



Legislative Assembly of Manitoba

HEARING OF THE STANDING COMMITTEE

ON

STATUTORY REGULATIONS AND ORDERS

Chairman

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



THURSDAY, December 9, 1976. 2:00 p.m.

Statutory Regulations and Orders
Thursday, December 9, 1976

TIME: 2:00 p.m.

CHAIRMAN (Mr. D. James Walding): Order please. We have a quorum gentlemen. We will come to order. Is Shirley Munroe here please? If so would you come forward.

SHIRLEY MUNROE: Hello. My name is Shirley Munroe, and if the Press is here I ask that my name be kept confident because I am still in a very difficult situation and I don't need any more problems than what I've already got. I ask for your thoughts and your consideration to women like myself that have started as an equal in a marriage situation, and for 17 years has been an equal and working partner in a business that we've worked together on, and as time goes by, as the situation gets difficult, everything all of a sudden becomes "his". I'm told that there is no other recourse now, as the law stands, except to go through the courts, a situation which to myself I would find very degrading, both to myself and for my family. I don't know what the alternative is, I'm sure there isn't a Law that can affect everybody but I think that there has to be an easier way than the way it presents itself now. Any questions?

MR. F. JOHNSTON: Mrs. Munroe, your position that you're bringing forward is that, as I take it, that you and your husband after your marriage started a business, that you started after you were married?

SHIRLEY MUNROE: Yes.

MR. F. JOHNSTON: And you worked in it from the time it was started?

SHIRLEY MUNROE: Constantly, and still am active in it.

MR. F. JOHNSTON: Still active in it.

SHIRLEY MUNROE: Yes.

MR. F. JOHNSTON: And you're presently separated, but . . . ?

SHIRLEY MUNROE: No, no, we're still living together, a problem that I have to face is problem drinking. Can he, or will he, not only drink his half of this business or how long do I have to sit by in fear or worry that my half will go with him?

MR. F. JOHNSTON: I see. The business, the ownership or the company is, I take it, all in his name, is it a Limited company in his name?

SHIRLEY MUNROE: Yes, it is, bank accounts, a very viable business, a great deal of assets, something that lawyers would really love to relish in.

MR. F. JOHNSTON: I have no further questions, Mr. Chairman, I think Mrs. Munroe is stating a problem that we certainly should be looking into.

MR. SHERMAN: Mr. Chairman, through you to Mrs. Munroe. Mrs. Munroe, in other words, the way things stand right now, in the way the law reads right now you feel yourself at a severe disadvantage, very likely to be a victim in a situation here that would see you receive no recognition for your input into the business? Is that correct?

SHIRLEY MUNROE: From the legal advice that I have sought they tell me, of course, that it would be acknowledged but not nearly to the extent that I feel that has been put into it, and for the assets that are in it now.

MR. CHAIRMAN: Before you go on Mrs. Munroe can I just remind you again you're not under oath and you may choose to answer or choose not to answer any question that is put to you. Mr. Sherman.

SHIRLEY MUNROE: Thank you.

MR. SHERMAN: Yes, this is just for the Committee's information, of course, Mr. Chairman, and whatever information you can supply us with Mrs. Munroe is helpful, but certainly there's no obligation on your part. I was going to ask you whether you would care to tell the Committee whether you felt that it had been kind of a 50-50 proposition, or less than that, or more than that?

SHIRLEY MUNROE: Always at least 50-50, if not more. When there's a drinking problem it seems one has to share more of the responsibility than the other at times.

MR. SHERMAN: Well have you had an opportunity to consider the recommendations of the Law Reform Commission, or to follow the . . . have you had the time or the opportunity to follow the unofficial debate that has gone on surrounding this subject for the last few weeks since the Committee started to meet?

SHIRLEY MUNROE: I sat in the first full day but missed this morning.

MR. SHERMAN: Did you have any particular priorities in terms of what we're considering, or are you just seeking some reform of the Law before it's too late to salvage your own situation?

SHIRLEY MUNROE: I think that just being a human being that we are all equal, both in a marriage and outside of a marriage.

MR. SHERMAN: So you would essentially be in favour of the direction that the Law Reform Commission Report takes even though there might be some specifics that you would have reservations about?

SHIRLEY MUNROE: Yes, I do think so.

MR. SHERMAN: You would favour, I assume, the instantaneous sharing of property rather than preferred sharing, I assume the concept of instantaneous joint management, from the moment the marriage takes place, rather than deferred sharing?

SHIRLEY MUNROE: From my situation, when you work in it, yes. But I'm sure there's other gentlemen that their wives, you know, they've established a business on their own, and again that's another situation, but

Statutory Regulations and Orders
Thursday, December 9, 1976

that is for you gentlemen to work out, I guess.

MR. SHERMAN: This is what I was going to ask you, whether you have a strong suggestion to the Committee on that point or not? I gather now what you're telling me is because of your particular situation, your personal preference would be instantaneous joint management.

SHIRLEY MUNROE: I don't see how it can be any other way. When you do start, no matter how young you are you believe that this marriage is the sharing thing, you share the work, you share the joy, you share the problems. Then when a situation arises that there is a possible break-up, then there is no more sharing, it all becomes an "I" not a "we". I fail to go along with that.

MR. SHERMAN: But that's sort of a general overview and also it stems from your particular situation. Are you also saying to us that you can conceive of situations where instantaneous joint management or joint ownership would not be desirable or preferable, that there are marriages you know of, and even business situations in marriages that you know of, where that would not necessarily be the desirable thing, but deferred sharing would be preferable? Are you saying that, in fact, that there are arguments for both positions?

SHIRLEY MUNROE: I would suspect so, and yet it's as some of the ladies say the sharing of a life together is the sharing of assets. They, equally, if they're raising a family and children, . . . just because I've worked in this business perhaps doesn't make me that much stronger a situation than theirs, it's just I feel so strongly about it because I have experienced it for this long.

MR. SHERMAN: Are there any other basic positions that the Law Reform Commission has taken that strike you as being unacceptable or difficult to accept. They, for example, proposed a unilateral opting out option. I think, in fairness, I'd have to say that most of the delegations who have appeared before us have argued against that and said that it should only be permitted by mutual agreement of the two partners.

SHIRLEY MUNROE: Well, again, I can only speak from my experience because of the problem drinker. How long is a person, whether it's male or female, supposed to sit in a situation and say: "I can't opt out of this bad living way and still be blameless." It depends so much . . .

MR. SHERMAN: Well let me put it this way — and again I remind you of the Chairman's instruction that, of course, there's no requirement on you to answer, but we're looking for help here. Let's take your specific situation, because you've outlined a particular problem, it/s probably duplicated many times over, but we're dealing with this one specific tangible problem that we can come to grips with. Do you think that a requirement for mutual opting out of the new law, should it be written in the form generally that we are considering in this Committee, would be of any benefit to you? In other words I guess, I'm asking you whether you could get your husband to go along with your decision to opt out. You might, because of your position, want to opt out of provisions under the . . . you might, I don't know what the particular financial structure of the company is. In order for you to opt out the Law Reform Commission says you can do it on your own; most delegations have said there must be mutual agreement reached. I'm just wondering whether you think, in your own situation, it would be more beneficial to you to have the right to opt out of the legislation on your own, or whether you think it should be a mutual agreement, together, yourself and your husband, with independent legal advice?

SHIRLEY MUNROE: I would think that usually by the time you get to that situation, already, if one's home life is miserable enough, they're both ready to opt out.

MR. SHERMAN: So you don't foresee any difficulty in terms of going for the mutual or the bilateral concept?

SHIRLEY MUNROE: Not from my experience, no.

MR. SHERMAN: Thanks very much.

MR. F. JOHNSTON: Mrs. Munroe is your main concern at the present time that if the situation continues a viable good business, which has been started by two people, could go down the drain? Is your concern that if you were able to get some control that you would be able to save the business for the betterment of the family?

SHIRLEY MUNROE: It isn't necessarily control because I respect his individuality, I believe he should be able to do with his portion as he sees fit. I just don't think that he should be able to control my share of what I have worked for, that I should be able to get a hold of what I have in that business without dragging it through the courts and consequently having a separation or divorce, or whatever it may be out of it.

MR. F. JOHNSTON: Yes, well if that doesn't happen, as you say, it could conceivably go.

SHIRLEY MUNROE: Go, yes.

MR. F. JOHNSTON: And I guess, I don't like the word "control" any more than you do, but if you had some control the business is very much likely to stay viable than the other way around.

SHIRLEY MUNROE: Again, he may do with his what he wishes.

MR. F. JOHNSTON: Thank you.

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

SHIRLEY MUNROE: Thank you for the opportunity of hearing me.

MR. CHAIRMAN: Mrs. Tracy please, would you come forward.

MRS. MARY TRACY: I'm Mary Tracy and I'm going to speak about the judicial discretion that happened to me.

Three years ago we got a separation. I have been married for 25 years and separated for three now and the

Statutory Regulations and Orders
Thursday, December 9, 1976

things that happened to me in a court room are still a shock to me 'til this day. I got custody of the two children that were under 18 and the maintenance was set at only \$125 per month while my husband lived in the house until the house was sold, and after the maintenance was to go up to \$225. So he was taking his sweet time about selling the home and everything. I didn't know what to do about it, about how to buy my half of it, so I just let it go at that and just signed the papers and the home was sold. But when we got into the court room there was a fight. Judge Saunders was my judge at the Family Court. I wanted to live in the home with my children and my husband wanted to live in the home, so my attorney comes up to me and whispers in my ear, "Well if you can't live in the home", he says, "You might as well get a court order and sell it." So this is what happened, I had nothing to say about it. I feel very bitter towards this, and very cheated, and my kids feel the same way because I've worked in the home for so many years and I did all the work, the painting of the home, the cutting of the grass, the storm windows and all the things, and looking after the children while he was drinking every night, coming home late, abusing the children and myself. And then after, when we go to court, he comes up smelling roses while I'm the underdog. This is what I could never figure out.

Now we are in the process of a divorce, so my husband has filed a petition against me on such stupid grounds as, after three years separation, he's got it on mental cruelty and marriage breakdown against me, and I feel that all along through the marriage he was the one that was causing all the mental and physical cruelty, towards me. Throughout the years that he has been abusing my children and abused me, as a result of it now I'm disabled, but three years ago I had gone to my doctor and I wanted him to write a letter, my attorney had asked him to write a letter, that it was physical cruelty that I could get the separation on, but my doctor phoned his attorney and he says to the attorney: "Why can't Mrs. Tracy get a separation without me having to say it was physical cruelty?" So I guess his lawyer said to him that he didn't have to get involved. So then he never answered any letters to my attorney or anything, so my husband just agreed to a separation and that was it, nothing was brought out.

Now three years later, I've had a myelogram last year, and I had two discs smashed because of the injuries my husband had caused me. This was due to sexual relationship. He wanted sex and he'd had sex three times that day, and I figured that was enough and he wanted to do it in such a way, through the rectum, and I had hemorrhoids so I didn't want him to do it, so he took his fist and hit me right on the side of my back, smashing the discs. I didn't know this, and like I said, I was going to the doctor for three years or four years and the doctor kept on saying that it's sciatica. Then I took jobs, I worked at Flyer Industries which was kind of a hard job for me. Then I had to quit because they were going on strike, and later on I worked at the Concordia Hospital in housekeeping. With all the walking and all the bending and everything else my back got so bad that I couldn't walk anymore and I just got into the hallway, hung onto the hallways, and they took me to Emergency. But the doctors didn't know what was the matter at the time, they were treating me for a joint sprain and other things like that until finally I had the myelogram and it revealed that the two discs were smashed, and so the doctor trimmed away the excess along the spinal cord, but I still have problem with my hip today. But like I said, somehow he seems to get — he's got the money, he gets the better attorney and I, I'm not a pusher and so I'm going down and under even though I have the kids maintenance, he doesn't want to pay maintenance and so we keep on going to court. Last year I was in court five times in five months.

You were speaking about the enforcement officers. Well there's another thing I have here, they don't really enforce anything about paying that maintenance. As a matter of fact, I phoned them just in October, I said to him, do you know that my husband hasn't been paying maintenance, he says, yes, and I says "well, what is the government paying you for," I says, "are you going to get after him for payment, or are you going to run after the suitcase that my husband says I stole when he took the kids on a holiday last year because he got himself involved in that which was none of his business; and my attorney wrote him a letter saying that I wasn't responsible for this ruddy suitcase — I left it outside the door — I went to the Legal Aid lawyer that night, then he came for the suitcase that was missing, so then he blamed me for stealing it; and this enforcement officer is running to my place to pay for it. It had nothing to do with him; instead of him trying to get after my husband to pay maintenance, he's worried about some other thing. This is what has been happening throughout our separation and divorce action. I don't know whether to believe his lawyers or what to do about it, it seems like it's unfair. Even when I went for my separation, we had the woman Judge, nothing was brought open because my son was there as a witness and everything, but my husband agreed to a separation, so nothing was brought in front of the Judge. The Judge didn't know what the circumstances were in the marriage or anything. This has been happening with me going to Family Court for maintenance. Every time I go there's a different Judge; well, they don't know anything about your case: I've had five different Judges in the short time that I've been separated. Even the last time when my son turned 18, well my husband took it upon himself not to send the money for my son anymore; then he found out he had to have a variation order. So then he went to the Court and got the order; then we went to Court this past October — and he didn't bring an attorney with him, I just had mine — and it was adjourned because the divorce is pending so it goes to the Court of Queen's Bench.

