



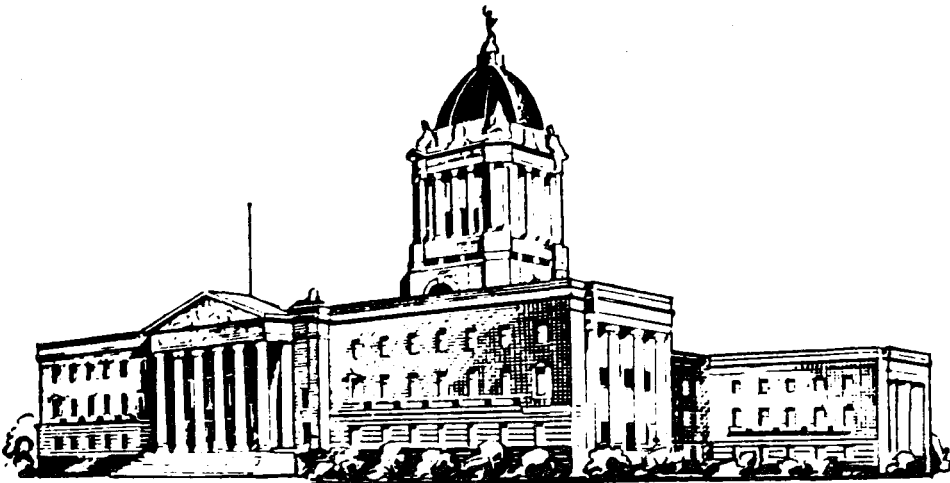
**Legislative Assembly of Manitoba**  

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**HEARING OF THE STANDING COMMITTEE**  
  
**ON**  
  
**STATUTORY REGULATIONS AND ORDERS**

**Chairman**

**Mr. D. James Walding**  
**Constituency of St. Vital**



**TUESDAY, November 23, 1976. 2:00 p.m.**

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

TIME: 2:00 p.m.

**MR. CHAIRMAN:** Order please. We have a quorum, the Committee will come to order. There is one small problem I'd like the advice of the Committee on. We have separate lists of persons who have indicated a wish to appear before the Committee this morning, this evening and this afternoon, as well as another list with an unspecified time on it. Some of those I understand have been here all morning and want to know when they can be heard. The Chair would propose to continue the list from this morning, then move to the unspecified list and then go to the afternoon's hearing. Would that be satisfactory to the Committee? Mr. Cherniack.

**MR. CHERNIACK:** Mr. Chairman, it might be a hardship on someone who came in from out of town and made special arrangements to be free this afternoon on the understanding that they would be heard this afternoon.

**MR. CHAIRMAN:** It has been the practice of the Committee to give preference to those attending from out of town and the Chair will do so. With that proviso does that procedure meet with the approval of the Committee? (Agreed)

I just repeat to the audience that the Committee does have a rule against applause in its hearings and there is a very good reason for it and that is that expressions of approval are not permitted for the same reason that expressions of disapproval are also not permitted and this is so that members of the public wishing to speak to the Committee should not be prevented or discouraged from doing so by any intimidation from a hostile audience. I hope that you will co-operate with us on that.

Are there any members of the Committee wishing to ask questions of the last person this morning, Mrs. Turnbull? Mrs. Turnbull would you come forward please. Mr. Adam.

**MR. ADAM:** Thank you, Mr. Chairman. Mrs. Turnbull, I think some of us, at least myself, are quite concerned about the no fault clause. Maybe we are a bit old fashioned, I don't know. My main concern is with a no fault clause where the public would be responsible to assume the cost of maintenance and where a spouse or both spouses have acted outrageously. I feel that there should be some standards of behavior where one or both spouses behaved contrary to these standards, you know, I still have some concerns about going to the public and saying well now, you know, I'm safe, I can act whichever way I want, I know that if I can't get it out of my husband or my spouse or vice versa, I can always go to the public and I'll receive maintenance. This concerns me a little bit because we are talking about tax dollars.

**MRS. TURNBULL:** Right. I think that, you know, obviously society has a concern that its members act responsibly. I think that a number of the situations would be covered by the present mother's allowance legislation which basically gives public support to people who are raising children and really the money is given for the job of parenting rather than so much to the person.

The position that the Committee has taken with regard to spousal maintenance in the private sector is that need should be the basis of maintenance rather than fault and that that need should be based on the three categories that I mentioned. I think in the public sector again the principle really is on relating people to the job market so that if a person gets out of or is forced out of a marriage and becomes a public charge because of their inability to support themselves, we would push our principles into the mother's allowance area as well and say that mother's allowance should be geared towards those kind of categories and that the emphasis in mother's allowance or in any welfare program should be towards retraining; towards maintaining people who are caring for infant children or, you know, who have health needs such that they can't work, or retraining, but that that also be seen as a transitional structure. Now I don't know if that answers your question directly but I think in all areas our concern is that monies that are used to support people, whether they be from the family purse or from the public purse, be orientated towards that person becoming independent. Does that answer the question?

**MR. ADAM:** That's good, good enough. Thank you.

**MR. CHAIRMAN:** Are there any further questions? Mr. Cherniack.

**MR. CHERNIACK:** Mr. Chairman, I'd like to ask Mrs. Turnbull, in the aspect of the rehabilitative support which includes retraining or new training, new education, is there any limit which you can visualize that would have to be imposed in the event that the state is required to make the payment for support as compared with the husband?

**MRS. TURNBULL:** Well our position basically is that the same kind of maintenance should be available from the family as is presently available for women who are retraining under Mother's Allowance which is basically that they're entitled to a Red River course or an undergraduate degree which is, you know, basically a three year limit at the top, but that, you know, we feel that it has to be a realistic amount of retraining, that the problem that women have in the job market is that they generally are undertrained and, you know, three months, six months, does not give a person the kind of training which allows them to do anything but raise their children in poverty. We don't think a system should be set up which encourages poverty for families. So that kind of limit I think — yes, I don't think anybody wants to support a perpetual university student nor is that socially desirable.

**MR. CHERNIACK:** Well then the question I asked Mrs. Steinbart this morning related to whether there should be a different level of payment recognized by the state to a spouse who is not being supported according to an order of the court or the welfare standards or whatever standards the province pays now. Do you want to

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

---

comment on that?

**MRS. TURNBULL:** Well we have accepted the Coalition's position on that matter. You raised the difficulty of having different people maintained at different levels. I think our emphasis in that area is that all maintenance should be focused on retraining. I don't know whether I want to say any more than that. We feel that the state should be involved in a more active way in seeing that some of these maintenance orders are collected because it prevents people from becoming public charges. If the state has some interest in that they may well be more active in collecting them because the experience so far has not been particularly good on collecting and the state, you know, basically because the Federal Government hasn't recognized its responsibility in the area of collecting maintenance and a person can simply move from province to province and the case has to be re-tried and the right re-established except in a couple of provinces who have signed agreements of concurrence, I'm not sure what the legal term is but whereby an order can be enforced from one province to another.

**MR. CHERNIACK:** I am concerned about whether it is thought that the obligation of the state to say a deserted spouse is greater than the obligation to any other person in society, and I did give my example of a bereaved rather than a deserted spouse. I really have difficulty understanding that there should be a difference in responsibility by the state and I would like to hear more on that aspect.

**MRS. TURNBULL:** Well I think you raise a legitimate problem. You know our position basically is that, you know, we should be focused on helping these people get into the work force.

**MR. CHERNIACK:** Well that should apply to all people who are not in the work force and who are in need of independence.

**MRS. TURNBULL:** Yes, but that the program should be structured in such a way that they actually help people do that rather than welfare being . . .

**MR. CHERNIACK:** Get off the dole.

**MRS. TURNBULL:** . . . being the option that people tend to be sort of elbowed into. Because retraining of course is more expensive than welfare for the government in the short run. In the long run of course it's much cheaper but in the short run it's more expensive; you have to pay tuition; sometimes you have to pay child care costs.

**MR. CHERNIACK:** On the fault aspect, I do not understand the Law Reform Commission's majority decision to bring in the fault aspect. You may understand it but you don't agree with it but I am having a problem trying to recognize what they are getting at. Are you able to — since you won't be back and the question may come up, somebody else may come and say we support the fault provision — I am having difficulty in recognizing how you decide to penalize a person who is at fault either by a lesser maintenance payment — that is for the recipient who is at fault — or is it a greater maintenance payment?

**MRS. TURNBULL:** Well the position basically under the present law is that if you are at fault you normally forego many of your rights. In the Alberta case, Mrs. Murdoch for example, because she left her husband, with her broken jaw, she forfeited her dower rights and got a minimum maintenance payment because she was judged to be at fault because she left. Even under Manitoba law she would have been judged to have been forced out. So that the way the law generally operates now is that if you are legally judged to be at fault, you very often don't get any spousal maintenance, you only get child maintenance or you may forego your property rights. The problem that we have with this is that . . . you know, it takes two to make a fault. With the advent of modern psychology and the understanding of how families work it is almost impossible to find a situation in which one person is one hundred per cent at fault. So that, you know, it just has become irrelevant in modern conditions.

I think the Law Reform Commission — I can't speak for them, I was not a member of that, I'm not a member of the Law Reform Commission — felt that there was some feeling in society that people should have to pay for their faults and that that presented the faith of justice having been done. You'd really have to ask them why they put it in. But as I went over, I thought fairly fully this morning, you know we really feel that fault is not a principle which allows for equity. And then, of course, when you get down to establishing in court what the causes of fault are it becomes even more difficult in practice.

**MR. CHAIRMAN:** Mr. Graham, would you use the microphone please.

**MR. GRAHAM:** Mrs. Turnbull, I think you made a statement that it takes two to make a fault.

**MRS. TURNBULL:** Right.

**MR. GRAHAM:** I know it takes two to make a marriage but does it actually take two to make a fault?

**MRS. TURNBULL:** Well it depends on what kind of fault you are talking about. I am professionally a social worker and I would say on the basis of my professional experience, yes it takes two to make a fault. I think there is the occasional instance that a person may be able to draw up from their understanding, which is sometimes one-sided in that they got their information from one side of the case where it looks like it was only one; I don't think from a theoretical point of view or can I find from a fair number of years practising as a marriage counsellor, from a practical point of view, that I have never seen an instance in which I would say he did it or she did it all.

**MR. GRAHAM:** Very good then, thanks.

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

---

**MR. SHERMAN:** Mr. Chairman, just one supplementary to Mrs. Turnbull on that point because it is an interesting point. I'd just like to ask Mrs. Turnbull, for my information, whether she can assure the Committee that the position that she and the group she represents espouses in this respect is in any way, in her view, coloured or confused by the concept of no fault divorce. Mrs. Turnbull has said that in her experience as a marriage counsellor she hasn't seen many occasions, if any, where fault could be singularly attached, and I'm just wondering whether, because it's a very important point to the committee and no doubt to everybody, whether you can assure us that you're not oriented to that position because of a kind of a commitment to the concept of no fault divorce which is an entirely different thing. In other words I guess what I'm asking you is, do you not think it's possible to pursue and believe in the concept of no fault divorce without necessarily saying that you therefore have to be consistent and pursue the concept of no fault maintenance?

**MRS. TURNBULL:** Well I think that one of the reasons that there is a consideration for the law to be changed is that we have had the rather difficult situation in Canada that the Federal law has been reformed on divorce, and one of the options there — I'm not sure that you could really say that the Federal law is no fault. As a matter of fact in my understanding what it did was specify in very specific terms what the faults were that one could get a divorce on, that is gross non-support, living apart for three or five years, infidelity, alcoholism, incarceration, so on. It spelled out the marital faults in a very specific way.

The problem that has cropped up in the application of that law is that in order for a person who needs job retraining or the care of infant children, to separate, they have to be able to prove a different kind of fault under provincial law in order to have the right to separate and obtain maintenance. So that if a woman or a man for example, wants to, and it would usually be a woman who would be in charge of infant children, if the marriage just isn't working but there has been no infidelity, you know, the husband has supported and so on, she has no grounds and she's put in the position of having to establish grounds in order to be able to leave. Now that's a rather indirect answer to your question and you may want to come at it from a different angle if that doesn't deal with it.

**MR. SHERMAN:** No, I think that deals with it, Mr. Chairman, but I would like Mrs. Turnbull's guidance on whether she thinks from her experience in the field of social work and marriage counselling, whether she thinks the committee will be exposed pretty generally to a position with respect to no-fault maintenance that is essentially coloured by the kind of dialogue that's gone on in North America for the last ten years on the subject of no-fault divorce which is an entirely different thing in my view. And I'm not suggesting we have no-fault divorce in this country but there certainly is a powerful argument for no fault divorce and we may be moving to no fault divorce. But would you agree with me that the concepts and the principles and the values that are brought into play in arriving at a conclusion of support for no fault divorce are not the same as those that should be applied in the field of maintenance? Or do you think that to be consistent you have to apply it across the board?

**MRS. TURNBULL:** Well basically yes, I think it's part of the same process. Basically what we're trying to do is base maintenance on need rather than on fault. In other words to substitute a new principle which we feel is more in light with equality in society and with women in the work force' which is you know what is happening, that however people feel about that, that's what is happening in society and as marriages break down women are being forced into the work force. So that we want to set up a situation in which they can participate meaningfully in the work force and not raise their children in poverty. So that, yes, I think there is a need to be consistent because otherwise you create an intolerable situation where you have the right to separate but you don't have the right to get retraining so that that means that there is no economic base.

**MR. SHERMAN:** Yes but one is based on simply the fact that the marriage no longer functions. Right?

**MRS. TURNBULL:** Right.

**MR. SHERMAN:** And that being the case, that should accommodate all other arguments and perspectives that are brought to bear. If the marriage no longer functions, what's the point of maintaining it?

In the other area you're talking about respective contributions to a situation, which I agree with you, in 60 percent of the cases they're probably equal, probably equal, but in 20 percent of cases you know and I know of the wife has contributed far more and in the other 20 percent of cases perhaps the husband has contributed far more under some stress in many situations.

**MRS. TURNBULL:** Well yes, there certainly are people who put more into a marriage than their partners but you see our position is based on the fact that many women are asked to stay home and raise children, and that if they are asked to do that by the marriage then if they are put in the position of being out of the marriage for whatever reason, that the family, as the basic unit of society should be responsible for retraining them because it has been the family which has asked them not to work.

If a man leaves a marriage and he has been judged to be at fault, he has been unfaithful or whatever, but he leaves with all his job skills, he leaves with all his business contacts and all his work experience, and you know, many many women can attest to the kind of reception you get if you go for a job interview and you say, "well, you know, I have a Grade Twelve and I never worked and I've been at home for 15 years." You get a very different reception than if you go for a job interview and you say, "well yes, I was working for the Bank of Commerce for five years and I was working for the Federal Government for five years, and Mr. so and so I know Mr. so and so and they can give me references."

