Law Reform Commission proposal for opting out of the standard marital regime.

Family Law must reflect the principle that all children are deserving of support and that the birth of a child creates a serious obligation both to the parents and to the community as a whole.

All children are entitled to have their basic physical, emotional and social needs met in order to provide them the greatest opportunity to become self-respecting and participating members of the community.

For the more affluent members of our society the equal division of assets in the event of divorce will assist in providing these opportunities, but for the large number of children in economically deprived family situations, the division of property will only slightly affect their circumstances.

For these children it is not accumulated property, but the wage labour of their parents which provides the only economic security they will experience. Let us look for a moment at the conditions of single parent families. Ninety percent of these families are headed by a mother and according to Statistics Canada more than one-third of them live in poverty; about one-quarter of these families are supported through welfare payments. And yet, in spite of this, about 75 percent of court-ordered maintenance payments in Canada are not received by the spouse with care of dependent children.

According to the Royal Commission on the Status of Women half of all female heads of families have only an elementary level of schooling or no schooling. They would then likely receive jobs paying near the minimum wage and many would be forced onto welfare. But with the knowledge that 80 or 100 or 200 additional dollars would be paid to them each month they could leave welfare, plan their future and begin a life of economic independence.

We quote from the Royal Commission Report: "*The biggest single and continuing problem of sole-support mothers is a basic financial insecurity and a subsistence level of living which they have no real hope of improving*. Therefore, we believe that a special agency should be created which would maintain a registry of all maintenance orders, collect and enforce all maintenance orders and make this payment to the single parent whether or not the full amount is collected.

This action is essential for the following reasons:

1. If the government was making child support payments out of public funds it would take more seriously its responsibility to uphold the law and to pursue offending and irresponsible spouses. Just as we do not ask bank managers to track down bank robbers we should not expect single parents, already overburdened, to track down spouses who break the law by withholding child support payments.

2. Such a provision would primarily help children because at present, it is the children who we force to pay the cost of the illegal actions of one of their parents and of the reluctance of society to regard the action with the seriousness it deserves. Although we believe and recommend that the court begin to order maintenance at a level which ensures a stable environment for children we do not ask that any unreasonably high level of child support be paid out of public funds; there must be a cut-off level, perhaps when the single-parent families' income reaches the average income of a two-parent family with the same number of children.

3. Guaranteeing maintenance awards will effectively result in some redistribution of income, by providing additional monies to those at the lowest end of the income scale. All Manitoba political groupings have committed themselves to provide for the needy. What group is more deserving than low-income sole-support families? We advocate and will happily support through our taxes, any mechanism which will redistribute money in this way.

According to the Women's Bureau the average wage for males in Manitoba in 1975 was $11,000, while women on the average earned only $4,000; we have been trained to have unequal job aspirations for which we receive unequal wages. Children of single parent families suffer from this widespread and complex system of discrimination. We believe our proposal would begin to overcome this injustice.

The second area we wish to discuss is spousal maintenance during marriage. We support the following:

1. Each spouse is responsible for the support of the other during marriage. This may be accomplished by one spouse making a financial contribution while the other is involved in child care and household duties, or both spouses may choose to share in child rearing and homemaking responsibilities and also contribute financially to the unit. Income earning and child care are to be seen as equally valuable and important to the family and to the society.

2. Each spouse has the right to participate in making decisions. A question came up this morning about this. The existing law states that whoever earns the wages makes the decision on how to spend them regardless of how responsible or irresponsible or competent or incompetent they may be. We are simply suggesting here that both spouses may share in that decision-making.

3. This necessitates that both spouses must have full information about the earnings, assets and debts of the unit. If one spouse withholds this information, the law must require that it can be obtained through the spouse's employer (including the government), partner or accountant.

4. Each spouse has a right to a reasonable standard of living including a personal and clothing income. This amount should not be determined by the spending of the wage-earning spouse, as proposed by the Law Reform Commission, but should depend on the financial circumstances of the family.

5. A spouse should be able to apply to the courts for enforcement of each of these rights.

The Coalition supports these reforms not as a solution to equality in marriage but as a base for the introduction of full community of property.

The community of property system is essential to an equitable reform of family law; Women's Place and Women's Liberation would like to go on record as supporting its immediate introduction. We wonder why a law would be introduced that would distribute property equally upon the dissolution of a marriage but deny its sharing during the course of a marriage.

We disagree strongly with the position of the Law Reform Commission that during the first six months following the passage of Family Law Reform Legislation that one spouse could unilaterally opt out of equal sharing of all assets acquired up to that time — a point I should remind you that has been supported by almost every brief so far presented. We agree that certain couples may wish to opt out of this law because of special circumstances and if they agree, after each receives independent legal advice to do so, that course of action should be available to them. But we say, as many women have said to us, after hearing the Law Reform proposal, that if one partner can opt out, where is the reform, where is the justice? The principle that marriage is an equal partnership and that both partners whether at home or in the labour force contribute equally to that relationship is a just principle.

Let us reflect on why we and all the other provinces have begun to examine family law with a view to reform it. It began because Mrs. Murdoch fought for her right to be recognized as an equal partner in her marriage and to have her contribution recognized as equally valuable to that of Mr. Murdoch. During that case we came to recognize that women who do not receive wages for their work are not regarded as equal partners in a marriage. All across Canada women were outraged — they felt deceived and humiliated. Their effort, their work, the responsibility they had shown to their home and their family was negated. Work which received wages was enshrined in law as better and more deserving than their work, whether in small business, farms or city homes and communities. We all, men and women, felt an injustice was being perpetrated in law and that therefore the law must change. But to accept a proposal for unilateral opting out would not change the situation of Mrs. Murdoch because Mr. Murdoch simply would have informed his spouse he did not like the principle of equality

and that would have been the end of it.

The proposed changes in family law are not going to alter our concept of justice, they are going to remove an existing injustice. To show you how long women have struggled for this recognition, I will quote from a letter published in 1909 in the Grain Growers Guide. *"Women do not 'lay claim' to half of their husbands property; women lay claim only to their own share, to their own property, which the husband has appropriated, with the aid of the law, which law the husband made without the consent of his wife."* That effort that women put in, to attempt to have their contribution recognized, resulted in The Dower Act.

New laws must protect not only good relationships but also difficult or deteriorating relationships. We do not have to create laws of any type for those who behave in socially acceptable ways; we create laws to state principles that the society feels are just and to deter those who would abuse our principles, who would seek to undermine societies' values.

Unilateral opting out would encourage unfair and manipulative spouses to immediately attempt to ignore the principle of equality and it would be necessary for lawyers to support their clients attempt to gain whatever they could under the old and unjust system. Every Mrs. Murdoch in this province, and there are many women who make the contribution Mrs. Murdoch made, would find past injustices perpetuated.

This Committee is meeting to make better laws, more just laws, laws which recognize the value of the work women do and have done in the family. These laws must apply to all of us. A unilateral opting out provision is simply not acceptable.

In conclusion, we have touched on only about three areas of family law, but we remind you that Women's Place and Women's Liberation support all of the proposals as set out by the Coalition on Family Law. We urge you to examine these recommendations seriously and to support their adoption.

MR. PAWLEY: I would just like to ask Ms. Taylor in connection with Page 3, I would like to obtain her impressions in connection with the present system of enforcing maintenance orders at the Family Court. As you know, in the past, approximately four years ago, enforcement officers were hired to actively enforce orders and to exercise some initiative in place of the very passive role at the Court prior to that, so that there was a substantial improvement at that point. But I sense from the brief that you note many problems still existing as far as the enforcement of maintenance ordeis are concerned, and thus the recommendation for a central agency. I wonder if you would mind just expanding on your your group's observations to the present system.

LINDA TAYLOR: Well I understand that the efforts taken on behalf of the people of Manitoba through the government, have provided some assistance and that the situation is somewhat better than it was. Our feeling is that as long as any woman is not receiving the order, the maintenance that she is entitled to and has been ordered through the court, , that the system is still not working adequately. Far too many women simply do not receive the moneys to which they are entitled. The purpose of this special registry was also to ensure that payment would be regularly coming to this person (it could be a man, there are a few men that could be in the position of receiving child support, but it's mostly women) and so if a payment wasn't made for three or four months and at the end of four months the court was able to get all of the money back which had been owing, the woman still would be getting her money regularly each month, and without that it's not possible for women on low wages to take jobs or to anticipate, to predict, to plan their life in any sort of reasonable way. So that we don't like a system where a woman has to wait three months and perhaps receive nothing, and then receives a lump sum, and then for another five months she doesn't receive anything, and then she receives some back. We think it should be that children are important, that we should recognize that sole support families are experiencing not only economic difficulties but psychological difficulties and that we should be supporting any effort on behalf of the government to provide them with some security. I don't know if I avoided your question too much by this.

MR. PAWLEY: I wonder if you would like to make some suggestions in connection with the other area of weakness in connection with the enforcement of such orders, and that is the enforcement of such orders from province to province, the lack of speedy and effective means too frequently in enfoicing those orders, and not only from province to province but, of course, from country to country.

LINDA TAYLOR: Do we not have an agreement with the other provinces whereby we can collect the funds from spouses who leave this province but have been ordered by the court to make payments?

MR. PAWLEY: Yes we do except there is some lengthy procedure. I just wondered if you had any observations as to the effectiveness and speed by which such orders are actually confirmed.

LINDA TAYLOR: I don't have any observation on how it is working. If you were to accept our proposal then there would be no problem because the money would be paid regularly out of public funds, and if you had to wait six months to collect that money, that would then go into the fund which would make up for the money that had gone out but it would be regularly received then by the spouse who had care of dependent children and that would iemove those kind of problems which result from the delays you've described.

MR. PAWLEY: Would the sum that you are referring to there be, as in the earlier brief that dealt with this, another organization, be restricted to maintenance for the children; that that would be the sum that would be paid out?

LINDA TAYLOR: The position of the Coalition is that the only money which will be paid out are court-ordered child maintenance. We're not speaking at this point about spousal maintenance, only about child

support payments. We also think that a law like this will state a principle which the people in our society perhaps don't grow up understanding clearly enough, that both parents, male and female, are equally responsible for any children which they have jointly brought into the world and we feel this is important to recognize and reinforce in the population.

MR. CHAIRMAN: Are there any further questions? There seems to be no further questions.

LINDA TAYLOR: Thank you.

MR. CHAIRMAN: Order please. Is the representative here for the Manitoba Association of Women and the Law. Would you come forward please.

LAURIE ALLEN: My name is Laurie Allen, and I'm speaking on behalf of the Manitoba Association of Women and the Law. We are a group of lawyers, law students and people who are concerned about and interested in the law especially as it pertains to women. We are a member of the National Association of Women and the Law and our aim is to work towards law reform, to remedy inequality in law, and education of the public about the law as it is and should be. We are also a member of the Coalition on Family Law and we firmly support the Coalition's position as presented this morning and the various aspects of it presented by different groups throughout the day. Our brief and presentation here is to expand and enlarge on the Coalition's stand on the concept of fault and the part it should or shouldn't play in maintenance awards. And just at this time I would also like to inform this Committee that the Manitoba Family Law subsection of the Canadian Bar Association has passed the following resolutions regarding several aspects of the Law Reform Commission's recommendations. It's my understanding that these resolutions may not get to this Committee in time and I've been asked to review the ones that have been overwhelmingly passed by this sub-committee of the Bar Association.

Their first recommendation that they agree with is that there should be no-fault equal division of all property acquired during the marriage on separation; that there should be no judicial discretion to vary this equal division of property, and that the matrimonial home be jointly owned during the marriage. And while those recommendations are outside my topic tonight, we do agree with those as well. I would also like to re-emphasize it is our position that there should not be any judicial discretion to vary property divisions. We feel to allow for judicial discretion would encourage litigation and couples trying to see if maybe they can get a 60-40 split or something like that, and for the few circumstances that this situation may arise we feel that it is not something that should be put forward in legislation. We also feel that if there is no judicial discretion that shows that the Manitoba Government firmly recognizes the principle that marriage is a partnership, an equal partnership, not one that can be 60-40 sometimes or 30-70 or something like that but 50-50 all the time.

However, to go into the main part of my presentation now, in order to have a clear understanding of the concept and purposes of maintenance, we feel it is necessary to first look at the concept of marriage and the role of each party in a marriage. Today, I think that most people in society, as reflected by the Law Reform Commission's statement and commentary on spousal maintenance during marriage, see marriage as a partnership with each spouse being responsible for the support of the other through financial contributions, child-rearing, household duties. We firmly support this view and feel that this understanding of a partnership, arrangements between spouses, should and must be carried through to the maintenance after marriage breakdown.

The Law Reform Commission, in consideiing interspousal maintenance, deals with a number of factors to be taken into account both when determining the entitlement to and the amount of maintenance. We feel that most of the factors listed by them accurately reflect the concept of equal responsibility for maintenance and support between spouses, however we do strongly disagree with the Law Reform Commission's introduction of fault into the factois to be considered. The factors which concern us are: "the extent to which each spouse has contributed to the marriage," as I believe it's recommendation (e) and recommendation (h), "the relative responsibility of both spouses for the separation or marital breakdown or for the refusal or neglect to provide support."

Keeping in mind the equal responsibility that we recognize as being present during a marriage, from one spouse to the other, we see the concept and purpose of maintenance after separation encompassing the following goals: The first goal is the support of a spouse with dependent children; the second goal of maintenance we see as support of a spouse during appropriate formal education and job retraining with a view to establishing economic independence; and (c) long-term support for a spouse if their ability to earn has been impaired during the marriage by age, health or home iesponsibility.

The above concepts of maintenance, we feel that we are perhaps somewhat closer to the minority recommendations on maintenance, although the minority of the Law Reform Commission also sees fault as a factor. This is where we part company with the minority as well.

A consideration of fault in determining entitlement to or amount of maintenance will only serve to distort the goals listed above. Maintenance should not be seen as a punishment or as a reward' but as an award that is necessary in some circumstances until a spouse is able to achieve economic independence. If a husband and wife have chosen a traditional marital relationship it seems illogical to say suddenly that a wife — when I'm dealing with a traditional marriage situation — can only get maintenance to establish her own economic independence

if the husband is at fault.

At present, the law is moving away from the consideration of fault in awarding maintenance and we feel the Manitoba Legislature should recognize that trend and carry it to its logical conclusion. While it is true that courts have been dealing with the concept of fault in the past, it is, I think everyone will agree, an uncertain and nebulous concept at best. We submit that by looking at the parties' relative responsibility for breakdown, the court is getting into even more uncertain ground. If you ask yourself questions such as, does a "cold shoulder" contribute more to the breakdown of a marriage than a violent temper; or does extravagant spending contribute more to a breakdown than niggardliness; or does a "workaholic" contribute more to a breakdown of a marriage than a loafer, you will certainly see that it is certainly difficult to measure fault, and not only fault but the relative responsibility between the parties. Any attempt to try and measure this will certainly distort and often, perhaps, ignore the purposes of maintenance.

A major criticism of the general public towards many laws today is that they seem uncertain, unclear and leave too much in the air. Surely a judicial review of the behaviour of a husband and wife over the whole course of their marriage, be it 20 years, 10 years or one year, and an assessment of relative responsibility in order to determine entitlement to maintenance will only further enhance the public's disenchantment with the law. To continue this assessment will continue to tie up the courts and be counter-productive in terms of lessening chances of settlement by agreement.

While the Law Reform Commission's commentary on the recommendations and indeed the draft recommendation states that fault should only be one of the factors to be considered, it appears likely that if all other factors are equal, it will be the weighing of the relative fault of each spouse which will tip the balance of the determination of entitlement to maintenance. Again, it is our opinion that this possibility neglects the fundamental principles of a maintenance award.

Most rational people feel that maintenance should not be considered a "meal ticket" or a reward if the other spouse has been "guilty" of causing the marriage breakdown. The picture of the spouse who plans to make his or her spouse "pay" for real or imagined faults is unfortunately too often a reality which is enforced and indeed rewarded by legal principles of fault. The Law Reform Commission Report at Page 21 states: *"It seems equally unjust that a party who fails to live up to the commitments expected of a marriage should escape scot free, should not be required to compensate in any way for the injuries inflicted during the years of marriage,"* and so on.

However, even the emphasis in the Law Reform Commission's quote I've just mentioned, makes maintenance sound more like a fine than an award based on need and financial circumstances.

Again, I must emphasize that we see maintenance as a rehabilitative tool that is used to try and restore the parties to the positions they held before the marriage. Only if this is not possible should the concept of lifetime maintenance enter the picture. Maintenance should be based on need and circumstances, not on the fact that one party is more responsible for the breakdown than the other. With the rising marital breakdown and ensuing separation and divorce marriage in today's society is more and more likely to be only one of a series of marriages. To reflect that fact and to avoid over-burdening people with lifetime obligations to spouse No. 1 or even sometimes spouse No. 2, maintenance must not be seen as a reward or as a punishment but as a rehabilitative tool to permit a spouse to become economically independent and responsible for his or her own future.

A final consideration in examining the role fault is to play in determining entitlement to maintenance is its effects on the children of the marriage. It is a trite truism that children are the innocent victims of a marriage breakdown. A system that omits fault will be a system that does not place children in the middle; that does not expect them to take sides or even often act as referees.

The Law Reform Commission also recommends that fault should be a factor in determining the amount of maintenance payments payable. If the relative responsibility is not seen as serious enough to deny maintenance altogether, they are recommending that the court consider that in determining quantum. In our opinion this can lead to even more ridiculous results. Should a wife be asking her lawyer, is an unfaithful husband worth an extra $100.00 a month? Or a man asking his lawyer, can I deduct $50.00 a month because my wife didn't speak to me for weeks on end? What is the value of these things? How is the court realistically supposed to consider them when he is faced with a woman who is entitled to maintenance because of need?