But then we garnisheed his wages. Okay, the money is there right now, it's still sitting there to go when we go into court. So what happens? The next month my husband didn't send the alimony again, even though his wages are garnisheed; and now he's in such a state and so up-tight because of me garnisheeing his wages that a few weeks ago I had a little problem with my daughter and she wanted to go out to stay at her girlfriend's for the

Statutory Regulations and Orders
Thursday, December 9, 1976

weekend. Well, she did this a few times, then after that I kind of stepped down on her and I said you can't go there unless I give you permission. So she was leaving the house and she said I'm going anyway. When she left the house, as she was leaving I said: "Roxanne, if you're not going to listen to me; I don't want you going there. I don't know what's going on, it's at the North End and I don't like you going to that area," and I said in a way, "Don't bother coming back," so she didn't, she went to her father that Sunday night and I didn't know where she was and I called the police; then I phoned the school to see if she had been attending school and she had been attending school, and the Counsellor spoke to her. Then I went to the Children's Aid Society, spoke to a Counsellor there and she said to me, "Well, if your daughter wants to go with her dad right now, let her go" and I said, "Okay, then, she can go and live with her dad until the divorce thing then she'll know if she wants to stay with her dad or with me," because she's 14 years old. So I let her go, and now what has he done? He's using this against me. He wrote a letter to the Family Allowance place saying that I had thrown my daughter out so he should get the Family Allowance cheque.

I phoned him the other day. I wanted to know how could he do this? Did he get a letter from his lawyer or anything like that and she said no, he just wrote the letter saying that I had thrown her out, and I said that isn't true. I wanted to discipline her, she's 14, she can't do things on her own yet, she's not of age. So they said to me, well if she comes back to you then you make another application for the Family Allowance. But until then they are not going to do anything about it. She's been there only two weeks and already he's let her talk to his attorney and had her say the things she did just to bribe her for a few clothes and money because I can't afford to give her certain things. He has talked to his attorney and said that she wants to live with her dad because I have been unfair to her, or whatever he has said, I don't know. But I got a letter from my lawyer saying, Now, come to my office and we'll discuss custody and maintenance again, and this has been dragging on already for ten months with this divorce. Every time I go over there I say, well I would like him to compensate me in some way because I'm almost 47 years old and I haven't worked now for a year and a half — and I can't work at a full-time job — and he says to me, well how are we going to work this? He said, you know before you asked the doctor to write a letter to say that you got physically abused, which he didn't. So what are we going to do now, he says? I feel that he should subpoena the doctor or something because after all why should the government have to support me when my husband is making a good salary. He's been working with the C.N. for thirty-three years and I've never seen his pay cheque for the twenty three years that I've been married to him or his Income Tax return, and now he's still giving me a raw deal. Right now he wants to see my Income Tax returns, through his attorney, for the last two years; and I said to my attorney I haven't worked for two years, what does he want to see the Income Tax for, I have no income? So I haven't shown it to him yet, but I guess probably it's the proper thing to do to show him the returns. But my husband didn't show him his for the last four years, he just showed his last year's one; and he's gotten so many things written in there like home ownership — I don't know if he can get a home ownership savings again if you've had a home once or not — but anyway he's got that there and he's got other things on there that makes his salary seem like he's making hardly anything because he's got so many deductions for his pension plan and other things.

That's another thing I couldn't figure out. What about his pension plan? I've been married to him for so many years; now he has sold the home and half the assets and the home went towards me and my children, and yet his pension — he's been there thirty-three years and I've worked along with him for so many years, I've got no pension, I've got no security, no nothing — now does this seem fair? I mean, I think I've really been put in a bad situation. Also, my son has turned 18 and my husband doesn't have to support him anymore, but he's still going to school. Now, does that mean once the children turn 18 you just throw them out of the house? I haven't got the heart to do that, he's still living with me and he's going to school. I feel his education is very important. But his father won't help in any way toward like one son that's going to university is 24, he's in his last year of Mechanical Engineering. Well, who helped him? He's gone out to the Legislative Building to get a student loan and bursaries and things like that. Now all those years he's said to me that I'm doing without a lot of these things because he's saving the money for the kids' education, and when the kid went to university he never gave him anything, and he kicked him out of the home when he was 17. So when I got my separation my son came to live with me. I felt why should I deprive him of his education? Okay, I got half the money from the house if it's going to be used for anything it's going to be used for the children to get educated on. But my husband got half his share. What did he do? He went on a trip to the Bahamas last year and he's having a whale of a time because he's not paying maintenance, the enforcement officer is not strict enough with him, and in the end I'm suffering. But I haven't gone to the welfare yet. I'm very seriously thinking about it because my house money is finally going down to nothing because it's been already three years and \$8,000 doesn't go too far now-a-days.

So this is my concern about the whole thing and I don't know how you feel toward these things. I feel very strongly that I was dealt unfairly, and I feel that if a person gets a separation in a courtroom and if there's ever anything comes up again for maintenance they have the same Judge so they'll know what the score is or they can refer to it, not going to five different judges. The one Judge doesn't know what happened in the last previous case, you know, and I felt this was an emotional thing, you know, the divorce and all this. It's hard on the children and my daughter has been failing certain grades in school and now with him taking her place and the fighting between us, the bitterness, I told the social worker at the time, I wish you could put my daughter in a

Statutory Regulations and Orders
Thursday, December 9, 1976

different home until the divorce thing is over because it is so hard on the children. She is so mixed up right now. She was too young when we split she feels her father wasn't so bad because, you know, she doesn't remember the time he was drinking and would come home at 11 o'clock at night and would abuse me or the other children. She was already sleeping in bed and she didn't hear a lot of these things that went on.

But I wish you could speak to my older children, my boys, the one who goes to university. He's very good in his schooling but he's a very very disturbed boy and I don't know how to deal with it and even my attorney before suggested that he go see a psychiatrist at the university as he has so much bitterness and so much hatred towards his father. I don't know how to deal with these things but social workers have more experience with things like that. My son doesn't want to go to a psychiatrist, I don't know how to . . . you ou know, the lawyer talked to him and I spoke to him but what can I really do and what kind of a future is it for him? Sure, he's a really educated boy, he's good in his school but what is he emotionally? Even now, he's finishing university but, you know, he still feels insecure about taking his first step about getting a job and he's got top marks in school. Like I said, this is the damage that happens to children brought up in homes like mine where all this abuse and drinking goes on.

This is all I have to say, thank you very much.

MR. CHAIRMAN: Mrs. Tracy, Mr. Pawley has a question for you which you may choose to answer or you may choose not to answer. Mr. Pawley.

MR. PAWLEY: Yes, Mrs. Tracy, all that I was really interested in discovering . . . this process has continued now for some three years, you have had legal aid all that time, a Legal Aid lawyer during that period of time?

MRS. TRACY: Well, right now I went through the Legal Aid but it's been ten months since the divorce took place and I have an attorney through Legal Aid, yes, and they're starting to negotiate now.

MR. PAWLEY: You had a private attorney prior to that did you?

MRS. TRACY: No, I had a Legal Aid but I ended up paying in the end anyways because the home was sold and they took it off the home.

MR. PAWLEY: I think you indicated or did I hear you incorrectly, that you had been in and out of court five times?

MRS. TRACY: Yes, last year alone, for maintenance.

MR. PAWLEY: Into Family Court?

MRS. TRACY: Family Court.

MR. PAWLEY: I would be interested, was there any particular reason you were in or out so many times, was it remands or . . .

MRS. TRACY: Not really. The first time I went in the judge said my husband was to pay 215 or something like that and the next time my husband didn't pay it at all. He took it upon himself that he was not going to pay anything so we went to court again and then after that second time, then he went and made another application, said he was sick or something and he wants it lowered because he was sickly and we went to court in December about that. Judge Saunders was the judge and she said "Well, you're getting paid from CN even if you are on sick leave." And he pulled out this letter, mental cruelty and all this. The only thing with this mental cruelty stuff of his, it was all due to drinking and he went to his doctor and his doctor tells him to quit drinking after 20 years. So then he figures he's going to turn it around and use it against me as mental cruelty, with all these illnesses of his, you know.

December 22nd is the time I was last year and he hadn't paid for a few months. So then he wanted to pay it on the instalment plan and the judge said to him, "Well, if you could afford to go to the Bahamas, you could afford to pay maintenance." This is where the enforcement officer said no instalment plan, you just pay the whole shot. So I got the check January 7th, it was after Christmas. In the meantime I was just lucky that I still had some money from my home. This was all I had to back myself up with.

MR. PAWLEY: Were you in the Court of Queen's Bench as well during that period?

MRS. TRACY: Not yet.

MR. PAWLEY: You still have to proceed to the Court of Queen's Bench?

MRS. TRACY: Yes, for the divorce.

MR. PAWLEY: I see. Thank you.

MR. BARROW: I just have one question, Mr. Chairman. Mrs. Tracy, you said your husband's wages were garnisheed and he still didn't make payment. I thought I understood that when your wages were garnisheed, which happens in our area for other kinds of debts, it's handed to the person to whom the money is owed. Is this not so?

MRS. TRACY: Yes, but somehow because it is going through a divorce case, right now it's staying there in the courts, the lawyers are holding it, I don't know who is holding it.

MR. BARROW: Well the money is there, the garnisheed part is there?

MRS. TRACY: Yes.

MR. BARROW: And eventually you probably will get it, is that right?

MRS. TRACY: Yes, when we go for a divorce.

Statutory Regulations and Orders
Thursday, December 9, 1976

MR. BARROW: I see, thank you.

MR. CHERNIACK: Mrs. Tracy, you've told us of your personal problems which is much more understandable than all the briefs we've had up to now where we are talking theory so I hope you don't mind my asking you just what your experience was during your married life in relation to decisions about how to spend money, whether or not to spend money? Did you have any kind of an understanding, where you both . . .

MRS. TRACY: From the start we did and he had the money and he put everything in envelopes. He was in charge mind you, he would put everything in envelopes, this went in this envelope for this bill and that went for that, but then sometimes he decided to go gambling and the whole thing went in one shot. I never had control of the money, never at any time and we used to often argue about that. What we did is we went grocery shopping together, I picked the stuff out and he was there handing the money. No money went through my hands.

MR. CHERNIACK: You didn't handle money at any time?

MRS. TRACY: N I didn't.

MR. CHERNIACK: When you were married, my arithmetic tells me you were pretty young and he must have been a little older. Was he working for the railway when you were married?

MRS. TRACY: Yes, yes because he's been working there for 33 years and we've been married 25 years.

MR. CHERNIACK: Are you aware . . . have there been layoffs or is he in a field where there is steady work.

MRS. TRACY: T ere's steady work, he works in the office.

MR. CHERNIACK: In the office?

MRS. TRACY: Yes and he handles all the freight claims.

MR. CHERNIACK: I see. Well do you know whether he acquired any assets other than the house?

MRS. TRACY: Yes, we didn't have a joint account so he had it in his own name. But I never got anything out of that.

MR. CHERNIACK: Did you ever know what it amounted to—

MRS. TRACY: No, but I knew what bank it was in because I seen at one time that . . .

MR. CHERNIACK: But you don't know, you think he had cash and you had a house and you must have owned it equally, the house.

MRS. TRACY: Yes, that's the only thing we had jointly.

MR. CHERNIACK: What happened to the furniture when you split up?

MRS. TRACY: Well the furniture was divided but he lived in the house and so he said, before the home was sold like, he says like, "I'll keep the furniture until the house is sold and then you can get most of it." But then it ended up he wanted this and he wanted that. He got the fridge and stove and we were arguing in the lawyer's office and I said, "I don't want to argue" and he got most of it. He got the car, he got the camper and the boat and all the stuff that was more expensive, he got it and even my daughter's bed, he got it.

MR. CHERNIACK: You had moved out before the house was sold?

MRS. TRACY: I ad to. I started to work part time at Eaton's in June of 973 and he was always against me working. I had started to work in 1970 and he beat me up, he gave me a black eye, so I quit the job, I didn't go to work because I was too ashamed. So then I started in '73, part time at Eaton's, I only worked in the evenings at the start. Then again he wanted me to quit and he would beat me up. So I went to the Alcoholic Foundation, I spoke to a counsellor there and she says to me, "Stick to your guns, don't quit this time, just keep it up." So he was very abusive and everything. As a matter of fact, that night I left he threatened me. I came in . . . like I was walking down the lane at 10:30 at night and he was coming home from drinking and he tried to run me down in the lane with his car and I just stepped out of his way along the fence. Then he got to the house and he stood in the back door and he blocked the entrance, he said, "You're not coming in this house." So then I went around the front and I rang the doorbell and my 15 year old son opened it and let me in. Then he started to argue because my daughter had injured herself that day at the farm. She got a pitchfork in her leg and he started to argue, "Why did you go to work when your daughter was sick?" I had taken her to the doctor that afternoon and there was really nothing wrong with her so I to go to work. But. I mean he could have come home right after work at five and looked after her too.