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

---

The very fact that fault being used as the basis of maintenance creates inequity between those who stay at home and do a legitimate role for society, do things that need to be done for society and those who go out and work, and I'm saying that men and women are equally capable of committing faults in marriage, I don't maintain the angel theory about women, but I'm saying that they should not be put in the position of being unable to get a foothold in the workplace because of having agreed to be mothers, if the marriage breaks down.

**MR. SHERMAN:** Well thank you very much, Mr. Chairman.

**MR. GRAHAM:** I had one more question for Mrs. Turnbull. In the last page of the brief by the coalition, they state that if one spouse dies without a will, the surviving spouse should inherit all of the deceased's estate. Does this viewpoint coincide with the viewpoint of your particular group?

**MRS. TURNBULL:** Well I may just pass on that. That argument is going to be presented later in greater detail. In general yes, the group that I represent, support that position' the presumption being that both partners are equally capable of managing the affairs the family and that the wife should not be judged to be less capable by law than the husband. You know it's not an area in which I claim to be particularly knowledgeable. I would rather that you would ask that of the coalition member who is speaking on that specific area.

**MR. GRAHAM:** Well then maybe I should rephrase it a different way. Does your group feel that children should have any right to property when one of the members in the marriage dies without a will?

**MRS. TURNBULL:** I don't think that it is a primary concern of our group, no.

**MR. BROWN:** I would like to get back to the no fault clause. If we had no fault divorce and no fault maintenance, how would a judge decide who would have custody of the children? Would the children automatically go to the mother even if she had been an extremely poor mother or how would the judge be able to make a decision if we had the no fault clause in there?

**MRS. TURNBULL:** Well basically the situation would be similar to what it is now in that if the partners could not agree as to who should have the children, then an adjudication would have to be made on that basis.

The feeling of the group generally has been that this is an area where children's rights need to have much more attention paid to them, where there really needs to be some decision as to where the children could best be brought up. And you know, we haven't dealt with that very extensively. The B.C. Law Reform Commission, for example, made a proposal that children should be able to be represented in court by a lawyer and that presentations should be able to be made on their behalf as to where they should be raised.

I think that really, if you want my personal opinion, I think the best way to handle this is by a different sort of system of dealing with divorce, which would, as we move away from the fault-finding basis, we can then perhaps move to an agreement basis of separation and divorce in which the mechanisms of the court and society try to force people to come to decisions about what they're going to do about their children and what they're going to do about their property and what they're going to do about maintenance.

The present system of fault tends to push people in opposite directions and force them to disagree. I know that the Law Reform Commission itself has a project that is in some stage of implementation, I'm not quite sure if the Attorney-General could inform us about that, which in effect sets up a court system which tries to help people to work towards agreement and then the judge is merely used to say, "okay this is the agreement that you have", you know, the court will rubber stamp it. But I think that that problem can best be handled by procedural changes and then if people after, in this revised system if they still can't agree, then there probably needs to be some system of having children's interests as to where and how they will be raised represented; that they shouldn't be fought over like property as presently. You know, that is a very destructive process. Does that answer your question?

**MR. CHAIRMAN:** Are there any other questions? Hearing none, thank you, Mrs. Turnbull.

**MRS. TURNBULL:** Thank you.

**MR. CHAIRMAN:** Before we proceed, may I ask if there are any other members of the public present wishing to speak to the committee who have not indicated previously that they wish to speak. If so, would you come forward to the microphone and give me your name, please.

**MR. G. JOHNSTON:** Mr. Chairman, on a point of order, I wonder if you have ascertained whether or not there are any people here from out of town and should they be given some priority, or should they go home and come back another day.

**MR. CHAIRMAN:** Mr. Johnston, I believe you were not here a little earlier when the committee agreed to give preference to delegations from out of town. I would ask if Mrs. Sharp from Portage la Prairie is here. If so, would you come forward please. Mrs. Sharp from Portage la Prairie? Is Mona Brown from Sperling here? Would you come forward please.

**MS. MONA BROWN:** It's Sperling, not Sterling. I live about 40 miles out of the city, it's on the way to Carman. My husband and I own a farm there and I apologize for being late. I'm not sure what the format is. Do you just want me to say what I have to say on the proposals.

**MR. CHAIRMAN:** Proceed.

**MS. BROWN:** Personally I support most of the proposals. I've talked to a number of women in the area and a number of men in the area that I live in, and I'm talking here about rural people mainly farmers, and most

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

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of the people that I have talked to and explained the proposals to seem to feel that they accept them and they agree with a lot of the proposals. I also came from a rural area previous to my marriage and I've talked to people there and they also felt the same way except there's one aspect that a lot of rural people don't seem to agree with and that's the idea of deferred community of property. They would prefer instantaneous community of property and the reasons that they prefer that, or a number of them, I personally have views on that. I feel that if you say that people are equal, that they are equal partners in the marriage, then you have to say you can't just have property rights given — and this is especially important to farm area and rural men and women — you shouldn't just have the property given at the time that you break up, that you split up the marriage, but you should be able to have management and control over the disposition of the property, etc., during the marriage. It seems like the Law Reform Commission, although most of their reforms I suppose are very good, deferred ownership of property rights is only going part way to what I would like to see and I've heard a number of other people would like to see which is a sort of an instantaneous community of property where if you really believe that it should be 50-50 split — I feel that a lot of women in rural Manitoba since the Murdoch case have been very vocal about that. They've started to wonder, well listen, what am I working for? Personally, we have our farm in joint ownership but I know my parents don't have their farm in joint ownership and my parents-in-law don't have their farm in joint ownership and yet they both feel that they are you know equal partners in that relationship and they would like to see it as an instantaneous community of property.

Also if you're not going to go that far then they would like to see that the part about death "that it not even become relevant upon death" be changed to say that you take what they call the standard marital regime in the Law Reform Commission's proposal, you apply that at the death of one spouse and then they get the 50 percent, the half of that, of what is divided in the standard marital regime, and then the other 50 percent, so as not to take away a person's right to dispose of their estate how they please, they can go ahead and dispose of it how they please. Perhaps they don't choose to dispose of it to their spouse. So it wouldn't take away their right to dispose of property under their Will but it would also make sure that each person gets a fair share. The way it is right now it seems like they're almost encouraging marriage breakdown because you get the property, you get half the farm if you split up with your husband but you don't get half the farm if he dies and perhaps leaves it to his son or someone else instead. Unless you apply under some other statute or something you're not left with that property. So it seems to me that I would personally prefer an instantaneous community of property, and second best, I would prefer property to be at least divided upon the death of one of the spouses according to the standard marital regime, 50 percent going to each one after the debts are paid.

**MR. CHAIRMAN:** Does that conclude your brief? Mr. Cherniack has a question.

**MR. CHERNIACK:** Ms. Brown, since I agree with so much of what you say, I would like to know what success you have had in persuading those people who agree with you and who do not have joint ownership of their farms to make that effective now by a legal change right now.

**MS. BROWN:** Well the problem is that you have to pay a gift tax, you can't just automatically change your farm over to joint ownership.

**MR. CHERNIACK:** Well to what extent have they started that program of transferring gifts . . .

**MS. BROWN:** Well my parents and my parents-in-law are presently — just an example, I can give those two — are both presently involved in changing over, gifting so much per year, as much as they are allowed over to the other spouse but with the increase in the price of land lately, that is not going to help them much when inheritance duties come along either.

**MR. CHERNIACK:** Are they doing it for inheritance duty purposes?

**MS. BROWN:** They are doing it for both purposes, I feel. Also, people weren't aware before. Many women that I know who work on the farm, who drive their combines and tractors and do all the work, when they found out about The Murdoch Case just from reading it in Chatelaine or some magazine like that, they were just astounded and they came to me and they said, "You know, is that correct that I wouldn't get any of the farm?" They just couldn't believe that that was what the law was in Canada. And so people are really concerned about it, and when I say I speak for more than myself, I really feel that I do. Most women that I have talked to, and I have talked to a fair number of men, too, and they might disagree with one or two aspects of certain parts of the proposal, but when it comes to property rights, they really agree that it should be a 50-50 split and it should be now and not just at the time of break-up.

**MR. CHERNIACK:** Well do you think then that if there was an exemption of gift tax for an amount equivalent to one-half of the estate that there would be an immediate transfer in many cases?

**MS. BROWN:** I'm sure there would be.

**MR. CHERNIACK:** Thank you.

**MR. CHAIRMAN:** Any further questions? Hearing none, thank you, Mrs. Brown.

**MS. BROWN:** Thank you.

**MR. CHAIRMAN:** Would the representative of the Winnipeg Council of Self-Help come forward please.

**MS. ROSKEVICH:** I was going to offer my allotted time now to an out-of-town speaker, but I notice by this time also, I have to leave to keep my son's doctor's appointment. So if someone else will take over. I would love the privilege to be here tonight, though. I am a local citizen so that's no problem.

**MR. CHAIRMAN:** Do I understand that someone else is going to give the brief for you?

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

---

**MS. ROSKEVICH:** I would like to come back and do it tonight.

**MR. CHAIRMAN:** You may do so.

The representative of the Provincial Council of Women. Would you come forward please. Would you give your name for the record please and proceed.

**MS. JEAN CARSON:** Jean Carson, Provincial Council of Women. The Provincial Council of Women of Manitoba represent a cross-section of approximately 40,000 women in Manitoba and we have appeared before Cabinet many times before.

The Council recommends that Family Law legislation reflect the concept of equality between spouses and marriage as an interdependent partnership of shared responsibilities. These concepts would be interpreted as follows:

Marriage as an economic and social partnership of legal equals;

Marriage as an interdependent partnership of shared responsibilities and rights;

The family as the fundamental unit within the economy and unpaid work done within the family must be recognized as vital to the unit and to society, and be given recognition equal to that of the bringing in of money to the unit;

At the dissolution of marriage, for whatever cause, the right of the partners to an equal share of the assets accumulated during the marriage must be recognized with the right of protection of those assets from undue alienation during marriage.

As to property disposition, Council recommends the adoption of the standard marital regime, deferred community of property rights and the application of this principle to all assets acquired by joint or individual effort during the marriage with the exception of gifts, inheritance, trusts and/or damages for tort.

Council is in agreement with the right to opt out of the standard marital regime after independent legal advice has been extended to both parties, but we express concern that one partner may opt out within a six-month period of enactment of the legislation without the agreement of the other spouse, and that in such a case the standard marital regime would then be applicable only from the date that the legislation becomes effective. May I interject there, that this removes one spouse, ordinarily the woman, from the automatic participation in the assets of perhaps many years of marriage to which we believe she is entitled. This is regressive legislation and the inclusion of this section is totally contrary to the principle of partnerships otherwise recommended in the reform.

Council agrees that the shareable asset of a spouse should never have a negative value unless that were attained by deducting debts incurred directly for family maintenance in the form of rent, clothing, food, dental costs, etc.

Council agrees with the proposed recommendation of the Commission relating to the marital home. Our major concern here is to see that the custodial spouse, again usually the woman, has security of occupancy.

Re maintenance: First of all it's with respect to children. Council agrees with the Commission's position that parents not be permitted to evade their natural and legal responsibility to support their children who are below the age of majority and therefore disagrees with the recommendation that responsibility be discontinued if the child is beyond control. Council recommends that responsibility remain to the age of 18 regardless of a child's delinquency although that child may not necessarily be in the home of the natural parents.

Council disagrees with the Commission in the collection of maintenance and therefore recommends that all maintenance orders be paid with special agency and that that agency pay maintenance at a reasonable level of support whether or not it is collected, and pay the full amount of the order if collected so as to insure security of payment. Now that has come up with other briefs and questions have been asked about the amount paid to people who are not in this position; this is not our concern. We are not doing a survey of welfare, social security. We are talking about the woman to whom payments have been ordered by the court, and that is what we are talking about.

Council has a resolution that has stood for some time advocating the creation of such a system due to the fact that many women have found themselves with little alternative other than welfare, which is a very denigrating and humiliating thing to have to take, because a supporting spouse is in default of maintenance. It has been suggested, and this is generally accepted, that the rate of default from maintenance orders runs as high as 75 percent. It is our opinion incidentally, that the system that we advocate would probably be as cheap, perhaps cheaper, than welfare.

Maintenance with regard to the spouse: In determining the amount of maintenance to be granted Council recommends the following principles:

1. The responsibility of each spouse for the custody and support of the children.
2. The respective responsibility of each spouse for the custody and support of designated others.
3. The length of the marriage.
4. The dependency of each upon the earnings of the other and the reasons for such dependency.
5. The amount received by each for the property settlement.
6. The standard of living and financial situation of each spouse' and
7. The ability of each spouse to become financially independent.

The Council agrees with the principles suggested by the Commission that marriage is a partnership, creating certain responsibilities and obligations within that partnership.

We agree that both spouses are entitled to know about the family's financial affairs, and we would suggest that both spouses be required to sign jointly the Income Tax Return, and with the low view of human nature we seem to take I guess there should be witnesses. This method would help to discourage confrontation between spouses and also give each access to the family's joint earnings. Council realizes that Income Tax is a Federal matter; however we recommend that the Provincial Government might pursue this matter. Our business is not to tell you how to do it; our business we feel is to enunciate principles in which we believe very deeply.

Council agrees with the recommendation that a spouse be entitled "to a reasonable standard of living in accordance with the family's available means." However, we would suggest the deletion of the term, "the actual amounts expended by the other spouse for such purposes." Neither the extravagance nor the penuriousness of one spouse should be the yardstick for the expenditures of the other.

Council agrees with the principle of the "at home" spouse being encouraged to become self-sufficient. Obviously this is the long-term answer to all these problems, for every woman to have a trade, a skill, a profession, that can make her self-sufficient; and also that where possible maintenance should not become a life sentence. We agree that there are instances where that is unavoidable. A reasonable time would have to be provided for the "at home" spouse to re-enter the main-stream of society and develop skills necessary for self-sufficiency. May I interject, that many women embark on this program from a standing start.

**Maintenance and Non-Marital Cohabitation and Children:** Council firmly believes that the family unit is the foundation of society. Those who choose to live outside of marriage do so of their own free will, and should not be entitled to the protection of the standard marital regime. Moreover, some people have chosen the common-law relationship to avoid just such interference and regard the interference as an intrusion into their civil rights.

Any children resulting from the relationship should be the responsibility of the natural parents to maintain and support, although the secondary responsibility for maintenance and support would probably devolve upon the state.

This is another resolution of Council's, we have many of them — Council is opposed to the principle of fault in all areas related to marriage breakdown. How does one decide what is fault? What stimulæ go into promoting these actions which are regarded as fault? They are probably away back in the mists of time. Those factors which are presently recognized by law as fault seldom relate to the true causes of marital breakdown. The system should not be destructive but constructive, and further, the primary concern of legislation and the courts should be to encourage both spouses to re-enter the social stream of society with as little damage to either as possible. The position of No Fault for Divorce, Property Disposition and Maintenance has been held by a Provincial Council for many years.

Council is opposed to the use of Discretionary Powers of the Court in matters of disposition and maintenance. We have a kind of a shorthand for criticizing that, we say Murdoch and Rathwell. In the past this method has worked to the disadvantage of women. The criteria should be based on need on the one hand and resources on the other.