To reduce or increase an award because of a greater responsibility for the marriage breakdown is losing sight of the purpose of maintenance. If, for example, a woman who has custody of the children has her award reduced because of a finding of a lesser contribution to the marriage, it seems likely that she will perhaps be forced to use part of the children's maintenance award to support herself. If a man is ordered to pay more because of his lesser contribution to the marriage, perhaps he will cease making any payments at all. In both cases, the children will suffer, a curious result indeed.

A further reason for omitting the consideration of fault in maintenance awards is that it will perhaps permit more "civilized" behaviour on the part of unhappy spouses. There should be less "mud-slinging", less remembrance of every little item of marital discord and a more positive approach to ordering financial affairs in the spouses' separate futures if the Court is able to ignore the highly subjective and emotionally charged concept of fault. If a court is permitted to defuse the relationship between fault and finances, an easing of

tension between spouses will benefit the children as well, as neither party will have to denigrate and depreciate the other in the hopes of enlarging or reducing the maintenance payable. Simply because a marriage has broken down does not mean that a wife is not a mother, a husband is not a father, and it is our opinion that looking at the question of fault gets those concepts mixed up somewhat.

Finally, it is our submission that a battle over fault and its relationship to maintenance will further hinder any possibility of reconciliation that may exist. It has often been said that nothing hurts more than a blow to the pocketbook. If one's financial future, in whole or in part, depends on how well a spouse can prove to the Court how the other spouse was more to blame for the breakdown of the marriage, feelings will run higher and certainly won't be easily forgotten.

In conclusion, the Manitoba Association of Women and the Law as a member of the Coalition on Family Law Reform, firmly urges this Committee to delete fault from the factors in determining both entitlement to and quantum of maintenance. We feel that to consider fault loses sight of the purpose of a maintenance award and is degrading, both to the parties and to the institution of marriage, to attempt to place a dollar value on a party's contribution or lack thereof to a marriage, or a party's responsibility for its breakdown. We feel that we are speaking for a majority of Manitobans who wish to see their Legislative Assembly adopt laws which will provide for a more rational and less emotional determination of the necessity for and the contribution to maintenance of a spouse. Thank you.

MR. CHERNIACK: Ms. Allen, since my inclination is to agree with your position on fault, I don't want to deal with that, I want rather to ask you why you left out, where you cite the factors which concern you dealing with interest rather than maintenance, why did you leave out the length of the marriage, why do you want it in? Why is that a factor, if you are dealing with the question of need and financial resources, where does the length come in?

LAURIE ALLEN: Well, we feel that the length of marriage has a part to play especially in considering long-term maintenance where a person's ability to maintain themselves has been impaired because of the previous marital relationship. I suppose to a certain extent it would also play a part in short marriages in looking at the need for maintenance and the possibilities of financial independence in the future. For the majority of middle-length marriages I don't think that that would be that relevant; but in certain circumstances we felt it may be a factor that the court should consider.

MR. CHERNIACK: Let's assume we have two 62-year-old ladies. One was married thirty years, the other was married two years, they each have the same resources; should they get different amounts depending on length of marriage?

LAURIE ALLEN: Well, that's a difficult question to answer right off the top of my head. I'm not sure — based on the factors that you've given me — that there would be any difference in the awards, but we do feel that a court should be able to consider that. Circumstances is one of the seven or eight that have been listed.

MR. CHERNIACK: Suppose we have two ladies each 62 years of age; one has been married thirty years and has a quarter of a million dollars which she got tax-free somehow; and the other one has nothing and has been married only two years. Now would there be a difference depending on the length of marriage?

LAURIE ALLEN: No. I think that in that circumstance, other circumstances that you have introduced into a hypothetical question would out-weigh any consideration of the length of the marriage. All of the criteria that are listed are to be considered together and to pull out one in isolation I think you could make circumstances where it would make a lot of difference or no difference, if you were just looking at that one factor in isolation.

MR. CHERNIACK: Well, the reason I raise this — and I raise it very seriously because this Committee will be making a recommendation to the Legislature and I want to know whether I go along with your concept on leaving in the question of the length of marriage or not — you worry or at least some of the people who presented briefs today worry about what a court might do when using HIS discretion. I understand that worry and I will recognize a concern. By introducing the length of marriage are you not introducing something like an emotional aspect like a bias that ought to be brought in that a long marriage may deserve a larger payment than a short marriage? And if so, doesn't it turn against the principle which you have espoused and that is need should determine the amount; and also that the amount should not be considered to be permanent if there's a hope that the dependent becomes independent. Don't you recognize my concern that if you put in the length of the marriage that indeed that could be an influence which could adversely affect the justice of equality which we all aspire to?

LAURIE ALLEN: Well, we recognize your concern. Perhaps we didn't give that first phrase the consideration it deserves, and if the Committee feels that it could distort the concepts as we endorse them, we certainly would not be unhappy to see the whole phrase deleted from the legislation.

MR. CHERNIACK: Could you tell me , since I'm sure you studied this much more carefully than I did , is there anything in the consideration suggested other t n fault and length of marriage and then contribution to marriage, which I don't even understand, other than those? That is items C and H. C is the length of marriage and the extent of which each spouse has contributed; and H which is fault. My impression is that those are unmeasurable and therefore dangerous, I don't know. Could you tell me if any of the others have the same kind of lack of quantification that would make for a Judge using that as a reason for letting a bias or an emotional reaction influence him?

LAURIE ALLEN: No, I think that the others are certainly more measurable than these two. We have stated that we are happy with the other ones. The only circumstance that one could perhaps see problems with would be the standard of living and financial situation of each one, where a Judge may have to come to a determination that someone is not entitled to the standard of living that they wish to have. But on the whole we feel that that is reasonable consideration to take into account.

MR. CHERNIACK: Thank you.

MR. SHERMAN: I just had one question, Mr. Chairman. I'd just like to ask Ms. Allen whether her group presented its position as spelled out in this brief to the Law Reform Commission?

LAURIE ALLEN: Well, I believe our group presented an overall position regarding their Working Paper — all the things that were considered in the Working Papers. It's just for the purposes of this presentation that all the members of the Coalition have decided to look at one or two areas in more detail than one presentation could do. But the core of my presentation, I believe, was presented to the Law Reform Commission.

MR. SHERMAN: Did you zero in on the question of fault in your presentation to the Law Reform Commission with the same degree of conscientiousness that you have in this presentation?

LAURIE ALLEN: Well, I don't think to the same degree of conscientiousness because basically I think we presented approximately a 15 or 20 page report dealing with all their recommendations. So obviously their recommendations weren't as firm, so our criticisms couldn't be as firm as they are right now. But basically our position was the same, that fault should not be a consideration in determining maintenance.

MR. SHERMAN: That's all, thank you.

MR. F. JOHNSTON: Miss Allen, going back . . . Mr. Cherniack has been discussing on the length of marriage of a lady 62. Is it possible whether you are considering the length of marriage from the point of view of the lady 62 who had only been married two years would be in a much better position to rehabilitate herself if there is a separation than the lady who has been married all that long?

LAURIE ALLEN: Well really to take that example, there may be less of one in some ways because surely if a man was marrying a 62 year old woman he would be aware of what her background was. If you look at a marriage that is two years in length where the woman is fresh out of university or high school or something like that obviously with the same lack of degree of specific training she is certainly in a better position at the end of the marriage than the 62 year old lady and I believe a court would certainly consider what the position of the party was prior to entering the marriage.

MR. CHAIRMAN: Are there any further questions? If there are none, thank you Miss Allen.

Mrs. Anne Ross, Mount Carmel Clinic. Mrs. Ross?

The Manitoba Action Committee on the Status of Women. Their representative is here. Would you come forward please.

MARILYN McGONICAL: Gentlemen, I represent the Manitoba Action Committee on the Status of Women and my purpose is to give you a summary of the Family Law Coalition position and also to deal with some of the issues that have been discussed today by the members of the Coalition that were presented to you by Alice Steinbart this morning. . .

MR. CHAIRMAN: Would you give us your name for the record please.

MARILYN McGONICAL: I'm Marilyn McGonical. . . . hopefully to clarify some of the things which have been subject to a lot of questioning which reveals certain misunderstandings about the position. To the extent that I'm able I'd like to clarify some of those issues for you with respect to the Coalition position.

Now first of all, before discussing the various highlights of the Coalition position, I want to make some preliminary comments. The Coalition response to the Law Reform Commission Report and the recommendations before this committee are by way of enunciating principles and rights that are not now reflected in the law. We are not lawyers and we are not statute drafters. We are also not interested in seeing any inequities as between spouses or with regard to children made into statutory provisions so that where there is a position, we're stating, that will obviously create an inequity that has to be taken care of as well in the drafting of the legislation. We feel that the Committee, you people, are responsible for the drafting and we urge you to do so with regard to the principles of equal partnership, equal capacity and equal responsibility in marriage and family matters.

I detected an inference today that would seem to be taken about some of the presentations, because they were specific and dealt with only certain issues and did not enunciate a concern for children, that perhaps the concern for children is lacking in the Coalition considerations. I think that nothing could be farther from the truth. We are by and large parents, married men and women who are considering always the needs of children and there is no question that this is a priority. However in dealing with the questions we looked at the Law Reform Commission recommendations which had a few references to children, important references with regard to the responsibility for them and perhaps the alteration of that responsibility with regard to the age of majority and those are the issues raised that we dealt with. Believe me we would be the first in line to submit to you opinions and suggestions for the rights of children where that is the primary consideration. Here we see the family law reform as being primarily concerned with the status of the marriage and the property. That is how it was dealt with by the Law Reform Commission. Certainly wherein it affects children, the parents' responsibilities and so forth, that is relevant. Now this in no way puts children in second place. In fact I think it

should be obvious from everything that's been said today that one of the very basic concerns and difficulties is that the care of children is thwarted by the present law as it is articulated and as it affects men and women, particularly women who have the custody of children and the responsibility for them. The Law Reform Commission for instance did not deal with the child custody question, that is who gets child custody and so forth, and that we see as a different issue and we dealt with what they did.

The other area in which there was an inference that we were not concerned about children was in the idea of the testamentary disposition, the receipt by the surviving spouse of 100 percent of the estate of the deceased in the case where there is no Will. Now we don't see that as ignoring children at all. In fact we see that if the marriage is a unit and does not terminate by separation or divorce but on death, we're concerned that the estate should continue in the surviving spouse, and that the children will be cared for by and large because there were mutual concerns and mutual responsibilities while they lived and we don't see death terminating those, death creating a conflict. So we have recommended that rather than cause a split of the estate which works a lot of hardship on surviving widows and perhaps widowers, we see that we can incorporate a concept into the law of deferring that hardship and deferring the estate going to the children until both spouses are dead, until both spouses have been taken care of throughout the marriage, until they've both been able to benefit by, throughout their lives, the proceeds or the acquisitions of the marriage. So we did not see a conflict. We do see however — I think we can always see in a general principle all kinds of exceptions and difficulties and we do support the Testator's Family Maintenance Act provisions for instance that dependents can have a right to apply to the court for what they need and that right now includes children, in fact children and wives only are included. That would mitigate against the harshness of the 100 percent over in cases of need and dependency where that responsibility is not being carried out by the surviving spouse.

Now as to the general provisions of the Coalition's position the first statement, and you've heard it many many times today, is the notion that marriage is a partnership of legal equals with equal legal capacity and equal responsibility. I wish to stress just one point about this and that is that this Committee should not under estimate what a surprise it is to people in existing marriages that this is not the state of the law today, that mutual input does not necessarily give equal entitlement. I think that you can view the situation two ways. The marriage has been formed on a basis that it is an equal partnership or a unit that two people share equally in somehow, in which case the law should simply bring itself up-to-date and articulate that. If you take the view that people do not enter marriage with that idea, that people enter marriage with the idea that they do not share equally in what they jointly put together, then I see no harm in allowing those people to consentually sit down together and write their own contract, that is to vary it to conform with what they thought the marriage was. Now why we should allow someone to do it unilaterally is not understood at all by the Coalition and not supported as a recommendation, to allow one person to do it alone.

We agree that marriage contracts should be permitted as they are today but looking at today's realities we don't have marriage contracts very often and we're not really foreseeing marriage contract as a solution to inequities that exist in the law. We see that the overall contract should be written by the Legislature reflecting what exists, the values that we have. Then if there's going to be a contract to vary that that's fine as long as it's fully informed and there is legal advice so that we get around the obviously coercive possibilities, the undue influence perhaps that can be brought to bear on someone at the beginning of a marriage. We also support the idea that marriage contracts should be varied at any time during the marriage by consent and with legal advice and this way they can deal with unforeseen events because marriage contracts have the definite flaw of at the time of their making events are not foreseeable nor is the amount of wealth or the other circumstances that might come into the marriage.

Now opting out of course is a very different concept and I mentioned that already. It has the unilateral aspect and as I've said, if we believe in equal sharing then opting out should not be allowed unilaterally. It's unfair to let one person say it's all mine in reference to mutually acquired and worked for property.

Now the next area is the support for the full and immediate community. We favour that but we have supported the Law Reform Commission Report recommendation for deferred and the reasons were raised a couple of times today with respect to what we thought we could convince this Committee to decide to enact. What we're saying is that deferred community is the very minimum that should be done and that full and immediate should be looked at and considered and favoured. But had we dealt only with the recommendation for full and immediate we would have had to ignore all the rest of the Law Reform Commission Report that deals with what you're going to do with the ongoing marriage in the event that deferred is what is enacted. We wanted to deal with all the recommendations and address ourselves to the deferred community ramifications.

You see the disadvantage of a deferred community — disadvantages include that . . . the whole concept does not recognize equality, economic and legal, in marriage. In fact it denies it for the ongoing marriage. The other problem that is raised by deferred is how does the deferred sharing concept protect the future half interest where the management rights and ownership are in the one party and there is no necessity for consultation or no way to enforce consultation when the property does not belong to the other spouse. The other very great disadvantage in the deferred community concept is it doesn't apply on death in which case those marriages that end that way do not ever give the non-earning spouse property rights or testamentary rights. That is a very great

inequity. Where your non titled spouse dies first there is no property that ever does come into that person's possession or into that person's estate, and if we're talking about denying testamentary freedom we take that one step further. Here we've denied even the ownership concept, the equal sharing concept in that case. In this respect the Law Reform Commission has recommended that dower rights be updated and take the place — presumably because the potential share is greater than if the standard marital regime formula is applied on death. We see that there is a necessity for the Dower Act to continue even if we have full and immediate or even if we have deferred community applying on death where there's an accounting at that time and you figure out what the shares in the community, the mutually acquired assets are and that would be for the people who have opted out of the system, opted out of community. Dower rights should protect as they do today if there is going to be a separate property option.

Now I just wanted to mention these things to highlight what was said and the big area of concern today of course is the maintenance area and our recommendations with respect to that. It has been said by Linda Taylor, very well, the aspects of maintenance and I'll be very brief. We see our maintenance recommendations as positive reform for both men and women. It's very important that what we're seeing not be construed as something that is very one-sided. Every reform we look at we want it to be fair and apply so that neither spouse has an injustice performed against them. We find that we support the principle of the necessity to terminate the marriage obligation as soon as possible after the breakdown, and this of course is the interspousal obligation, because of course the child obligation carried forth during the infancy of the children, and we see our guidelines being far better criteria than either judicial discretion or the fault principle which, as has been said many many times, clutters up the whole issue of maintenance and its purpose and the necessity to provide for women and children in these

situations. There are difficulties with that when it comes to working that both ways. We have a problem with the social fact that women are not able to earn as much as men, particularly if they've stayed home, and the availability of child care so a woman can go to work is an important factor that makes it difficult to strictly apply the principles. The job market and their skills and opportunities and so forth which we said are important, the social facts work against women in all these situations, and this raises difficulty with the maintenance obligation' but we see that as making it necessary to have adequate maintenance that enables women to train, pay for child care, become self-supporting, which means probably more maintenance immediately and less later. One of the difficulties is that people get locked into maintenance situations. The woman gets locked into the fact that if she goes to work her maintenance is reduced by that amount and she doesn't have any incentive to go to work to reduce the maintenance. If it's too low she is also in no position to get herself trained to make more money. There are too many problems with it and with long-term low maintenance and we're trying to mitigate against them.

The question about the length of marriage. . .

MR. CHAIRMAN: Order please. The Committee has iequested that people speaking to the Committee do restrict their remarks to 15 minutes. You have gone a couple of minutes over that, I will give you a couple more if you wish to conclude youi remarks.

MARILYN McGONICAL: Okay. Then I want to mention just two more important things that were raised today, and one is the question of the length of the marriage seems to work against the concept of need and the length of marriage, I think, is relevant in situations where there is a great lack of assets in the marriage, that is the property split doesn't amount to anything or where the only money involved is the earnings, the money that is earned. So that I think it is relevant there that the length of the marriage be taken into consideration in this respect. The two-year marriage and the 30-year marriage create different considerations.

I won't mention the fault principle again. I have mentioned that we support children's rights. The agency then, the government agency, I think one thing that was overlooked is that we support the principle that government should assist women in enforcing their rights and that is that it is as much a collection agency as a pay-out agency, and that is what we really mean by this is that women cannot enforce these rights themselves so that they have to have the opportunity, they need the support of the system which does pay lip service to women and children but doesn't live up to it by putting its money where its mouth is, and it is time that we had that kind of consideration and make it work. So it is not really a pay-out from government funds except insofar as their payments are in default and I also would like to point out there that the women who are seeking this assistance are on welfare and if those maintenance payments are collected, it should inevitably result in a reduction of welfare payments to these people just logically and put the responsibility where it belongs.