MR. CHERNIACK: Well, Mrs. Tracy, I don't want to go too far into . . .

MRS. TRACY: . . into all the details.

MR. CHERNIACK: Yes, but I gather that you had the house which you must have sold for something like \$16,000 net, if you got eight I assume he got eight.

MRS. TRACY: Yes, because the real estate got a certain percentage.

MR. CHERNIACK: Commission. Whatever it was, you ended up with 8,000 each. But he the house, the trailer, a boat . . .

MRS. TRACY: The car, yes.

MR. CHERNIACK: The car. Did you have anything else on your separation?

MRS. TRACY: No, just the sale of the home and the furniture.

MR. CHERNIACK: So now you got an order for monthly maintenance.

MRS. TRACY: Yes.

Statutory Regulations and Orders
Thursday, December 9, 1976

MR. CHERNIACK: Do you know how much . . . well you know how much it was. How much was it?

MRS. TRACY: When we first started it was 125 which was very low and I lived in an apartment and paid \$155 a month for rent. I went to the welfare and they were going to give me the difference, I was working part-time at Eatons, 24 hours like they give you there, they don't give you more than 24 hours at a minimum wage, and they said to me, well, we will give you \$267 — for me and the children — and they wanted to take the alimony from the Family Court to make up the difference. Then I was figuring, well gee whiz, maybe I can manage without that welfare. . . and I never had much to spend so I could live cheaply because I always had to look for bargains for the kids clothing.

MR. CHERNIACK: How much was he earning at that time?

MRS. TRACY: He was making, when we got a separation, I think it was 9,000 a year and now he is making 13,000 or something like that.

MR. CHERNIACK: And what is your present maintenance?

MRS. TRACY: Well \$140. . .

MR. CHERNIACK: For what? For the one child?

MRS. TRACY: Yes, 75 for the child and 65 for me.

MR. CHERNIACK: And he is earning 13,000 a year.

MR. CHAIRMAN: If there are no further questions, thank you, Mrs. Tracy.

Mr. Jake Feakes, please.

MR. JAKE FEAKES: Members of the Legislative Committee, on November 24th I wrote you a letter which is part and parcel of this brief I intend to present, and just for the record I would like to read parts of it as to my intent.

“The Legislative Committee, Dear Sirs: I attended the all day session of yesterday, November 23rd, and I was indeed pleased with the representation of all parties on the Committee. I was very pleased with the interest and attention shown by all the members and the extreme patience shown throughout the somewhat trying ordeal with so many duplicate presentations by the groups and some individuals making their presentations with the same repetitions I thought. I was somewhat amazed that only half of the members asked most of the questions in exploration of the issues coming before the meeting, and I would like to suggest that others participate more.

I would also like to point out that I do not feel that you have adequate representation from a general cross-section of the family populace of the province at present, neither does the Law Reform Commission in that it is made up of five members of the legal profession, two of the teaching profession and one columnist. I have been unable to determine the profession of the two officers and secretary of the Commission or the partial list of respondents to the Commission only that there are twelve women's organizations, thirty individual women, seven that I consider impartial organizations, eight individuals with initials only and only fifteen men without sponsored clubs, etc.

I also note with some apprehension that there wasn't any meetings held in southern Manitoba at all where incidentally, in case you are not aware, that this is where the largest population of the tight-knit family is concentrated mainly of ethnic origin and religious belief and philosophy of a single unit marriage and family. I believe you will find the break-up situation is very low in these various communities as well as some other parts of Manitoba. I am pointing this out because of the extreme, important area of law we are delving into in an effort for change and that is therefore most vital to have the opinion of these family units in order to obtain a broader concept of opinion based on living experience and the reasons for success and/or failure in this basic principle before attempting to change or adopt a new set of laws based on the values of our very permissive society with all the ills it is breeding.

I am preparing a detailed brief for presentation to your Committee on December 9, 1976 relating my own experience as regards to the whole family structure, how it lasted for 21 years without much dissension and strife or hardship, how and why it began deteriorating, resulting in separation and divorce, custody and maintenance, property disposition, legal and judiciary procedure, involvement of government institutions, welfare and Children's Aid Society and the medical profession, and most important what has happened to a once happy, prosperous family of seven children, six in-law children and what is happening to ten lovely grandchildren at the present time and the future life holds for them as a result.

I am also proposing at this time that you solicit and acquire the personal and professional opinions of the following bodies functioning that are highly competent and experienced in the family as well as criminal law, civil and common law, etc., etc., that we cannot afford to place our future generations in jeopardy because of hasty law reform without this vast knowledge and wisdom by experience. Now this is the political arena, in the judiciary, in the legal profession, in the medical profession, the ministerial profession, the Royal Canadian Mounted Police and all members of the Jewish and Catholic faith as well as any others that may exist in Manitoba. I beg you to consider these people and request their assistance in reaching your ultimate decision. I have contacted most of those mentioned as well as many others by letter two weeks ago, and I am certain that they will all cooperate if asked and make themselves available either in camera or by presentation to the Committee meetings. I am also certain that all of them would like to know what happens to families and the general public as a result of our present system. I have nothing but deep admiration and respect for all of those

Statutory Regulations and Orders
Thursday, December 9, 1976

involved because they were deeply and visibly concerned during and after the ultimate and climactic end of a family and home and their involvement in its destruction by following the existing laws and former precedents which I feel should never apply in any case.

If this meets with your approval, I would like to request that you circularize all of the foregoing to the people mentioned herein as I do not intend to name any names in my brief and I feel it would lend more credence to you, and I am not searching for glory or recognition other than that I am deeply concerned for all peoples of Manitoba, Canada and the whole world because of the direction we are heading and the ultimate end of our beautiful world as we know it today because of greed and selfishness in our never-ending struggle for power and glory and the pursuit and happiness of peace and prosperity by chasing after material things and holding and honouring wealth and money as our Lord God instead of God our Creator, Father, Master, Redeemer, Lord and Saviour of us all in whom are all the things we are striving for if only we submit ourselves to Him and Him alone and abide and do by His will by obeying His commandments, law and statutes in all things every day.

I was worth over \$100,000 only 9 years ago, I had a lovely wife, home, business, family, security, happiness and friends. Today I am worth less than \$1,000 with an estranged wife, family and friends and have just given up a reasonably good paying position because of the need of people all around us and I have never been happier, healthier, had more peace of mind and am more prosperous in life than I have ever experienced in 49 years. I do not envy any rich man, I just remember the Kennedys, Aristotle Onassis, Howard Hughes, John Paul Getty, etc., and how they lived and died and the battles ensuing for their wealth and I thank God that I can be me and know what real love and happiness really is.

If you do not wish to deploy this presentation to the people I mentioned, I would appreciate it very much if you would advise me at least a week before the meeting on December 9th so that I can forward the information myself as I feel they have a right to know how I feel towards them and my position in regards to the presentation of my brief. I love them all in spite of what has happened and I do not intend to embarrass any individuals and will stress only the system that is at fault and recommend an alternative and change only where I feel it is needed."

Pursuant to this letter I received a letter from Mr. Chairman Jim Walding. *"Thank you for your letter of November 24th indicating your intention to present a brief to the Family Law Committee at its next meeting on December 9th. The meeting will be held in Room 254, Legislative Building, commencing at 10 a.m. It has not been the practice of the Legislative Committee to solicit responses from particular individuals rather a blanket invitation is extended to all members of the public who might wish to do so. May I remind you that briefs to the Committee should be limited to 15 minutes in length. Questions may be asked by members of the Committee which you may choose to answer or choose not to answer."*

Consequently I then forwarded a copy of these letters to the following: *"Dear Friends and Former Associates:* Enclosed you will find a copy of my letter, comments and proposals to the Legislative Committee on the aspects of Family Law Reform. This is mostly self-explanatory as to my views and opinions but you will see by the reply I have received today from the Chairman, Mr. Jim Walding (copy also enclosed) that they do not solicit any responses from individuals. I would hereby like to request your participation by submission to the Committee either by letter, brief or personal presentation at the meeting of December 9th as stated. I do not believe that the general public has been adequately informed as to the important impact the proposed Law Reform Report will have on our whole society, and as I have a personal relationship or contact with most of you in one way or another, I would therefore like you to know that I have a high personal regard for all of you regardless of the consequences. I do not judge or condemn anyone because I appreciate the sincerity and dedicated effort put forth in upholding the laws and principles of our present system which I know is wrong. There aren't any winners in our adversary system, in peace or war, because it is always the innocent that suffer most and this is what we must fight and destroy instead of our families, homes and each other. This will be the context and purpose of my brief. Thank you for your cooperation."

And I also sent a letter to the Committee again, to Mr. Jim Walding. *"Thank you so very much for your letter of December 1, 1976 in reply to my request of November 24, 1976. I have just completed and mailed copies of the attached letters to all those mentioned to you and I hope they will reach all of them before the weekend so they will have time to prepare their own submission to your Committee. It is just the situation that you mention in the second paragraph that keeps so many responsible, God-fearing citizens of this great land of ours from expressing their rightful views and opinions on so many important matters concerning them. It is quite easy for governments to send out the ridiculous garbage that has been enclosed with our children's conscience cheques but never important matters concerning the when families of the nation is at stake. The blanket you mention has covered only a very small percentage of the family population regardless of the membership quoted by the various groups making presentation as I have stated. I do not think that you would deliberately discriminate as regards to the 15 minute time limit when the minority had a full day and night to submit theirs. I am representing the welfare of the whole province and even the world. Thank you again. I am looking forward to December 9, 1976 when I hope history will be made."*

Statutory Regulations and Orders
Thursday, December 9, 1976

I am making my presentation on behalf of 600 near relatives and many friends of every race, colour, creed, religion, sex, age, etc., etc., and especially status from all walks of life and political beliefs and all aspirations. This being the most important aspect of any and all laws, namely family laws, I would like to contribute to the formation and passing of a law that is of maximum benefits to all people in this world with special emphasis on the women and children who depend on man for their well-being. No matter how tough some of them may present themselves, this is the law of God and nature all around us. I am relating my own personal experiences without fear or favour for your consideration only and will make the recommendations if the people and/or your Committee feel that it is desirous to give you a first-hand report with examples and proof that I can and will produce upon request from you or publish without your request and detail for the information of the general public who are the ones mainly affected by any and all laws passed by government.

My personal experiences also include many violations of the Bill of Rights, Constitution, Human Rights and criminal law which I will also divulge on request or publish without request because it cannot be swept under the rug or filed away any longer.

Pursuant to my personal experiences, it began with outside interference from various sources after 21 years of marriage, mainly because of envy and jealousy because I had embarked on a do-it-yourself project with the welfare of my wife and family of seven children as of primary importance and their future consideration. I must admit that I also did it to prove a point of what can be accomplished by a family perseverance who works together on their own initiative and to accomplish that which society deems the impossible. This created many problems which I attempted to solve myself with competent advice whenever needed, which I did not involve my wife or family with because I felt it was my responsibility and I did not want to burden them with the complexities of these problems. During the period of total commitment there developed underlying conditions and situations, both within my own household as well as outside of it, of which I was totally unaware until things began to disrupt and I was always the last one to be informed until after the fact when the only solution was to try to patch the result which could and should have been prevented before it ultimately occurred.

I was never aware of the seriousness of the situation until my wife left me and was informed by her lawyer, via petition for legal separation, after futile efforts of reconciliation on my part to bring her back to her home and children whom she had deserted. But by this time the outside influence by in-laws, doctors, lawyers, etc., etc. was so great that it seemed hopeless. But I didn't give up trying even after the pitiful trauma of the trial for legal separation which in itself was enough to drive the most stable person into a state of insanity because of the incessant bickering between the two lawyers and the judge in which neither my wife nor I had any say except to answer yes or no to their own questions and harassment in trying to outdo one another with the consequences being the furthest from their mind in my own opinion and experience. We were forced to reveal our most intimate relationships, which was invasion of privacy at its worst, in a public court of law in which we had no other choice than to comply with their wishes.

I was charged with mental cruelty which I could have proved false by many friends and acquaintances including her own parents had I wished to do so, but I did not want to fight her or any of my loved ones which I was being forced to do against my will and better judgment. She was awarded custody which I never contested because I felt that if the choice is necessary then the children are better off with their mother, all things being considered, and I did not want to see them separated. I was ordered to pay maintenance for the children but not for her, for any alimony which her lawyer had promised her was the decision of the judge, and wisely so I admit. I did pay maintenance until she entered into a common-law relationship with a no-good bum who was living off her means and the children's support payments by me, besides physically beating and abusing my children of which I had no recourse because I had been ordered to stay away from them, but as a consequence my older teenage daughter brought the two younger boys back to me and I took care of them and subsequently stopped support payments to her after which more lawyers' threats, property caveats, demands, etc., etc. which I ignored awaiting a trial transcript so that I could commence legal action against the false allegations by lawyers and other witnesses, which resulted in my forced committal into a mental institution because they were afraid of the consequences of a legal investigation and charges of perjury and alienation — not to discount a conspiracy to dispose of me at all costs rather than themselves be cited for perjury, etc. The Bill of Rights was completely ignored in my case.