Council agrees with the Commission recommendation that the provisions described in the Dower Act and suggested to be described as "Surviving Spouse's Share of Estate", should be increased from one-third to one-half of the testator's net estate.

We have another resolution from Council in the past. In the absence of a Will Council's position is that the surviving spouse receive the entire estate. It is interesting to note that no husband, upon the death of his wife, feels any compulsion to distribute assets to his children. However, when the husband predeceases the wife, she is expected to share the assets with her children. If you believe that they're equal partners and have equal rights then you wouldn't expect that.

Another resolution of Council's, and this goes back to the time when the Federal Government vacated the tax field and the Provincial Government entered it. Succession Duty and Gift Tax between spouses is regressive legislation and should be abolished.

Another Council resolution: Council has previously supported the concept of the Unified Family Court System which would be complementary to this reform legislation.

Council expresses concern that when couples enter the state of marriage they are inadequately prepared to deal with the responsibilities they will encounter. We would suggest that couples prepare a marital contract after receiving independent legal advice. This would be an opportune time, perhaps, for them no matter how little they had to prepare their first Will thus demonstrating immediate concern for the long-time welfare of the people they are marrying.

May I just finish by saying that the whole concept of this submission is that marriage is an economic and social partnership of legal equals and that the contribution of each spouse though different in kind is equal in value. Everything in this brief flows logically from that premise.

**MR. SHERMAN:** Mr. Chairman, I thank Mrs. Carson for a very explicit presentation and commend her on the clarity of the brief. I'd like to ask, on Page I, Mrs. Carson, you point out that the Provincial Council of Women of Manitoba favours the concept of the Deferred Community of Property Regime. When the previous



delegations that appeared before the Committee today as you are no doubt aware, there has been some persuasion in favour of the concept of instantaneous jointly managed community of property. I wonder if you could enlighten the Committee, it would be helpful to me and I'm sure to my colleagues, as to why the Provincial Council of Women favours the Deferred Community of Property concept over the instantaneous one.

**MRS. CARSON:** Believe me, Mr. Sherman, we would love joint ownership and legal management at once. I was most grateful to the previous speaker who comes from a country point and set forth exactly the problem with which we have been dealing in Council in a little dramatic skit that we have done 35 times entitled "The Balloon Lady" dealing with Mrs. Murdoch's problems.

Ideally, of course, there should be joint management. There is no question in Provincial Council's mind anymore than there is in anybody else's mind. We just thought that perhaps for starters it might be easier not to leap in, for your sake.

**MR. SHERMAN:** But what you've really done here is adopted a loss leader.

**MRS. CARSON:** That's right, and I hope when you come in to buy your loss leader you'll buy the whole package.

**MR. SHERMAN:** Well, I may have some other questions but that was the first one and I'll pass the microphone, Mr. Chairman.

**MRS. CARSON:** May I make a further comment, Mr. Chairman?

**MR. CHAIRMAN:** Please do.

**MRS. CARSON:** This morning when the laws were being discussed some of your Committee members said that they thought we had pretty good laws right now. I wonder if they've read the Devolution of Estates Act which I consider to be insulting to women. It regards women as having the same dependencies, the same lack of capabilities, and apparently no sense of responsibility as to children. Why would the law take upon itself the right to distribute this money and tell the woman how she must use it? Women are adult responsible people with a deep and abiding care for their children.

**MR. CHAIRMAN:** Order please.

**MRS. CARSON:** Pardon?

**MR. CHAIRMAN:** I was calling the audience to order, Mrs. Carson.

**MRS. CARSON:** Well, I thank them.

**MR. CHERNIACK:** Well, Mr. Chairman, Mrs. Carson side-tracked me from my suggestion to her that she's trying to sell out too cheap by giving up the instantaneous right to share in property . . .

**MRS. CARSON:** (inaudible)

**MR. CHERNIACK:** That may be, but you're still on paper as accepting the other concept.

But you did divert me and I want now to ask you, what is there in the 8Devolution of Estates Act that makes women accountable for what they do rather than a direct inheritance?

**MRS. CARSON:** Because it says that if there is one child they get half the estate. If there is more than one child you get a third of the estate. Why should this be? Why should the estate not go to the woman and let her dispense the necessary goods and moneys and so on to her children, which in our belief women do?

**MR. CHERNIACK:** And men do.

**MRS. CARSON:** Sure men do but it doesn't arise in man's life.

**MR. CHERNIACK:** The Devolution of Estates Act applies to both, it's just assumed that . . .

**MRS. CARSON:** Yes, but how many times, Mr. Cherniack, does a woman die with an estate where it isn't operable in any way?

**MR. CHERNIACK:** You're saying that you should take away the law, or society should consider that a person has to make a definite decision to share the property in a different way, say 50-50 with children, should do that rather than have it done for him if he doesn't leave a Will, because you do recognize his right to make a Will making that very same distribution as with the Devolution of Estates Act.

**MRS. CARSON:** I have reservations about that but it's not in this brief, I'm representing the Provincial Council, I can only speak as Council has instructed me to speak.

**MR. CHERNIACK:** All right then let me come back to your brief. Since I agree with your omission, deliberate omission, on maintenance of spouse, of the fault provision, I would like you to clarify for me why you consider that length of marriage has a relationship to the maintenance. You said that needs and resources . . .

**MRS. CARSON:** Where?

**MR. CHERNIACK:** At the top of page 3, item 3. You took out the fault, which would have been number 8 if you had copied everything that the Law Reform Commission said. You took out fault and I say fine, I agree it should be "needs and resources." Then why did you leave in the length of the marriage? How is that a factor?

**MRS. CARSON:** Well I would think that when you come to the question, which you discussed at great length with Mrs. Turnbull, on the woman who has had many many years in the marriage and has thus been rendered incapable of supporting herself, in that respect the length of the marriage would be a matter of fact.

**MR. CHERNIACK:** Wouldn't that then relate to needs rather than length?

**MRS. CARSON:** Well it could but I don't think that is important.

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

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**MR. CHERNIACK:** The other question I have to ask of you is whether you believe in the principle of estate taxation.

**MRS. CARSON:** Definitely not, a victim I am.

**MR. CHERNIACK:** So that you don't agree with any type of taxation of succession?

**MRS. CARSON:** I don't believe in any kind of taxation between spouses.

**MR. CHERNIACK:** No, no, I'm asking you about the general . . .

**MRS. CARSON:** Oh, you're talking about the overall picture of taxation.

**MR. CHERNIACK:** The overall picture of estate taxation.

**MRS. CARSON:** We could have quite a long talk about that. You know I think there are other things to be said, but what I'm talking about here is between spouses and Wills.

**MR. CHERNIACK:** Thank you.

**MR. ADAM:** Thank you, Mr. Chairman. Mrs. Carson most of the briefs that we have heard today are in support of the division of assets in the event of a marriage breakdown or maintenance. I'm just wondering what your position would be in the event of a marriage breakdown, and say that instead of assets there's \$100,000 deficit.

**MRS. CARSON:** I think we covered that, did we not?

**MR. ADAM:** Did you have that in your brief here?

**MRS. CARSON:** Well we said that there should be no negative value to the estate, unless it had been incurred before . . .

**MR. ADAM:** In other words the spouse would not take on any of the debt.

**MRS. CARSON:** No, no. We agree that the shareable assets of a spouse should never have a negative value unless that position had been attained by deducting debts incurred directly for the family maintenance in the form of rent, clothing, food, dental care, etc., not speculation or horse racing, as has come up before, or riot to us living of any sort.

**MR. ADAM:** Thank you.

**MR. CHAIRMAN:** Are there any further questions? Mr. Johnston.

**MR. G. JOHNSTON:** Yes, on page 4 you talk about maintenance. In the first paragraph under maintenance it says, "Non-Marital Cohabitation and Children", and you say those who choose to live outside of a marriage do so at their own will' and should not be entitled to the protection of the standard marital regime. That's a pretty harsh recommendation in my opinion that you're blanketing, because of the lack of a signature on a document, you're blanketing everybody with a feeling that you have or your people have.

**MRS. CARSON:** No, I don't think so Mr. Johnston. I think we're doing here what we are attempting to have you do throughout, and that is regard women, men as people, and responsible people. And if you choose to go into a common-law relationship presumably you choose to do so. Now you will say, "Well there are places perhaps where this can't be done, the one person is married and so on and so forth." You still go in with your eyes wide open, that's your choice. We say this because we believe in the family. It probably comes as quite a surprise to some people who think of us as pretty hard-bitten, but we believe in the family as the only logical unit for the upbringing and training of children and we want to protect the family. We don't want to make it easier not to have the family. Mind you there's lots of people, as I said, who do this, who've gone into this relationship because they don't want these responsibilities attached to them, and this also is their privilege. They pay their money and they take their choice.

**MR. G. JOHNSTON:** Well are you really saying, with no exceptions? Should not someone have a chance to, whether it's a judge or by contract or whatever, shouldn't there be some appeal?

**MS. CARSON:** Well here again MRS. Mr. Johnston, all morning we've been listening to these straw men being set up and the minutiae of these things. We don't consider these to be really our problems. There can be exceptions, presumably the people who frame the laws will have thought of more contingencies perhaps than we have, we're talking about general principles in which we believe and we shall have to leave it to the wisdom of the legislators to frame these things into law.

**MR. G. JOHNSTON:** Thank you.

**MR. CHAIRMAN:** Are there any further questions? If not thank you Mrs. Carson.

**MRS. CARSON:** Thank you.

**MR. CHAIRMAN:** Is Bernice Sisler here please? If so would you come forward? Proceed.

**MS. BERNICE SISLER:** Bernice Sisler, 714 Ash Street, is that the information you want?

**MR. CHAIRMAN:** Thank you. You are not representing any group?

**MS. SISLER:** I am here as a private citizen and I have copies of my brief which I will wait for distribution before we begin.

**MR. CHAIRMAN:** They will be distributed if you'd like to proceed.

**MS. SISLER:** Well I think it's easier if you start when I do with the brief and you don't have to flip through the pages as I'm reading and try to catch up with me. If I may have your . . .

**MR. CHAIRMAN:** Very well. Mr. Johnston.

**MS. SISLER:** I'm sorry, Mr. Chairman, but I saw that happen the last time and I think it really is easier. If I

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

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were sitting there I would want to start with the brief and not have to catch up at the end.

**MR. CHAIRMAN:** You have the tacit approval of the Committee.

**MS. SISLER:** Pardon?

**MR. CHAIRMAN:** You have the tacit approval of the Committee.

**MS. SISLER:** Thank you. Since I went to a great deal of difficulty to get them xeroxed and collated and so on and here on time I really would like them distributed. I don't have a secretary.

**MR. SHERMAN:** Not even a male one.

**MS. SISLER:** Not a male one and not even a wife so it puts me in an unenviable position in this regard.

Gentlemen: I welcome the opportunity provided for citizens to appear before this Committee. I have worked with various groups studying the recommendations of the Manitoba Law Reform Commission on Family Law. However, my presentation will not concern itself with a detailed review of proposed changes in the Law since other briefs will do so. I will refer to three aspects only:

1. Why we need change in Family Law
2. The principles on which the change should be based
3. A rationale in rebuttal of arguments given for not changing the Law.

Why we need change in Family Law: Laws reflect the attitudes of the era in which they are formulated. Current laws governing women in family relationships are based on the common law of feudal England. It is evident that the attitudes they reflect are out of date and that change is long overdue.

In feudal times the relationship between husband and wife was one of an exchange — the husband provided protection to the wife in exchange for her exclusive services. The aspect of exclusivity of those services is reflected in many of our laws and in the interpretation of those laws. It is seen in the procedure of Criminal Conversation where the husband can sue the lover of his wife. There is no reciprocal right of the wife to sue her husband's lover. It is my understanding that if a husband deserts her, the wife can obtain maintenance only if she remains chaste. This means remaining faithful to the husband who walked out on you. Our laws concerning rape and the attitudes of the courts toward women who have been victims of rape reflect a demand for a woman to be chaste. Because the husband provides protection rather than services there is no like demand for him to be chaste — a clear-cut case of wives regarded as property.

Again, the concept of wives being the property of their husbands is seen in the custom of the wife taking the husband's name at the time of marriage. If at some point later in the marriage or at the time of separation the wife wishes to use her maiden name she must obtain her husband's consent to do so.

The laws providing for protection of the wife were valid for the era which produced them. At that time a woman left home where she was the property of her father and moved to another home where she became the property of her husband. She turned her dowry over to her husband and she herself owned nothing. It was sufficient at that time to have protection. In 1882 the Married Women's Property Act was passed enabling women to retain property they brought into the marriage. This was an advance for that day. It is not enough today.

Today society no longer regards wives as the property of husbands. In 1974, 36.7 percent of married women were in the labor force. Indeed in that year married women formed 57.1 percent of the female labor force. Attitudes have changed about women being confined to the home. Some married women are in the labor force so that they and their families can eat and have shelter and clothing. Some, simply because they choose to be there. Society has moved from a "one life style for all" to a recognition of options of life styles. During the War, women were called upon to work in factories. When peace came, some women returned to their homes to raise families. Others did not.

It is unrealistic to bring expectations of a different time to bear on the present reality.

I suggest to you that by virtue of human rights, married women should be regarded as persons in their own right rather than the property of their husbands and that the work they do whether performed in the home or outside the home should be recognized to be of value to society. This is a basic principle.

Recognition by society of the value of work done within the home has been slow in coming but a measure of that value in terms society understands — i.e. dollars — has been made. Reckoned at minimum wage level economists have valued a housewife's work at an annual amount of \$13,000.

Some of our laws contribute to the opinion that work performed in the home is of lesser value than that performed outside the home for a wage. When both marriage partners work to maintain the family — the wife in the home and the husband outside the home — the money earned by the husband is considered to be his and he may give his wife an "allowance" as one might give a child an allowance. At time of marital breakdown, the law puts the onus on the wife to prove that property has been bought with her money and not with her husband's. Again, when a man dies intestate, the law allows the wife to claim only one-third of the estate if there is more than one child. If a woman dies intestate does the law expect the husband to give two-thirds of the assets to the children? It might be argued that the law exacts the same dispensation from the wife's estate as it does from the husband's. The argument is academic since the assets acquired during the course of the marriage, if acquired with his money, are considered as his assets.

The Gift Tax Act states that any transfer of property or moneys over \$5,000 in value passed from husband to wife is a gift and as such is taxable on the same basis as a transfer between parents and children.

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

---

The Succession Duty Act states that estates valued over a given amount passing from husband to wife are taxable on the same basis as those passing from parent to children. Clearly these laws treat wives as though they had the same dependence and the same capabilities as children have.

The fact that the Government of Manitoba has seen fit to direct the Manitoba Law Reform Commission to examine Family Law indicates of itself that there is reason to question the laws in this area.

The law isn't attuned to the reality. We need new legislation.