Now I think that's basically all that I should say at this point then except that that is what the Coalition wants you to consider, and if there are no questions . . .

MR. CHERNIACK: It is just coming back to the length of the marriage. Miss McGonical if you look at (b), the extent to which the applicant spouse is dependent upon the earnings of the other spouse; don't you think that is a much more important factor than the length of the marriage?

MARILYN McGONICAL: It may be and under circumstances as they are . . .

MR. CHERNIACK: Under what circumstances would it not be more important?

MARILYN McGONICAL: Which. . .?

MR. CHERNIACK: The extent to which the applicant spouse is dependent upon the earnings of the other

spouse. Can you conceive of any circumstance, or if you can't please tell me, where this is less important a factor than the length of the marriage — the extent to which they are dependent on the earnings of the other? Isn't that really the crucial thing?

MARILYN McGONICAL: The extent to which they are dependent, yes, I mean, that is a crucial factor.

MR. CHERNIACK: Doesn't that factor involve whether or not the distribution of the moneys earned during the S.M.R. is great or small? That's the factor, the extent to which the applicant is dependent on the spouse, the earnings. Now it seems to me that that is so much more important than the length of the marriage that I marvel that you still want that factor in when I think that it is emotional and will influence on an emotional basis. You don't agree with that, you think it is a rational approach, the length of the marriage as a factor?

MARILYN McGONICAL: I think the length of the marriage is a rational approach and if you are not going to support it on the basis of needs, then I think you can support it on the basis of the fact, on this consideration, that at the end of a long marriage, in which one spouse stays home throughout and does the homemaking function, there is usually a situation of a substantial income, there may or may not be substantial property. Now if you are going to stick with the need to the exclusion of all other factors, you can actually arrange criteria that the spouse is going to be on maintenance should have only as much as she needs rather than what she has got coming to her by virtue of her contribution, and if there is a 30-year marriage, there is a longer contribution, there is a higher income which is all being earned by one spouse, and there is a right, I think an inherent right to receive a standard of living and to receive something based on that length of time — contributing.

MR. CHERNIACK: So you are now saying that in addition to the equal right to share in the assets of the marriage, a person with a longer marriage has a greater right to the future earnings of the spouse with whom she is no longer living.

MARILYN McGONICAL: Yes, I'm saying . . .

MR. CHERNIACK: You say that is the positive position of the Coalition?

MARILYN McGONICAL: Yes, as an alternative reasoning because the point here is that we stress the idea that maintenance should be based on need and should encourage the self-sufficiency as soon as possible, and we find that to be important. But invariably in a very long marriage, you know 30 years or so, you are going to find a person, particularly a woman, in a position where to become self-sustaining is almost impossible or it is very unlikely and therefore it is relevant how long she was a part of the unit and assisted her husband in achieving the income he has got.

MR. CHERNIACK: Miss McGonical, you have item *"(g), the relative means and ability of the spouses to be or become economically independent."* It seems to me you have in all these things each of the factors you are looking for. . .

MARILYN McGONICAL: The elements in which . . .

MR. CHERNIACK: Well in respect to the spouse — no, that's for the support of children — *"in respect to the responsibility of the spouses for the support of others, the extent to which the applicant spouse is dependent on the earnings of the other; the probable amounts of proceeds of any possible or likely property settlement between the spouses; the spouses standard of living and their financial situation; their relative means and ability of the spouses to become economically independent."* I assume from what you have said that that's not enough. You want something additional to be involved. You want the rights of the wife of a long marriage to have a share in the future earnings of the husband regardless, or in addition to these other factors.

MARILYN McGONICAL: Yes, and conversely we want to see that in the very short marriage you don't apply all the rest of the principles to the exclusion of consideration of a short marriage. For instance, if indeed all the other considerations add up to the same amount of maintenance for a woman of a 30-year marriage as for the woman married two years, you know, a younger woman let's say, then you have an injustice there.

MR. CHERNIACK: What is the injustice? Would you tell us the injustice?

MARILYN McGONICAL: To tell you the truth I think that the a very short marriage should not engender, let's say, a life sentence of maintenance based on all those criteria.

MR. CHERNIACK: Even if there is no independence achieved because of the inability of the wife to acquire independence. Would you not then say there should or should not be a life sentence as you say?

MARILYN McGONICAL: I think that there is a point at which the responsibility after marriage breakdown should cease. Not that a person should be left bereft but in terms of a very short-term marriage, it seems logical that theie isn't an obligation, for instance, long-term retraining or long-term maintenance.

MR. CHERNIACK: Why not? That person may be, I don't know, a widow who has recently been bereaved and a year later got married and has no chance of retraining, and one assumes that that marital union was made with the eyes wide open of the husband knowing the responsibility he was assuming.

MARILYN McGONICAL: That he was assuming for the rest of his life.

MR. CHERNIACK: Yes, and you are suggesting that there be a differential.

MARILYN McGONICAL: In which case, if you are saying that the marriage is undertaken with the idea that maintenance is to continue no matter when it breaks down and forever, then we shouldn't take out the

woman who has less of an ability to support herself.

MR. CHERNIACK: Wouldn't you take that into account?

MARILYN McGONICAL: Yes, you would take it all into account. If you think length of the marriage is covered by all the other things . . .

MR. CHERNIACK: No, I don't think it is a factor. I am having trouble seeing length of marriage as a factor when all the other factors are real and measurable and logical and rational as being something required to rehabilitate a person and maintain that person until that stage comes about, and that to me is what you have all been saying is important — needs and resources. Now you are saying you want an additional, may I say "payment" for a long marriage. You want a stake or a mortgage on the future earnings because of a long marriage? You are saying that a long marriage carries with it the right to some nebulous but something that can be turned into real money, payment for marriage of a long term.

MARILYN McGONICAL: The length of the marriage is relevant to the situation that the two people are in. Women who stay at home contribute to the marriage not only in the acquisition of property but in the status of their husbands in terms of assistance with a career or something like that. Now after 30 years of a marriage, it is reasonable to look at a 30-year marriage oi a two-year marriage to see just where — you know, it seems to me to be very obviously relevant to how long the maintenance obligations are going to. Right now we are talking about reducing from life sentence. Today, in law, there is the only remaining life sentence in law that can be imposed for the lifetime of the person who has to pay. Now we are talking about the means of reducing it without performing an injustice, and it seems to me to be completely logical that you would consider how long the couple were together. Let's say the money is in fact all spent throughout this marriage and there is no asset, which often happens either in poor situations or in situations where property simply isn't acquired. The only asset of that marriage is the earning ability of one spouse and I think it seems so obviously relevant how long they were together and how they contributed to that.

MR. CHERNIACK: Well we are not really meeting on common ground, so I will ask you one more question in that relation and then I am going to drop it. What it seems to me that you are saying that sounds inconsistent to me is that it is your desire that the dependent wife becomes independent as quickly as possible. Give her all the opportunity for job training, give her all the opportunity to earn equally with the husband, do everything possible that she will achieve an independence which makes her no longer reliant on the husband.

MARILYN McGONICAL: Yes, bring about the termination of the relationship.

MR. CHERNIACK: But I interpret what you say that a long term marriage is entitled to something beyond that.

MARILYN McGONICAL: In terms of time, yes, that is why we put it in.

MR. CHERNIACK: Then would you give that person a longer, once she has acquired all these abilities and gotten a job which may even pay her better than her husband is earning, you would still say, "Ah, but she has been married 30 years and entitled to something extra."

MARILYN McGONICAL: Oh my gosh, I think you are so confused, I hardly even want to talk to you any more.

MR. CHERNIACK: All right, let's drop that. I have no question in that regard, Miss McGonical, because now that you feel there is no hope for me, don't talk to me about it, Miss McGonical.

Then would you please clarify something else for me? What is your position on The Dower Act? I read here that you think it should be studied. Have you not come to a conclusion of what you think ought to be done with The Dower Act?

MARILYN McGONICAL: Well personally I certainly have . . .

MR. CHERNIACK: I mean the Coalition. You know, I am the one that's confused but at the same time I want to hear what the Coalition thought about it.

MARILYN McGONICAL: Well we have to look at The Dower Act from two points of view. One is when we are looking at a deferred community that is not effective on death, that is the Law Reform Commission's position which leaves marriages basically as they are and the only thing that fills in for rights is The Dower Act. In that even then The Dower Act is necessary and it has to be changed to make the share 50 percent instead of the one-third so that we don't have a situation in which a smaller estate goes to a surviving spouse than would on the break-up of the marriage by separation or divorce. The preferable position on dower, is that if a community of property or a deferred community applies on death, if you . . . immediate it will of course apply at death and if you have deferred community and apply it in a death situation, then you have the consideration of what role dower would play with regard to the personal property, the property acquired prior to the marriage, and the share of the community property. Now when you consider that you have the four alternatives as outlined in Cam Harvey's paper, you know, from the extremes, 100 percent over on dowei; Cam Harvey's paper dealt with the share that would be the community. . .

MR. CHERNIACK: Do you want a copy of it?

MARILYN McGONICAL: I have one here, I think. He was dealing with the community share, and it can go by survivorship to the other spouse, the surviving spouse can be given a life interest in the deceased spouse's share of the community property; the third alternative is that there is fixed forced sharing, that's what The Dower Act is about, it's a forced sharing of property that belongs to one spouse or belongs to the estate of one

spouse. . .

MR. CHERNIACK: What percentage?

MARILYN McGONICAL: What percentage of the estate. Well if you applied a 50 percent, if you look at it this way, you take the community share and the surviving spouse owns half and then you would fix a percentage of the other half so that could be 50 percent or 25 percent depending on other values than equality. We are looking at the question of equality in marriage and equal sharing in assets. That is one issue. The other question is what do you do with the personal property on death of the deceased spouse, and there is where we look at the other considerations, like what are the considerations in The Devolution of Estates Act? What are the considerations in The Testator's Family Maintenance Act? Now we have supported the retention of The Testator's Family Maintenance so that you have a situation where you can take care of need of dependents, and in this case you could opt for the fourth alternative there which is that the deceased spouse then has complete testamentary freedom with respect to his half, his or her half. Now there is a problem there and that has to be solved by looking further into this and it might be solved by a basic minimum that goes over such as in the Devolution of Estates Act. It's 10,000 now and we could make that a higher amount so that there is not a problem of forcing the surviving spouse to give up property that's needed, to give up the opportunity to live and use some of the community property. When one spouse dies there is an accounting situation and perhaps a necessity to sell off property to satisfy the legacies that are given to other people and it seems a rather odd concept to make it necessary for a spouse to, in effect, buy twice the property. With the husband it's been acquired in the marriage, it becomes a community property, then on the death of one suddenly it's necessary to buy out perhaps an unrelated person, their share, suddenly they own an interest by virtue of the legacy in some of the community property. This is essentially why I personally favour and the Coalition has not got a position on this, I personally favour the survivorship of the community property, with testamentary freedom for the personal property and pre-acquired. It's definitely true that each of these situations has problems, each of these options, and when you start dealing witb them you can get more and more tangled up. But that's because we've got conflicting values. You see there is testamentary freedom, there's shared property concepts and then there's the dependent and need concept and it's true that these have to be examined and balanced to see which way you are going to come out on it. Dower, of course, is necessary for situations in which opting out has taken place and you are back to separate property.

MR. CHERNIACK: I agree with you, you have confused me completely.

MARILYN McGONICAL: Oh, that doesn't seem to have been hard to do today.

MR. CHERNIACK: You're right.

MR. CHAIRMAN: Are there any further questions? If there are none, thank you Mrs. McGonical. Order please. Mr. Charles Huband, please. Is Mr. Huband here?

MR. CHERNIACK: Give him a rain check.

MR. CHAIRMAN: I'll move Mr. Huband one place down on the list and call on the representative of the Manitoba Association of Registered Nurses. Would you come forward please.

BONNIE McDONNELL: My name is Bonnie McDonnell and I would ask the members' indulgence if, when they get the Association's brief, that we did make an error on the preface date and we think that possibly in checking it that it was in anticipation and hope that Family Law Reform must be in the process by February 1977. On the bottom of the first page we put February 23rd, 1976, it should be November, please.

Honourable Members, this brief is presented on behalf of the Manitoba Association of Registered Nurses, as approved by a duly passed resolution of the Board of Directors of the Association. The Association membership is comprised of all Active Practicing and Active Non-practicing Registered Nurses in Manitoba, such membership presently totalling in excess of 8,200.

The health and welfare of all persons, regardless of race, color, creed or sex, is of prime concern to our Association, and this must, and does, include equal rights for all.

Recent court decisions, such as the Murdoch and Rathwell cases, point up the many injustices and discriminations still existing in present day law, or in the lack thereof, particularly as it applies to women. Our Courts must have the necessary legislated authority to assure justice for all, regardless of sex.

Much emphasis is today being placed on the implementation and application of The Human Rights Act. How can we support "equal rights for all" and yet ignore the urgent need of reform in order to provide equality and justice in Family Law?

In February 1976, The Manitoba Law Reform Commission completed and submitted to the Provincial Government a detailed report on needed reforms in Family Law. This report contains specific recommended revisions in two areas: I. The Support Obligation; and II. Property Disposition. Our Association supports the majority of these recommendations, which we will briefly outline in this presentation but, above all else, we strongly support and stress the urgent need for Family Law Reform, and we solicit the support and unanimous approval of this Honourable Committee in recommending to the Manitoba Government that Family Law Reform legislation be immediately drafted and presented for consideration and official sanction of the next first sitting of the Manitoba Legislature. Let Manitoba be at least among the leading provinces in righting the wrongs and injustices which have been carried forward from ancient common law, and let us thereby assure our citizens of equality of rights in the administration of Family Law.

In the following list of our recommended reforms, we have endeavoured to relate to the recommendations as set forth by the Law Reform Commission, but at the same time to eliminate as much detail as possible in the interest of brevity. Indication will be given as to our agreement and/ or disagreement with the A. Children

Both parents have a responsibility to support their children and the children of their spouses until attainment of age 18. The amount of support should be determined by the actual financial circumstances of each spouse.

Natural parents have the primary responsibility to maintain their child, a common law step-parent should have secondary responsibility and the province should only be responsible if the natural and/ or common-law parents are unable to fulfill this duty.

We are not in agreement with Clause 4 of the Law Reform Commission but agree with the minority in that there is already sufficient provision in Section 16 of The Child Welfare Act re a child beyond parental control. We prefer to place more emphasis on parental responsibility in child upbringing and guidance rather than providing additional legal reprieve from such responsibility and the resulting cost to the provincial taxpayer.

The amount of maintenance for a child should be based on appropriate total costs of such maintenance including accommodation, reasonable household assistance, food, clothing, recreation and supervision in order to provide a stable environment for children.

We aie in agreement with the L.R.C. clauses 8, 9 and 10, in providing the Courts with discretion and jurisdiction in awarding child maintenance. We do, however, wish to voice one caution by strongly advocating that existing court and government agencees are idequate to record and otherwise, as directed to administer any such court ordered child maintenance and that there is no necessity of the already over-burdened taxpayer being laden with the cost of any new agencies.

Suffering and deprivatUon haverbeen caused through inability to collect maintenance orders. Debtor spouses have disappeared and recipient spouses may not bave funds to finance search and legal aid. Legislated authority should be such that all maintenance court orders can be Xeadily enforceable both within and beyond provincial boundaries. Surely in this day of "highly registered" society, provincial and federal governments can agree to utilize and make accessible such things as Social Insurance Registration, or even the sacro sanctum of the Department of Internal Revenue, if the same are necessary in locating a delinquent debtor spouse. In many such cases of delinquency it is the innocent taxpayer who again pays the bill through the necessity of welfare support. Also to many recipient spouses the welfare state is a demeaning position and too often places a stigma on the innocent children involved. This Honourable Committee, through its recommendations to government, has the ways and means of assuring immediate, effective and enforceable family B. Spouses: Maintenance during Marriage.

We support the L.R.C.'s position of General Principlesand 2 on maintenance during marriage and on Disclosure and Allowance 3 to 6, with only one question which relates to Clause 3, subsection (3), the answer to which only requires a clear and concise understanding of the word "reasonable" as contained in the last paragraph, and that this term should clearly apply to both the family's financial circumstances and the actual expenditures by either spouse. Our concern is that "reasonable" be correctly interpreted and that it does not necessarily mean an equal expenditure in dollars and cents. Conditions of out-of-home employment may, in the interest of earning potential, require a somewhat larger sum, both for clothing and personal allowance. Emphasis is therefore placed on the correct insertion and interpretation Maintenance after Separation:

The L.R.C., in Section 4, outlines reasons on which maintenance should be granted and the principles governing the determination of the amount of such maintenance. We concur with the principles given in the sub-clauses (a) to (g), both inclusive, but find disagreement with sub-clause (h) which we intrpret as "Fault", and we urge your support in the deletion of any fault provision in the deliberation of maintenance determination. To define and prove "fault" is, in many cases, an arduous task and very seldom can children be kept entirely immune from the controversy involved, in fact, there is every possibility of later traumatic implications. It may even result in deterring either spouse from attaing a respected self-sufficienty.

We wish to make one further reference to "Maintenance after Separation" in that we support and recommend for inclusion in legislation, the complementary general principle which reads: *"Upon separation, a spouse is obliged to do everything or anything which is lawful and within his or her ability to maintain Maintenance in Separation from Non-marital Cohabitation:*

Clause 5(a) and (b) of the L.R.C.'s report receives our agreement in that maintenance should be awarded, as in a marriage separation, if a child is born or expected as a result of the union and/ or the union has impaired the economic self-sufficiency of A. Marital Home:

We agree with the definition of Marital Home contained in the L.R.C. Clause 1, (1) and (2). We also concur with Clauses 2 through 7 of the Law Reform Commission, which in brief, provide as follows:

A marital home purchased after marriage or with marriage in mind will be jointly owned.