I appealed to many and various politicians, legal, medical and ministerial bodies for assistance, all to no avail. Then I was released the first time. I filed specific charges with the RCMP by laying an information after which I was again committed by the same procedure as previously and released under the threats of reincarceration unless I subjected myself to the administration of their demon drugs and was so subjected for more than three years, during which time I lost my wife, family, friends and all of our worldly possessions and they were shunted from one place to another ending up in foster homes, a ward of the Children's Aid Society through the courts, while my wife lived common-law and neglected the children who ended up with me again for a short time. Then outside influence again interfered and my wife filed for divorce which I did not contest because it meant fighting my loved ones again and she remarried and received a property settlement for the children's support only which she squandered on herself and her new mate while the children were in foster homes.

MR. CHAIRMAN: Order please. Mr. Feakes, as I indicated to you before, the Committee had set a limit of

Statutory Regulations and Orders
Thursday, December 9, 1976

15/ minutes on individual briefs. We have exceeded that time. Can you indicate to me whether you have almost completed your brief?

MR. FEAKES: Yes I have, this part of it here. I can go into the aspect of the Law Reform Report if you like because I have comments on that but this is up to you, it doesn't matter to me.

MR. CHAIRMAN: If you have nearly finished I will give you two more minutes to complete it.

MR. FEAKES: Fine, thank you.

They have all gone through the most wicked type of life which will be with them until the day they die, which can never be erased. The only beneficiaries of the whole family assets were governments' banks, lending institutions, the medical profession, the druggists, the pharmaceutical companies, the judiciary, the legal professions and the real vultures, the real estate agencies and their ever-ready clients who take advantage of this type of situation without regard for anyone but themselves, and the families, and especially the children who are the innocent losers.

MR. CHAIRMAN: Thank you. Are there any questions from the Committee? Mr. Brown.

MR. BROWN: Mr. Feakes, at the beginning of your statement you seemed to intimate that there was a stronger basic family unit in southern Manitoba. I wonder do you have any specific reason why you would make a statement of that nature?

MR. FEAKES: Well from personal experience because I grew up there. I come from a family of 16 children who are all married and I'm happy to say there is very few divorces and none until the new divorce law came into being — so from that and many relatives that I have also in the area and other parts of Manitoba, the trend just does not go along with the provincial or national consensus.

MR. BROWN: I wonder then, Mr. Chairman, whether Mr. Feakes would have any specific recommendation that he would want to give to the Law Reform Committee in that regard.

MR. FEAKES: As I say I can go through this Law Reform Report and give you my opinions on it which I am mainly in agreement with except for certain areas of it. If you so deem advisable I will certainly proceed and go ahead but this is up to the Committee.

MR. BROWN: Mr. Chairman, I was wondering whether he could very briefly state his case in that regard.

MR. FEAKES: Well what has been proposed here really is a completely new concept of marriage. The vows that we are obligated under right now which are in existence of course stem from the biblical laws of Moses. They are explicit in every respect and therefore they only need interpretation to some extent, as far as the legal aspect is concerned. If we follow those laws then there is no concern of either children's rights, property rights or anything to that effect because it is explicitly explained there exactly how it functions and what the results are.

MR. BROWN: Thank you, Mr. Chairman.

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

MR. SHERMAN: Mr. Chairman, I was intrigued by Mr. Feakes' sort of overall position as he expressed it with respect to the Commission Report itself. He said that he is in large part in agreement with the Commission Report but there are specific areas he disagrees with and I wonder if you could just identify those areas, Mr. Feakes. By subject, you don't need necessarily to give me page references unless it's easier for you, but by subject.

MR. FEAKES: Well the support obligation to start with, Item 4. This I think should not be a part of any law reform. This is a strictly optional parents' decision and I don't think that our children should be subjected to any form of coercion in that regard. The door should always be open for them to come back home even if they want to go and try their wings on their own which this suggests that they no longer have any right to. As far as my concept of family is concerned, my children are my children as long as they live or I live including the grandchildren and future generations. This is just a part of it and this is a part of the agreement of the original marriage concept, and even though I may not support them financially, I will if requested of me or they are unable to do so themselves. I think this is an obligation of both parents right at the beginning. And in regard to equal sharing of assets, I firmly believe that if there is going to be a distribution then a child, immediately upon birth, becomes a shareholder of that family asset regardless. Now this can be based on a percentage agreed to by the parents or can be written into a contract which has been suggested here numerous times and is also suggested in the Law Reform Report. This again is a different concept of the original marriage vows or agreement and if this new concept of marriage is entered into by contract then The Companies Act should apply because that is explicit, it is fair' it can be done on any share basis by contribution or whatever, right from the outset. If this is supposed to be a factor well then it should be done in that way. That is my feeling on it and those are laws that are already passed which do not have to be changed to any extent.

MR. SHERMAN: Do you feel any basic opposition to the fundamental thrust of the Commission Report which envisions the marriage as an equal partnership to the point of articulating that in property division and related property rights?

MR. FEAKES: Well in the original marriage concept — I'm sure that we have all agreed to the marriage vows and the partnership — this is all equal regardless of how many children there are or anything else. It only becomes a factor upon dissolution, in the event of death, separation or divorce, when there is property assets to

Statutory Regulations and Orders
Thursday, December 9, 1976

be disposed of.

There has been quite a lot of emphasis placed on the no-fault aspect of it and I cannot see how we can get away without fault factor because it determines who may get custody, who maintains, who gets maintenance as far as the spouse is concerned, under what conditions and so on. Now the divorce laws conversant with our marriage vows, the spouse that is at fault is automatically out, only the children are considered. Now in this event and interpretation of that law, under our present laws it would be the initiator of the divorce or separation proceedings because he or she is opting out of a promise "till death do us part, for better or for worse," whatever the conditions may be. Now this cannot be included in the new type of divorce contract, at least I don't think it can and be honest, in the type of contract that is being suggested here which would be legal and binding but it leaves the door open as to the head of the household. This could be an example, in a case where the wife is more capable, for example, or has more property rights in the home or homestead, whatever the case may be, therefore she is deemed to be the head. Now in any organization, company, home, whatever, there has got to be someone that is in control of day-to-day activity, but it always should be in consultation with the other spouse as far as I'm concerned, which in most cases I believe it is. There are some circumstances, certainly, that the husband may not reveal to his wife, not for prejudicial intent or anything but that it would be better for the wife not to know because it may affect her in her work or thinking or whatever the case may be. So consequently in this case if the wife should be the head of the household then comes the point of legitimacy. Who are the children going to be named after? We just had an example of this right in our own federal leadership where Joe Clark and Maureen McTeer are, in effect, living common-law because she is not Mrs. Clark.

MR. SHERMAN: I'm rather sorry I asked this question.

MR. FEAKES: So then they had a child born and they decided to call it Clark for the sake of political or whatever expediency it might be. I'm sorry, I know you're Conservative. I used to be one myself too.

MR. SHERMAN: Perhaps I could ask you a different question. You seem to be saying to the Committee that you agree with much of the philosophy in the Family Law Commission Report but you would not like to see it enshrined in legislation.

MR. FEAKES: No I don't think it can be enshrined because it is a partnership. I mean they are the ones that have to decide. If they decide to go to counselling this should be available, yes, be it ministerial or social or whatever. They're always stressed legal. Now this is a boon to the legal profession, nobody else. It's always legal, there's no other alternative. Legal advice, independent legal advice. Now this can be construed that they are the only ones that know what a family is all about and they may not even have a family of their own, may be the only child in another family, so where have they got the experience? It's only theory or from books that they get this from. Now the actual living experience as you gentlemen I am sure will certainly agree to is a much better teacher than anything else.

MR. SHERMAN: Just one final question, Mr. Chairman, just to refresh my memory or clarify a point. Did you say even though you are presenting this brief individually, Mr. Feakes, that you felt that your view is representative of some 600 near relatives or part relatives?

MR. FEAKES: Yes, my own relatives and they're big, believe me. I had an aunt, she had 26 children. Took two husbands to do it but she had them and they've got many ancestors and so on. They're spread throughout the whole province and of course the whole country, even in the United States and the world and from many people I have talked to personally on this matter and have had a relationship with through my motel business which I used to have and other business functions that I've been part of, you get a pretty good general consensus of what the feeling is, and this is not only one particular religious belief, you know, it's bi-partisan. In my own family I have a French son-in-law, I have an Indian son-in-law, I have a German son-in-law, I have a Ukrainian son-in-law and so on. This is a cross-section pretty well of what our province especially and our country is made up of so that you get individual viewpoints and there is no room for prejudice really.

MR. PAWLEY: Just one very quick question, Mr. Feakes, for clarification. You indicated that prior to these proceedings you were worth \$100,000 now reduced to \$1,000. I gather that that is not relevant to the proceedings itself, that that . . .

MR. FEAKES: Well it is a direct result of it because of having to sell my business. In a forced sale as you know you're never going to get what the business is worth. Besides, for over three years I was unable to be productive which you can figure in what I was averaging before and we ended up out of that \$100,000 in net assets a little better than \$12,000. Now consequently my wife she only got support for the children' up until the age of 18' when the settlement was made. I have no more legal obligations or even moral for that matter' I have no obligation to any one of my children and yet because she did not hold up her end of it I am supporting my youngest child who is still under the age of 18, on my own voluntary basis. I am not legally obligated or anything else to it but I am supporting him and will do so until he is 18 or past 18 if necessary.

MR. CHAIRMAN: Are there any further questions? If not, thank you Mr. Feakes.

MR. FEAKES: Thank you very much.

MR. CHAIRMAN: Is Mrs. Havelock here this afternoon? Mrs. Berkowski? Mrs. Cramer? Professor Sokoloff? Mrs. Pear, would you come forward please.

MRS. RUTH PEAR: I'm sorry I didn't get the submission typed. I may add some verbal comments as I go along, in addition to what I have written here. I gave the Clerk one copy but I didn't have many copies made

Statutory Regulations and Orders
Thursday, December 9, 1976

RUTH PEAR: This is an individual submission just on my own behalf. The most urgent concerns that society has that relate to family law as I see them, are that children be adequately provided for, that marriages function as a cooperative endeavour for both spouses and that spouses and children affected by marriage breakdown be healed and become functioning again as soon as possible. And I'll deal with each of those concerns in turn as I see the main reforms that could assist in each of those areas.

An immediate reform that would help considerably towards ensuring that children are adequately provided for is a Provincial Government guarantee of all maintenance payments for child support up to a level index to the cost of living. In my view this ought to be calculated so that children in those families are not living below the poverty line. This measure as I view it would be an interim one until a guaranteed annual income becomes a reality. The effect of this would be to decrease welfare caseloads significantly, I understand by about 70 percent, although I'm not sure of the exact proportion.

If the level of funding required to meet the criterion suggested would mean an increase in income taxes, I for one, would be prepared to pay for it, and my present income is such that I probably would be affected in that way.

I know that this concern has come before the committee before and that members of the committee have asked: well, do you mean making it like welfare? And I'm reluctant to say: yes, that's the level because it ties it in to a level that's already been set and seems niggardly to me. I don't think it's a good thing to have, three or four different rates, one for welfare recipients, one for children in this particular situation and maybe a third level of funding that's available for widows or widowers with dependent children. But I'd hate to see them get locked into the welfare level because I can see that that then would remain the level and it would be very difficult to alter it once it's been set that way. I'd rather see it set at a higher level and then bring the other people in parallel categories up to a more generous level of funding.

Turning to cooperation during marriage. The best proposal for encouraging cooperation during marriage is full community of property with joint management. In the discussions that I have had individually with men and women since this has become a public issue and even before that, frequent response I have had is, isn't this the law now? In other words, the social norm at present in healthy marriages is a full partnership in every sense, including economically. And some people have expressed genuine shock to me that this isn't the law in fact, people who have had full partnership in their marriage, they have a joint bank account, they have the house in joint tenancy, they have a good understanding between them of how things are going to be divided and who makes the decisions in which area and which things — it's always understood there's going to be consultation on major things. They're surprised to find out that the law as it is with the separate property regime, can result in some of the painful situations that have been brought to the Committee's attention.

I've heard it expressed that a freeloader spouse may gain a windfall from a business of his or her spouse. It seems to me that this situation can be guarded against by a marriage contract which is provided for in the Law Reform Recommendations. I would argue that a lack of recognition for unpaid work is a much more frequent and serious injustice than an occasional freeloader. I would urge that the assumption of law be a relationship of full sharing. This presumption should be set aside only if there is a written contract and advice considered by both partners.