The principles on which changes in the law should be based: IT MUST BE RECOGNIZED IN LAW THAT MARRIAGE IS AN ECONOMIC AND SOCIAL PARTNERSHIP OF LEGAL EQUALS. It follows from this that both partners during the course of the marriage support one another according to their abilities and needs; that the partners share the responsibilities of the marriage; that the partners have a responsibility to share in the support and care of children of the marriage; that both partners have knowledge about the family income; that both partners participate in the decisions concerning the expenditure of that income; that both partners protect the assets being built up and that both partners have knowledge of each other's will. It likewise follows that upon marriage breakdown both partners have a right to an equal share of the assets built up during the course of the marriage; that fault for marital breakdown is irrelevant to property sharing. It follows as well that opting out of equal sharing must be by mutual consent with independent legal advice for each partner and never unilaterally.

IT MUST BE RECOGNIZED THAT THE FAMILY IS THE FUNDAMENTAL GROUP UNIT OF THE ECONOMY AND THAT UNPAID WORK WITHIN THE FAMILY IS AS VITAL TO THE FAMILY UNIT AND TO SOCIETY AS PAID WORK PERFORMED OUTSIDE THE FAMILY. It follows that during the course of the marriage both partners have a right to an on-going share of security being built up for the future; that all taxes as between marriage partners should be abolished; that succession duties as between marriage partners should be abolished. It likewise follows that up

Fears re proposed changes: One hears the concern expressed that changes in the law will contribute to the break-up of the family unit. Changes have taken place and are taking place in the family. Some of our expectations for the family are based on a society in which conditions were quite different from what they are today.

The question is — will the recognition of the equality of women in marriage contribute to family breakdown or to family cohesion? There is reason to believe that where economic, sociological and psychological disabilities have been removed from traditionally female occupations and where this has been accompanied by a recognition of the equality of women, women tend to choose female occupations. If these deterrents are removed from traditional women's occupations in our society the same result might occur.

The institution of marriage is being viewed with a critical eye by many because the family as traditionally organized implies discrimination against women. If discrimination were removed marriages would be more desirable and when entered into, more stable.

We ought not to be concerned that laws established on the principle of equality of marriage partners will contribute to family break-up. We ought to be concerned that the present laws in which there is no equality for women do contribute to this. Only where partners regard each other as equals will the marriage and family flourish in today's society.

Another concern is frequently expressed re the effect of a law requiring equal sharing of property and holdings such as the farm or family business. I believe that was expressed this morning. Will marital breakdown in such cases also mean the break-up of the farm or business? Even though the farm or business you bring into the marriage remains your property, the increased value of that holding during the marriage would be shareable under a deferred sharing regime. To deny one partner his or her rights under a law of equitable sharing because there are difficulties with regard to property holdings is no solution. Wives in family businesses and family farms are usually joint managers — in fact if not in law. They don't earn a salary, they don't build up an equity. Nor do they have any fringe benefits. But they do do the work of a partner. Ways can be found to solve the problem of keeping the farm or business intact other than by depriving one spouse of what is rightfully his or hers.

Again, we hear that Manitoba doesn't need new laws, that since the uproar over the Murdoch and Rathwell cases, decisions by judges have been more favourable to women. The report of the Manitoba Law Reform Commission quotes a court decision which refutes this assumption. The judge states: "If a presumption of joint assets is to be built up in these matrimonial cases, it seems to me a better course would be to attain this object by legislation rather than by exercise of an immeasurable judicial discretion." When the uproar accompanying these cases has died down we may very well be back to the game of judicial roulette. Privileges can be taken away very easily. It is more difficult to tamper with rights once they have become enshrined in legislation.

There continues to be concern about the unscrupulous marriage partner who marries for monetary gain. The present laws based on protection do nothing to deter this type of opportunism. Laws based on equality of both partners would tend to discourage this. Short marriages would not prove lucrative where equal sharing of assets acquired during the course of the marriage is the rule and where maintenance is based on need rather than on the fault of the other partner for the breakdown of the marriage. The "gold digger" syndrome would be discouraged if not eliminated by a change in the basis on which family laws are framed.

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

In conclusion I would bring to your attention a remark heard repeatedly since the publication of the report of the Manitoba Law Reform Commission — namely that those who are working toward having the laws changed have an axe to grind. There are those who have learned from experience that the law and the application of it are far from fair and just. There are those who see injustice in the laws and who want to see this injustice corrected simply because it is unjust. The time has come to stop sweeping the situation under the rug and to pay serious attention to it. It is unworthy to suggest that because women want changes in law they have ulterior and questionable motives. The time has come to frame laws that are equitable for men and women.

**MR. CHAIRMAN:** Are there any questions? Mr. Adam.

**MR. ADAM:** Thank you, Mr. Chairman. To the witness. I would like to ask the same question with a kind of a different example. I asked Mrs. Carson a question relating to the situation where the assets to be divided are in debt to the tune of \$100,000. I would like to ask another example and get your reaction to this situation. In the event that there's \$100,000 of assets to be divided and there's \$100,000 debt, I understood Mrs. Carson's response would be that there would be \$50,000 in that situation that one spouse would have to provide for the other.

**MS. SISLER:** I really don't understand your question. Did you say there's \$100,000 assets and \$100,000 debt?

**MR. ADAM:** Owing on the assets.

**MS. SISLER:** I was a mathematics teacher and it seems to me that that adds up to zero. I don't really understand what you're questioning here.

**MR. ADAM:** My question to Mrs. Carson was that if there were no assets, there was \$100,000 debt instead of assets, there was to be, according to the brief presented by Mrs. Carson and the Council, there was to be no negative value.

**MS. SISLER:** Yes, that's the recommendation of the Law Reform Commission.

**MR. ADAM:** But in this type of a situation here where there is \$100,000 of property — I'm just using an example, it could be \$150,000 but there's \$100,000 owing — it seems to me that the approach that's being presented here today is that the spouse, whichever one, the husband or the wife, would have to come up with \$50,000 for the other spouse.

**MS. SISLER:** I think if you read the report and the explanation of how this might be done, and again I would point out that because my expertise isn't in this kind of area of drawing legislation and working out the details I can only rely on what the Law Reform Commission has come up with, if you look at that it's really quite detailed in there about the net estate that you would share, the net estate, and they go into great detail about it giving an example and adding up your total assets and what would be an equitable share of what is left and that's what you would do. I would imagine that the legislation would be set up such that that would be drawn up and you would share what's left. Now I see the point that you're making that there still might be something left with liabilities against it in some way. I am not knowledgeable enough in this area but I would say that what you share is the net estate and that you both would share that. You're referring to perhaps a business situation are you?

**MR. ADAM:** No, I'm suggesting here that the way the briefs have been presented here, the majority of the briefs are that the onus is on the managing partner and if there is negative assets one is still responsible for half of those assets to someone, to the other spouse.

**MS. SISLER:** I've just been presented with the method of calculation that I couldn't find, the exact page. It's on page 65 and 66 in the Report and it's detailed. I really don't feel that I'm in a position — I can look at the principles involved and I realize that there are difficulties but as I went through the Law Reform Report I felt that it outlined many many of these. Now of course I think that the law can't legislate against everything that happens. There are lots of things in my life that have happened to me that I wouldn't expect the law to protect me from, they just happen. You can't legislate against health disabilities, those kinds of things and I think that there are some cases that won't fall in the law. What I would be interested in having is a law that was equitable for women as for men, that it be the same for both of them and that would seem to me to be the basis.

Now in any situation there are going to be some things that aren't going to come out equal. In a family you try to raise your children the same way, give them each the same opportunities but if you have children you know that one child seems to cope very well and you seem to do the same thing for the other child and that child doesn't cope very well. So I think you know that's life. But as far as the details of that particular situation are concerned I think the principle is that at marital breakdown you share what has been built up, the assets that have been built up in the course of marriage. I'm sorry I can't be more explicit on that but I can't.

**MR. ADAM:** Well that's fine. Thanks very much, Mr. Chairman.

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

**MR. SHERMAN:** The only question I would have, Mr. Chairman, to Mrs. Sisler is about a point not that's in her brief but that is not in her brief unless I've missed it and that is the question relating to spousal responsibility for minors and children.

**MS. SISLER:** Yes I referred to that, that generally they are responsible for the care and support of children in the marriage.

**MR. SHERMAN:** To the age of 18?

**MS. SISLER:** I would say yes. I didn't specify that because I wasn't answering specific things. My personal feeling would be to 18. I think parents have a responsibility in law to 18.

**MR. SHERMAN:** This is the point I was looking for. As you know there is some disagreement as to whether it should be 16 or 18. You feel that that responsibility should be maintained until a child reaches the age of majority regardless of what that child may be at 16 or 17 either boy or girl, may have elected himself or herself to do in terms of their own lifestyle and regardless of where they may be doing it.

**MS. SISLER:** When I looked into that I phoned the Children's Aid and I phoned people that are knowledgeable about The Child Welfare Act and so on and as I did that I discovered that the objections brought up to sort of explain that position really were more apparent than real. I think that a lot of those things are taken care of in the normal course of events, that parents wouldn't be obligated in ways that that clause seems to suggest. I think that's going on, you know, that Children's Aid looks after difficult cases and so on and parents are not responsible for debts incurred, this sort of thing, at the present time so I don't see that as a particular problem. I think what I'm concerned there with is the principle that if by law a child is defined as a child until he or she reaches the age of 18 that that then means that the parents' responsibility should extend to that time.

**MR. SHERMAN:** But you're telling me and the Committee that it's your understanding that legally that responsibility would not extend for example to the son or daughter of a couple living in Winnipeg who, the son or daughter living in Vancouver or living in Halifax of a couple living in Winnipeg. You're telling me that your understanding is there would not be any legal responsibility in this case.

**MS. SISLER:** No. I think that where there are extraordinary circumstances that the sorts of concerns that seem to be — I don't know really because I'm not a commissioner — but seem to me to be behind that recommendation, that where those are they are taken care of in the normal course of events. One of the things that concerned us is say if your child goes out and incurs a great debt, now because you're legally responsible until he's 18 must you pay that debt. My research indicated to me that no, you're not responsible — a lawyer will know whether I'm correct in this — that when you make contracts, if somebody makes a contract with a child the onus is on the person making the contract with the person under age so that the parents are not obligated. I'm sure this arose with credit being extended to under-age children and so on.

**MR. SHERMAN:** I wasn't so concerned with the question of accumulating a debt but I was concerned with the matter of support generally and maintenance of the lifestyle or the ability to live of that child. I have raised this very question with the Chairman of the Manitoba Law Commission because it seemed to me that if the age is set at 16 as is recommended in the Report that that opens up an opportunity for child abuse of a kind that is certainly not desirable where there could be parents who wanted to get rid of children at 16 and used that as an excuse to do so. I was assured by the Chairman of the Law Commission that that couldn't happen, the Children's Aid Society in those cases would step in.

**MS. SISLER:** I wondered if you were referring to children who move out of the home. I would think that you'd only be obligated to support them in your own home. I don't imagine that means that if your child moves to Vancouver that you've got to send him \$500.00 a month for rent. I think that that would mean that you would be required if your child wanted to come home and he's 17 or she's 17, you know, that that's your legal responsibility to provide for them during that time. I think where you have very difficult situations it's not likely that the kids will want to come home you know. Let's face it, they're not wanting to come back to the rules and so on if there are these kinds of problems.

**MR. SHERMAN:** They may not want to come home but if they are minors then you have the legal right to go out and fetch them and bring them home. They may not want to come home.

**MS. SISLER:** But my research indicates, Mr. Sherman, that the Children's Aid does look after this, that they don't usually in a difficult situation like this force the parents to do a, b, c and d sort of a thing, that this is not a productive way of solving the problem, they bring other solutions to bear.

**MR. SHERMAN:** Thank you.

**MR. FRANK JOHNSTON:** Thank you. On page 4, Mrs. Sisler, your second paragraph is quite a paragraph. "*The institution of marriage is being viewed with a critical eye by many because the family as traditionally organized implies discrimination against women.*" Now you might say instead that marriage implies discrimination against women. Could you explain?

**MS. SISLER:** Well I thought I explained that in my introductory, Why We Need Change in Family Law. I thought I outlined in two pages there what the discriminatory factors are in the law. I think this is my point, that people are not going into the legal marriage. They're opting for not taking out that legal document because of all that the law reflects, that women are property and not persons. I've pointed out specific laws, I felt that I had documented that enough to indicate that therein lies the discrimination and it's very interesting once you perceive this historical property aspect to women, you see it in all aspects of her life. If any of you were at the opera, you'd see that the other day where the men and women come out of church and the men assemble on one side and drink and the women go to the other side, and that's the history of the situation. That's what we have with us right now and it's no longer applicable. Things have changed. We're not in that kind of society anymore.

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

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**MR. F. JOHNSTON:** Well, thank you. You explained your reference there.

**MR. CHAIRMAN:** Are there any further questions? Hearing none, thank you Mrs. Sisler.

**MRS. SISLER:** Thank you.

**MR. CHAIRMAN:** I've been informed that Mrs. Sharpe has arrived from Portage la Prairie. If you are here would you come forward, please? Are you representing any group, Mrs. Sharpe?

**MRS. SHARPE:** No, I'm by myself.

**MR. CHAIRMAN:** Would you proceed, please?

**MRS. SHARPE:** Thank you. Someone assured me that if I faint you will pick me up. Do I have your assurance? I don't make speeches.

The Commission has gone over these laws and has made recommendations about how the law ought to be changed, and I'd like to make a few comments on these recommendations as I understand them.

I tried to get a copy of the recommendations but I just heard about these hearings three weeks ago and the lawyer told me that by the time I got a copy and read them and thought about them and went over them the hearings would be long over. So I read a summary from the Women's Coalition in Winnipeg who seem to have done a good job of going over them.

When these recommendations for changes come before the Legislature I feel they deserve attention. It's been rumoured that the legislators don't really feel it's very important and I take exception to that. I would really like to have them looked at seriously and with concern.

A lot of us have gone over these issues — and I don't represent a group — but I think of all the women's groups, the church auxiliaries, the University Women's groups, all the women's groups throughout the rural part of the province who have sat and talked about these. We have had speakers in and we've discussed what we think about these issues which are now coming up and I feel that we should have a contribution and although I don't represent a group officially I feel that I do represent the opinion of a lot of individuals. When a notice comes out and these hearings have been adequately advertised, and yet a notice at the back of the paper which says, Public Hearings on a certain date about Family Law, the people who are concerned about it just don't seem to notice a notice like that and realize that that is where they'll get a chance to have a say about how the legislation is changed. They don't seem to relate the problem to this particular legislation, and I think this is too bad.

I don't know a lot about the legal aspects of these recommendations, so I may sound very general compared to some of the detailed reports you've heard previously, I'm sure.

The recommendations state the principle that marriage is an equal partnership. I think it's very good that they state that because even though legislation cannot change attitudes, I think that by directly saying that the tone can support the view. There's one recommendation that apparently says that when a marriage breaks down the property and the assets acquired since the marriage will be divided equally, and this supports the view that marriage will be an equal partnership on separation, and that seems a bit funny to me; that once we separate we're going to be completely equal, but as long as we're married the same rule holds that he who buys will own. The wage earner seems to me still with the advantage there.