There should be no taxation on transferring titles to joint tenancy when this Act comes into effect.

Couples may opt out of these provisions, but only by joint consent with a written agreement and independent legal advice, but even then an updated Dower Act would still apply. The Dower Act disallows the sale of the family home without the consent of the person whose name is not on the title and gives the surviving

spouse certain rights to inheritance.

A spouse may enforce their right to joint ownership by filing an appropriately completed deposition along with a marriage certificate in the Land Titles Office.

A joint tenancy cannot be transferred without the consent of the other joint tenant.

Partition and sale should be allowed but should not be forced on the spouse having custody of any child if it is in the best interest of the spouse and child to remain in the home.

Property acquired before marriage will be separately B. Equal Dispostion of Post Nuptial Assets:

We are in agreement with the Law Reform Commission's recommendations, Clauses 1 through 41, but request the inclusion of the additional recommendation following Clause 25, which reads as follows: *"Even in the extraordinary circumstances described above, some definite and final limitation period of reasonable duration should be imposed, after which the right to apply for equalizing payment should lapse absolutely."*

Clauses 34 and 35 recommend retention of The Dower Act with revisions in said Act to increase the surviving spouse's share to "one-half of the Testator's net estate". Consideration should also be given to first and second families in the case of more than one marriage. We wish to further recommend that in relation to all existing law governing intestate estates of married persons, revision be made and become part of the Standard Marital Regime legislation to provide that, where there are no children from the marriage or children for whom the deceased spouse was legally responsible, the surviving spouse be entitled to one hundred percent of the deceased's estate. If there are children, one half of the estate should go to the surviving spouse and the other half to such children.

To briefly summarize our concurrence with this section on division of property after separation:

There should be a no fault equal division of all assets acquired during the marriage upon separation.

Assets acquired by either spouse before marriage should remain separate property and be accounted as such during the division.

The following property should not be included in any division calculation upon separation: a. gifts to one spouse; b. inheritances; c. trusts and incomes from (a) and (b) above; d. damage settlements.

During the first six months immediately following the effective date of this Act, as approved by Royal Assent, one spouse can unilaterally opt out of an equal sharing of all assets acquired up to that time.

The method of computing the amount each spouse is to receive should be as follows: a. value all assets except the family home; b. deduct all debts; c. deduct the exempt assets such as gifts, inheritance, etc. **d. one-half of the remainder to each spouse.**

If the debts are more than the value of the property then the debts will not be shared unless they were incurred for family maintenance.

In dividing the assets a spouse can receive either a particular asset or an equalizing payment.

The couple can agree either to division of assets and time for paying the equalizing payment or apply to the Courts for an Order.

Details of the recommendations and the new law should be widely distributed and well publicized.

Thank you for giving us this opportunity to express our views on Family Law Reform, and we sincerely trust that this Honourable Committee will be recommending to the Government that immediate action be taken thereon.

MR. PAWLEY: I would like to just ask one question because I don't believe we dealt with it yet today, about where property was acquired prior to marriage, such as a home or a summer cottage, whatever it be, and that property thus, under your recommendation on page seven and the same with the Law Reform Commission, remains separate. What about the increased value of that asset, the appreciation on that asset, which may double in value during the term of the marriage from before, would that increased value become part of the community estate or would it remain separate in your view?

BONNIE McDONNELL: I would think it would remain separate. It is part of trust and income.

MR. PAWLEY: What about a bond or shares held prior to marriage, the interest from those bonds and shares accumulating an additional asset? Again would you recommend separate or community?

BONNIE McDONNELL: Separate

MR. PAWLEY: Separate. I'm not sure, it would be interesting . . . We didn't ask the Coalition their view on that, whether . .

MR. SHERMAN: Mr. Chairman, I'd like to ask the delegate if she would explain for the benefit of the Committee, the reasons behind the positions that MARN takes with respect to the opting out provision. It's interesting that in the recommendations put forward by the Association you advocate favour for the unilateral opting out provision which has been the subject of some considerable opposition here today, as you are aware, and I think it would be helpful to the Committee if you could give us your reasons for favouring that provision.

BONNIE McDONNELL: Well, one reason is that it does include, the opting out, a written notice of intent to do so. . . could I ask my associates?

MR. SHERMAN: Yes, please.

MR. CHAIRMAN: Would you give your name for the record, please.

JEAN CUMMINGS: I'm Jean Cummings from the M.A.R.N. We've worded it very simply in stating

unilaterally opting out. We have stayed within the Commission's recommendations. Our understanding is this does not involve the marital home, it only involves other property acquired or other assets acquired in the previous term of marriage. We look at this as relating to the possibility of a business, regardless of which spouse may have built the business, may have been solely responsible for contributing to the business, and we feel that the leeway should be given to opt out of such a situation, that it necessarily — it doesn't say whether it's the man or the woman, either spouse may so have acquired property.

MR. SHERMAN: Well I think it's very helpful to have that point of view on the record for the Committee's consideration. Thank you very much.

MR. CHERNIACK: Mr. Chairman, Mr. Pawley asked about the position on accretions to the estate from property that is not included in the assets of the Standard Marital Regime.

BONNIE McDONNELL: I'm sorry I didn't hear the first part of your question.

MR. CHERNIACK: I gather that you said that you did not think that the earnings from an asset which was acquired, let's say premarital, should be included in the assets to be divided at the termination of a Standard Marital Regime.

BONNIE McDONNELL: If you're talking of property?

MR. CHERNIACK: Yes.

BONNIE McDONNELL: No.

MR. CHERNIACK: My impression is that the Law Reform Commission believes that it should be because it is moneys earned during the marriage. Now do you disagree with it knowingly or is it just a . . . I mean I don't want you to be fixed on a position which possibly you haven't thought through that point.

BONNIE McDONNELL: Well I thought through from my own point of view, but since I'm speaking for an Association perhaps . . .

MR. CHERNIACK: I'm just pointing out that it is different from . . .

BONNIE McDONNELL: I see.

JEAN CUMMINGS: May I ask a question? Are you referring to the question that we were just answering to Mr. Sherman or were you talking about property, separate property, before marriage?

MR. CHERNIACK: The earnings from separate property.

JEAN CUMMINGS: Earnings, or the value, yes.

MR. CHERNIACK: The earnings during the marriage of separate property.

JEAN CUMMINGS: We believe that should still accrue, as does any interest or income on inheritance, whether it's a bond, as you say, it could be a cottage which was given to one or the other of the spouses prior to marriage. Had the spouses then, following marriage, both contributed to an improvement on that property, then I would say that it should apply, only that portion to which they have contributed which has provided the increased value.

MR. CHERNIACK: Oh, thank you.

JEAN CUMMINGS: Am I not making myself clear?

MR. CHERNIACK: Oh, absolutely.

JEAN CUMMINGS: You might have a cottage, following marriage the couple then agree to spend money on that, $1,000 for a deck which increases its value, then if it's a joint contribution that joint contribution and its prorated relationship to the increased value would be a consideration . . .

MR. CHERNIACK: Yes, that's clear, the only reason I pointed it out is to possibly inform Mr. Pawley that your opinion differs from that of the Law Reform Commission and that of the other groups that have made presentations. There's nothing wrong with that, I just wanted to point out the difference.

And another difference I seem to see is in relation to the Devolution of Estates Act where it seems to me all the briefs we heard up to now have recommended that on death, on an intestacy the total estate shall pass to the survivor, whereas in your case you are making that distinction saying; "No, if there are children, or children who are dependent, then it should be equally divided."

JEAN CUMMINGS: That is correct.

MR. CHERNIACK: Yes, I just wanted to clarify it, to make sure of that. Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any further questions? There are none, thank you Ma'am. Mr. Charles Huband please, would you come forward.

MR. SHERMAN: You are speaking for whom?

MR. CHARLES HUBAND: I'm appearing on my own behalf Mr. Sherman.

MR. CHERNIACK: Not as the Liberal leader?

MR. HUBAND: I can't divorce myself from the position that I occupy however.

MR. CHAIRMAN: Would you proceed Mr. Huband.

MR. HUBAND: Yes, thank you, Mr. Chairman. I'm glad to have the opportunity of meeting with such an alert, vibrant, bright group at virtually 10:30 in the evening. Because the electors of both River Heights and Crescentwood have seen fit not to give me a seat in the Legislature I thought that I might take this opportunity to address you, for a few moments, on what I conceive to be a very important issue that has come up and has been recognized by the Legislature in the establishment of this Committee. What I have put before you in written form is a brief authored by myself, and attached to that brief — and you will note that there is some

commentary about it — is a policy paper on women's rights, that has not been passed by the Liberal Party but is the policy paper that is going to the Liberal Party Policy Convention in approximately a week's time, on this subject matter, and to which I commend your attention. Fundamentally I am in agreement with that policy paper with a few very minor exceptions.

First of all I might say on the major issue I agree that marriage should be regarded as an economic partnership as well as a partnership in social terms, and consequently, I believe, that the assets of the marriage should be shared. I concur with the Law Reform Commission that the best way of implementing that sharing of marital assets, assets accumulated during marriage, would be by a deferred sharing scheme, and that is the thrust of the policy paper that is attached.

It is also my view that the division of property between spouses on marriage or divorce should not be eroded on the basis of misconduct, or alleged misconduct, on one or the other part, because my experience is such that in most instances there is fault to some degree on both sides and the process of having the courts decide the issue of fault is often a tedious, time-consuming, costly, irritating and inexact process, and I would rather move to a situation where the law simply states that on the separation or divorce that the marital assets accumulated during marriage be shared equally.

Since this enactment would alter the rights of persons, who are married before the legislation is passed, we also agree with the opportunity to opt out providing that the opting out be done within a reasonable time after the legislation has been passed.

One of the more difficult questions is whether the opting out provision should also be extended to persons who are married after the legislation. One can argue on the one hand and I don't want to be ambivalent about it, but I think that there are two sides to this argument. One can argue that the whole process of passing the legislation is to protect the otherwise unprotected spouse, and therefore, that there should be no opting out provision after this law is passed. On the other hand I suppose that there would be some people who would be prepared to trade their property rights for the simple expedient of getting married, and if they're adults perhaps they should be allowed to do so. I think that there are validly two sides of that argument that could be argued. I would come down on the side, right now in any event, of saying that I do not think that the opting out provision should extend to marriages consummated and solemnized after the legislation has been passed.

The Law Reform Commission and the policy paper that is attached to my submission both conclude that the marital home should be jointly owned by a husband and wife and I concur in that philosophy. If one accepts the concept of marriage as being an equal partnership, then I think that that concept should extend to a situation created on the death of one or the other spouses. In other words the marital assets accumulated during marriage should be totalled and then divided and one half of the value of those assets should automatically become the property of the surviving spouse. And I say this with respect to division of property on death, and I say it also on divorce or separation, that there should be no narrow definition, as there is in Ontario, of what constitutes assets accumulated during marriage. I think, for example, that if I, as a lawyer, have built up an interest in a business, it is not that the wife will all of a sudden come in and become a partner in that operation, of course, but I think that is an asset that is accumulated during marriage and it should not be narrowly defined to include only bank accounts and household contents.

In terms of death and what occurs on death, as I mentioned, automatically I would suggest that one-half of the assets accumulated during marriage would go to the surviving spouse, that would leave me as a testator with the freedom to dispose of the other half of the estate by Will. But then I have gone one step further, and so does the policy paper, and suggest that just as we now have dower rights that guarantees the surviving spouse an interest in her spouse's estate, so with the one-half that I now am free to dispose of it should be subject to a one-half interest or $10,000 whichever is the maximum, the larger, that would automatically go to the surviving spouse. We're now dealing with my assets, and my right to dispose of property would therefore be confined only to what is left after that dower interest, if you will, has been taken off. Under the existing Devolution of Estates Act, as you gentlemen are aware, where an individual dies leaving a spouse alone that spouse succeeds to the property; where there is a spouse and one child it is equally divided; where there is a spouse and two or more children the surviving spouse receives one-third and the children divide the remaining assets between them.

This is in my view not the best form that the law should take. It causes problems, particularly with infants, where the estate is often tied up subject to court rulings on obtaining the access to those funds for maintenance and support, but usually it is money that the widow could well use. What we are suggesting is that in those kinds of instances, upon a death of an intestate person, that if there is a surviving spouse the entire estate pass to the surviving spouse. Now if a person finds that law abhorrent that person has the right to exercise the limited right that we've got here to simply make a will and make some other disposition of the estate according to that person's choice.

The further comment that I wish to make is with respect to maintenance. Obviously we are going to have to rely on maintenance as a tool to maintain an individual after a separation or divorce has taken place. Again I would suggest that the concept of maintenance should be based upon the means of one partner and the needs of another, it should be directed at creating independence so that the spouse who is receiving maintenance will as

quickly as possible come off maintenance. I think maintenance should be regarded as less important to some extent if we alter our laws on the division of property because that can properly be taken into account as afactor in determining whether a spouse has a level of independence because she will have assets that she perhaps otherwise would not have. I should say, he or she, will have assets that he or she would not otherwise have had. The goal however should be to allow the spouse who is receiving maintenance to, as quickly as possible, reach a position of independence, and consequently I think that long-term maintenance would be used only in situations where you have a husband and wife who have been married for a long period of time, where for example, a separation takes place and the wife has not been on the job market for 20 or 30 years, and is of an age where retraining and finding a place in the job market would be impractical, then you would rely, continue to rely on maintenance as a long-term support for such a spouse. But the thrust of it should be to try and create an independent position for both spouses with less reliance on maintenance than perhaps we have at the present time.

There is one further suggestion in the policy paper on which I declare my own ambivalence again, and unashamedly do so because again I think that there are two sides to this argument, and that is on the question of whether maintenance payments that fall into default ought to be guaranteed by the state. Now this proposal has some attraction and I think other speakers who have brought papers before you have commented upon this. It is particularly attractive to women who do not wish to become a welfare statistic, and without that guarantee is forced to utilize her own small capital resources in order to become eligible, at some later time, to obtain welfare assistance. But if we are moving towards the idea of a guarantee then we suggest that it should be up to a maximum of three quarters of the maintenance payments as ordered by the court or the level of welfare payments whichever is the lower, but we don't want to get into a situation where the state would be guaranteeing maintenance payments to an already wealthy person of perhaps three or four or five thousand dollars a month. It seems to me that it would be ridiculous to impose a burden upon the public and on lower income people to provide a guarantee of maintenance payments of that kind of a level to a person who does not need it. So that is the limitation that we would put on that particular aspect of it.

One must concede that the concept of guaranteed maintenance has drawbacks, and there would be some modest additional cost to the public treasury because the person entitled to the maintenance would apply for and receive the guaranteed payment when default occurs without having to deflate his or her own capital resources before qualifying for welfare. In a few cases, but probably few, the state would be providing public funds to a person who does have substantial resources of their own.

And, finally, this concept would require a greater degree of public scrutiny as to what is going on, andthat I find somewhat anathema, but obviously the state would have to be in a position to find out whether a person no longer needed maintenance, and that would take some degree of observation, and that would be one of the defects of moving towards a guaranteed kind of payment. Obviously in that kind of a situation the state ought to be in a position to bring a motion before the court that circumstances have changed and the original maintenance order ought to be varied.

Now those are my comments in brief gentlemen and I'll leave you with both my brief and the policy paper which I said is going before the policy convention of the Liberal party in approximately a week's time. There is absolutely no guarantee, of course, that that policy paper, or the recommendations at the end of it, will be adopted by that convention, but I do suspect that there will be substantial concurrence with that policy paper at our convention.

MR. CHERNIACK: Yes, Mr. Chairman, I'd like to ask Mr. Huband's assistance in clarifying some of the points he makes. It is clear that you believe in deferred sharing, that's clear from the paper; it's also clear that you believe that — well I infer that you believe that during the marriage you should have control of the assets which you earn and should be able to dispose of them as you see fit . . .

MR. HUBAND: Yes.

MR. CHERNIACK: . . . until the termination, which means that you could give it away, you could gamble it, you could do whatever you wish to do with it before the termination of the marriage.

MR. HUBAND: And so could my wife . . .

MR. CHERNIACK: With her share.

MR. HUBAND: Yes

MR. CHERNIACK: And you recognize that right even though it may end up with an impoverished spouse.

MR. HUBAND: And a depletion of assets, sure.

MR. CHERNIACK: A depletion of assets, yes, because you have given them away to someone else and we won't have to go into who that other one might be.

MR. HUBAND: Please don't.

MR. CHERNIACK: No I won't. But that to me appears to be a conflict between your acceptance that half the value of the assets should automatically become the property of the surviving spouse on the basis, I imagine, that you feel that the spouse has participated in the earning of that asset.

MR. HUBAND: Yes, that's correct but . . .

MR. CHERNIACK: Well do you not see a contradiction?

MR. HUBAND: No, I don't think there is an inconsistency. I'm in a business partnership at the present

time; I make transactions, I expend money to buy capital equipment or furniture, or equipment for the office. If I make those kind of contracts it may affect my partner's income, he may think it is a silly thing for me to have done but the validity of what I have done is there and if he doesn't like it, he can control me better in the future. I think we are talking about the same kind of thing. One of the perils of marriage is that the husband may spend his money unwisely and the wife may have a difficult time in keeping him in check, but that's the same kind of hazard as in a business partnership. —(Interjection)— But at the termination of the partnership, whether a business or a marriage, you say, what assets do we have left, let's divide them.