Another criticism levelled at immediate community of property with joint management is that it would be complex and difficult to administer. Even if this is true, I submit that ease of administration is not a good reason to continue injustice. Once the law recognizes the fact of partnership, it has an effect on couples prior to their going to court to resolve any specific problem. Only the most unreasonable or those least responsive to social expectations need be brought to court repeatedly to enforce those kinds of provisions. In addition, if you have the right during marriage to say, to force an accounting or to enforce payment back after there's been an irresponsible one-sided major financial commitment, one can have counselling provided for at that point and perhaps save that marriage and have that person learn a new way of responding in marriage that is more a shared kind of way, and both partners can learn a better pattern for the future.

As things stand now, if one is unhappy with the decision-making spouse of one spouse, one has to either become manipulative or put up with it as a doormat, or force an end to the relationship. One has very few options.

The Law Reform Commission proposals give a few more options but they are limited. The most important reason however, besides these, for having immediate community of property with joint management rather than deferred sharing, is that joint management encourages a continuing sharing while deferred sharing encourages the economically weaker spouse to force separation in order to get my share. If there is only one breadwinner in the family and this person has the attitude, I earned it, it is mine, I may give it to you but it is not yours, then the other spouse will feel more urgently that he or she must force an end to the relationship in order to get recognition of his or her contribution.

I'm turning now to restoring normal functioning after breakup. The reform that will do most to restore spouses and children to normal functioning after the marriage has ended is to have maintenance unrelated to any concept of fault. To have fault involved encourages spouses to see an economic advantage in emphasizing what is wrong with the other. No provision could be better calculated to acerbate and prolong bitter feelings

than this one.

I must say I find it very upsetting that the Law Reform Commission has chosen to state it in a way of paramount responsibility for the end of the relationship. As horrifying as was Mr. Pawley's recital of the provisions in the Wives' and Children's Maintenance Act this morning, and I share the feelings of the person whom he was questioning at that time, it's even more horrifying to me to have this very open-ended statement of paramount responsibility into which the poor unfortunate judge who was forced to make this finding of fact, is going to have just a complete can of worms opened up every time an adjudication must be made on that kind of an issue. It doesn't matter if it's minority or majority or what it is, it's just very upsetting to see it there because it's a retrogressive step as I view it. The effect of that kind of provision is an invitation, you know, dig up all the skeletons that you can, remember all the bad things he or she did, keep a diary, take notes, drag in your neighbour, it's just very negative. And then I continue in the brief. I must confess that part of my opposition to this is that it consistently works against the economically dependent spouse. I think this is borne out by the experience of all lawyers who do a substantial amount of family law. I haven't done very much in this area myself but the little that I've seen it is true and the verbal report that I have from other lawyers who do family law is that this is so.

Courts seem reluctant to give larger awards to punish the earning spouse but quite ready to give smaller awards to punish the recipient spouse. I added a caveat at the end because I had misunderstood from the people who had attended the previous hearings that most of the members of the committee were concerned about fault. If the legislators feel strongly that fault must be preserved, I would urge as strongly as possible that fault that is to affect maintenance be defined as tightly as possible so that only a few extreme behaviours will incur this penalty. Respectfully submitted, Ruth Pear.

I had a couple of observations that I wanted to make about publication for hearings like this. I've had several people express to me that they didn't feel the publicity was wide enough and well, they did what was required, they put it in the newspaper and so on. It seems to me that when we have something that is of significance to the whole community of this kind, we perhaps ought to change our thinking about what is sufficient notice and consider radio and television media announcements rather than publication in the newspaper. Newspaper doesn't have quite the same function that it had at the time when those provisions were enacted. There was another point I wanted to make.

I wanted to respond to Mrs. Ross's very dramatic examples this morning. I have had an instance of that kind myself **front and back doors broken in, the furniture all awry, a woman crouching in the corner trembling, you know, the trembling was visible and obviously physically abused. — And this apparently was not the first or second or third time but the last of many instances, — and having myself to have to intervene as a neighbour saying to the police, "I am a lawyer, she can't reach her lawyer right now, I have her authority to act on her behalf at the present instance. Would you please remove the husband from here so that you will not be moving a body from here three or four hours from now."** And finally getting them to take the individual with the broken wrist and blood and screaming and shouting and so on, having him removed from the premises.

My perception is that if the law reflects that a woman's contribution, or the person who stays home, takes care of the children, has the sort of "unpaid" part of maintaining the family, if that person's contribution is recognized as equal and if fault is not, particularly sexual behaviour is not at issue in separation proceedings, then there will be less of a feeling on the part of spouses who are in the process of separating and, who are very upset, get intoxicated feeling that they have the law on their side, that the money is mine and I decide, and if she goes out with somebody else, then I have the right to punish her, it will get at that feeling and decrease it and there will be, hopefully, fewer cases of that kind in the future.

MR. CHERNIACK: Thank you, Mr. Chairman. Mrs. Pear, I just want to refer to your comments regarding publicity about these hearings. Whose point of view do you think has not been expressed but should have been expressed?

RUTH PEAR: Well I think that we perhaps heard today more from individuals who had a life history to tell more so than at the November 23rd hearings, so we've begun to hear the sort of individual concerns. What we did hear up to this point I think mostly was organizations who knew that there was going to be a hearing and had prepared for it. And I have to include myself in that group because I was, you know, involved in some of the Coalition discussions on that.

I think the person on the street who receives a great deal of his or her information about what is going on in the world through listening to the radio and seeing the television, that is the person that is perhaps maybe not being completely unheard here but under represented here.

MR. CHERNIACK: Do you feel that the briefs we've heard up till now, some 40 odd, have not really been representative of the man on the street's cause?

RUTH PEAR: I'm not saying that. What I'm saying is, you can't really know because there is a half a million people in the city and you just have to trust that what has come forward is representative, that's all. It's just a general observation. I had heard some comments from people that they heard about them too late and they weren't able to get anything prepared and they were somewhat concerned. That's all. It was a thought for the future.

Statutory Regulations and Orders
Thursday, December 9, 1976

MR. CHERNIACK: There are some 130 odd pages in this Commission report. The personal accounts we've had today are very illuminating but they have not gone to the roots of the report recommendations to any extent compared with the briefs we have already heard.

RUTH PEAR: Well I suppose everyone in the decision-making process sort of takes the general statements on one side and the illustrated example from the other side, you correlate them somehow as to where the individual case fits in to try and understand it.

MR. CHERNIACK: Are you struck by the fact that there seems to have been very little representation on behalf of the status quo? If you look at the fact that the vast majority of these forty odd representations, especially those organization made by women and women's groups, do you draw any conclusions from the fact that we've heard very little from the establishment groups, if I can use that term, if you understand what I mean?

RUTH PEAR: It might mean that the establishment groups are satisfied perhaps with the law as it is.

MR. CHERNIACK: But if there were, wouldn't they be distressed to find that this committee is studying changes?

RUTH PEAR: I'm not quite sure how to respond to that. Either they don't care that intensely or maybe it hasn't fully registered yet that they have something to lose and they ought therefore to respond.

MR. CHERNIACK: Would you care to guess that maybe they are satisfied that these changes should take place as recommended?

RUTH PEAR: I guess what it must mean is that they are sort of vaguely aware of them and their content and they say, well that's okay, I don't have any strong concern to register so I don't. I think that's what it must mean, because there certainly has been quite a bit — after the hearings there was stuff in the newspaper and on TV and so on. So there has been an increased level of awareness.

MR. CHERNIACK: I'm sorry, does that mean then that you do think that there has been enough publicity to inform those people who might come here to oppose the Law Reform Commission report recommendations?

RUTH PEAR: Well it's hard to know. All I'm responding to is that there were some people who said to me that it's a pity that they didn't have more publicity about it, and the way I understood what they said was, they felt that they only heard about it after there was some media coverage because this is the way they usually learn about everything.

MR. CHERNIACK: Were those people - did they come here this morning to make a presentation?

RUTH PEAR: No, not all of them.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: Mr. Jenkins. Would you use the microphone please.

MR. JENKINS: Through you, Mr. Chairman, to Mrs. Pear. You suggest that there was sufficient ads — I'm going on with the same question basically what Mr. Cherniack asked — that there wasn't sufficient publicity given to the fact that these hearings were being held. In some of the places we were at, people said they had not even seen the report, didn't even know what some of the recommendations were. Have you ran into many people who have been in that position?

RUTH PEAR: Yes.

MR. JENKINS: Do you feel that perhaps the media should have published some of the findings of the Law Reform Commission report so that they would be perhaps more aware of what was being proposed?

RUTH PEAR: Yes, that would have been preferable, yes.

MR. CHERNIACK: Are you suggesting then . . .

MR. JENKINS: No, I'm not suggesting . . . I'm not going to get in a debate with Mr. Cherniack here, but I'm just saying that is one of the things we did hear, that some people were there making representations who had not even seen the Law Commission report. I'm not telling the newspapers how to run their business. I think they know how to run their business well enough. I know there are representatives of the press here and I just hope that they maybe take heed and maybe make some of these recommendations wider known than they are. Maybe we should have taken an ad out. As far as the Attorney-General is concerned, maybe we should have taken out a page ad and shown what some of the Reform Commission's recommendations were so the people would have been more informed. Do you think that we should have done that?

RUTH PEAR: Well, I don't know. I'm just expressing, you know, the concerns that people gave to me and thinking that . . . it's just sort of a general observation of how I see the average person functioning, that they get most of the general information about what's going on through radio and through T.V. and they may only cursorily look at the newspaper. So that to effectively reach the largest number of people, even though it's much more expensive, you almost have to look at a radio or a T.V. kind of coverage. I didn't expect you would make such a big deal out of it.

MR. JENKINS: Well, it's not that I want to make a big deal out of it but I do realize that, you know, if we have been delinquent in presenting the fact that, you know, these hearings will be held, that it is, I think, advisable that we do know about it and hopefully we can correct it.

Thanks very much.

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

MR. SHERMAN: Mr. Chairman, Mrs. Pear, in the area of equal division of property you made the point

Statutory Regulations and Orders
Thursday, December 9, 1976

that the economically weaker partner has to force an end to the relationship in order to get his or her share. If death were considered a termination of marriage, for the purposes of equal division of property, would you feel so strongly against the deferred sharing concept as you do?

RUTH PEAR: I don't think it would make any difference because you're still looking at how is the relationship between the partners going to function during the marriage while it continues. It seems to me that the reform that really goes to the root of solving the problems of, "I earned it, it's mine, I just give you what I think you should have, period", is to have joint management and that begins at the beginning of the marriage. If the two people find that that's not suitable for them, they want to have something else, they want to have the business debts set off to one side and they want to organize things differently, then they enter into a written contract and they each have advice, and they deal with it that way. I'm not opposed to contracting out but I think it all should be a joint decision.

MR. SHERMAN: So you're saying the relationship during a marriage would be enhanced by immediate community joint ownership?

RUTH PEAR: Yes.

MR. SHERMAN: Rather immediate community ownership.

RUTH PEAR: Yes.

MR. SHERMAN: And would be hurt or diminished by deferred sharing.

RUTH PEAR: You're taking a risk I think, that some partners would interpret it that way.

MR. SHERMAN: In your view, the risk that you're taking is greater that way than the risk that you'd be taking doing it the other way.

RUTH PEAR: Yes.

MR. SHERMAN: You didn't mention this right now, Mr. Chairman, the delegation didn't mention this right now, but, Mrs. Pear, you are a member of the Action Coalition on Family Law or at least have been instrumental in helping to prepare their position.

RUTH PEAR: Yes.

MR. SHERMAN: I'd like to ask you if you have any recommendations for the Committee as to how maintenance orders could be practically and realistically enforced? We have examined all the agonies of the maintenance question but we could make as many rules and laws and provisions as we'd like about maintenance. Maintenance can be no-fault and it can be rehabilitative and it can be charitable and it can be anything you want it to be but it's no good if it doesn't work at the enforcement end.

RUTH PEAR: Yes. Well, as I said at the beginning, I really think that if you're going to do something substantial about that end of it, you have to work towards a provincial guarantee and then using either present agencies or additional structures to chase after the spouse that's left afterwards. As I see it, it would come in finally with a guaranteed annual income thing; it would finally solve all of those related problems. There are some things that you could do, sort of small things. I give the enforcement officer the capability to file things in the Land Titles Office and go through the bailiff procedure as to the non-contributing spouse's possessions and those kinds of things. There are things that you could do to make the present system more stringent. You might be able to do something with having more enforcement officers so that they have a smaller caseload to deal with. You might be able to do small things in that direction but if you're going to do anything really major about it, then you're going to look at the government pays it out when the need begins and then collects when it's able to collect. I don't think anything short of that is going to really have much effect.

MR. SHERMAN: Well really the only kind of practical solution that you see to the problem is the state picking up the tab at this point, because no matter how many enforcement officers you've got, there still will be people who won't pay their maintenance orders and they wind up in jail under either system, but that doesn't help the spouse or children any.

RUTH PEAR: Yes.

MR. SHERMAN: So really the nub of the whole thing as you see it, is that the state, the province, the taxpayer, has got to face the requirement and the obligation of moving into this area and picking up the tab.