We've talked about it and thought it would be better if that read that during the marriage property would be owned equally in common; and on separation would be divided equally.

It's been suggested in the recommendations that each partner should be legally entitled to know the earnings and the debts and the property of the other. I felt that that was fair and ought to receive approval.

In trying to equalize the situation apparently the Committee has recommended that the non-earning spouse be allowed an allowance in relationship to what the earning spouse spends on himself, and that didn't seem too practical, that one person should still have his life-style dependent on that of another. But the meaning of it was good.

In the matter of the maintenance awards, apparently the recommendation still put in the criteria for maintenance that one shall be fault — I don't know where this is coming from — but it seems generally agreed among everyone I speak to that this is an antiquated idea and that whose fault the marriage breakdown was bears no relevance to the arrangements that will be made on separation, and seems to cause a lot of trouble.

We can look at the example of a marriage where we presume people have tried to get along for years and then have failed and one partner wants out and can only get out by proving the other partner is at fault. We all know that you go to a lawyer and you have to tear the other person apart completely in order to get away, and that seems not only foolish but immoral to me.

In the matter of maintenance the recommendations of the Commission work on the principle which I think is really enlightened and excellent, that they're working towards the goal of economic independence for both partners, and that these payments might be highest during separation when say a woman or the person looking after the children needs money to care for the children but that it could taper off after retraining when she or he were able to take care of herself.

The other thing I wanted to comment on was the idea of a fund to make the maintenance payments from. I know the lawyers have lots of ideas why it wouldn't work, but I think we really have to try this. I don't remember many statistics in my head, but two have hit me. One is that 75 percent of the maintenance orders are not collected. The other is that 69 percent of welfare is given to sole-support parents looking after families

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

where one parent looks after the family and it seems that we know these are women looking after children. It seems to me that in this time of rapid change there is going to be hardship, we know it, that roles are changing and we can't go back. We're caught in the middle of the change and there is going to be hardship on somebody and I think we should try to bear this more equally rather than putting the burden of hardship on the children. We can't say that they're not our children because they are, we have to live with them and they are going to be our children. I don't think we should put this burden on them. If a fund from which maintenance could be paid would relieve this, I think we should look at it very seriously.

Apparently in the recommendations there was a clause which allowed opting out by one partner within six months or 60 days or something, from the time the legislation was passed if it was passed, and I can see a lot of drawbacks to that. Irene Murdoch could be in the same position that she was to begin with; the wage earner could opt out of this contract. Other legislation is enacted from the time that it is passed and I think this should apply here.

I realize that I've drawn a lot on the work of women in Winnipeg and I'd like to support and say that we who have studied this in our town have supported generally the report of the Women's Coalition. I'm not even sure of whom they comprise, but the coalition of women's groups who has put together a report. As a minimum I would support their report. Thank you very much.

**MR. GORDON JOHNSTON:** Mr. Chairman, I followed Mrs. Sharpe's remarks quite closely, and I have a letter here from her. I guess her notes are very similar to the letter I have.

**MRS. SHARPE:** Probably.

**MR. GORDON JOHNSTON:** One point she made that she neglected to mention now I think should be brought out, and that is the fact that in her letter she said she would like to see a hearing held in Portage la Prairie.

Now because the province is so large and naturally the time of the Committee can only be extended so long because the government has to form legislation if that is their intent, I would like to make the suggestion that was carried out when the Northern Task Force was in operation and that is that the Committee split itself up and elect a sub-chairman and go to some of these other points. It doesn't seem fair to me that the women at Flin Flon and Lynn Lake and Russell and Portage la Prairie and other small centres in the province should not have the same right as the women of Thompson, Brandon and Winnipeg to present their case. Now I know there will be some duplication. I know that it's time consuming. But in the interests of allowing the women in all of the province, or as much as we can cover properly, we should consider the suggestion that I'm talking about that Mrs. Sharpe has made but was perhaps too shy to say, that this Committee should go to other centres other than the three that are on the agenda now.

**MRS. SHARPE:** I don't know what the response would be in a town but I tried to get to as many people as I could. Groups hold meetings only once a month, you know, and I didn't have much time to get around, but there was interest. What women said was, we said all this last year and they felt that they'd done this. They've brought it up on their agendas, they've talked about it, they've decided what they would like to see and they've reported to their legislator. I think they would put it back on their agendas again if they felt it was coming to their towns. Now they would have a chance to come forward and say what they had decided at all the meetings that they've had. It's the same old thing, that the women talk and talk, but then when it comes time to hand in the results of their talk they think the men will take care of them, we'll let the legislators do it. Then they're surprised to hear that nobody did that.

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

**MR. SHERMAN:** Well, I just wanted to say, Mr. Chairman, that certainly I would be in agreement with Mr. Gordon Johnston's suggestion, I have no objection to it, whatever. We'd like to get the widest possible view. But just as each one of us around this table represents some 15,000 to 30,000 voters, all of whom can't be in this room, so I presume the delegations appearing before us represent a cross section of people, mainly women, but people generally across the province, and Mrs. Carson pointed out that her group, The Provincial Council of Women, represents 40,000 women. So I wouldn't want the implication left on the record that there is not an attempt being made here to reach Manitoba women and Manitobans generally. I think we should acknowledge that point. Whether or not we should be going to Lynn Lake as well is certainly a valid suggestion. But I think we are attempting to reach a cross section of Manitobans.

**MRS. SHARPE:** Well, people are linked up in certain ways. Now the University Women have groups throughout the province and the Winnipeg group could perhaps speak for them.

There's a lot of other people who aren't included in that. We have a population of 13 or 14,000, something like that and maybe legally it should work out that way but I don't feel that we are represented here today, and I'm not just speaking of women. I'm speaking of men who work on the Children's Aid who have said, well we should prepare something for that or just people who don't belong to anything. I don't feel that Winnipeg adequately represents all these people.

Someone said — it was probably a cynical remark — that it would cause confusion if we heard from too many people. I think the democratic process does cause confusion before we get any results.

**MR. SHERMAN:** Could I ask Mrs. Sharpe, Mr. Chairman, whether the eleven groups that are encompassed in the Coalition on Family Law represent only people in Winnipeg. Do those eleven groups not



represent Manitobans outside the perimeter of Winnipeg?

**MRS. SHARPE:** I don't think so. They may have a representative from say a church group, and the church is throughout the province, but I know that in our town we would have had no contact with the Coalition unless I had heard of them, more or less, by chance through some literature that I got in the mail. But they don't represent our town in any way. In fact our town was surprised to learn that there was such a coalition. It would be good if they could represent the whole province, but I don't feel that at present they do.

**MR. CHAIRMAN:** Are there any further questions? Hearing none, thank you, Mrs. Sharpe. Is the representative from the Progressive — Conservative Provincial Women's Association present? If so, would you come forward, please.

**MR. CHAIRMAN:** While the copies are being distributed would you give us your name please?

**MS. ELIZABETH WILLCOCK:** Elizabeth Willcock. Our brief is actually a statement of the principles that the Manitoba Progressive Conservative Women's Association are in agreement with.

The Manitoba Progressive Conservative Women's Association recognizes that current Manitoba Laws with reference to the rights of women in marriage are in conflict with the principle of equality of men and women, do not take account of the family as the fundamental group unit of society and do not recognize that women's full services and talents are engaged, along with those of men, in the full and complete development of the family and society.

We propose that Laws relating to men and women in marriage should incorporate the principle of equality between spouses and of marriage as an interdependent partnership of shared responsibilities. The legislation should reflect the concept of marriage as an economic and social partnership of legal equals. Since the family is the fundamental unit of the economy, the unpaid work within the family should be recognized as being as vital to the unit and the society as paid work performed outside the family.

During the currency of the marriage there would be the responsibility of the partners to support one another with services and/or finances to reflect the concept of marriage as an interdependent partnership of shared responsibilities. At the dissolution of the marriage there would be the right of the partners to an equal share of the assets accumulated during the period of the marriage.

With regard to Property Disposition: The Association would treat marriage as a partnership which has economic as well as social implications. The necessary and legitimate labour involved in child-rearing and homemaking is unpaid, but is undertaken for many years by a married woman as a social and economic responsibility to her husband and to society in spite of the fact that by separating herself from the legitimate labour market the married woman assumes a serious personal, financial loss in the form of foregone current income, foregone labour market experience that would enhance future earnings, and foregone personal security in the conventional labour market. There is a significant economic contribution made to the state by the woman in the home, raising children and caring for other dependents, which, even though unpaid, should be recognized by providing such labour with the same equity in the society to which paid labourers are already entitled.

We would recommend this principle, that in the event of the dissolution of a marriage, provision must be made at the time the dissolution is granted, for an equal division of property acquired by the marriage unit during the years of the marriage partnership (i.e. earnings, savings, investments) excluding gifts and bequests made by a third party to either spouse.

Since we believe in the general principle that people should be able to arrange their own affairs with as little interference as possible, we would favour a provision for the spouses to contract out of the provisions of a standard marital regime of deferred equal sharing of the value of post-nuptially acquired spousal property. An agreement to contract out of the provisions of the standard marital regime should be expressed in writing and executed only after independent legal advice to each of the two partners, the tendering of which advice would be certified on the agreement.

I. The Support Obligation: We would affirm that children have the right to be maintained by both parents and that the parents have an obligation to support their children, jointly or alone, until the children are eighteen years of age. The assessment of the amounts payable for maintenance of children shall take into account appropriate total costs of child maintenance, including among other factors the cost of residential accommodation, reasonable household assistance, nourishment, clothing, recreation and supervision. The obligation to support children is to be borne equally by the parents, but with regard to the actual financial circumstances of each.

2. Interspousal Maintenance after Separation or Divorce. After separation or divorce, maintenance of one spouse by the other should be granted by the court on the basis of meeting the need of the spouse. There are certain factors which should be taken into consideration. Support of the spouse with the custody of the dependent children may be necessary for some period of time. A spouse may require maintenance during appropriate formal education and job retraining undertaken to establish economic independence. Finally, long-term support may be necessary for a spouse if and when the ability to earn has been impaired during marriage by age, health or home responsibility. The laws should specifically remind the judiciary of the purpose

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

of maintenance awards, that is, what society wants to accomplish in allowing the payment of maintenance to a spouse on the break-up of marriage.

**MR. CHAIRMAN:** Thank you. Mr. Cherniack.

**MR. CHERNIACK:** Mrs. Willcock there are a few specifics I'd like your response to. Firstly, on the assets that you refer to acquired during the marriage, I don't see a clear-cut statement on immediate vesting as compared with deferred distribution.

**MS. WILLCOCK:** I'm sorry I didn't hear your question Mr. Cherniack.

**MR. CHERNIACK:** I'm asking what your position is on the immediate joint ownership and joint management during a marriage as compared with distribution on the breakdown.

**MS. WILLCOCK:** Well what is earned as a marriage unit should be shared equally on the dissolution of marriage, but assets acquired prior to marriage belong to the partner to whom they belonged prior to the marriage.

**MR. CHERNIACK:** I understand that, but during the marriage as the assets accumulate, as a result of the earnings during the marriage, does your organization believe in immediate vesting during the marriage or differently as the Law Reform Commission recommends, only on the breakdown of the marriage.

**MS. WILLCOCK:** Only on the breakdown.

**MR. CHERNIACK:** You do not believe in immediate joint ownership and joint management?

**MS. WILLCOCK:** No.

**MR. CHERNIACK:** All right, the second question is on the question of the opting out provision recommended by the Law Reform Commission for marriages in existence at the time of enactment. Do you accept their recommendation or do you differ from it, dealing with a unilateral right to opt out during the first six months?

**MS. WILLCOCK:** No, we believe that it has to be agreed by both parties and one party should not be allowed to opt out.

**MR. CHERNIACK:** Which means then retroactive rights for all goods acquired during the marriage even though it precedes the enactment?

**MS. WILLCOCK:** That's right.

**MR. CHERNIACK:** Thirdly, what is your view on the fault provision on maintenance?

**MS. WILLCOCK:** There was several areas that we did not include in our brief this afternoon because many of the Association felt that they required further study and further research into some areas, and this was one in particular that they felt that they would like to look into in greater detail, and they do hope that prior to the institution of legislation that we would be able to views present our viewin this area.

**MR. CHERNIACK:** Would you care to indicate what the others are so that we can . . .

**MS. WILLCOCK:** Yes, there was the no fault, there was the common-law and there was the estate areas, which they were at this point . . .

**MR. CHERNIACK:** You mean taxation? Oh, oh you mean a devolution of estate.

**MS. WILLCOCK:** Estate, yes, devolution of estate.

**MR. CHERNIACK:** Well then may I invite you — I'm sure, Mr. Chairman, that the least that the Committee would do would be to be happy to receive written submissions even though there may not be other hearings.

**MS. WILLCOCK:** We hope to be able to do this, Mr. Cherniack.

**MR. CHERNIACK:** Sure.

**MR. G. JOHNSTON:** Mr. Chairman, to Mrs. Willcock. On the last page, in your last recommendation, and I quote, "*Inter-spousal Maintenance after Separation or Divorce. After separation or divorce maintenance of one spouse by the other should be granted by the court on the basis of meeting the need of the spouse.*" Well, isn't that almost exactly what happened in the Murdoch case where after years of marriage the court and the judge decided what she should have out of that 25 or whatever year the married period was?

**MS. WILLCOCK:** But it wasn't really necessarily what she needed, it wasn't adequate support, the maintenance is what we're discussing, we're not discussing the sharing of the property that they earned during the marriage union.

**MR. G. JOHNSTON:** Well then you can't . . .

**MS. WILLCOCK:** This area refers, I think, to maintenance following the marriage break-up.

**MR. G. JOHNSTON:** Well I'm a little bit mystified then, you can't have it both ways. You can't have division of property such as we've heard discussed today, at least on equality, and then on top of that have maintenance as well.

**MS. WILLCOCK:** In some circumstances maintenance is necessary for one of the spouses as we mentioned, to be retrained, or in a circumstance where, because of age, she could not go back to work, and although she would have the property settlement she would still need maintenance to be able to live. If there was only a homestead left she would have a share of the homestead, but she would still need maintenance to be able to exist.

**MR. G. JOHNSTON:** Well then are you suggesting, and we'll say a farm is worth \$200,000 and if we go on the equality aspect of the suggestions made today, that they each end up with half which is \$100,000 each, then

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

in most cases it would be the husband would then be required to pay a monthly maintenance forever, as well?

**MS. WILLCOCK:** According to need, according to need. If there was no need, if there was that type of settlement there would be no need.

**MR. G. JOHNSTON:** If there was no large amount to be divided up I can understand your suggestion, but if there is a great amount of money and land and whatnot to be divided, and you still say that . . .

**MS. WILLCOCK:** There would be no need . . . according to need, then there would be no need.

**MR. G. JOHNSTON:** Well perhaps I haven't thought this through, but I see the thing in front of a judge. You're suggesting that a judge should decide.