MR. CHERNIACK: But, Mr. Huband, that business partnership you describe, your partner has the same right as you do to buy furniture or to deal, to buy things, to deal with your jointly held property and all you can do is say, "In the future I'll watch you more carefully." You don't give your wife that same recognition as a partner.

MR. HUBAND: Well, in many cases that would be so. In many cases there are two income earners. In my particular case, you are right, but in many cases there are two income earners and we're talking about it as though the husband is always the errant spender. It could equally be the wife .

MR. CHERNIACK: Well certainly.

MR. HUBAND: So it has to be posed in two directions.

MR. CHERNIACK: But you are saying — it's your analogy — you said that marriage is a partnership where the earning partner is the one that decides on the disposition of partnership assets; whereas in your business partnership you recognize that your partner and you have equal right to pledge or deal with the partnership assets.

MR. HUBAND: The point that I make is that in a partnership one of the parties is free to commit assets of the partnership and it becomes a binding contract.

MR. CHERNIACK: But in the marriage partnership you don't apply that.

MR. HUBAND: I think that we would be creating immense practical difficulties to carry the concept of separation of property during the course of the marriage. I'm looking at it from a practical standpoint, that I simply do not see that both spouses can be involved in every financial decision, from buying a new suit or buying a chocolate bar, I think it simply doesn't work. One has to assume that the parties will be free to spend resources, make individual decisions as they go along and the only thing that I can do is say that would apply to both spouses, granting that in most instances that would inure to the benefit of the husband.

MR. CHERNIACK: I've been accused of being confused already this evening so I can admit that in reading the Law Reform Commission I have had difficulty following their justification for the deferral. The one you have mentioned is awkwardness — that may be my word, not yours. Professor Harvey has suggested that there could be something to take care of your suit and your chocolate bar by saying items over $500.00 shall require the consent of the partner in the marriage. I think we know that the marital home is clearly tied down to a partnership of a marriage having to make a joint decision. Can I convince you to change your stand a little bit?

MR. HUBAND: No you can't, I think . . .

MR. CHERNIACK: No, all right.

MR. HUBAND: I'll try and give you another instance of difficulty related to a loss rather than a profit. Let me put it to you this way and this is an example that I used before and I don't know whether you've got the right answer to it, you may. But suppose that I lend someone $500 or $5,000 to make it above the limit that you have suggested. I lend that person $5,000 and my wife says, "I am part of this decision, you had no right to do that. He must repay the money." But the fellow says, "Well, look I've got it and I've got a contract here that says I don't have to repay it for a year." Does the wife have the right to reclaim the $5,000? Does she have the right to reclaim only half of the $5,000, namely her share of the $5,000? If she does sue and he wins, is the husband required to pay the court costs in an action that he did not want to bring, to recover monies that he didn't want to recover? Those are the kind of practical problems that I think attend carrying the separation of property right through into the marriage all the way through and the kind of problems that are avoided by deferred sharing.

MR. CHERNIACK: Would you not agree that the business partner and the marital partner would not have a right to reverse a contract made by the partner acting on behalf of the partnership, but would only have a right to make a claim on the partner for having done something beyond his authority?

MR. HUBAND: Well, if you are not prepared to set aside contracts then I think that the concept of common property during marriage fails, because if I go out and I buy a piece of property that my wife does not want, if I buy a business for $50,000 that she does not want me to buy and if her only recourse is to sue me, I think it makes a mockery of the law that she is supposed to be able to control decisions. It is only if she can say "No, you needed my approval for that contract, you did not have it, the contract is set aside," that you then have substance to the law. I really wouldn't want to see that occur.

MR. CHERNIACK: But now suppose all your jointly owned, not owned but the property that you have a joint investment in, totals that $50,000, in land, and you then do something with it which is contrary to your marital partner's belief. Should she not have the right to put a caveat on that property and say, "Hold, he does not have a right to deal with this to my exclusion." Or do you still say that the earning partner shall have the entire right throughout the marriage?

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MR. HUBAND: I certainly think in our little debate and I am not persuaded that the concept of giving both partners control over all assets during marriage is a workable concept and that's fundamentally why I would move towards deferred sharing.

MR. CHERNIACK: You don't quarrel with the principle, you just . . .

MR. HUBAND: I don't quarrel with the principle, it's the application or implementation.

MR. CHERNIACK: But then I move on to the question, having recognized — and I think we have both agreed — that the spouse has an equal right in the assets, whether it's deferred or instant, that this principle of right is not something that is born as of the date of the legislation but is really something we recognize that took place at the beginning of a marriage. Could you justify this concept of unilateral opting out just because it didn't happen yet but we agree that it should have happened?

MR. HUBAND: I haven't said a unilateral opting out.

MR. CHERNIACK: Then I misunderstood.

MR. HUBAND: I said where both spouses agree then they can jointly opt out.

MR. CHERNIACK: Well then what about unilateral opting out which is recommended by the Law Reform Commission?

MR. HUBAND: We depart from the Law Reform Commission and say that it ought to be only where both spouses are in agreement.

MR. CHERNIACK: Thank you, that was not clear to me. All right then, just on the question of maintenance — I'm looking at Page 4 — if a person acquires a share of the assets of the marriage, those assets will be of assistance to that individual in establishing financial independence. The concept dealt with in the Law Reform Commission Report is that it is desirable for the dependent person to become independent as quickly as possible and to that end there shall be support given at a level which makes it possible for that person to acquire skills which will make that person independent. Are you suggesting that the capital of the marriage, that is the share of the assets which go to a spouse, should be used up by that spouse in acquiring that skill which that spouse wasn't able to acquire during the marriage? Now let me be very precise. Suppose they each end up with $10,000, he having the skill or the earning capacity, she doesn't, would you want her to use any part of her $10,000 with which to acquire that skill and end up with a lesser capital than he had but a skill?

MR. HUBAND: No, I would be in favour of her using the income from that property and to that extent it would mitigate against high maintenance payments. In other words, if she were able to invest her capital at ten percent she would have $1,000 for the year and to the extent that she has that additional $1,000 of income without depleting capital, I think it can fairly be taken into account that she has some resources to assist her in retraining in order to obtain employment.

MR. CHERNIACK: This will leave them with an imbalance in their shared assets because he will have both his skill and his earnings on his half and she will have a depleted earning.

MR. HUBAND: But he will also have to pay maintenance to her to enable her to become independent.

MR. CHERNIACK: But at a lesser level . . .

MR. HUBAND: At a lesser level, that's true. I don't think one can have one's cake and eat it too. All I'm saying is that if we are moving towards a sharing of marital assets in the form that we are talking about here, that is a factor that I would hope would mitigate against high maintenance payments in the future. I would far rather move towards sharing of property than a continuation of reliance on high maintenance payments.

MR. CHERNIACK: I think you said that you were ambivalent on that part of the policy paper dealing with maintenance by the state. I think you said that . . .

MR. HUBAND: Yes, that is correct.

MR. CHERNIACK: In your letter it is not clear to me the extent to which you do not concur in the policy paper.

MR. HUBAND: Well only this, that I have conceded that there is a second argument to it. I think there is merit in the argument of guarantee of maintenance payments to a certain level and you will notice that we have put pretty strict limitations on the level to which we would suggest a government consider guaranteeing maintenance payments. There are some factors that weigh against that kind of a suggestion and I have tried to candidly assess what those factors are, the cost to the public which I think would be modest; the greater degree of scrutiny or surveillance because of the state which I think is a factor that I would not like to see and yet would be inevitable when the state becomes the guarantor of maintenance.

MR. CHERNIACK: Mr. Huband, since no other political leader in Manitoba has had the courage to make a statement in advance of consideration of briefs, then I really don't want to put you in a position of binding yourself to something unless you are ready to do so, so I will interpret the policy paper as being what you described it to be, on Page 5, not having had time to read the paper itself, and ask you whether the policy paper, not you, but does the policy paper contemplate that there should be no means test with public welfare assistance.

MR. HUBAND: It does not require a means test. Indeed one of the bases for suggesting no means test is that we want to avoid the wife who may have a few assets of her own, capital assets, $5,000, $10,000, utilizing those assets and having to utilize those assets before she becomes eligible to the equivalent of welfare payments.

MR. CHERNIACK: But on the other hand your policy paper seems to be suggesting that if there were no assets then the spouse would still get possibly less than the state pays to welfare now, that is three-quarters of the amount which might well be less than welfare.

MR. HUBAND: Well I'm trying to take into account a situation where, for example, the maintenance payment is only $50.00 a month for some strange reason. It may be that she is earning money and she has a maintenance order that enables her to get $50.00 a month from her husband. I don't see the necessity then of paying her welfare when the court has decreed that sbe doesn't need that level of maintenance, she only needs $50.00 a month.

MR. CHERNIACK: But I suppose then if she is dependent entirely on this kind of income she would be on welfare rather than on maintenance.

MR. HUBAND: That's right.

MR. CHERNIACK: One other thing, I skimmed through this too quickly to be sure whether you dealt with the question of fault on maintenance.

MR. HUBAND: I did and we say no fault on maintenance.

MR. CHERNIACK: Thank you.

MR. SHERMAN: Just one question, Mr. Chairman, to Mr. Huband. I note in the resolutions contained at the conclusion of your party policy paper, Mr. Huband, you favour the opting out concept in essence as it has been proposed by many groups appearing before the Committee today, with one important exception. Your resolution contains no caveat that suggests the decision to opt out should be taken by both spouses after independent legal advice has been sought. In addressing another delegation on the question I received the very strong impression that that delegation at least felt that it was absolutely necessary and should be mandatory and compulsory, that . . .

MR. HUBAND: Mr. Sherman, I think I can clear that up. That is the resolution that you're reading in the body of the policy paper.

MR. SHERMAN: That's right.

MR. HUBAND: It reads *"only where both parties are in agreement and have obtained independent legal advice."*

MR. SHERMAN: You would suggest, or you do suggest that independent legal advice for both spouses is a necessary condition of exercising that option too.

MR. HUBAND: Right.

MR. SHERMAN: That's all I had, Mr. Chairman, thank you.

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you, Mr. Huband.

MR. HUBAND: Thank you very much

MR. CHAIRMAN: If the representative of the Manitoba Teachers' Society is present, would you come forward please.

MRS. HILTON: My name is Betty Hilton. The Manitoba Teachers' Society does not have a brief but we do wish to go on record as being in support of the brief as presented by the Action Coalition on Family Law. I would like to point out at this time that we have 12,000 members in our Society and that membership consists of both men and women. In fact the 1976-77 Provincial Executive who gave the final stamp of approval consists of 15 men and only four women.

Our experience tells us that children reflect the anxieties and problems that a home is experiencing. Children of single parent families who have adequate support are better able to adjust to the trauma of having only one parent. Children are the ultimate victims whenever, 1. there's a lack of money for support; 2. when responsibility for maintenance and custody of a child is in doubt; 3. when there is a stigma of illegitimacy; 4. when in marital break-up of a family home, it is disposed of and children have to move from familiar settings and in many instances there is a resulting lower standard of living.

These problems place an unreasonable burden on the schools as the school in many cases is the only stable aspect of the child's life. The onus to solve the problem is placed on us. For example, the single parent sends a sick child to school as there is no one at home to leave him with and not enough money for a babysitter. This is only one concrete example, but we are also presented with emotional problems which interfere with learning. These problems have to be solved. We strongly urge the honourable members to carefully consider the briefs that have been presented on Family Law and to make it a priority in the next Session of the Legislature. Thank you.

MR. CHAIRMAN: Thank you. Are there any questions? Hearing none, thank you Mrs. Hilton. Mrs. Prystupa, please. Would you come forward.

MRS. MAXINE PRYSTUPA: I am Maxine Prystupa and if I can be permitted, I would like to present this brief on behalf of a group that has presented already. If not, I will do it as a private citizen. We had agreed that Mrs. Turnbull would deal with aspects of support, and that I would deal with the property aspects of the Law Reform Commission Report. If the Committee will permit it, I will speak on behalf of the NDP Status of Women Committee, if not as an individual. It is a position that the Committee has adopted.

MR. CHAIRMAN: What is the wish of the Committee.

MRS. PRYSTUPA: First of all I wanted to say that a long time ago, back in the 1920s, Isadora Duncan who was a well-known dancer said that if any woman of sound mind looks at the marriage laws and still goes ahead and gets married, she deserves everything she gets. Well I really don't quite agree with that. I would think that 50 years later we would have changed the laws by now.

The Status of Women Committee of the New Democratic Party of Manitoba welcomes the final report of the Manitoba Law Reform Commission on Family Law as we see the reform of family law as one of the most important and fundamental changes to come before Manitobans in some time. We certainly welcome the assertion that marriage is a partnership of equals and as such must be a principle which is enshrined in law and not left to chance, and to a good lawyer, or even to the vagrancies of the evolution of case law. We anticipate that we will shortly be welcoming good reform and would like to share with the Committee the areas in which we agree with the Commission's findings and also to point out some of the areas which we feel the Commission overlooked or could have handled differently.

We certainly agree with the Commission that the matrimonial home barring agreement based on the informed joint consent of both parties to the contrary should be considered as joint-tenancy; and then upon separation all assets acquired during the marriage with some notable exceptions such as gifts and so on, should be divided equally. We agree in principle with most of the division formula, at least on property items, and have endorsed by the way, the Coalition position.

We share the Coalition's concern about the clause allowing one party to unilaterally opt out of the standard marital regime in the first six months after the law is passed. We recognize the power of the Commission's arguments about retroactivity in law, but we feel that we must point out that that merely allows for the continuation of a current injustice into the future. We do not feel that a law which will affect only future marriages, and not all current ones as well, is sufficiently broad.

The Manitoba Law Reform Commission has recommended a regime based on deferred sharing or a system in which, in effect, the joint assets of the community are equally shared when the community breaks down. We wonder why the Commission has chosen to create equality when marriages break down but not during marriage itself. That seems to be an even more crucial issue. We wonder as well at the concern over what happens to property during marriage but not to that very most important shared asset of all, income. A regime which equalizes differences only at the end of marriage and only on the basis of property settlements will, in the first instance, maintain the system of inequality and dependence for women with children during marriage; and in the second instance, benefit primarily the wealthy. That is not to say that instituting deferred sharing would not be an improvement over existing law, we want to say that it would. But we feel that equality should exist during marriage. At separation or death all joint assets should be split equally. It is not, let me repeat, it is not the forced giving of half of thine to me, but sharing what is mine with me.

I want to say that very few Manitobans own much property of any significance. Most of what most Manitobans do own is heavily mortgaged and therefore I think the most important and crucial issue that we're facing is how the family income is controlled and managed, and how the lines of responsibility for the provision of children's needs are drawn. Who, for example, has the right to encumber family income? Why should it rest unilaterally in the hands of the income earner? Should there not be checks and balances built into the law, for example, so that either spouse can prevent the other from mortgaging away their future food and clothing? Why not a simple mechanism, joint signatures on all major loans, or the purchasing or the giving away of all major property items?

The Berger Commission in B.C. recommended immediate sharing of all assets acquired during marriage, including income, with full joint management. Both California, by the way, and the State of Washington have such systems. It's not something that's unworkable; it's something that is in existence right now and working.

We believe that any property regime that does not assure full and equal partnership in marriage from the very outset of that marriage will perpetuate the inequalities which are existent in our society. It is of little comfort to a mother of a large family who has spent years of scrimping and saving and doing without while a partner has built up a business, who has no guaranteed access even to the income derived from that business, nor even the right for that matter to know what that income is, to know that she may have a future half interest in that business if the marriage fails; a right by the way which could be denied if the so-called fault principle were retained.

This becomes even more unfair if one realizes that in many instances women work while they are young to support the family while the family business is getting established, often while they are caring for children. It is

of small comfort to the mother of several small children who works side by side with her husband on the family farm to know that she has a future half interest in the farm if what she needs right now are more diapers and a decent washing machine and her husband says no and moreover is perfectly able to enforce that decision even if he is spending lavishly on himself or what is more likely, ploughing every cent back into the farm.

I note final that the report of the Law Reform Commission has brought forward a mechanism by which you can apply to the courts to receive an allowance for yourself. That takes care of part of the problem, but it certainly doesn't take care of all of the problem, and it certainly is a cumbersome mechanism. I think that if there was joint management instituted it would be much simpler. You would still need a court as an appeal for final resort but the simple mechanism of joint signatures on all major decisions would certainly be one way of getting at that problem.

The application of the court principle does not really do one other thing that we think is very important. lt doesn't stop one spouse from concentrating all of the family assets into his or her own hands and disposing of them as they see fit. The other problem is of course, the problem of dissipation. I think that that's something that the Law Reform Commission has not really dealt with adequately.

What happens in the case mentioned above, for example, if husband at age 50 or so decides to sell the family farm and go off to Europe? There really is no way to stop that kind of thing unless the entire farm is under joint tenancy. Under existing law right now the only protection is the Dower Act, and that's only one-third, and that doesn't always stand up unless there's a dower caveat registered.

In short any regime which does not institute community of property of income with joint management — I really want to emphasize that because we've said a lot today about community of property — but community of property that does not bring into effect joint management privileges is not adequate. It assumes that the income-earning spouse has a unilateral right to determine tne needs of the non-income-earning spouse according to his or her own perspective. Certainly there is an obligation to support. But the question becomes, who determines what is reasonable in relation to available income and current needs? We think that should be jointly determined.

There is also a tremendous psychological advantage for the person within a relationship who can withdraw the right of the other for basic and fundamental needs such as food, shelter and clothing. This can and does spill over into the other areas of the relationship. Women are constantly being told that they should learn to stand on their own two feet. We are saying that within the context of a very difficult relationship it becomes practically impossible without knowing that in the end one has rights and the means to apply them. Without such rights and the means it takes a very extraordinary person to stand up to that kind of pressure. No wonder women have learned to become deferential to men. The wonder is not that women don't stand up to their husbands enough, but that given their vulnerable position under existing law, so many of them manage to do so. Again I want to note the partial recognition of this in the final report, but that it does not go far enough.