RUTH PEAR: I really don't see any other alternative. It seems to me that . . . well, society in the long run pays anyway. The children that suffer in those homes become the social problems of, you know, 10, 15 years hence. So the taxpayer ends up paying for it in the end and sometimes on an increased scale.

MR. SHERMAN: I think that's all I had, Mr. Chairman. I know that the Action Coalition on one area in the support obligation took the position contrary to that taken by the Law Reform Commission with respect to common-law spousal responsibility for children and I know that the Action Coalition on Family Law's position, as I said, is contrary to the Law Reform Commission's position. The Law Reform Commission said that the natural parent is the first line of responsibility, the common-law parent is the second line of responsibility. The Action Coalition says the natural parent, then the state. Can you separate yourself from the Action Coalition on Family Law, which you did a few moments ago in presenting an individual brief, and give the Committee your personal view on that?

Statutory Regulations and Orders
Thursday, December 9, 1976

RUTH PEAR: Yes. I don't think you are going to get the answer you want. My personal feeling is that if you have a rule which says that natural parent and then common-law spouse, then the state — it depends upon how you define common-law spouse because as soon as that person moves in and becomes part of the family unit, you have . . . If there is a neighbour who wishes to be unpleasant about it, you have in effect a rule which means that that spouse who has been left to take care of those children cannot have a social relationship of any significance because it will have adverse economic consequences for the children. I think that at the time when a person decides to marry or remarry and take on the family unit as a whole and say, "Yes, I am the parent for these children even though they were not mine biologically," that is the appropriate time for the state to say, "Okay, this is all your responsibility." It seems to me that if you have a situation in which the state assumes that this other person has responsibility before the state, then you have the person feeling some resentment of, "I don't want to get involved here, I don't want to be seen as a parent in any sense or a spouse in any sense, I can't do that because I'm jeopardizing the economic security of people that I care about." So I would have to say that I prefer having the natural parent and then the state. The person can then be socially related to that person and try out as a trial thing, a social thing, the relationship of parent and then decide, "Okay, I take on the economic responsibilities." That to me goes with marriage.

MR. SHERMAN: That goes with marriage but it doesn't go, in your view, with common-law marriage.

RUTH PEAR: No. It depends on how you define it because if the person is there temporarily then it becomes a punitive thing, of outside people saying, "Uh uh, they're living together," therefore in effect discouraging anyone from forming a new tie. I guess I see it as a more positive thing that the state should have the financial responsibility while, sort of, the dust settles, and encourage a new family to be formed, that is a full family, because if you have this rule about as soon as somebody shows up and is seemed to be having sex with this person, then it's assumed that that person takes on the entire economic responsibility. Well, what that does is intrude the state back into the bedroom. I don't like it, it leaves a bad taste in my mouth.

MR. SHERMAN: Well I guess there is a wide area of disagreement, not disagreement but an area in which agreement has not been reached as to what constitutes a common-law spouse and this really gets down to the question of definition that you talk about.

RUTH PEAR: Yes.

MR. SHERMAN: There would be many people who wouldn't view that one night or one week-end or one week sexual liaison as constituting a common-law marriage. What I'm talking about here and I think what was being considered by the Reform Commission, plus the Action Coalition, was what is generally regarded as a common-law marriage, creating a common-law spouse.

RUTH PEAR: Well, if you did have some parameters on that so that you could decrease a neighbour who has a grudge being able to use it as a weapon against someone who is on social assistance, then perhaps I think there would be wide acceptance for it. But both in my experiences with friends of mine and also when I worked as a social worker, I just had, you know, very unpleasant, very upsetting things occurring. I don't think that kind of role should be continued.

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

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

RUTH PEAR: Thank you.

MR. CHAIRMAN: Is Mr. Murray Smith here please? Is there anyone else in the audience wishing to speak to the Committee? Since there is not, the Committee will take a recess for ten minutes.

MR. CHAIRMAN: Order please. Mr. Murray Smith, would you come forward please.

MR. MURRAY SMITH: Murray Smith, 618 Oxford Street, halftime teacher; Chairman of the Board of the Health Sciences Centre. I apologize for the Committee having to reassemble in order to hear this. It may amuse you to discover after I have been down four times that I have but one page to present. I have, however, one other little item to present. On the evening of the 23rd when it seemed to me that your proceedings were becoming very extended and it must be a strain on the Committee, I composed a limerick which I thought might lighten the evening, at about 11:15 and not wanting to throw it out, I present it to you now.

From Alberta the case of Irene

Made us think back to what should have been

Let's see how our laws

Can help Ma's and Pa's

Live more fairly in each marriage scene.

Mr. Chairman, members, these comments are based on two premises: that family law reform is urgently needed and that it will benefit both women and men. With the excellent report of the Law Reform Commission and the wide discussion prompted by its preparation and publication, Manitoba is in a strong position to act quickly and effectively, and it is imperative that our Legislature seize this moment of high public concern to implement long-awaited changes. There will be many to counsel caution and the need for a perfect bill, but it is surely time to correct known and widespread inequity even if minor difficulties remain or result. Waiting for the flawless solution will only prolong an unjust status quo while the promised millenium recedes each time we

Statutory Regulations and Orders
Thursday, December 9, 1976

approach and meanwhile benefits no one. If we do not yet know enough to move on the basic issues affecting the great majority of Manitoba families, perhaps we never shall.

Because family law reform is urged so eloquently by women's groups it is important to recognize that it is equally in the interests of men. It occurs to me that there may be some men in Manitoba who haven't appreciated this because when I came down on the 23rd, I was quite impressed by the fact that the public seemed to be about 98 percent female. If marriage can be seen as a partnership with equal rights and responsibilities, wifely dependence may be replaced by spousal interdependence — a reciprocal relationship healthier for both partners. The Commission's view that each spouse is obliged to support the other spouse and their children correctly stresses the equal weight of these responsibilities and the diverse ways in which they are discharged. In particular it reminds us that in most families spouses contribute in both financial and other terms. Paid work can be full-time or part-time, lifelong or interrupted; unpaid work in the family interest comprises a great range of chores with the double advantage of being productive and tax free. Whether they come by pay cheque or child care, a fence painted or the dishes washed, the contributions of both spouses are indeed massive and should be presumed equal, by them and by the law.

To me it is surprising that after stating these principles so firmly the Commission avoids the clear implications of immediate community of property and joint management. In fact I find that their label of the standard marital regime is perhaps a little misleading. There are many places in the Commission Report where it says in effect that the standard marital regime doesn't come into operation until the marriage has ceased. So I decided to relabel it as the "standard post marital regime" and call it the SPMR.

Yet the Commission must really have accepted these concepts for isn't equal sharing at marriage breakdown based upon presumed equity during marriage rather than the other way round? But if spouses do not experience equity within marriage and have no remedy within marriage, they may perceive separation as the only route to proper sharing.

I have a quotation from the British Columbia Family Law Report which I thought put this well. "Deferred community of property" — that is what our Commission recommends and what B.C. did not recommend — "deferred community of property creates in the non-titled spouse a 'future interest' in property acquired during marriage but it does nothing to render more equitable the positions of the spouses during marriage."

Much of the present feeling of urgency about family law reform has arisen from the Murdoch case as this pronounced legal inequity at its most obviously absurd. We have been led to examine our assumptions because such cases expose them so brutally; even the Commission report starts with *Murdoch* and proceeds backwards. But the route to understanding is not always the best for future thinking. Perhaps with our thinking improved we can now devote more attention to marriage and how the law can strengthen and enrich marriage by providing guidelines for equity and interdependence therein. Perhaps we can now be as positive about supporting marital health and relieving marital illness as we are about fairness should the illness prove terminal. Perhaps we can think of better preparation for marriage and better counselling within it. Perhaps this preparation and counselling can stress the creative power of mutual support and decision making and help break the vicious axis of powerful provider and demure dependent.

Whether or not our Legislature acts marriage will change but only by acting now can the Legislature help marriage change in the direction of increasing equity and richer experience for both men and women.

Now, Mr. Chairman, had I made my presentation on the evening of the 23rd, I would have stopped at that point but you have given me ten more days in which to recognize a few other points that I would like to mention to the Committee. Generally I find myself in agreement with the position that you had very well presented on the first morning by the Coalition on Family Law Reform. The major point of difference would be that I have come to believe in full and immediate community of property and joint management and believe that now is the time to institute that.

I think with respect to those issues that the complexities have been very much overstated, first by the Law Reform Commission and then by people making presentations to your Committee. There are many areas in which the law has to provide for various options, for diverse possibilities, for resolving intricate issues. I wouldn't think that even if community of property and joint management led to complexity that that would be an overwhelming argument against it.

I am particularly unimpressed by the argument in the Law Reform Commission's Report about the inequality of partners should there be a presumption of joint management as the Commission says. The two partners will not always be able to deal with each other on equal footing, one may be stronger and one may be weaker. Now if that is likely to be a serious problem when we have declared community of property and joint management, how on earth did they describe the present system, the present situation, when the law gives no backing whatever to the weaker partner.

I heard Mr. Cherniack ask a number of questions related to one particular factor in determining the award of maintenance, namely the length of marriage, and my own view is that that can safely be deleted from the list of factors because the consequences of the length of marriage are already covered in the two sections that refer to present dependents and to the prospect of future economic independence.

In the same phrase in the Commission's version of it where it refers to length of marriage and contribution of each spouse to it, I would draw your attention to the fact that asking what has been the contribution of each

Statutory Regulations and Orders
Thursday, December 9, 1976

spouse within the marriage denies the whole presumption of equal contribution and consequent equal sharing. I cannot understand how that expression sneaked back into the document.

On the issue of no-fault which is obviously one of great concern to many people who have spoken to you and to the Committee members, I would like to testify that I have found this the most difficult issue but have after a good deal of time and exploration come down on the side that fault has no place in awards of maintenance. I think the arguments that were presented to you by the Manitoba Association of Women in the Law were particularly good, but I would like to add one which has been specially important to me. And that is that if you look at a marriage over a long period, suppose the marriage has continued for 15 years and separation is then occurring, surely over the great majority of the 15 years there have been valuable inputs from both partners. Surely the results of 15 years of apparently satisfactory relationship should not be negated by what leads in the instance to a separation. A fault over a period of a few weeks or a month which results in the collapse of the marriage seems to me rather a specific thing in comparison with the whole picture of the marriage over 10, 15, 20 years.

I think that there was an important point made to the Committee when Jill Oliver presented a paper in which I took the major issue to be that provision for property distribution on the death of one spouse must be carefully designed to be consistent with the principle of equal sharing during marriage or at marriage breakdown.

I am strongly opposed to unilateral opting out. I can't see any justification for giving one partner in the marriage the right to tell the other partner what regime they shall function under. In fact I have now reached the point where I would almost go for a law which said there should not be any opting out even by mutual agreement. I do firmly believe that if you are going to have opting out by mutual consent after marriage that there should be a cooling off period. One of the Commissioners recommended a year, perhaps it should be more than that.

Finally I agree with the need for a maintenance award agency or for substantial improvement in the present provisions for ensuring that a maintenance which has been awarded by the court in fact reaches the person who is intended to receive it.

I would like to leave with you just in case they haven't already crossed your desks, Mr. Chairman, three documents published by the Advisory Council on the Status of Women — this is the Federal Advisory Council. They are entitled: A Definition of Equity in Marriage; Divorce Law Reform; and one which you may feel is not entirely related to your work but which I contend does shed a lot of light on it, it's called A Background Study on Women and the Personal Income Tax System and talks about income splitting among other things which is obviously an option under equal sharing and immediate community of property.

At the risk of sound a little presumptuous I would also like to give you one statement by a woman who was here on the night of the 23rd but had to leave because her child care arrangements expired at 10:30. She asked me if I got the opportunity would I pass on to you from Janet Paxton that she thought the most important single thing she could tell you was to reinforce the need for a maintenance award agency. She is a single parent and her comment came with great feeling, I assure you.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you. Are there any questions from the Committee? Mr. Sherman.

MR. SHERMAN: I would just have one, I think. Mr. Smith's brief and presentation were certainly comprehensive and I think fully explanatory in presentation, so I don't feel that very many questions are necessary, not on my part anyway. But I would, Mr. Chairman, like to ask Mr. Smith one point having to do with the opting out procedure. You said, Mr. Smith, that you had almost come to the conclusion now or come to the conclusion that there perhaps should be no opting out provision at all even on a mutual consent basis. Do you foresee any difficulty with that in terms of marriages that were perhaps not solemnized in the Province of Manitoba, people who move into the Province of Manitoba who are already married and then find themselves in a jurisdiction in which this proposed new family law exists?

MR. SMITH: Well as I understand the recommendation of the Commission, it is that they should be under the standard marital regime from the time that they establish residence in the province. I would think that if you accepted any regime as the standard one for the province that the same argument would have a lot of merit; if you accepted immediate community of property then I think that would apply to people who took up residence but only from the date that they did so in Manitoba. .

MR. SHERMAN: Yes, only from the date that they did so but that that should take effect even for those persons moving into the province.