**MS. WILLCOCK:** According to need. This has no effect on the sharing of the property acquired during marriage, this is for the maintenance.

**MR. CHAIRMAN:** Are there any further questions? Hearing none, thank you Mrs. Willcock.

**MS. WILLCOCK:** Thank you.

**MR. CHAIRMAN:** Is the representative of the YWCA present? If so would you come forward please.

**MS. KAYE HARLAND:** Thank you, my name is Kaye Harland, I'm the last of the morning speakers I believe.

The YWCA of Winnipeg, an organization having a membership of 4,000 persons, welcomes the opportunity the Government of Manitoba has afforded its citizens to participate in the hearings convened by the Government prior to presenting legislation regarding Family Law.

The Purpose of the YWCA of Canada states that it ". . . seeks to provide opportunities for personal growth, to deepen concern for human needs and to act responsibly in the world community". Historically, YWCAs around the world have acted as social advocates working for justice, most particularly in the field of women's concerns. It is because of this concern that we appear here today.

While we do not agree with all the proposals made in the final report of the Manitoba Law Reform Commission on Family Law, we find many of the proposals acceptable and we commend the Commission for its efforts in bringing the subject of Family Law to public attention.

The YWCA accepts the basic principles that marriage is an economic and social partnership of legal equals, that as such each spouse has equal rights and responsibilities, and that the contribution of the spouse working in the home is of equal value to that of the spouse working outside the home.

**Property Disposition:**

a) It is our opinion that all property acquired during the marriage should be shared equally at the time of separation or divorce with certain exclusions such as inheritances, gifts and awards of damages.

b) We prefer the deferred community regime which would come into effect in the event of termination of the marriage. To anticipate a question may I say that we, like other groups, would be delighted to have immediate sharing of property, but we didn't want to ask for everything all at once.

c) We recommend that the deferred community regime of property disposition be the standard regime, and we recommend that it be retroactive. To do otherwise would be less than just. We strongly recommend that any changes in legislation provide for opportunity of contracting out by mutual agreement and with independent legal advice for each spouse.

d) We recommend that there be no interspousal taxation and no interspousal succession duties.

e) We recommend that when one spouse dies intestate, the other spouse inherit absolutely.

f) We accept the recommendation of the Manitoba Law Reform Commission concerning the disposition of the marital home that it be considered to be held in joint tenancy by both spouses unless it was bought before a marriage was considered or unless both spouses agree to opt out of this section of the Act after obtaining independent legal advice. In the case of these two exceptions disposition of the Marital Home would then be subject to the provisions of the "Dower Act".

**Child Support**

We endorse the position . — children have the right to be maintained by both parents and that the obligation to support children be borne equally by both parents with regard to the financial circumstances of each.

We cannot support the recommendation of the Manitoba Law Reform Commission that parents are not responsible for supporting a child over the age of 16 years if that child does not attend school, is self-supporting or is beyond the control . the parents. While the parents of such a child may, in fact, do not maintain the child, we feel that the legal obligation to do so should exist until the child reaches the age of majority.

We support the position that the "common-law" or step parent should be fixed with a secondary obligation to support the children brought into the liaison by the other spouse while the liaison endures. This position is taken out of concern for the welfare of the children involved.

**Spousal Support:**

We endorse the principle of mutual support and interdependence. Every married person should be obliged to contribute to the support and maintenance of his or her spouse during the course of a marriage.

We acknowledge that it is of importance for separated or divorced persons to become financially independent of each other as soon as it is possible to do so. We would point out that this is not possible in all cases.

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

a) The spouse who has remained in the home in a longerm marriage - usually the woman - carrying out the responsibilities of the family unit, will be at great economic disadvantage at the time of marriage breakdown. If that spouse is able to re-enter the labour market he/she will need a period of retraining to make this possible. In the case of a woman it is unlikely that she will ever achieve the standard of living the husband will enjoy as a result of their mutual efforts. In this instance there must be some responsibility on the part of the spouse with the greater earning power to provide maintenance during the period of retraining and to supplement the income of the disadvantaged person.

b) For those spouses whose earning ability has been impaired or lost due to age, health or long-term home responsibilities there can be no cut-off date for the provision of maintenance.

c) It is unrealistic to assume that when children of the marriage reach a certain age the spouse having custody of the children will then be able to support himself or herself. There are too many factors involved, such as the number of children in that spouse's custody, the individual needs of those children, the availability of support services such as lunch and after school programs. The years between school age and the age of majority are costly years and ones requiring caring supervision. The spouse charged with the custody of the children assumes extra burdens with this custody.

It is our contention that fault or the responsibility for the marriage breakdown should not be a factor in awarding maintenance. We submit that the adversary or confrontation approach inherent in the fault concept is outmoded as a method of arriving at the best solution; that it is damaging to the children of the union because it gives legal backing to attributing blame; that it is detrimental to both parents in its negative emotional implications; and that separation or divorce is seldom, if ever, a result of one person's fault and the other spouse's innocence. The Working Paper of the Law Reform Commission of Canada on Family Property, their Paper No. 8, states that "misconduct may be the legal reason for the termination of a marriage, but it does not necessarily follow from this that it should also be the reason for inflicting economic sanctions upon one of the parties."

The Manitoba Law Reform Commission recommends that during the marriage each partner be entitled to clothing and personal allowances, taking into account the amount spent by the other spouse. While the financial circumstances of the family should certainly be a factor in determining this allowance, we see no reason why the amount spent by the other spouse should be a consideration.

Because of difficulties involved in collecting maintenance awards and because of the unfavourable ramifications for both persons involved, we support the establishment of a special agency to be responsible for the registration of all maintenance orders, as well as the collection and the disbursement of these orders.

We believe that the proposed new laws should be as specific as possible in determining formulas to be used in the disposition of property and the awarding of maintenance. However, in view of the fact that there are often unusual circumstances which cannot be legislated for, we recommend that judges should have only limited residual judicial discretion.

In conclusion, we would like to emphasize our belief that marriage should be a legal, social and economic partnership, and we urge the Manitoba Legislature to enact the necessary laws to validate this partnership.

**MR. CHERNIACK:** Mr. Chairman, to Ms. Harland. Since I think this was a very good presentation of the point of view I'd like to ask you about two specifics which I'm in doubt about. Firstly, why do you prefer the deferred community regime distribution rather than the immediate joint ownership and joint management concept?

**MS. HARLAND:** There was a great deal of discussion about this and as I said we really feel that immediate management would be preferable. There was some consideration of the fact that it might be very difficult to administer businesses jointly. We also felt that perhaps you gentlemen would not accept that. Forgive me.

**MR. CHERNIACK:** Then are you taking the same point of view I think as the Council of Women that said, since we don't think we can sell it we won't tell you exactly what we think, we'll tell you what we think you might buy.

**MS. HARLAND:** Yes. I don't think that's a very strong position but this is the position of the "Y" at the moment.

**MR. CHERNIACK:** It certainly isn't. Well then I'm glad I asked that.

The other question then and I want to go into it a little bit because you and previous briefs have argued against interspousal taxation on gifts and succession so I want to pose this to you. Firstly, if your concept of equal ownership of assets acquired during the marriage regime succeeds and therefore one-half of that portion vests in the spouse before death and if The Dower Act then provides that one-half goes to the spouse as a matter of right, recognition of a right, then there would not be a gift tax payable would there if the law says that it really belongs to the wife, not that it's given to the wife but it belongs to the wife.

**MS. HARLAND:** That's right.

**MR. CHERNIACK:** All right. So once we say that one-half of those assets belong to the wife, therefore they are not taxable, then we are then dealing only with the other half and with assets acquired other than through the efforts of the spouse at all, that is premarital, post separation or gifts and inheritance. None of this money was earned by the other spouse, by the survivor, and we know that the spouse has shared fully in one-

half of what was indeed shared effort — you know we recognize that. Now I'm asking whether an exemption of \$250,000, which is the present law, doesn't in itself recognize that the half which the wife did not share in earning — because she's already got that half — but the half that she did not share in earning, after an exemption of \$250,000, seems to me to be pretty good recognition of her special vested status as a spouse — and I say wife but I mean it both ways. Does that not take care of what you seem to find offensive in taxation of gifts which are of non-earned moneys?

**MS. HARLAND:** No I still think that there shouldn't be taxation between spouses, between gifts to spouses.

**MR. CHERNIACK:** Do you believe in taxation of moneys that are passed from one person to another that are not earned by the other person, that is a complete gift of non-earned goods, non-earned assets. Do you believe in the general principle?

**MS. HARLAND:** In the general principle, yes.

**MR. CHERNIACK:** You do believe in estate taxation, succession taxation?

**MS. HARLAND:** Yes.

**MR. CHERNIACK:** But not as between husband and wife.

**MS. HARLAND:** That's right.

**MR. CHERNIACK:** And you say that even though the spouse — I'm just repeating myself to make it clear — that in the case where the spouse receives what the spouse is entitled to as recognized, that is one half of the goods that are earned, without any form of taxation and in addition the present law exempts one quarter of a million dollars of the other part of the assets, then moneys passing in excess of that quarter of a million and in excess of one-half of the estate should still not be taxed?

**MS. HARLAND:** That is correct.

**MR. CHERNIACK:** And if the estate were ten million you would still say the same thing.

**MS. HARLAND:** That is correct.

**MR. CHERNIACK:** And you do believe in the principle of taxation of the estate.

**MS. HARLAND:** You'll get it when she gives it to the children.

**MR. CHERNIACK:** Pardon?

**MS. HARLAND:** It will come to the government when it's given to the children after the other spouse dies I suppose. No I don't believe that there should be taxation between spouses.

**MR. CHERNIACK:** Thank you.

**MR. SHERMAN:** Thanks, Mr. Chairman. Mrs. Harland, on the question of deferred community of property or instantaneous would it be fair or reasonable to ask you whether there was a strong inclination on the part of your group to favour the concept of deferred management? You've suggested that you'd like to go for instantaneous but you decided to settle for what you thought would be a door opener and so you went for the deferred concept. Was that a unanimous kind of a feeling or would there be a good many people in your group who would favour the deferred concept?

**MS. HARLAND:** The questions that were raised as I remember were: Well my husband has a business downtown now do I have to be involved in every aspect of this business? What responsibilities then would a housewife have in this sort of management of a business? But I think that perhaps those are not entirely reasonable concerns and other than that it was I think unanimous that we would like immediate sharing.

**MR. SHERMAN:** Do you see any pressures or any dangers imposed on a marriage situation, a new marriage, by the concept of instantaneous joint management? I think the counter argument is that why create a competitive business atmosphere right off the nuptial bed when you don't have to. The deferred concept takes care of the problem should separation ever arise, should break-up ever arise but the other argument is that you're inviting a competitive businesslike mechanical, clinical, pretty cold position.

**MS. HARLAND:** I think on the other hand that you're also inviting a responsible sharing.

**MR. SHERMAN:** On page 2 in subsection (f) where you addressed yourself to the opting out option you talk about the provision enabling both spouses to agree to opt out of that section of the Act after obtaining independent legal advice. Do you see it as being compulsory or mandatory that they have to obtain independent legal advice or would you permit the spouses to opt out by mutual consent even without legal advice?

**MS. HARLAND:** No. It would be mandatory that there would be independent legal advice.

**MR. SHERMAN:** So you're putting more work into the hands of the lawyers.

**MS. HARLAND:** Yes. Hopefully we'll take some away from them elsewhere.

**MR. SHERMAN:** One other question, Mr. Chairman. Very close to the conclusion of your brief, Mrs. Harland, you confess to at least some limited acceptance of the concept of judicial discretion. I notice that your brief says, "we recommend that judges should have limited residual judicial discretion." In your actual verbal presentation you said, and I think the transcript will show that "we recommend that judges should have only limited residual judicial discretion" which seemed to me to give it even a more confining and narrowing interpretation and application. You are suggesting that this option of discretion would apply in maintenance cases, maintenance situations and maintenance judgments.

**MS. HARLAND:** As well as in the disposition of property at times, yes.

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

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**MR. SHERMAN:** But you think it would have some value in the area of reaching decisions with respect to maintenance?

**MS. HARLAND:** Yes. I think that at times circumstances may be such that there would be no legislation to cover the various situations.

**MR. SHERMAN:** Thank you very much.

**MR. GRAHAM:** Thank you, Mr. Chairman. Through you to Mrs. Harland. I believe some of the questions that I had hoped to ask have been partially answered. I think it is interesting to note though that while some of the briefs we've had today have recommended no judicial discretion at least your brief has recommended some judicial discretion.

The main point that I think I want to bring out is the fact that throughout your brief I think that your brief has tended to have more concern for the child, at least the child support obligation seems to have commanded more attention in your brief than it has in other briefs and I commend you for that also. However on page 2 in section (e) you recommend that when one spouse dies intestate the other spouse inherit absolutely.

**MS. HARLAND:** Yes.

**MR. GRAHAM:** Had you given any consideration to the rights and the needs of children in that respect before you drew this up?

**MS. HARLAND:** We certainly did. We have given a great deal of consideration to the rights of children. I think that you seem to assume that should a husband die and the wife inherit absolutely all of a sudden she's not going to look after the children. She will be affixed by law with the responsibility of caring for them until they reach the age of majority. If a man married her hoping and knowing she would be this kind of a mother she should have the sole discretionary use of that money. While I think children have very definite rights to caring and being supported I don't think children have rights to inheritance.

**MR. GRAHAM:** I'm not a legal authority but I believe at the present time in some of the statutes of the Legislature the rights of children are protected in that respect. Are you recommending that those rights be removed from existing legislation?

**MS. HARLAND:** Yes.

**MR. GRAHAM:** Thank you, Mr. Chairman.

**MR. PAWLEY:** If I might just pursue this area, page 2 clause (e), the recommendation that if one spouse dies intestate the other spouse inherit absolutely. I would like to just deal with some possible instances of where there is a very very large estate involved and in the case of negligence or neglect on the part of the couple to insure that a Will is prepared, assume an estate of a half million dollars, \$400,000, very substantial estate, would we not be better to simply state that all of an estate up to a sum of \$100,000 or \$200,000 would pass to the wife in the event of death without Will and that in excess of that would be divided between wife and the children. There are so many instances where there is simple neglect on the part of either spouse to complete or prepare a will and the result may be very much different than what the intention was. I certainly concur up to a certain amount in order to insure maintenance and continuation of a certain pattern of life after death that there should be protection for the remaining spouse; I'm wondering in excess of that which is necessary for that purpose whether you're not playing into the hands of a situation which is contrary to the intention in many cases simply because of negligence or lack of deliberate conduct.

**MS. HARLAND:** No I wouldn't agree with a limitation as to what the wife would receive. We have at the moment the present example of The Dower Act, \$10,000 was probably a great deal of money 60 years ago, now it means very little in terms of continuing support for the rest of a person's life. In the same way \$100,000 or \$200,000 might not mean so much in 30 or 40 years and these laws don't get changed all that frequently besides which . . . no, we feel that it should go to the other spouse.