Men seem to find giving wives access, for example, to credit in their own names frightening. There is a presumption that it will immediately be squandered. I want to ask you for a moment to consider what would happen if the shoe were on the other foot. Right now a married woman can get no credit whatever in her own name except what her husband chooses to extend to her. A man can get credit to the extent of jeopardizing the livelihood of the entire family. Would that be acceptable to each and every one of you if the situation were reversed? I'd like you to think about that

I think that joint signatures on all major transactions should not be entirely cumbersome. I think that we can look at a situation where minor transactions do not require a joint signature, but all major ones do, and I leave it to you as to exactly how you're going to define what is a major and a minor transaction. I'd like to draw your attention to the recommendations of the Berger Commission in B.C. because they went into a considerable amount of detail in the way they drew the lines of responsibility with respect to third parties and to the extent to which third parties can get access to the community and the extent to which third parties can get access to the community property when it was a transaction that required joinder and when it was a transaction that did not require a joinder.

Again I want to say that most couples can sit down and iron out the difficulties that I mentioned before like the diapers and the washing machine, but we must as well concern ourselves with those who cannot or will not. I think that's where the third level of the application to the court will become applicable. I would like to add that if even one woman with a child can be denied the legal base from which to assert her economic rights within marriage and at the same time know that she can be denied those rights and face a welfare-like situation if the marriage breaks down, all women suffer because of ultimately the psychological knowledge of knowing the position that you're going to be in. I'm trying to summarize because I know that the time is short.

I think that we are also convinced that on a practical level it benefits both partners to become aware of the total economic situation that the partnership faces. I wanted to add that maybe that farm wife, for example, may have decided that the washing machine and the diapers were not such a big priority if she knew that the expansion of the family farm was essential to attain reasonable production and she knew that in fact she was a joint owner of that farm and had a right to the future income derived from that farm. With knowledge and rights comes responsibility. With no knowledge and no rights quite frequently the only way you can protect yourself is by behaving in a manner which seems unreasonable.

We believe that the proposals of the Berger Commission in British Columbia which we recommended to the Manitoba Law Reform Commission by the way, were rejected all too quickly on a basis that was in fact either a misunderstanding or a misrepresentation of basic proposals. I know that in the first report of the Commission one of the major arguments given was that of the Lazy Loutish Lothario who had squandered his wife's property prior to marriage and I would like to draw to your attention that under the recommendations of the Berger Commission all property acquired prior to marriage was considered to remain separate property and only property which was acquired during marriage became community property.

One of the other arguments that was given and I think expounded upon at great length in the final report was that in Quebec, for example, where people supposedly have access to community property systems as a matter of choice, they are not choosing to do so. Either the Commission did not know or ignored the fact that in Quebec when you choose the community property option it is not community property with joint management, it's husband-owned community property. So people do, of course, choose the property of acquest option rather than the community property.

The other argument which was presented at length in the final report of the Law Reform Commission was that of the idea that you would immediately have these tremendous arguments in marriage, that marriage just can't survive if there are two people making a decision. Well, look at the number of people on this Committee. Are you going to assume that this Committee will not possibly be able to come to a decision unless you delegate all of the authority to the chairman?

I think that I will leave the detail of the recommendations that we agreed with and disagreed with on the Berger Commission to the questioning. Basically it comes down to making a decision on the basis of how you decide what is a major transaction and what is a minor transaction. The Berger Commission had recommended $2,000.00. The figure $500.00 has been mentioned today. One of the things I would like you to consider is a formula under which perhaps it's related to income because it seems to me, for example, that $2,000.00 is not a tremendously large sum to high income earners; but $500.00 is a very large sum to some low income earners. So perhaps it could be a formula related to income.

I think I'd like to emphasize that it's pretty important and it's possible to institute a two-way veto power over large and weighty decisions while retaining the ability to operate independently of each other most of the time. I also want to emphasize that I think it's possible, for example, to get around the problem of a business partnership by delegating authority for one party to be operative in that business partnership, to do the day-to-day operations of that business. I think in that kind of situation the community would have the right to the income derived from that business and the decision over any major disposal of that business or any disposal of the major assets of that business, but not on the day-to-day operations.

I think it would be important, for example, to institute a system under which the spouse's right to — that's detail and it's getting late' so I'll answer questions.

MR. CHAIRMAN: Thank you. Are there any questions? Hearing none, thank you Mrs. Prystupa.

MAXINE PRYSTUPA: I'm surprised. Thank you.

MR. CHAIRMAN: Mrs. Quarrie.

MARY JO QUARRIE: I'm Mary Jo Quarrie. I'm also representing the NDP Status of Women Committee. Maxine has discussed in general our support of immediate joint sharing of community property.

I'd like to give you a brief description of how community property systems work in the United States in the jurisdictions which have them, and point out to you some of the reasons why we feel this is the only system which genuinely recognizes the marriage as a partnership of equals. The Law Reform Commission has proposed what they've called deferred sharing, and what they have said in the body of their report is a deferred sort of community of property. We feel this is a significant reform, but that really it's sort of a half-hearted reform and we'd like Mr. Cherniack to realize that we are not willing to settle for a sort of half-baked reform, and we're also not . . .

MR. CHERNIACK: Loss-leader is the word.

loss-leader,MARY JO QUARRIE: A yes. And we're also not intending to ask the Committee for what we think might be the minimum that they were going to be able to do. We really intend to ask them for what we consider to be the appropriate reform that should be taken.

We are also aware that the Law Reform Commission spent two years studying this question. Mrs. Bowman said that there was blood on every page of the report and I can imagine that there was. We figure that this is going to be the last time that the Legislature in this province will look at Law Reform for the next few years, clearly priorities come up from year to year and this is going to occupy a good deal of both this Committee and the Legislature's time. We suspect that the Legislature isn't going to be keen in two years again looking at further reforms, therefore, we'd like to suggest that if you're going to reform what's a very obsolete and ramshackle legal structure, you should do it all the way and do it right the first time. The Manitoba Law Reform Commission has suggested that marriage should be seen as a partnership of equals, that both partners should have equal access to the assets acquired during the marriage, but that the access shouldn't really take place unless the marriage breaks up.

Now they've attempted to build in piecemeal sort of placating situations for the non-income earner by

saying that both people have a right to a clothing allowance, a personal allowance. They seem to have done this because they have accepted arguments that immediate joint sharing of community property is an unworkable system, that it is so complex it can't possibly operate, and it's some sort of hare-brained scheme that a few women's groups, a few extremists have brought up. I'd like to point out that community property systems operate in eight of the United States. Forty million people directly to the south of us live under this system, that's a fifth of the population of the United States, and they have lived under it in its various guises for up to 140 years, and in all that time the wheels of commerce have turned in those states. People have earned incomes, spent the incomes, raised families, they've contracted with third parties, they've repaid their debts, they've made Wills, it has operated, it has operated complexly but perhaps no less complexly than the law operates in Canada, and the law operates in Canada unfairly. Our position is that if the law can be complex and unfair it can also be fair as well as complex.

As well the Law Reform Commission has suggested that both partners in a marriage should have access to the information about how much income is coming in, they should have a share in decision-making about how it's spent, but they haven't provided any mechanism to enforce that other than allowing the spouse who can't get her partner to agree, to apply to the courts or to wind up the marriage. This is the reform in which you're going to give someone rights, but you're going to make it so expensive for her to apply those rights that most people aren't going to take advantage of them which means you don't really change the situation. As it is you apply a sort of cosmetic reform in saying that we really do think that you both ought to be quite open and honest with each other and you really ought to make your decisions jointly. But, again, the spouse who doesn't wish to do that isn't going to be forced to do it.

Joint community property systems operate on the premise that whatever is acquired through the talents or effort of either partner belong to both equally. Generally in states where this regime applies it applies unless you opt out of it and most of them have provisions for opting out jointly.

Property owned before the marriage remains separate unless the partners obviously intended it should be co-mingled by, for instance, putting it into a joint bank account or ploughing it back into a family business or a family farm. Goods that are bought with community property are presumed to belong to both spouses unless it's a very specific effort made to indicate that the property was bought with separate funds.

Traditionally in community property regimes that operate in the eight of the United States the management has been left to the husband. Since 1967 six of these states have changed over to some variety of an equal management system, the seventh has a more complex sort of dual management and the eighth is still in sort of labour pains about making the reform. In essence this operates to give each spouse an undivided half interest in the assets of the marriage. That means either partner may pledge credit, either partner may use the asset as if he had a share in the full marital asset.

The states handle some of the problems that come up differently. Most of them require a joinder or joint consent for any dealings with real property, some of them have specifications for the sort of upper level transaction which can be made without joint consent.

The B.C. Law Reform Commission, as Maxine Prystupa said, suggested joint community property as a system, and suggested that a $2,000 limit be placed on transactions which could be made without requiring a joinder.

Mr. Huband seems to feel that, and apparently the Law Reform Commission feels, because they've got a couple of very gory paragraphs in here, that no marriage can survive if both people really have a share in the decision-making.

I'd like to read you one paragraph which is really the paragraph with which the Law Reform Commission disregarded and chose to do away with the suggestion of community property. They say, page 40, I'm sorry, at the bottom: *"Any partnership works best when its principals are equal in knowledge, ability and resolution. Weak or indifferent partners offer an invitation to exploitation which is often irresistible to their more aggressive or ruthless confrere. Internal politicking can frequently be contained within acceptable limits in a business or professional partnership where the partners are bound only by the economics of their particular enterprise. However, in a partnership which embraces the intimate, physical and emotional union of marriage as well as the pooled property of the partners, the conflicts of managerial hegemony could be disastrous. A weaker partner could be subjected to virtually all kinds of undue influence and coercion in order to secure his or her consent to a particular disposition of community property; and between a couple of equally strong-willed partners the most minor of management decisions could become a grinding duel in which the economic tug-of-war would inevitably degenerate into an emotional battle."*

Now I don't know who wrote this, but I suggest that whichever one of the Commissioners it was, has sort of fixated on an adversary system that takes place in a courtroom. This really doesn't sound like anything that's in my experience, or the way most couples settle their financial decisions over a cheque book at the kitchen table.

The advantages of a system in which both marriage partners have access to the assets of the marriage all the way through rather than at the end is that in the first place it's really the only system that acknowledges that you're talking about a partnership of two equal people who are working — if the marriage lasts over the course of a lifetime — over an entire lifetime and accumulating assets, both of them seem to be responsible adults, they should both have access to what they're earning and accumulating. As well it strengthens the marriage unit

because if both people have an existing and continuing interest in building up their own assets and the use of those assets, you don't have a situation where the incentive to a woman who has otherwise no financial security, no access to what has been accumulated. (I'm sorry, I've lost my sentence.) A system which says you operate at your husband's discretion regardless of how fair or just that discretion is throughout the course of the marriage. The fact that you can only really get your hands on the money that he doesn't want to give you otherwise if you break up the marriage encourages someone in a desperate situation to break up a marriage

Problems arise with the community property system and I wouldn't suggest in any way that they didn't. The Federal Law Reform Commission discussed this system among others and reviewed it very favourably. It stopped short of recommending it because it felt it was complex, perhaps too complex to introduce into the Canadian system, but it did point out that it was very little less complex than the deferred sharing system will be because that will also involve amending a variety of other laws to do with taxation and inheritance, similar sorts of financial considerations.

One of the problems most often brought up, and it was brought up by Mr. Huband in discussing the situation, is that if one partner is engaged in operating a business they don't feel that they want both partners to be engaged in every business decision. Most of the states that have community property specifically exempt a business which is operated by one partner from needing the joint-management provisions to prevail.

Another objection frequently raised is that enacting a joint-management system in one regime, one province, would create problems because surrounding provinces would have different systems and if people moved from province to province this creates a conflict of laws.

Again there is 150 years worth of precedents to the south of us in terms of ways that one can deal with the difficulty of people moving from one system to another with differing marital regimes, and the Law Reform Commission doesn't seem to have looked at that or considered any of the ways in which it might well be possible to make it work.

I'd like to close, I think, by suggesting that it should be incumbent upon this Committee to decide what its premises are about the situation of marriage in society. If you generally feel and can agree on the fact that it is seen as a partnership of equal adults, then I think it's incumbent upon you to decide which regime most adequately recognizes that that is what you're looking at in marriage. If you decide that a joint access system of community property is that system — and I have heard very few arguments really about that aspect of the argument — I think it's incumbent upon you to draft legislation that brings that system in. If it's complex and involves amending other laws then it's complex and involves the amending of other laws. But I would like not to see this Legislature stop short of a genuine reform on the excuse of complexity.

I will table a written brief within a week. As well I have xeroxed articles from a lot of American Law Journals which are very specific about the ways in which State Legislatures have dealt with some of the specific problems to do with joint-management and community property as a system. That will be in in a few days. Do you wish questions?

MR. ADAM: Mr. Chairman, I would like to ask you if you have the copies of the Acts that you referred that are in existence in the United States and if you don't do you have the names of those states that you . . .

MARY JO QUARRIE: I have the names of the states and there are copies of some of the Acts in the material that I have xeroxed which I will be giving to the Committee in a few days.

I've given Mr. Pawley's office the numbers of some of the Statutes before, so those could be sent for' and the community property states are listed at length in the Federal Law Reform Commission Report. They are, I think, Arizona, California, Washington, Idaho, New Mexico, Texas **Louisianna is in the process of becoming.**

MR. ADAM: The reason I ask is that the Committee may want to review this legislation as it exists in the United States to see just how they have it set up.

MARY JO QUARRIE: Right. The Statutes are available and they are quoted at some length in what I have, I just haven't had time to get it put together and do it in brief.

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you Mrs. Quarrie. The Fort Garry Law Reform Committee.

JUDY BRENAN: Okay. My name is Judy Brenan and I'm here to represent the Fort Garry Law Reform Action Committee, but judging from the time and the wilted appearance of everybody I'm going to shorten it right down.

Our Committee agrees with the paper entitled "Action Coalition on Family Law Recommendations". Family Law is vitally important. It affects the lives of all of us. Legislation on Family Law should reflect the following principles:

The marriage is an economic and social partnership of legal equals.

Marriage is an inter-dependent partnership of shared responsibilities and rights.

The family is a fundamental unit within the economy and unpaid work done within the family is vital to the unit and to the society and must be given recognition equal to that of bringing money into the unit.

Both spouses should have an equal ongoing share in the assets of the marriage and the security and assets being built up for the future and right to the protection of those assets.

The care of children is a responsibility to be shared by the mother and the father and society. Both parents have a responsibility to support their children and the children of their spouse until age 18. A common-law

spouse should not be held responsible for the support of the otber spouse's child if the natural parent cannot or will not.

The amount of maintenance for a child should be based on appropriate total costs of child maintenance including accommodation, reasonable household assistance, food, clothing, recreation and supervision in order to secure a stable environment.

One of our ideas would be to set up a special agency or registry just like the Canada Pension Plan where an employer would have to send in the Social Insurance number of his new employees. In this way a delinquent spouse could be found and made to support his or her children. The agency would maintain a registry of all maintenance orders and endorse same. If there was no way to find the delinquent spouse the agency would pay maintenance at a reasonable level of support whether or not it was collected, so as to ensure security of payment.

During marriage each spouse is responsible for the support of the other either by financial contribution or by child-rearing and household duties. Each spouse should give the other full information on earnings, assets and debts. If one spouse will not provide this information then the other spouse can obtain it from the spouse's employer, etc. Each spouse has the right to participate in making decisions on spending. That should be an equal thing there.

I'm referring to the section on maintenance after separation. Inter-spousal maintenance should fill the following goals:

Support of a spouse with custody of dependent children.

Support of a spouse during appropriate formal education and job retraining, (and boy am I for that. Everybody should learn to stand on their own feet) with a view to establishing economic independence.

Long-term support for a spouse if their ability to earn has been impaired during marriage by age, health or home responsibility.

The following principles should be used to determine the amount and need of maintenance to be granted:

Responsibility of each spouse for the custody and support of the children.

Responsibility of each spouse for the support of others at the time of separation.

Again we have the length of marriage, the dependency of each upon the earnings of the other and the reasons for such dependency, the amount received by each for the property settlement, the standard of living and financial situation of each, the ability of each to become financially independent; and we've added the relative responsibility of each for the breakdown of the marriage. Now the Law Reform Commission has stated that if fault is found, maintenance may be denied or reduced. That is demeaning and the hurt that will come out of that will be reflected in the children, the other one is caught in the middle. Because of that, we support the principle of no-fault divorce realizing that divorce is a Federal matter.

In a common-law situation, maintenance should be given if either a child is born or expected as a result of the union, or if the union is impaired with the economic self-sufficiency of one spouse.

Regarding property — a marital home purchased after marriage or with marriage in mind will be jointly owned. There should be no taxation on transferring titles to joint tenancy when this Act comes into effect. Couples may opt out of these provisions but only by joint consent, with a written agreement and independent legal advice, but even then an updated Dower Act would still apply. The Dower Act disallows the sale of the family home without the consent of the person whose name is not on the title and gives the surviving spouse certain rights to inheritance. A spouse may enforce thei right to joint ownership by filing a document along with their marriage certificate in the Land Titles' Office. A joint tenancy cannot be transferred without the consent of the other joint tenant. Partition or sale should be allowed but should not be forced on the spouse having custody of any child if it is in the best interest of the spouse and child to remain in the home. Property acquired before marriage will be separately owned, but the Dower Act will still apply.