MR. SMITH: I would think so. The alternative which occurs to me is that it might be possible to have a clause saying that in demonstrably exceptional circumstances a court could rule that the couple could by mutual consent opt out of the standard regime for Manitoba. I confess that that was not my initial position. My assumption originally was that it should be determined by agreement between the two members of the partnership, but I've changed my view partly because of the statements which occur in a Commission report, and which have been made to you, about people who may feel one way at a time of relative innocence in the issues involved, that is it's very difficult for young people particularly to appreciate all of the consequences of

Statutory Regulations and Orders
Thursday, December 9, 1976

the decision, and therefore, although I don't normally believe in dictation from above, . I think in this case it might be a genuine safeguard for many people.

MR. SHERMAN: What did you have in mind when you talked about a cooling off period? Would the six-month exercise right on the option not constitute a sufficient cooling off period in your view?

MR. SMITH: I think they're two different periods we're talking about. That one, if I remember correctly, had to do with marriages already in effect where it was suggested when the law was promulgated there would be a period for existing partnerships to make up their minds. I would think that six months would be sufficient for that. I'm more concerned about the people who are newly married once the law is in effect and I would be happier if their decision was postponed until they had experienced perhaps two or three years together rather than just the one which one of the commissioners suggested.

MR. SHERMAN: I see. Thank you.

MR. PAWLEY: I just wonder, Mr. Smith, you would include I would think, insofar as reasons for mutual consent, particularly those marriages later in life, a second marriage later in life . . .

MR. SMITH: Yes I think there might well be particular circumstances there which would make an agreement more reasonable.

MR. CHAIRMAN: Are there any further questions? Being none, thank you Mr. Smith.

MR. SMITH: Thank you, Mr. Chairman.

MR. CHAIRMAN: That exhausts the list of speakers that I had. Is there anyone else present wishing to speak to the Committee? Would you come forward please. Would you give your name for the record please.

MR. ROMAN BURAK: Roman Burak from Lorette.

Well I don't usually make speeches of this sort and this is kind of unusual to me but I've stirred up many a can of worms I guess in politics or whatever it is.

MR. PAWLEY: Explain.

MR. BURAK: I've got a few jokes here, one is a federal joke and the other is a provincial, but I don't know if I should really go into that. I guess you're all tired. You've probably had a long day. I think I will hand it over to one of you gentlemen, you can read it quietly here.

I was born and raised on a farm, I'm 42 years old right now and maybe I should tell you a little of my background, it might be of interest, I don't know. My dad got killed by lightning when I was about eight. The oldest of the family was ten and the younger one, I had one sister, she was six. My folks had just purchased the farm in 1943 and in 1944 he got killed by lightning, there was debts. I don't know, nowadays as soon as a family breaks up then the woman is up in arms, she is ready to go and apply for welfare or maintenance or what have you. Our family has never had any assistance from any organization, anything of that sort. The family stuck together, plugged along. A lot of kids at my age, you know being young, they were out playing or out with their parents having a good time. Most of us we had no choice. My brother only reached grade 6; he flunked that and that was it because we stayed home, we couldn't afford to keep a hired man going. I know I missed a lot of school myself — well the one thing was the school wasn't that close to us, it was three and a half miles. Many a time we would walk to school and sometimes we took the horse and buggy and in winter we went with a sleigh. A lot of times the horse would get scared and we'd tip over; we walked the rest of the way and the horse took off home. This was one of the deals on there.

Myself, I was married; I'm divorced right now. I've been separated already eight years. I've got one girl and twin boys. I've been locked up already. What really got my goat is when Judge Trudel pushed my case through without my attorney and being on the farm I didn't really get around in the public that much or didn't have too much experience and hadn't talked with other people who had gone through a domestic split up, you know, a family split. I had seen Judge — well he is judge now — Ben Hewak at the time he was a lawyer and I told him, I says, she's not broke. I had a joint account, she cleaned that out and I had some money put in with the children, she cleaned that out and she had several thousand dollars put away. I told him, I says — in 1968 that was a wet year, I says, well the first thing that has to be done is get the crop off and you've got all winter to hassle about it.

So when I did appear in court, I don't know, he had a pretty vicious attitude there, when he started screaming all this sort of stuff, I wasn't quite used to that. So he proceeded with my trial and I told him, I said, I have nothing here. I had some records, it was all down at the lawyer's office and he didn't show up. So he says, well this has waited long enough and this was, oh I'd say maybe a month and a half, something of this nature. I don't remember exactly when. He proceeded on it.

Those were the years when grain wasn't worth that much. My wife, she had packed up on me after we were married for three years. I had moved to the city to try and find different ways and I worked at different places. To me jobs were more or less a novelty because I had never really worked, you know, punching the clock and all this kind of stuff there. So during that winter I had about four or five jobs there. I wasn't too particular if I had a job or not and mainly I wasn't there to impress that I could hang on to a job because I wanted to stick on the farm and that was the homestead and the family has gone through a lot to make a go of it. From there on we had acquired some city property and since then, well since about 1960 the whole business has just hung low. I haven't gone into anything more.

Since Trudel had pushed it through, he had made such a big issue out of it, out of the gross income that was made on the farm — and there were some years I made ten percent, some years not even that, it all depended on

Statutory Regulations and Orders
Thursday, December 9, 1976

the year — of the gross income he wanted 50 percent I was supposed to pay for maintenance. I says, there's no way I could do that and I couldn't do it. Well he told me to go and get another job. I said, look, I said, she knew I was on the farm before I married her and she knew the circumstances, that I would stay on the farm. There was a rumor prior to that, just prior to my marriage, that she was a gold-digger so I was kind of a little leery on owning too much property there. I guess somebody knows a little bit too much about me.

I operated the farm — well it lasted five years all told. When I sold it he came out with — first they put a foreclosure on the bank, walked in — well I'm getting a little ahead of myself. I kept on making payments, you know, paying the utilities, hydro and all this kind of stuff while my money lasted out and I paid my own lawyer till my money was broke, then I went on Legal Aid after to try and get him off my back.

When the bills started coming back on me because when the money ran out I just quit making payments, I figured that since Trudel had given me such a rough time there, so I just packed the whole thing up in a nutshell and I just mailed it in to him. I said, since I wasn't good enough before — he wasn't satisfied when I made the payments, I told him to look after it. He had done some legal work and apparently the collectors were after me already. So I just turned it over to him and I haven't heard anything since from him. So he done a little bit of legal work for me I think.

I got locked up on two occasions. First of all they put a foreclosure on the bank. They came in, there was no money in there. Apparently she told them I had a pile of money in there which wasn't true. The second, the bailiff came out to repossess the equipment on the farm and I told him, I said, it's all here, if you want to see it you're welcome to but the reason I'm here on the farm is so nothing leaves. I said, if you leave with the equipment you're in more hot water than you know what's good for you.

The first time she packed up I froze everything. You see I never owned the farm and the equipment I bought. I was just the manager on the farm just like any other business. So I sold everything because there was some money owing on the equipment because I had just made a big changeover, I just put new equipment in there, updated, because the other equipment was pretty well all gone. So the fellow that I loaned money for the equipment, because I never had to pay no interest on it. If it took me a year, two years or even five years I wouldn't have had to pay interest on it, so that deal wasn't bad. I went and sold it all back to him. After that I got locked up in summer.

My mom there she's gone through a lot. She's had a big lawsuit with the two municipalities of Ste. Anne and Tache away back in 1955 and 1956. The municipalities tried to drown us out. They actually created a dike cut the riverbanks down and they've really they're probably looking at a way to get the property for taxes because they all knew that there was a lot of debts on that farm. So finally I got locked up, the first time I got two weeks. I don't know, it's more of a challenge to me, I'm always a little interested to see what things are like; and I don't know if I should really say it or not but from my experience I think the Government is wasting their time to lock up individuals like me that probably were active at one time, because I've run across fellows in there from just about every profession you can think of, from professional safe-crackers who didn't even have to blow the dial out to open it up, and organized crime and what have you in there. The first two weeks were all right, so afterwards I got a month, so all told I served about a month and a half. With good behaviour you get a few day's grace out of the deal.

I don't think that some of these laws are quite fair, especially if somebody is an amateur like myself, and if you appeared in front of Trudel and you didn't have a lawyer he just had this in mind if he had somebody behind bars, well that was one merit for his good conduct I feel or good deed to the public.

So after being locked up there I came out and I don't know whatever got into me, I walked into the Legislature when it was in Session — I think it was what's-his-name, it was before you, Mr. Pawley, yes, Al Mackling there — and he read out my speech of how Trudel had messed up my case. So apparently there was quite a bit of tension in the Legislature about the whole thing because I just let him know that what I could gather there was no justice in this province, that I wouldn't get the proper justice in here, I would take it out. So apparently I figured well since I've got nothing to lose, I had actually blackmailed the Government and averted a provincial election. Later on I heard I was called an Autopac kingpin at the time — they were trying to put Autopac through at the time there — it was quite an unstable atmosphere I would say in the Legislature.

So I don't know, I've been on the loose and I have no intention of actually remarrying after what I've gone through. I would say if I ever did settle down I would either shack up or it would be a contract marriage for a number of years; if it worked out okay I would say this would be a darned sight better than the present system they have. This is my own opinion. I've gone through it and it's no roses, because there's a three-quarter section of land there and it's all up-to-date equipment. Mind you right now some of the equipment is about ten years old, but it's still in good shape, I keep it in good condition. I have built some equipment there like a hydraulic . . . I just built this summer a bulk fertilizer tank, cabs for the tractor and the combine. I've got a 70 horsepower tractor and a 40-inch cylinder combine. So some may think that, you know, it's all roses, but till you get actually down to the nitty-gritty it's not that easy.

I don't know how to bring it, but I had a wife that experimented sex with just about anything, you can name it, even with animals. I caught her in the act. I caught her making time with the neighbour in bed, and as far as me she just cut me off completely, and I think this was probably where most of the trouble is that the women get

Statutory Regulations and Orders
Thursday, December 9, 1976

a little too high and mighty and wear the men's pants, and say okay either have it her way or else you don't get any sex for a month or two months. Well, you figure as long as you're working and providing a good home for her, I think they should be a little bit more compatible. I don't know if I've put it right, if you can understand me on this.

I've run into a few incidents there and I had the opportunity about two years ago, apparently this lady she was quite interested in me, she wanted to move in with me. So, I don't know, maybe some fellows have run into this deal or not — she had two daughters, one was eight and one was about ten or eleven or something like this — well I was down with the girls' mother in the back room there and all of a sudden I hear this buzzing in there like an electric shaver. I said what the heck is this going on in here? And she says, oh, that's my machine, you know we haven't got a man around the place she says, and they were using this dummy vibrator. I think this is where a lot of marriages are going to the rocks since they're so available at these novelty love shops now. I think that this is where a lot of trouble is created because I've talked with different women and they tell me that it takes about three months before the numbness wears off from the vibrators.

So with these two girls, well a lot of times I'd phone in and come in about maybe half an hour before she would — sometimes she would work overtime — and it struck me kind of odd, you know, they'd be walking around with the tape recorder. Then there was one phone call that came in and there was a little bit of conversation; but when you don't get the two sides of the story it's kind of hard to make out what the score is, and I found out that I was — so the girls told me to leave my shoes by the door and I said, Christ, this place isn't that fancy that I would have to take off my shoes to walk into their bedroom, they're going to show me their bedroom. And I don't know, any time I get pushed into something of this nature I'm usually quite cautious about it. So apparently they had this arranged with the neighbour next door and one of them would move the drapes and from there on they said something about a time limit of fifteen minutes. So the oldest one says to me, well since I'm older I'm going to take you on first, you know, and it just dawned on me that there's something fishy you know, so I said . . .

MR. CHAIRMAN: Order please. Mr. Burak the Committee has set a time limit of 15 minutes on presentations. Could you sum up your remarks in a couple of minutes?

MR. BURAK: Well this here, I was just about through with it . . . and I had walked out and I phoned her a week later and she says, well you're lucky, she didn't think that she was a type — she expected I would be a little different person than I was and it was a frameup, they apparently had the police involved and everything. And I think there's some fellows that have probably run into this situation.

I had one similar one a couple months ago. I don't know if I should really go into that but she was offering me and I just stayed out of it because I sat in for about two months on a court and I've seen one fellow get six years for messing around with that stuff and that's not my cup of tea. And I don't think there's too many out here want to spend time for . . . like that.

MR. CHAIRMAN: Thank you. Mr. Cherniack, you had a question? Did anyone else have a question from Mr. Burak?

MR. BURAK: I would like to talk on a few things - - go ahead and ask the question.

MR. BARROW: Just one question, Mr. Chairman. I heard you say, instead of another marriage, your disallusment with your prior marriage, that you prefer a contract marriage.

MR. BURAK: Oh definitely.

MR. BARROW: So you have a contract to live as partners and what would happen . . .

MR. BURAK: Well make a contract for maybe five years If it lasts out, okay, because going through this legal hassle is no roses.

MR. BARROW: Well according to your contract, you go for equal partnership, like the Law Reform Commission has been referred to all along, you're equal partners. Would you go for that kind of a contract?