**MR. PAWLEY:** In the case of the recommendation on page 6 dealing with the difficulty in collecting maintenance awards, I was wondering in your experience at the YWCA if there are too many instances where obviously there is difficulty in obtaining information because of government agencies, federal, provincial, municipal, feeling that they can't release information and whether or not you feel that there ought to be some changes in order to permit, in fact to require the release of legitimate information to a spouse attempting to collect, which is now being cloaked under some sort of guise of secrecy with the result that so many people are just unable to enforce maintenance orders.

**MS. HARLAND:** I'm not sure that I remember all that we discussed. We certainly have considered the problem of collection of orders. What I remember was that when we heard of the proposal to establish this agency, we immediately decided upon that as being a very good agency; and surely then we would hope that laws would change so that this collection agency would be able to acquire the information it needs to then collect awards from the other spouse.

**MR. PAWLEY:** If we could just return again to that other item dealing with E, the recommendation. I know what your answer is, that in second marriages late in life, usually the couples from my own experience just don't want to become involved in concerns over property matters. It's a second marriage. It's well on in life. I suppose the obvious thing for them to do is to prepare a Will in order to ensure that their children from the first marriage receive rather than their spouse because they have no such desire whatsoever.

But again I only express the concern of negligence or failure to complete such a document, and you have a couple marrying very late in life, in the 60s or the 70s, and just through negligence failing to . . .

**MS. HARLAND:** Perhaps before a marriage they should make a will as well as have a blood test, you know.

**MR. PAWLEY:** They should, but unfortunately they don't.

**MS. HARLAND:** Perhaps it could even be legislated. I don't know. I suppose that that would be a case where there would be some opportunity for judicial discretion.

**MR. PAWLEY:** If it can be shown that the failure to complete the Will was because of negligence, in some way or another. Now, I don't know how we could go about to prove that. You're saying there should be some means by which that could be looked at in those type of circumstances?

**MS. HARLAND:** Yes.

**MR. CHAIRMAN:** Are there any further questions? Hearing none, thank you Mrs. Harland. Is Frank Peters present, please? If so, would you come forward.

**MR. FRANK PETERS:** Okay, first of all I'd like to mention that I don't represent anybody except myself. I feel privileged to be here. Really I would like to see half the women in front of me and half the men behind me, but it's something that is regrettable.

I'd like to compliment the Manitoba Law Reform Commission, first of all on a certain amount of idealism and the obvious effort that went into this report. I believe they really want to make fair and equal settlements possible in cases of marriage failure.

Now, on the other hand there are a lot of things in here which I find extremely disturbing. First of all there seems to be things like basic humanity, love, trust, compassion, co-operation, things which cannot be legislated aren't really admitted in this report. I think at least they should be recognized. To many people these things are far more important in the case of a marriage breakdown and the children themselves are far more important, as far as I am concerned, than all the judges, lawyers, laws and money in the world. We seem to be dealing with nothing but money. The people themselves, the children, there's very little discussion of them.

Now, in the report on Page 9 I'm told that it's a fact that 85 percent of single-parent families are headed by women. Although I believe men and women are equal as human beings I also believe that men and women are equal as parents. I believe a man can be just as good a parent as a woman, and as a matter of fact certain psychologists say that in most cases boys over two should be in the custody of the father, girls over seven are generally better off in the custody of the father although there's a lot of dissension in that area.

Now obviously 15 percent then are father single parent families. Of personal knowledge I know of quite a few people where the mother has simply deserted, left the father with the children. What bothers me is basically we've got our Provincial Courts, we've got our County Courts, we've got our Court of Queen's Bench, and in spite of this you talk about justice; where is the justice for the children? Or can a man get justice in our courts? I'd like to see women get property fine, but can a man get justice in our courts? Now in certain other countries, and I'm speaking specifically of the Scandinavian countries, up to 55 percent of single family homes are run by the father. In other words, the father obtains custody in 55 percent of the cases. In the entire Law Report Commission I don't see anything at all about changing the process of getting custody or anything else. It seems to be one solid battle and this report simply seems to invite more battles. It seems as though the Commission wants to legislate family budgeting, where a spouse can get a clothing allowance even if it means the other spouse has to go into debt to do it.

In parts of my presentation I was rather cynical so I'm trying to skip certain parts. I apologize for that. I also apologize for the fact that I don't have a written report. Now, as far as I'm concerned if there are no children or if they're grown up it doesn't matter to me and possibly not to a lot of other people what happens to Law Reform, it's only money, and from the look of this report most of it is going to end up in the lawyer's hands anyway to pay for court costs. When there's children, let's do what's best for them. Instead of just legislating property, we've got our Wives' and Children's Maintenance Act, where is the husband's and children's Maintenance Act? I think if we're going to legislate equality, let's see that as well.

Mother's Allowance is something which is being received by hundreds and thousands of women; where is father's allowance? It's acceptable for a woman to stay home with the children while they are under six or seven. Can society or our courts accept the fact that a father might stay home with the children until those children are five, six or seven?

Then we come to the question of Legal Aid as well. We've got a Legal Aid setup which is really only of use to the person who's not working. In any custody fight the working spouse has all the advantages, because who can afford to keep on a running battle forever?

I believe we need legal representation for the children where they're under 18, after that they can get their own, but they should be appointed by the Crown and since we are dealing with children's rights perhaps the lawyers in representation should have far broader rights and access to information than the spouse's lawyers have.

I believe that our present court system is all based on the adversary system and it might be to our benefit to, really rather than having three separate courts and everything else, have, whether it's a tribunal or even individuals, perhaps a social worker, and one lawyer or judge, a citizen who is really concerned, whether it's a

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

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leryman or you-name-it, really help solve the problems without all these custody battles, property division battles, budgeting battles and other things.

Now as I see it a lot of parts of this legislation are good, but there's a lot of things which to me make very little sense and I'd like to add one thing. You were mentioning instant joint ownership. Okay, I've talked to a lot of people about financial planning and so on and I find that most men I have run into would very much welcome a way in which they could divest some of their interests and get it into the wife's hands. Quite often this from a tax standpoint, it would be advantageous for them from a tax position, but also it does give the wife more security and most men, I believe, are in favour of it.

There was another thing I found extremely disturbing in this report; that was regarding the splitting of cash value of Retirement Funds. Now I just took an example of a friend of mine who is sort of in this position. He's earning around \$20,000; he'll be looking forward to a 70 percent pension in a number of years. As it turns out he has to make quite a large cash settlement, but based on the assumption that half the cash value would be split, with the maintenance he's paying, with the interest he'd have to pay since he can't get at the money, he'd end up with \$1,500.00 in the hole before he even started living, and his income is split down the half. But roughly, to me, splitting retirement funds, and to a certain extent splitting even business property, can be a sure road to bankruptcy in the cases of a lot of men.

Basically, I'm in a position where I can't say I represent men, I represent myself more than anything. I know what my past has been like, especially the last seven years. I'm a formerly married person. At the present time I've finally paid off lawyer's bills and they amounted to well over \$6,000.00 — that's to obtain custody — and I have custody. I am paying \$125.00 a month lifetime payment — call it a punishment — for having married a person who is mentally ill, even though this fact was hidden — and I don't know, this whole thing just bothers me. I can see a lot of things. As a matter of fact there's things like a wife should get a certain allowance for spending on clothing and that, that's fine. I started marriage with that approach, too. Even though it started off relatively poorly, I was earning a reasonable amount, after expenses, \$100 a month to go to the wife. All right, she could use this for hairdressing, for clothes; that was beside any food and so on. Then I found, rapidly, that if I gave her rent money, she was supposed to pay the rent, that disappeared as well and generally had to borrow the money to pay the rent. I found the telephone bill would be up to eighty or ninety dollars. At the same time I was a poor miserable husband who really didn't give his wife as much as she needed. And even in the courts I found that this was the reaction of the judges.

I've got a few notes here, I think some of you have received a letter from me in the past, but basically as far as the present courts are concerned or any future courts, I feel that no judge at any level should have a right to prevent pertinent evidence from coming to court and should not have a right to prevent ordinary cross examination. I feel that a judge — well one case, a judge mentioned that I had adequately provided for my family. Her wants and everything else would have cost me roughly \$50,000 and my lack of providing them was considered cruelty.

I believe that judges, especially when it comes to family matters and custody should know quite a bit about child psychology, and they should have adequate support staff.

Once it comes to the filing of orders, quite often, and in this particular case, 21 different court dates were set and a total of 30 days were spent in court. That's on a custody matter where the child repeatedly had to be brought to the hospital. Now I can't see that happening where the father is the one harming the child. There's no way any of our laws would allow it. Where it's a mother, it seems to be perfectly all right.

Now in a sense I think I've said too much but I am really disturbed that all they can think about here is money and the actual problems, the actual heartbreak, the feelings, everything else doesn't seem to be touched. We're still working towards an adversary system and as I see it the Law Reform Commission is simply going to make twice as much work for lawyers, twice as much work for our courts and possibly even cause twice as many marriage breakups.

**MR. GRAHAM:** Thank you, Mr. Chairman. Mr. Peters, some of the things that you have said I have to say I heartily concur with, especially when you say that the laws that we have today and the court procedures the only winner in it is the profession. At the same time, you have expressed what to me seems to be a genuine concern for the child in the cases where we have marriage breakdown, maintenance and the disposition of marital property. This again is a field that I feel has not been touched on adequately.

I want to point out to you that I believe the Law Reform Commission at one time did make a recommendation for a children's advocate or they were working on a position paper on that, but the family law seemed to have taken priority and we have the report on family law coming in first. In your own view do you think it would be advisable that we establish a children's advocate before we attempt to make any changes in the family law?

**MR. PETERS:** I think that's a part of it. I think a children's advocate is extremely important. I mean children have rights and if there's no children involved in the marriage break-up largely it becomes an economic matter but if there are children involved the children have rights which have to be established.

**MR. GRAHAM:** Do you feel that the report of the Family Law Commission has adequately dealt with the rights of children in respect of the recommendations that they're making in this report?

**MR. PETERS:** I feel that there is going to be a difference between first of all the recommendations as they



are made and what is carried out through the courts partially because of the judicial discretion which they do have. Our courts aren't Solomon, I'm not saying they can always be right, but I do think that very often the decision — well an entire court case becomes an extremely emotional thing and it can be simply, you know, the person who plays on the judge's emotions to the greatest extent — and hopefully this isn't supposed to be happening — can get the decision made in their favour. I'd like to see something where first of all it's more than one person making the decision, where it's possibly two or three and perhaps this doesn't even have to be done through the courts in many cases. A smaller group I'm sure would be far more economical than having an entire court proceeding; they could make recommendations which possibly could influence the court, you know, if it still has to go into the court itself. I think that most family breakdowns can largely be solved outside of court if we had an appropriate set-up perhaps where the regular court procedures were not followed, just like a committee like this can accomplish a lot more things perhaps than a regular sitting of the Legislature because of procedural rules and so on, I think the same thing can happen outside of court.

**MR. GRAHAM:** During the last sitting of the Legislature I think authority was passed for the establishment of a family court concept which was supposed to have been instituted in the St. Boniface area but because of priorities never got off the ground. The information that was given to the Legislature at that time was that this was going to be a pilot project which would endeavour to cover a broader field including divorce. Divorce could also come before the same judge as maintenance and all the other problems of family law. Would you see a move in that direction as being something that would be beneficial?

**MR. PETERS:** Right now with my experiences in Family/ Court, I really am extremely disillusioned with them. Mind you I'm prejudiced. County Court, I also feel extremely disillusioned. It was not until Court of Queen's Bench came along that the law allowed really evidence to be presented which could be used to decide the entire matter. The Family Court and the County Court were so restricted in many ways that . . . I don't know, my initial reaction to Family Court was kangaroo court. That's a pretty cynical approach and I don't think anybody should have that feeling.

**MR. GRAHAM:** Mr. Chairman, there are many other questions I would like to ask but I think there are other members of the committee that want to ask some questions too.

**MR. GORDON JOHNSTON:** Mr. Peters, in your presentation you gave us an example of what could be termed an unusual situation and it was obvious in your remarks that you felt that you didn't receive a fair deal. If the Legislature in its wisdom passes legislation that will allow what nine-tenths of the presentations have told us today, that is full equality in a marriage, full equality in the splitting of assets, would that have benefited you at the time?

**MR. PETERS:** It would have been worth about \$20,000 to me I'd say in plain cash. As it was my wife got all the assets, I got all the debts. Splitting the assets would have benefited me financially however I'm not saying I recommend it, no. I'm sorry, I forgot the other thing I was going to say.

**MR. GORDON JOHNSTON:** Well really what we're asking you, as someone who has another point of view, is that full equality in a marriage in your particular case you have said that wouldn't be a bad idea. In other words, where you feel you go to court with some sort of a strike on you the court wouldn't be so influenced then if they had certain guidelines. Is that correct?

**MR. PETERS:** No I believe in equality of splitting property. I think it's an excellent idea. Mind you I think the value of property brought into marriage should be sort of geared to inflation, increase in property values, this type of thing, you know, so that a person if they do have let's say 100 acres worth \$10,000 twenty years ago, still have that 100 acres now except it's worth half a million dollars, that should still be his. I don't think that gain should be split, and it seems to be split here in the Commission's recommendations.

**MR. GORDON JOHNSTON:** We've changed tax now but the observation there I would make then the whole system wouldn't work if you're going to put provisos into the situation like you've mentioned land or house values accelerating. What if they go down?

**MR. PETERS:** Well then the appropriate value later on has to be taken into consideration as assets.

**MR. GORDON JOHNSTON:** Don't you think you should take the now value in any case whether it's up or down?

**MR. PETERS:** It's hard to say.

**MR. PAWLEY:** I was interested in your remark that you had spent \$6,000 in a worthy cause of contributing towards the legal profession in order to obtain custody of children. I was wondering if you could just outline for us, because Mr. Graham made some reference to the unified family court program which we hope to resume in the next fiscal year, the sooner the better, the procedure that you went through courtwise for days in order to deal with the matters pertaining to custody that gave rise to such an enormous legal bill?

**MR. PETERS:** All right. First of all I started off at Provincial Judge's Court, I went there July 29th 1973. They gave me a date of hearing of August 27th. A couple of days later my wife appeared there; she applied for custody. She obtained an interim custody hearing on July 12th, we had another hearing on July 24th and another date was set for August 23rd. So she got three days before I could possibly get one. At that point the Family Court gave her custody and said I should pay \$125.00 per month maintenance.

Within the week I filed a Notice of Appeal for a trial nova in County Court. Now normally this has to be

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

---

done within two weeks of the time judgment is made — apparently that's a regular rule that judges have — however the judge was in Brandon for the following five weeks, it was impossible to contact him for the three weeks following that and so there was a two month delay. County Court, despite numerous requests refused to do anything until the Order was signed. Finally with the Order still unsigned — as a matter of fact I believe the County Court hearing was held without Family Court proceedings being confirmed and written down — a date of October 22nd was set. Just before that my former wife had dismissed her lawyer and the judge refused to set down a date until she had obtained counsel.