When a separation happens, there should be a no-fault equal division of all assets acquired during marriage. Assets acquired by either spouse before marriage should remain separate property and be accounted as such during the division. The following property would not be divided. Gifts, inheritance, trusts and income, damage settlements. Couples should be able to contract out of these provisions, but only by joint consent, written agreement and independent legal advice A method of computing the amount each spouse is to receive should be as follows: value of all assets except family home, deducting all debts, deduct the exempt assets such as gifts, inheritance, etc., half of the remainder to each spouse.

In dividing the assets a spouse can receive either a particular asset or an equalizing payment. The couple can agree either to division of assets and time for paying the equalizing payment, or apply to the courts for an order.

If one spouse dies without a Will the other spouse should receive all of the deceased's estate except where the deceased spouse has children by a previous marriage. The Dower Act setting out how much a spouse can inherit, despite what the deceased's Will says, should be reviewed. Consideration should be given to first and second families in the case of more than one marriage. Recommendations in the new law should be widely publicized.

We ask the Law Reform Commission to review immediate joint ownership of all assets acquired during marriage, the Dower Act, principles of custody and adequate representation of children in separation

proceedings eliminating the stigma of illegitimacy, change of name, making it less difficult for a woman to go back to the name she was born with if she so desires.

And lastly but not leastly, distribution of assets in a common-law relationship on separation. I tried to do that as fast as I could. Okay, any questions? Everything was mainly covered before.

MR. CHAIRMAN: Are there any questions?

MR. SHERMAN: Mr. Chairman, I'd like to ask Ms. Brenan a question and I note that there are probably three specific areas in which the committee that she represents differs very strongly and challenges the position taken by the Law Reform Commission. One is in the area of the opting out provision and one is in the area of maintenance and the concept of maintenance without insinuation of judicial discretion, without fault and without judicial discretion and one is in a classification of responsibility for minors up to the age of 18, where the Commission recommends 16.

But there's also another point that I would appreciate your guidance on and that has to do with the responsibility and the primary and tertiary responsibility for maintaining children. Your committee recommends that the order of priority be natural parents, then the state and then — well presumably it would only go to two levels on your recommendation, whereas many delgations appearing before us today have held the view that a common-law spouse, or step-parents should be the second level of responsibility in a situation where a marriage is broken down and a common-law relationship has developed in its place and there are children involved.

What sort of views and opinions led your committee to the conclusion that the state or the province should have a priority responsibility over a common-law parent or step-parent.

JUDY BRENAN: I better not answer that. Ruth . . . is away, she is actually our Chairperson for that committee. I better not answer that at the moment seeing as I'm just a brand new member. I'm just not exactly sure of, you know, all their claims there.

MR. SHERMAN: No well that's all right, I was just interested in the fact that it's not a departure from every position that's been presented today but it's a departure from a good many. Even those other delegations who support the same concepts that your committee has proposed here tonight in the three other areas that I've mentioned, some of them have suggested that the common-law spouse or step-parent should rank second in responsibility after the natural parent for looking after a child, before the province or before the state. So it was because of that difference that my interest was aroused.

JUDY BRENAN: Well that's usually up to the common-law person because if he doesn't want to or she doesn't want to, then she doesn't have to. There's nothing written down about that.

MR. SHERMAN: Well that's true but presumably, or hopefully, there could be some conditions attached to the new liaison. The natural parent who is still there certainly has a responsibility, and the new liaison — it would seem to me that our laws could be useful even from just the declaratory point of view in suggesting that anyone entering into a new liaison with that natural parent does have some responsibilities to fulfil to that natural parent's child or children, before the state should take over responsibility. I was just wondering what the committee's line of reasoning was on that point. But I can leave that and we can discuss it at a later time with Ruth . . . or other members of the committee.

MR. CHAIRMAN: Are there any further questions? If there are no further questions, thank you, Mrs. Brenan.

MR. PAWLEY: I would suggest that unless there is someone present with a brief that cannot return that we consider adjourning because I think we can do better justice to the briefs upon following through with a further sitting after we're finished with the Thompson hearings.

MR. CHAIRMAN: I would like to get some idea of whether we could finish it tonight. I still have seven names on the list. If I read them out, could I get an indication if those people are still here; if so, we might call hearings for another day.

The Catholic Women's League and Christ the King Parish Council, Mrs. Carson. Thank you. Jake . . ., Mrs. Havelock, Shirley Munro, Mrs. Birkowski and Mr. Ralph Raphael. —(Interjection)— Beg your pardon. Murray Smith.

MR. PAWLEY: Mr. Chairman, I am prepared to do either but I'm wondering if in fairness to those submitting briefs whether we will properly explore their briefs with them.

MR. CHAIRMAN: We have, as you know, set aside two extra days in December either for the use of the committee in its own discussions or for public briefs. If it is your wish, we will use the first of those for public representation, December 9th.

MR. CHERNIACK: Mr. Chairman, I'd like to endorse Mr. Pawley's position but if somebody present today says that they can't come December 9th and would thus lose the opportunity to speak, if that's possible, then we possibly could consider whether to hear that person but let's find out. I think they themselves will realize that at 11:30 it's not very good to go further into it. What do you think about canvassing that possibility?

MR. CHAIRMAN: December 9th is a Thursday, two weeks on Thursday; is there anyone who could not appear before the committee on that date? —(Interjection)— The committee normally begins its hearings at ten o'clock in the morning and continues through. I could give you no promise that it would meet in the evening of that day.

MR. SHERMAN: Mr. Chairman, perhaps on that particular — if there are one or two people who would find it difficult to come in the daytime, perhaps a spot late in the afternoon of December 9th; I'm sure the committee would be prepared to sit till six o'clock without necessarily committing itself to evening sittings for the sake of one brief, it might be that we could sit till 6:00 or 6:30 on the 9th to accommodate those persons who couldn't get here till after 5:00 o'clock. I'm wondering if that would be satisfactory. **MR. PAWLEY:** Can you come in during the day or would it. be better late in the afternoon for you? **A MEMBER:** Are you talking about December 9th? **MR. PAWLEY:** Yes. **A MEMBER:** I don't know if I will be able to make it then. **MR. PAWLEY:** Oh, well we better hear anybody who can not be here December 9th now. **MR. CHAIRMAN:** Is that the wish of the committee? If it is, would you come forward, sir, please. **MR. CHERNIACK:** I don't think that my marital partner will approve of all this. She'll have to share the time . . .

MR. RALPH RAPHAEL: In regards, respect and honour to the justice of life, the justice of law, the justice of truth and the justice of justice, in the heavens and on the earth to impose itself at will and command and the cases of too much disregard, disrespect and/ or dishonour rendered against the justice, I would truthfully love to enlighten all people in Canada, to the justice and the law.

First in respect to the true law of injustice, I am here to request and command that ye stand by, and with the letter of the law, to create a proper work ethic by hiring men to take down a graven image of something of nothing made in the likeness of a boy or a man damned by hiring men to fashion the skills, balances and other parts related to the construction of the balances of justice...

MR. SHERMAN: On a point of order, Mr. Chairman, I wonder, could we have the delegation identify himself and then state who he's representing.

MR. RALPH RAPHAEL: My name is Ralph Raphael and I am representing Truth for the Word of God.

MR. SHERMAN: Representing what?

MR. RALPH RAPHAEL: Representing the true word of God, I am an advocate of the Spirit of Truth.

MR. SHERMAN: Spirit of Truth. Thank you.

MR. RALPH RAPHAEL: . . . and other parts related to the construction of the balances of justice which ye are to place above the Parliament Building; secondly, I will clarify my stand on family law, after you recognize that it is now commended to those and a responsibility to do the command. The command is to take away the graven images of the buffalos ye have made from the midst of the building, go to the zoo where the real buffalo behind bars and bring two buffalos to the Parliament gounds, hire men to feed them and hire men to build shelter for them.

Now in respect to family law, I am disappointed in the primary and the erroneous attempts for the people's incapacity to see that the divorce problem is hardly to be solved by the verbally pushing for division of properties and moneys on a grand scale, of pursuing divisions further and using the knowledge of pen and pencil workmanship to swamp people with unnecessary ideals and ambiguity produced in a somewhat great and orderly fashion. However, I must admit that I heard some very good submissions by the women during the day, though some proposals by a Mrs. Turnbull were nevertheless practical and they need not be overlooked.

Family law should be recognized to agree with the proper application of , physical, mental, emotional, spiritual, ethical and moral laws. Discussions, agreements, decisions and actions, proceeding after and in relation to discussions, agreements and decisions, and perception of the applicability of the totality of all laws.

I now state that I operate on the gradient basis of conviction, reproval, correction, solution and freedom, whereupon I emphasize that it is not necessary to disregard fault because of conviction, reproval and correction. And it is also more important to thereafter concern no fault, because of correction, solution and freedom.

So I would like to read the truth about the inter-related problems causing and building up to divorce in a family counsel I have prepared or written. There is also a hope that I gain the cooperation and support of many people in the things which I have previously stipulated and support in whatever way possible to actively implement the written orders and solutions in order, on other written materials which I am sorry to say, have been ignored and not read by one person but myself over the period of approximately a year.

Prior to starting to my reading of the material, I would also like to mention that over the period of a very long time I have not been very well rewarded by the people I stood to help, and have been very much persecuted and unjustly punished because I had, and I have, a truthful and faithful concern for the livelihood of justice and love.

If my apparently weakened state and apparently reduced countenance is to cause true strength to be manifested and sparked, then I caution and encourage people with the statement, what more when you accept the strength. Whether I show grief, propitiation, sympathy, fear, . . . no sympathy, anger, pain, antagonism, boredom, conservatism, interest, or/and enthusiasm, my feelings are genuine and with a trust which I do not betray and which I would like others not to portray.

MR. CHAIRMAN: Does that complete your remarks?

MR. RAPHAEL: No, I have family counsel to read right now.

MR. CHAIRMAN: Proceed.

MR. RAPHAEL: We have heard that it is written: "Honour thy father and thy mother". In order that

children honour their fathers and mothers and that husbands and wives find themselves in unity, the following counsel is given. The key commandment is: "Thou shalt not commit adultery". A father and/or mother shall not subject a child to spiritual, emotional, intellectual or physical adultery. A father and/or mother, either because of their own internal hardness of heart or external pressures from outside influences, shall not incur the guilt of their own wrongdoing upon a child. A child shall be taught the New Testament at the age of seven; a child shall be taught the Old Testament at the age of fourteen or the age of issuance of seed or menstration. If a husband or wife fails to be dutiful to either one of themselves either physically, mentally, emotionally, spiritually, whether external influences or past misbehaviour and their internal selves cause that, they shall not incur that guilt upon a child.

So if a wife, because for some reason or another becomes hardened of heart towards physical relationships with her husband, the husband shall not vent his frustrations or guilt feelings or anger whether those of the wife or husband upon a child.

A husband shall not counsel a daughter against his wife in regards to their relationship especially if that daughter has not had menstration. It shall be so with the relationship between mother and son. Thou shalt not shackle or bind a child with fetters of adultery, neither verbal nor to any other extent. It is the father's duty to be loving and protective to a daughter. It is the mother's duty to be loving and protective to her son. A father shall not chastise physically a daughter and a mother shall not chastise physically a son. Such is so lest in striking a daughter, the father causes his daughter to err or to sin against his honour, or the honour of one or more male associates later in life. It is so with the relationship between mother and son. Physical chastisement of a son is given to the father, physical chastisement of a daughter is given to the mother. Thou shalt in this way prevent the daughter, who is woman, from opposing men; thou shalt also prevent the son, , who is man from opposing women for God who is love does not desire that man oppose woman and desires not that woman oppose man; rather he desires that they be united in his love.

It is the duty of the father to teach his son, when and where necessary how to discern between good and evil. A father shall not corporally punish a son without love in mind. A father shall not chastise a son physically without having given the son proper counsel or discernment beforehand, otherwise the son will come to hate the father' for there is just chastisement and there has been abusive treatment, though it is unfortunate the latter has been such.

It is so with the relationship between mother and son. All verbal or physical chastisement should be with the consideration of whether the father or mother, by their own ignorance or habits, or loose morals, or outside influences, caused a child to err. If either one of the preceding is found to be the case, then it should be explained as such. Responsibility is where responsibility is.

In most cases, it is necessary to pray to the Lord Jesus Christ for forgiveness. A child only imitates his or her elders. Wherever possible, by the grace of God and the Saviour, the Lord Jesus Christ, the child becomes, or is and always will, of God.

Herein written are laws pertaining to husband and wife relationships where questions have been asked and outside influences have caused married couples to err away from the authority of the written Word of God. It is written, "A wife shall not bear witness against her husband and a husband shall not bear witness against his wife". The major cause of family quarrels or quarrels which bring the husband and wife in question of each other are outside influences or iniquitous influences by that which people have phrased, "the battle of the sexes". A woman or a man who is quick to — or is to go against the written Word of God is usually one whose heart is intent or inclined to evil. Even for that which is expedient for the truth it can be said that truth is with justice, the base of all justice is written by Moses of God and such is referred to the Word of God.

In the case of a husband beating a wife which with one glance is an act which can often be easily witnessed to because of visible effects as well as other effects; an applicable Word of God can oftentimes be, a victim is often the murderer, and a murderer is often the victim. Unfortunate though they are, the true word can be applied to most every level of violences. In such cases, a wife could subtly and covertly knowingly or unknowingly cause her husband to drink and afterwards, continuously accuse him of drunkenness. One is visible proof of the husband doing then what the wife might term might be, and that might cause divorce. But because of her possible lack of acknowledgement of her division between her husband either because of outside influences or iniquity which, whether she knows it or not, because of her lack of forgiveness or previous wrongdoings done to each other, or a mountain of the idle words continuously directed with a covert hostile intent, such might have happened **a state of unrepentence often follows because the world often lives most to bask themselves in massive false joy. The effect is that there is an emotional hardening of the heart where troubles become more than they were before. I think in such cases that it can be the reference to the Word of God — go to the man who has a wicked wife. Remember however, it is a beautiful thing in love that either party admit their fault, for it is hoped that each has that desire to find relief in the spouse's drying of tears. Accumulated withheld truths are often the cause of the alienation and often prevent proper emotional relief as well as buying the way to that treasured state of repentence, there being forgiveness thereafter.**

In a case of a husband repenting or a wife repenting, either should allow the other full repentence and forgiveness. Efforts should be made to bring or renew the joy of their love. Remember, hardness of heart, a product of over-indulgence in marital perversion or exterior perversion left unjudged and having pervading

influences, has been there to divide many a relationship between man and wife. Forgiveness given to us by the Lord Jesus is always there to reunite a man and wife. There are many influences in the world which would cause the severance of the love between man and wife, yet the one Lord Jesus Christ with Holy Spirit mends that broken heart many people have often found themselves with.

In the case of a man physically forcing himself on his wife, such conduct is not in contravention to natural law. Where there are many subtle ways by which a man might be put against his wife and his wife put against him, there is still the Word of God and man shall have dominion over his wife and at the head of every man is Jesus Christ and at the head of woman is man. And a husband shall be dutiful to his wife and a wife shall be dutiful to her husband, and treat your wife as Jesus Christ treats his church. Far be it for me to even think that Jesus Christ should not have dominion over his church or that his church would close its doors to the master of the church.

When married or in love, the husband may take within such realms of natural love, his wife by force. I say "or in love" only because there has been much dissention between churches and populace in the midst of unnecessary controversial issues and crime waves along with the attitudes of incrimination and accusation which I believe should not interfere with the natural unity of love between a man and woman, whose desire is to be man and wife; or perhaps by force of iniquity or hardness of heart, or outside influences trying to divide them, they might have happened to be put against each other. When and where such happens the husband has all rights to be masculine and to take his wife. Such cases of emergency to preserve a marriage and love are in truth a possibility that the feminine wishes the masculine to be. It is not for men to compete against the reality of tbe femineity of woman. It is not for a woman to compete against the reality of the masculinity of man, rather femineity enhances the masculinity. The reality of woman enhances the reality of man. Any man interfering with such law is guilty of trespassing the written orders of God by natural law, other than interference to prevent evil, sin or death threatening either man or woman, for the Lord does not wish man to kill his wife, nor does he wish the man's wife to kill her husband. Yet if justice must be done according to the Word of God, the victim is often the murderer and the murderer is often the victim, and let justice be done.

I have something here which is also in relevance to a revelation that is supposed to be submitted from St. John's Bible, an elaboration on the problem which we've been confronting for a long time and in order to alleviate problems we have to know what they are and then stipulate law implementation to alleviate them afterwards.

This is a mystery which has mind-boggled many men and women for the past 50 or 100 years, it's the mystery of Babylon, the greatest mother of all harlots. It's about shape, size, word and colour association of by-products of the error which eventually sometimes cause divorce.

The nipple on the milk bottle has had the same colour and shape as the filter tip of the cigarette. The colour of the milk in the bottle is the same colour as the stock or wick of a cigarette. There are two colour tones to a cigarette, two colour tones to a plastic nipple and bottle, and two colour tones to the breasts of women. The shape or form of the beer bottle is similar to the shape or form of the milk bottle, and the top part of the beer bottle is similar in form to woman's breasts and has a tip similar in form correlated to the tip of a milk bottle. The mention of the word "bottle" so many times reminds me of the word "battle".

All by-products of beer are associated or stem from the abysmal battle of the sexes evolving from the knowledge of the tree of good and evil. They are socially unnecessary to proper man and woman and father, mother and child relationships. Cigar is correlative by word association of word roots to cigarette. The smoking of a cigarette is an evolutionary cause and effect process which has not developed because of man's desire to have oral fulfillment at woman's breast, but has evolved introvertably from a woman's oral . . .

MR. CHAIRMAN: Order please. As you're perhaps aware Mr. Raphael the Committee has requested that people presenting briefs to us restrict their remarks to 15 minutes. Your 15 minutes has expired, I'll give you two more if you wish to sum up your remarks.

MR. RAPHAEL: Well I've got a write-up here which sheds some light on the relevance between causes and effects of different errors which we can perceive in today's social structure in the society which thereafter affect men and women in general. I would like to get a book written or I would like to get some assistance in typing this material. I haven't had any for a long time. It's material which I think will help people in knowing that that is a problem and will thereafter be able to overcome . . . progression into the solution. I don't think women should plastic bottle feed their children; I don't think prophylactics should be sold; I don't think there should be mannequins in windows; I don't think there should be pornography. I think those things eventually tend to lead people away from that unity of marriage which you people finally see evolve into much divorce and which causes a lot more convening of meetings for purposes of trying to solve errors which shouldn't even be caused.

MR. CHAIRMAN: Thank you. Mr. Adam has indicated he has a question for you.

MR. ADAM: Mr. Chairman, I was going to suggest that if Mr. Raphael has a further lengthy presentation to make perhaps he could arrange to have it transcribed or written and presented to the committee where we could look at it by ourselves.

MR. CHAIRMAN: If we receive a written brief from you, it will be duplicated and circulated to the members of the committee. Are there any further questions? Hearing none, thank you Mr. Raphael.

MR. RAPHAEL: If it is possible to do that, I'll try my best. Do you know anywhere where I could start the

process of getting it written or typewritten. I have been trying for a year to get the material read, let alone typewritten. — (Interjection) — Yes, I will do that then. Thank you, Mr. Walding; thank you, gentlemen.

MR. CHAIRMAN: Thank you. That concludes of the business of the Committee for today. We will remind you you are due in Brandon at 10:30 on Thursday. Committee rise.

Briefs Presented but Not Read:

The Widows and Widowers Group - Brief Against Proposed New

1. Equal rights for both spouses to family property acquired after marriage — this would make the serious, hardworking partner mainly contributing to the support of the family the loser since his efforts are not generally respected by his spouse and usually are one of the main discontentments leading and resulting in divorce. The mismanagement of many wives who do not financially contribute to the needs of the family and greedily and selfishly lavish themselves with material things, expecting their husbands to work their butts off for them frequently is breakdown factor in marriage. It is therefore felt that a positive proof of financial contribution toward acquired property by both spouses should be required and that a fair share based on these contributions be taken into consideration in dividing property on divorce.

2. It is a known factor that many women (not all) enter marriage seeking support and security alone. Once having received their marriage license, they are not interested in fulfilling any marital obligations household or otherwise, and abuse their marriage by unsettling and making extreme demands on their husbands. Should he then upon divorce be expected to keep her in lavish comfort forever? It is most unfair to the working spouse. If and when the wife contributes to the negligence and breakdown of her marriage in this respect she should not be pampered and given future security in other words, she should be expected to take some responsibility for her actions.

3. Most Importantly - equal division of property upon divorce without some proof of contribution will make further havoc out of marriage in that any serious, hardworking man (or woman) may become a prime target (to get rich fast) for marriage with the intent of divorce since there is no longer any stigma attached to divorce nor is it too difficult to acquire divorce. (Soon it won't be too difficult to get the money and assets either with your new laws.)

Therefore it is felt that the main spouse contributing financially to the marriage should be protected in the courts by laws requiring proof of contribution and some proof of honest respect in keeping the marriage intact.

Women demand equal sharing — why not then equal giving?

The fact that woman may leave marriage unskilled and untrained for work force should not be blamed on society. The same opportunity for both men and women exists in our educational system whereby they can learn and prepare themselves for future living. But if some women choose to ignore this and head into marriage at an early age to escape the aspect of preparing for their future life by leaving school at an early age, not work for a period of time to acquire some experience in the work force, they can only blame themselves by thinking marriage is an easy way out.

Family Services of Winnipeg Inc. - Statement Concerning Family Law for the Standing Committee of the Manitoba Legislature on Statutory Regulations and Orders.

Family Services of Winnipeg Inc., (formerly known as The Family Bureau of Greater Winnipeg) has been serving families in Winnipeg since 1937. Over the years and through such programs as marital and family counselling, homemaker service, family day care, and family life education, Family Services has encountered again and again the problems faced by families, including those of family maintenance and distribution of family property at the dissolution of marriage. Family Services is very much aware of the need for changes in family law to bring about a more equitable solution to these problems.

Family Services, therefore, wished to express its support for the principles expressed in the Report on Family Law of the Manitoba Law Reform Commission. We hope that the Standing Committee will give that Report its full and sympathetic attention in its deliberations about possible changes in family law.

In every instance but one, we support the principles expressed in the recommendations of the majority in the Report. The exception is Recommendation 4, Part I, A. Children, pages II and III:

Subject to the provisions of "The Child Welfare Act" a parent is not responsible to support and maintain a child over the age of 16 years who has wantonly discontinued appropriate formal education and training and who — (a) through gainful employment is able to be self-supporting; or (b) is beyond the control of his or her parents or other parentally designated person in whose charge he or she is.

We fully agree with the Memorandum of Dissent and Separate Opinion as stated on page 13 of the Report and would also "favour the deletion of Section 4 in the specific recommendations regarding the support obligation for children."

We would also suggest that the principle in Recommendation 5, Part I, B. Spouses, pages 23 and 116 of the Report, would benefit from a further clarification or definition of the differences between "unmarried cohabitation" or "common-law union" and "casual encounter" as used here and throughout the Report.

The Report states, on page 23: "Casual encounters having no significant impact on the future lives of the parties ought not to give rise to any such obligation; but unions which produce children, or which are of lengthy

duration and resemble marriage in all but legal form should, in the majority's view, create responsibilities similar to those undertaken by married persons." This is helpful but we see problems in interpretation. Perhaps the addition of "time" would be of assistance. For example, "unmarried cohabitation" or a "common-law union" might be defined as a union that has existed for a year, or possibly, two years.

We want to thank the Standing Committee of the Manitoba Legislature on Statutory Regulations and Orders for its attention to our statement and to reiterate our support for changes in Family Law.

We are enclosing a copy of our earlier reply to the Manitoba Law Reform Commission's Working Paper on Family Law for the Committee's information.

Response to Manitoba Law Reform Commission's Working Paper on Family Law.

The Family Bureau, being a private, non-profit, non-sectarian family service agency has been providing service to families since 1937. One of the main services offered is Marriage Counselling. In the course of service delivery the counsellors have experienced many situations where the law has not provided an adequate solution to the problems of maintenance and property distribution.

Accordingly, the staff of the Bureau wishes to present their views regarding the proposals outlined in your recent working paper on Family Law. A questionnaire was circulated to all staff at the Bureau asking their opinion concerning the major proposals postulated in your paper, and concerning the principles upon which those proposals were based. For the sake of clarity and brevity, we have referred to the page number of your proposal, quoted the proposal, and then inserted the questions which refer to that particular proposal. After the questions we have inserted comments which we hope will be beneficial to any further action to be taken with regard to the issues contained in your working paper.

Re Page 9, second paragraph:

" (i) children have the right to be maintained by both parents, who have a corresponding obligation to support their children, jointly or alone.

(ii) the obligation to support children is borne equally by parents but with regard to the actual financial circumstances of each.

(iii) notwithstanding any law to the contrary, every person is legally liable to support, maintain and educate his/her children and the children of his/her spouse, in the custody of that person or spouse, until each child attains the age of eighteen (18) years. A handicapped child on attaining majority, is entitled to provincial assistance."

Although the questionnaire did not contain any questions specifically with regard to this proposal, a majority of staff who responded, supported this proposal concerning the obligation of parents to support their children.

Re Page 10, (Section IV): *"when children are brought by one parent into a 'common-law' liaison, the obligation of both natural parents will endure and the newly required 8 'common-law' step-parent will also be fixed with an alternate (secondary) obligation to maintain those children."*

The Bureau supports this proposal. However, it would perhaps prove beneficial to define the time period which would have to be met before the common-law step-parent would be fixed with the alternate obligation. If the Commission feels that no time period would be appropriate, then it might prove beneficial to state this specifically as part of the legislation on this matter.

Re Page 12, second paragraph: *"on the other hand, it is unquestionably desirable that separated or divorced spouses should become finanacially independent of each other as soon as reasonably possible. Continued economic independence after the rupture of the marriage can be detrimental to the interests of all parties."*

Family Bureau Questionnaire, Question 2: Should separated or divorced spouses become financially independent of each other as soon as reasonably possible? Yes, 18; No, 1; No opinion, nil.

Family Bureau Questionnaire, Question 3: Is continued economic dependence after marriage breakdown detrimental to the interests of all parties? Yes, 14; No, 2; No opinion, 3.

One qualification to the above results is that in order to support the principle of financial independence, the spouse who receives custody of the children must also receive maintenance payments from the other spouse which are of such an amount to allow for expenditures which will free her to work in the community, "i.e., day care expenses".

Re Page 14, second paragraph: *"It is to be noted that the majority viewpoint does not go so far as to abandon the fault principle in awarding maintenance. The relative responsibility of the parties would be an ingredient in determination — but only one of a list of ingredients, not a major concern, as it is in the minority's proposal later expressed in this paper."*

Family Bureau Questionnaire, Question 5: Should the relative responsibility of each spouse for the marriage breakdown be the major concern in determining the amount of maintenance? Yes, 3; No 15; No opinion, 1.

Family Bureau Questionnaire, Question 6: Should the relative responsibility of each spouse for the marriage breakdown be only one of several factors considered in determining amount of maintenance? Yes, 13; No, 5; No opinion 1.

With regard to the whole question of fault, as can be seen from the results of the questions, a majority of staff supports the Commission's majority position that the fault principle should not be abandoned, but should

be only one of many factors considered. They do not agree with the minority viewpoint that in certain instances paramount responsibilities must be proven before maintenance will be awarded. They believe that a marriage breakdown usually involves conduct by both spouses which is not desirable and that in most instances, both parties have contributed to the deterioration of the marriage.

Re Page 15, paragraph 2: *"In a case of unmarried cohabitation, either party to the union may apply to the judge for maintenance on the same terms as if the parties to the union were married to each other if:* (a) a child or children has been born or is likely to be born as a result of the union, or (b) the union has impaired the economic self-sufficiency of the applicant spouse either permanently or temporarily."

Family Bureau Questionnaire, Question 11: Is it fair to assert that those who do not make a legally recognized marriage commitment should not be able to derive legal benefits of marriage concerning maintenance? Yes, 4; No, 11; No opinion, 1.

Family Bureau Questionnaire, Question 12: Is the freedom of unmarried persons to part without obligation concerning maintenance of one spouse by another humane? Yes, 6; No, 12; No opinion, 1.

With regard to the question of non-marital maintenance, a majority of staff who responded believe that in certain circumstances an obligation is owed by one common-law spouse toward the maintenance of the other. The argument is raised that persons who do not accept legal or moral commitments of the marriage should not be entitled to any of its benefits when they break up. A majority of staff who responded do not agree with this statement. If one accepts the principle that reform of family law is needed to provide restraint and redress of injustice, inequality and misbehaviour which is oppressive, irresponsible and selfish, then it becomes clear that non-marital maintenance is required.

A scenario can easily be imagined where a man deserts his family, leaves the province and takes up residence in another province. He may begin a common-law relationship with a woman, promising her that as soon as the five year period is up, he will divorce his first wife and marry his trusting common-law partner. Unless the common-law spouse forces him to enter into a formal written contract (which realistically would never happen) she has no protection. The man may live with her for four years. If during this period the man persuades the woman to quit working and remain at home because he is earning a sufficient salary, is it fair and equitable that he should leave her without any maintenance and without any opportunity for her to retrain herself if necessary to be able to enter the work force? We think not, and therefore, we support the majority proposition re non-marital maintenance. We especially recommend the sub-section which allows maintenance to be claimed where the common-law union has impaired the economic self-sufficiency of the applicant spouse. However, it would be beneficial if the Commission could propose certain guidelines or certain circumstances which would result in a determination that economic self-sufficiency of the applicant spouse had been impaired. If these guidelines are not set out succinctly, then the guidelines will have to be established by judicial precedent over a number of years. The majority of staff who responded do not believe this is the most efficient and equitable method of determining guidelines which will ultimately have an effect on an increasing number of citizens.

A majority of the staff who responded realize that there is a difficulty in determining when a relationship can be characterized as a common-law relationship. They agree that casual encounters should not be grounds for maintenance. In order to implement this proposal, some minimal time period would have to be instituted in order to qualify for maintenance. They believe that this period should be at least six months cohabitation or perhaps one year.

The other factor involved would be whether this time period would have to be an uninterrupted period or whether the couple could separate for a short time and resume cohabitation without losing the benefit of the earlier months spent together. Perhaps the time period could be accumulative, such as living together six months out of the nine months or one year out of 18 months.

Re Page6, paragraph 2: *"How does one reconcile the view which asserts that, with a share of such assets as the parties had, they should be required to establish their individual self-sufficiency, with the other view that in supporting the child one should also provide support for the parent who must, alone, rear the child?"*

"Are these approaches in such conflict that they cannot stand sensibly together?"

A majority of staff who responded believe that these approaches are not necessarily in conflict. However, they do believe that the parent who is awarded the custody of the children should receive additional maintenance for those children which would cover the day care expenses involved if that parent chooses to work in order to improve her economic situation.

They would also like to take specific exception to a comment made by the minority proposal in pages8 and 19 where they state as follows:

"Thus, society seems already to have accepted that where adequate supervision of school age children is available, there is no obstacle to both parents or the sole parent taking gainful employment outside the home."

The Bureau would point out that the cost factor for day care is extremely high, especially where there is a single parent family headed by a female. There is also the problem involved of the single parent forced into the situation of working all day and then having to provide an emotionally satisfying and stimulating atmosphere for the children at night. Added to this responsibility is the need to be responsible for the necessary household

chores.

Re Page 19, paragraph 2: *"Should the new law say that although the child ordinarily gets maintenance to age 18, the parent who has custody of the child gets personal maintenance ordinarily only until the child attains the age of seven (7), or some other chosen age?"* |

Family Bureau Questionnaire, Question 7: Should parent who has custody of child of a marriage, only receive maintenance for herself until the child is of school age? Yes, 4; No, 14; No opinion 1.

The majority of the Bureau staff do not agree with this proposal. A minority of the Bureau while agreeing with the above proposal would like to indicate that if the spouse with custody is also to get personal maintenance until the child attains the age of 7, then the amount of maintenance paid towards the child's well-being must be increased from the present maintenance amounts awarded. The Bureau notes that the Commission has not addressed itself to the question of the amount of maintenance payments. Is it to be assumed that the increased income to be derived from the new property disposition proposals would be sufficient compensation to the spouse who has custody?

Does this position, if it is that of the Commission, assume that the increased income which is derived from more equitable property dispositions will be sufficient to allow the spouse custody to maintain a full time job and also meet all additional child care who has expenses involved?

The Bureau believes that the spouse who has custody of any children from the previous marriage has a great burden to bear. The Bureau also believes that weekly visits of the respondent spouse, who is not awarded custody, are not a substantial contribution to the parenting process when measured against the contribution of the spouse who is awarded custody.

Re Page 20, section: *"whereby reason of — (a) the employment of a spouse's time in and about the home and/or (b) the spouse's lack of job skills, it is not reasonably possible for the spouse to become presently or ultimately self-sufficient or where by reason of (a) and/or (b) above spouse's earning capacities have been significantly prejudiced, then in any such circumstances transitional maintenance, reviewable and renewable by the court, but of not more that one year's aggregate duration, may be awarded to such spouse to be paid by his or her marriage partner."*

Although majority of the people questioned concerning the principle of transitional maintenance did not agree with this particular proposal, the Bureau would like to indicate that the proposal of transitional maintenance is an interesting and feasible alternative to the often unenforceable situation of indeterminate maintenance. Perhaps if the traditional maintenance period were increased to a period of not more than two years aggregate duration this would eliminate some hardships which would result if the period were only one year.

Re Page 24, paragraph 1: *"those who advocate this proposal assert the longer our laws impose major responsibility on the husbands to support separated and divorced wives, the longer our society will have to await the day when women achieve true social and economic independence with truly equal pay for equal work."*

Family Bureau Questionnaire, Question 9: Do you agree with the following statement?

The longer our laws impose major responsibilities on husbands to support separated and divorced wives, the longer our society will have to wait the day when women achieve true social and economic independence with truly equal pay for equal work.

Yes, 6; No, 13; No opinion, nil.

The majority of the people questioned disagreed with this principle. It would appear that this statement is too general and does not take into account all the various variables which are involved.

Re Page 25, paragraph 1: *"In any event, one should not agonize over whether the child supervision programs should come first, or the new maintenance law should come first. The minority asserts that their proposed maintenance law or one closely akin to it, should be considered as soon as practicably possible, and irrespective of progress in achieving the other arrangements for supervision."*

The entire staff of the Bureau would like to take specific exception to the above statement contained in the minority proposal. The Bureau offers a Family Day Care program as one of its main services to the community. The Bureau would also advise that the Provincial Government universal day care program which was instituted on September, 1974 is still struggling to become efficient and effective. We would emphatically state that it is essential that adequate child supervision in the form of either Family Day Care or Group Care is provided for all children under the age of 12 before any new maintenance law would be enacted which would have the result of forcing the spouse who has custody of school age children to enter the work force.

In regard to the minority proposal concerning non-marital cohabitation, the Bureau has already supported the majority position and therefore, has no comment with regard to the proposals contained in the minority position.