On December 12 and 13 of 1973 the case was heard in County Court. The judge in his closing statement said that he found there was no question as to who would provide the better home life and environment for the child, the father. He said the law stated that the child and his well-being was of paramount importance in custody cases. Then turned around and said he had not sufficient proof that the mother had deliberately wanted to do anything wrong and he upheld the lower court's decision. A Notice of Appeal was filed within the week. The judge went on a three week holiday followed by a four week French immersion course so it was a good two months before we got that one signed and the application for an appeal could be heard.

The appeal was dismissed because it was not a point of law and there was no new and conclusive evidence although a couple of witnesses who had been intimidated had shown up. We appealed the appeal and got nowhere as well. At this point the only solution seemed to be getting full divorce proceedings and custody hearing in Court of Queen's Bench so the first week of March, this would be in 1974, I filed for divorce and custody.

Between the first week of March and the last week of February of 1975 my former wife went through a total of over ten lawyers. I during that time wrote the Attorney-General, my MLA, my MP; no response there. Finally I called the Chief Justice of Manitoba because it was simply one court date after another being set, postponed, being set, postponed. During that 12 month period I had to take the child to the hospital three times because of beatings he had received, this type of thing, and nothing apparently could be done about it.

When we finally got to court the entire proceedings took six days and was a rather lengthy and expensive process and I got my divorce on mental cruelty and adultery.

**MR. PAWLEY:** I would just be interested, what is your occupation?

**MR. PETERS:** Right now I'm — call it insurance salesman, investments.

**MR. PAWLEY:** You're not involved in estate planning?

**MR. PETERS:** Yes I am.

**MR. PAWLEY:** Is that your principal area of responsibility?

**MR. PETERS:** One of the principal areas. Company pension plans, estate planning.

**MR. PAWLEY:** Am I correct in saying that most of your colleagues in estate planning are somewhat concerned about the Law Reform Commission's proposals?

**MR. PETERS:** I have not talked to any of them about it whatsoever and I have not discussed the Law Reform Commission with them at all. As a matter of fact I don't think any of them know that I'm coming here. Personally I don't think any of them have seen the report yet or have read it. Perhaps some of the people at head office have but not the average person, so I'm not speaking for any of them in any way. I'm here representing myself.

**MR. PAWLEY:** Have you read the Murdoch versus Murdoch case?

**MR. PETERS:** I've read quite a bit about it, I haven't read the actual case.

**MR. PAWLEY:** Would you not be in agreement from what you have read of that case, though you haven't read the actual case, that there is an area that is in need of dire reform?

**MR. PETERS:** Yes I agree a lot of reform is required.

**MR. PAWLEY:** But you disagree with the equal division of assets accumulated during marriage upon the termination of the marriage?

**MR. PETERS:** I didn't say I disagreed with that, I do agree with that, but determining what the assets are during the period of marriage is something that is extremely difficult and it's next to impossible in the case of a pension plan. In the case of property acquired before marriage once again it becomes an extremely difficult thing to consider the actual value.

**MR. PAWLEY:** Though it may be difficult you would agree that it's worth the effort to attempt to ascertain whether there is a reasonable formula that one could develop to do this?

**MR. PETERS:** Yes it would be. I think it would be definitely advisable to do something like that but doing it I think is going to cause an awful lot of problems and any legislation which is going to be passed also has to conform to a certain extent to The Income Tax Act. I can see an awful lot of changes being required there if the suggestions of the Law Reform Commission are accepted.

**MR. PAWLEY:** You made a statement earlier about the court denying the introduction of pertinent information as evidence. I don't know whether I need explore that with you except to suggest that certainly the court is expected to receive all relevant evidence in a hearing of this nature. What you might feel to be relevant the court might not consider to be relevant.

**MR. PETERS:** I think in this case the court felt a lot of sympathy for the other party for rather obvious reasons and I guess they figured I could stand on my own two feet, but an awful lot of interference was made

when the cross-examination and questions were beginning to bear fruit. After that the judge simply intervened and said he was not interested in hearing this line of questioning.

**MR. CHERNIACK:** Mr. Peters, I'm trying to sort out your brief between what we as a legislative committee can do and what is beyond our scope. I heard you describe your problems and your delays and the costs involved and I can only assure you from my rather lengthy experience in this field that women have very often the very same kinds of problems that men have as described by you so you must be talking about the court process as being difficult to deal with. All I can say is that it's pretty hard on a woman who is in the position of trying to apply and has these kinds of delays such as you describe. Whether or not the weight or the balance of whether it's men or women who suffer from delays of this kind it's unfortunate and it ought to be corrected but I don't know that we are able to do that and I don't think that you have given us any positive way of doing it. You have described a very serious problem, you've also talked about the need to bring in and consider all the emotional and social problems other than monetary and having done so I'm not sure that you've given us any concrete suggestions that we could deal with. You have stated that men are discriminated against in custody cases, and yet you do agree that the law is that the interests of the child are paramount. So it's a question of interpretation I assume, you're saying, "Well the courts don't really consider that as being the vital thing and therefore it's a criticism of the procedures." So I have to ask you, "What in specific do you feel that you can recommend," and I say that with complete sympathy for the problems and the difficulties you encountered?

**MR. PETERS:** I would say first of all, the law states that the best interests of the child should be upheld and I think the courts, as a start, should uphold that law.

**MR. CHERNIACK:** Well what could a Legislature do to ensure that?

**MR. PETERS:** I believe that it might be possible to — okay a Legislature controls a lot of , purse strings supply funds for adequate support staff for the courts. The Legislature also appoints, I believe, a lot of the judges, especially in the . . .

**MR. CHERNIACK:** Just the provincial.

**MR. PETERS:** Provincial Court . . .

**MR. CHERNIACK:** Right.

**MR. PETERS:** . . . where a lot of family matters are heard. And I think all these judges are pretty well taken straight out of the legal profession. I do believe there's a lot of good people in the Child Guidance area, although they are not really lawyers, per se, perhaps they don't know the law that well, but who have a better understanding of the problems than a lot of the present judges would have. I would like to see some sort of triumvirate in there, I think I mentioned that before, of which only one would really be of the legal profession. I do believe they could probably make a much better job than is being made right now.

**MR. CHERNIACK:** Now coming down from the monetary . . . problems, and that is a problem we recognize that, is there something other than your caution about matteis like pension plan, what do you call it, the value of a pension plan, the point you raised, other than that I have the impression that you agree, in the main, with the trend of the recommendations in the Law Reform Commission Report. Is that impression a correct one?

**MR. PETERS:** Mainly I do agree with it, yes.

**MR. CHERNIACK:** Thank you, Mr. Peters.

**MR. SHERMAN:** Mr. Chairman, through you to Mr. Peters. Mr. Peters I found your presentation very illuminating and very helpful, and I hope you didn't foreshorten it any. You observed at one or two occasions while you were making your presentation that you were shortening it a little and dropping sections of it. I hope you didn't because we need that kind of input on this Committee. I should know this but I don't so I'll ask you. Did you appear before the Manitoba Law Reform Commission during its hearings?

**MR. PETERS:** No, but I did write a letter, about a 10 page one, which I left with them. This would have been around two and a half years ago, the middle of '74.

**MR. SHERMAN:** Let me get this straight. You sent them that letter in 1974?

**MR. PETERS:** In 1974 I left a letter with them, I also sent a copy of the letter to, I believe, Mr. Pawley, and the people I mentioned I'd contacted before.

**MR. SHERMAN:** But during their hearings this past year, 1976, you didn't have the opportunity to free yourself up in order to appear before them?

**MR. PETERS:** No, I didn't. I wasn't really aware of any hearings, it's neglect on my part.

**MR. SHERMAN:** Well I think it's a pity that you weren't able to appear before them, because what you're saying to us essentially is there is some worthwhile recommendations, as I understand you, there's some worthwhile recommendations in their Report, but it only scratches the surface of what you think is a much more profound problem, and leaves many many areas of Family Law unexamined. Is that correct?

**MR. PETERS:** That's my feeling, yes.

**MR. SHERMAN:** So that the Report in your view, and what comes out of it, will fall short of the kinds of things that a person with your experiences in the system feel should be effected in the way of Family Law Reform.

**MR. PETERS:** That's correct. I don't think it's only Family Law, I think it's to a certain extent the social

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

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services, our entire social system needs a lot of reform, and perhaps a lot of it is tied in together. I know there's limits to what the Reform Commission can do and limits to the types of legislation that can be passed, so maybe a lot of things that I've said are, you know, impossible for even the Legislature to handle. But I do think that something has to be done and this Report only is a fraction of really what has to be done in the entire area.

**MR. SHERMAN:** Well let me ask you just one final question, Mr. Chairman, to Mr. Peters. There's been a good deal of examination on both sides, the pros and cons of the concept of fault in the area of maintenance, in adjudication of maintenance awards. What would be your view, expressed before the Committee on that concept, whether there should be some judicial discretion preserved in the area of maintenance, or whether you would agree with many who have appeared here today who say that the concept of fault has no place in that field and therefore judicial discretion is not needed.

**MR. PETERS:** Well, I believe in the concept of fault. I think right now, at least according to this Commission in the recommendations they give, it allows a person who just sort of deliberately sets out to guard all their rights throughout marriage, who sets out to make themselves as really unproductive and as spendthrift during marriage as possible, it gives them the advantages; whereas, a person who is honestly making an effort and doing their best, you know, can really be hurt by no fault legislation. And, you know, it's nice to believe that all people are nice and all people are always trying their best, if that were the case we really wouldn't need any sort of Law Reform Commission period, because we wouldn't need the laws, but that isn't the case. And I think in most marriage break-ups, even though fault might be largely, well might be partially two-sided, very often I would say that fault could be completely one person's in some cases, you know the main part of the fault can be one person's, I don't think the other person should necessarily have to suffer for a lifetime or even for a period of five or ten years in that case.

**MR. SHERMAN:** And you're speaking no doubt, as you've indicated to us, from personal experience?

**MR. PETERS:** From personal experience, you know, the \$125 a month I'm paying doesn't make any difference. I'm very happy that things have worked out the way they are and my son is happier now than he's been for years, so am I, we're having a great life, we're enjoying life, he's doing well, I'm doing well and really I feel in the entire case, the one person who has perhaps suffered the most all the way through is my former wife and I wouldn't object to helping her at all, as a matter of fact, I'd like to see nothing better than to see her get — well, call it healthier — and up to the position where she might even take custody. I mean, I'm interested in what's best for the child, the money isn't the problem.

**MR. SHERMAN:** Well, thank you very much, Mr. Peters.

**MR. PAWLEY:** I would like to just pursue this area of fault with you, Mr. Peters, for a moment because the central theme of your brief was to the effect that the welfare of the children ought to be paramount, and yet you suggested that fault ought to be considered insofar as the payment of maintenance. Does this mean that where in fact a mother, though found by a court to be at fault, is awarded the custody of the children, that you would propose that due to the fact that a court found her at fault, that maintenance payments would be restricted to the children only and not to her, so that she could remain at home with the children to prepare them for life?

**MR. PETERS:** All right, I believe in supporting the children, and the support of the children might be set at a high enough level so she could live off it as well. But I do believe the converse is also true. All the way through this morning and afternoon we've heard that, you know it's sort of assumed by everyone that the wife has the children. Now if the husband has the children and the wife is working, fine, shouldn't she have to pay for his support as well as the children's support as long as they're under seven? And if we're going to legislate any sort of equality then let's make it equality, not a split difference.

**MR. PAWLEY:** So that you would be prepared to concede then that where the children were involved, were children involved and the custody of children, that the maintenance should be paid regardless of fault to the other spouse if that spouse has custody of the children?

**MR. PETERS:** Yes.

**MR. PAWLEY:** Now in the second area then dealing with maintenance, the one that deals with preparing the spouse for retraining and re-establishment because that spouse's earning capacity was impaired due to the marriage, do you object to the payment of maintenance during a transition period to permit that spouse to get on his or her feet to establish themselves?

**MR. PETERS:** No, I would recommend it for a specific period of time which would vary from case to case depending upon the non-working spouse's needs, but I do think that it should be something that is cut off and not a lifetime commitment.

**MR. PAWLEY:** So again you would allow an interim period for payment of maintenance, regardless of fault?

**MR. PETERS:** Definitely.

**MR. PAWLEY:** Then that leaves us with a third area, maintenance payments fault based upon age, health, reasons such as that, because as I understood the earlier briefs, they were only referring to maintenance payments regardless of fault for particular circumstances, age, such as the example that was given earlier of a spouse that had reached 57 years of age, didn't feel they could at that point re-establish, or somebody who though might be at fault, is handicapped by reasons of health, physical/ mental. Would you feel that there are any instances there in that third category, that regardless of fault maintenance payments should be provided?

**Statutory Regulations and Orders**  
**Tuesday, November 23, 1976**

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**MR. PETERS:** I do believe that, you know, if assets are split and there are insufficient assets, that maintenance payments perhaps should be made and it would really depend I would say to a large extent on the needs of both parties. Okay, perhaps there's other persons in a similar position to mine who have custody, have to support the children, are working, require baby sitters, and I'd say a lot of them can't afford to support their wife even though she might be completely incapacitated. I do believe that there might be room for welfare being provided there.

**MR. PAWLEY:** Well then I'm wondering whether or not there is really the cleavage that we might have felt earlier, from your words with the earlier briefs you've indicated that the children ought to be a paramount concern. You have indicated that the needs are also of great importance. In dealing with those three areas I think it would be fair to say that you have relegated fault very much to the background. Would that be correct?

**MR. PETERS:** Yes. I think it's still part of it.

**MR. PAWLEY:** In this area of judicial discretion, in view of your experiences in the courts, travelling from one court to the other and back and forth, duplication, you would obviously be concerned with judicial discretion and the cost and delays that that can cause for you or for any other person in the province that is confronted with that situation, that the laws are not clear or they're not well defined so that people know without having to speculate what those laws are.

**MR. PETERS:** No, I'm finished with it now, but I can see a lot of other children and people suffering because I think it's partially the three court system, I think it's the whole setup and I'd like to see the setup changed. Whether it can be done or not I don't know, but I think we're far from ideal as far as justice and equality are concerned in many many aspects.

**MR. PAWLEY:** Do you get the impression sometimes that the lawyers are the main beneficiaries of the system rather than the users?

**MR. PETERS:** You better believe it.

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

**MR. PETERS:** Thank you.

**MR. CHAIRMAN:** Before we break for the dinner hour I can indicate to the Committee that there are approximately 20 more persons wishing to speak to the Committee. When we reconvene at 8:00 o'clock, the Chair would propose to call first the Winnipeg Council of Self-Help Groups if they're present, to be followed by the Canadian Council of Women, Professor Sokolov, Professor Harvey, the Family Services of Manitoba, and then to continue down the list for this afternoon. — (Interjection) —

Yes, the Committee will recess and reconvene here at 8:00 o'clock this evening. \*