MR. BURAK: Well it depends on the circumstances, like in my case there I can speak for myself, my wife worked for five years and she didn't have five cents to show for it and I haven't seen a bank account to the day she packed up on me.

MR. BARROW: If you had it to do over again and you drew up a contract, would you have a contract stating you're equal in every respect and so on, with division, the maintenance pertaining to your house, your farm or whatever. Is this how you would have your contract drawn?

MR. BURAK: Well I don't know. To be quite frank with you I don't think I'd ever go into business because it's . . .

MR. BARROW: Well you said that, you said, contract marriage or shack-up job you said' preferable to marriage.

MR. BURAK: I would sooner go common-law than marriage any day.

MR. BARROW: Thank you.

MR. CHAIRMAN: Any questions? If there are none, thank you, Mr. Burak. Janet Berkowski please. Would you come forward.

JANET BERKOWSKI: Gentlemen, may I most strongly urge that Point 11 of the proposals of the Action Coalition Committee be recommended for adoption. In all fairness to my ex-husband and in consideration of the fact that certain extracts are printed in the news media, I would like to state that I have been one of the

Statutory Regulations and Orders
Thursday, December 9, 1976

fortunate 25 percent who did receive maintenance to subsidize my own earnings toward the support of three children. As my own income has increased, I have voluntarily reduced maintenance payments to the point where I'm almost totally independent. However I am here because, even though I did receive these maintenance payments, there were financial difficulties and I have personally come in contact with so many women who have supported their children on their own, and suffered indescribable poverty, that I most strongly advocate that Point 11 be adopted.

The majority of the points listed by the Action Coalition Committee will be totally invalid unless it is. The government must recognize that their own laws are being ignored by a certain section of the population and do something immediately to put an end to it.

The proposal that the government make maintenance payment to the spouse awarded the same in court, and that the government in turn collect those moneys from the person paying the maintenance is the only logical solution to the present problems. While the government may argue that this will be a very costly endeavour, may I point out that the cost in medical care, psychiatric care and the heavy amount of welfare payments, could be greatly reduced from their present amounts should the strong hand of the law reach out to those who refuse to contribute to the care of their own children.

Families are breaking up more often, the problem is not provincewide, it is nationwide. While the Provincial Government may argue that where a spouse leaves the province, there are no adequate laws whereby action can be brought against them. What happens if a man steals a car in Winnipeg and goes to Regina to live with it? Is the law blocked then? It is all the more reason that the government officials, both at the provincial and federal levels stop making excuses to ignore their own responsibilities toward an ever growing category of citizens, the sole parent who is carrying the load alone.

I listened at the evening portion of the last meeting on this subject and not once did I hear a question in regard to this proposal. However, I've learned since that there was a question raised; I couldn't be here in the daytime.

This proposal will cost money and it will shift responsibilities on to the government which will be overwhelming. When one considers all the factors involved collecting money from errant spouses, it's a gigantic proposition to any government province. What is it? — for one person alone, she must maintain a job and be present at it every day in a five-day week, go straight home to care for children to attend to all the tasks required; washing, sewing, cooking, cleaning, there is no time to attend lawyer's offices or appear in court. The job that is held is a bird in the hand and the prospect of maintenance from the husband is a case of maybe two birds in the bush. No person with children to feed can afford that maybe. Someone commented that if women felt so strongly about this, why had they not turned out to these meetings in fuller force? I might suggest that it's possibly because they do not have the money to pay a sitter so they could come here, or because perhaps, they could not even afford the bus fare.

I admired the other speakers I heard at the first session, however, I wondered why they were all so unspecific concerning the effects of the maintenance that is not paid. Listening to the statistics leaves a person rather detached from the real point of what is being said. I see all of you gentlemen as being above average, both in moral character and family responsibilities, otherwise you could never have been elected by the public you now represent. I wonder if any of you really know what it means when a maintenance payment is withheld, late or inadequate. It means, from examples I'm using, and here I use the female term, I understand lately, the trend is toward the female leaving the family. So if you wouldn't mind substituting mentally where I refer. Okay.

(1) Watching the children see their friends and neighbours packing up for a weekend at the lake when it's 90 above, knowing that you have \$2.00 to stretch for the whole weekend and provide their entertainment.

(2) Shopping in secondhand clothing stores; sewing and remodelling so that no one will suspect. Children also are often upset at the prospect that other children would find out that their clothes are not brand new.

(3) Exchanging old secondhand curtains for newer secondhand curtains. Nothing in your decor in your house blends, it is a hodge-podge of the best bargains you could find, not your own personal choice.

(4) Going to the bus stop and pretending that you forgot your wallet, to borrow bus fare off a nice lady you usually run into, at the same time praying she will be there because you unexpectedly had to give your child your last cent for a school excursion or he cannot go.

(5) Carrying a one and a half year old child through a blizzard in 38 below weather to the babysitter's house, six streets away and it cannot be reached by bus, all the while knowing your spouse has a nice warm car he is driving to work in and back. He's ignored maintenance payments for the past two months. Even if taxis were available you cannot pay for one.

(6) Listening for the telephone to ring at the place you work as you know a credit collector is due to call. Your payment is long overdue because maintenance payment has not been received. You're embarrassed that fellow workers may overhear and you still have no money to pay. And may I point out that because a parent is working, creditors assume there is no reason payment cannot be made. However, the courts decide what maintenance is required based on your income and the maintenance payment right down to miscellaneous articles costing \$2.00. Income cannot possibly match output when the spouse reneges.

(7) Paying bank charges on NSF cheques; the budget is always strained to the breaking point so post-dated

Statutory Regulations and Orders
Thursday, December 9, 1976

cheques are made out with a prayer that maintenance cheque will be received on time. It is not, and you must pay the bank even more, face the embarrassment of the person you owe the money to, informing you of this.

(8) Being a vulnerable participant to emotional and sometimes immoral involvement with someone who has shown the least bit of kindness and attention because sense of self-worth is so diminished. You begin to feel like a non-person. Even the government lawyer regards you as an annoyance if you push demands for payment. People have been advised by lawyers, why try, based on past experience, it is obvious this person is going to dodge payment in every way possible. You are a nuisance to them. That is your answer to the extent of the reach of the law which ordered that spouse to pay the payment.

(9) Going for three full months, starting in May, when the temperature dips to 45 at night, with three small children in the house because the gas was disconnected. There's no heat, no hot water since the water tank is heated by gas and the gas company will not turn on the water. Your spouse stopped payment on the usual cheque when you were first separated, did not pay maintenance for two months and you cannot make up the amount they want.

(10) Carrying clothes to the laundromat because the washing machine broke down. You don't dare call in an electrician because you don't know the cost.

(11) No oven, as the element on the bottom wore out, again afraid to call the electrician with a guess as to what it will cost.

If you were on welfare these things would be fixed, but you are a responsible working person with no money for emergencies. (The judge does not figure such happenings into maintenance awards).

(12) It means children who are wondering why their parent can't laugh, looks worried, gets mad if they ask why she won't take them to the movies as she had promised to last week. The cheque didn't come.

(13) It means, watching a son sit in front of a television as his only diversion while his friends attend . . . lessons, music lessons or belong to a hockey team with full equipment of their own. Providing food and lodging is the best you can do and you wonder what his potential might have been if there had been an opportunity to find out.

(14) Phoning a spouse to ask if the maintenance payment has been mailed -- the depth of humiliation for any woman, particularly if one considers the children were jointly conceived; to have to beg for their support is shattering to one's whole sense of self-worth but the children have to be fed, so you swallow your pride.

(15) Listening to your lawyer tell you to take what is offered by the court. If you make it too hard on them they'll pay nothing. Listening to the man in court tell the judge he has lost his job, has no money, when maintenance is being decided upon for a divorce. The judge does not challenge nor check his statement. You are aware that this man has just moved into a new home with his new lady friend on one of the better streets in town, that he has just returned from a three-week holiday across Canada in a camper trailer, that he's just opened a new business. When you react with anger and say he is lying in court, you are reproved by the judge for not behaving properly and your lawyer is warned to restrain his client. Nobody offers to check his evidence. You must again hire a lawyer to prove what you know. It is impossible to do so because you have just paid the lawyer for this court appearance.

(16) Depriving yourself of all the semi-luxuries most working people take for granted; hairdos, pretty clothing, lunch with co-workers because guilt feelings for children would be overwhelming. You witness spouse showing up with lavish gifts for children and sometimes including those from his girlfriend, though in court the man claimed he was having a rough time of it, and maintenance payments were set at rock bottom. Daughter is very impressed with the presents, with father's new girlfriend and resents the poverty she shares with you. Phones father when you try to insist on discipline hours to arrive home, duties to perform; she admires the father who encourages her to disrespect of mother, and children learn to manipulate those who can give them the most. The parent looking after the child cannot provide the luxuries of life. Never being able to accept social invitations out as you have children to stay home with. Vacations very seldom and if so, at the least expensive place possible, usually surroundings inhabited by other sole support parents with children. You are the lower echelon of society even though you are a working respectable person.

Now in summary, may I say that if a person does not pay their parking fine, the city soon sends a policeman to their very door to summon them into court; and would that the city fathers would care for the children of sole support parents as well as they do their parking fines.

If a man robs a store of a \$25.00 item, there is no doubt that the law will swing into action to apprehend, fine and ensure that person knows that he cannot get away with breaking the law. If a man does not pay income tax whether he goes from one end of Canada to the other, the government will keep trying until they ensure that that money is recovered. But every day, men and women break the law with regard to maintenance payments, an order made by a judge in the court of the land is totally ignored, yet nothing is done in most of the cases. Every dodge is known, quit their job, leave the province; how can any government look the other way at this? It represents chronic laziness and incompetency on the part of government agencies; it represents pure hell for the sole support parent. The government must act, and I implore you gentlemen to recognize your responsibility on that.

MR. CHERNIACK: Thank you, Mr. Chairman. I didn't get your name.

JANET BERKOWSKI: It's Janet Berkowski.

Statutory Regulations and Orders
Thursday, December 9, 1976

MR. CHERNIACK: Ms. Berkowski, I think you have presented the picture very vividly for us. The only thing I challenge is your statement that you assume that all legislators have to be what? - - of the highest calibre and highest moral and other . . . That's an assumption that . . .

JANET BERKOWSKI: Well, I believe, that you must have been because you couldn't be where you are if you hadn't.

MR. CHERNIACK: I don't know, if you want us to give the same weight to the rest of your brief as you want us to give to our self-respect you may be in trouble so I'm discounting that. I think you presented the problem very clearly, I'm not sure that I am clear on your solutions. You said you endorsed No. 11 of the Coalition's brief and I've gone through it and I haven't really found a No. 11 but I . . .

JANET BERKOWSKI: It was the little short slip that the Action Coalition Committee put out . . .

MR. CHERNIACK: . . . it must be the one that . . .

JANET BERKOWSKI: Yes.

MR. CHERNIACK: Would you read it, just read it for us.

JANET BERKOWSKI: Yes. No. 1 states the province should assume responsibility for collecting and paying out court ordered maintenance and in cases of default, the government should ensure payment of the maintenance.

MR. CHERNIACK: All right, that's what I thought it was. Well, all right, I don't think I have too much of a problem understanding your point that the collection should be considered a responsibility of government, the taxpayers should pay for it.

JANET BERKOWSKI: No . . . oh, yes, sir, I'm sorry.

MR. CHERNIACK: You are saying the taxpayers should provide the means whereby there shall be an enforcement of collections on behalf of the dependent spouse.

JANET BERKOWSKI: That's correct.

MR. CHERNIACK: All right, you are a taxpayer I assume.

JANET BERKOWSKI: Yes I am.

MR. CHERNIACK: Yes. Where I bog down a little is trying to understand the extent to which you think any agency, even an agency which can take a person into court to put him to jail, could actually force an unwilling person to pay. You have heard, quite recently, a statement by somebody who said, "I've learned my lesson, I'm going to go into shacking-up or common-law as being an answer." You know that there are many husbands who just go away, they're loose and fancy free . . .

JANET BERKOWSKI: And it's so easy for them to go away isn't it?

MR. CHERNIACK: Right, right, and I can understand your point that they should be traced, they should be found, they should be put in jail.

JANET BERKOWSKI: No, what I believe could be done, I believe that the Provincial Government has to work hand in hand with the Federal Government. There is nobody working in this country, unless they are very illegal, that isn't recorded under their social insurance number, their income is recorded with the government Income Tax office. The government can send family payment cheques every month to the women with the children — I forget the names of them all, but they come every month.

MR. CHERNIACK: The Family Allowance?

JANET BERKOWSKI: The monthly Family Allowance, right. Now why can't the government, the Federal Government, as soon as the maintenance order has been established in any court in any province, why can't that maintenance order be forwarded to the Federal Government, with an automatic attachment to be provided against that man's wages in the form of garnishee, the way they would do with an income tax that wasn't paid. If the men knew or the ladies knew that if they do not pay that maintenance payment, the Income Tax branch of the government will garnishee their wages the way they would if they don't pay their income tax, then they would accept the fact they must pay that maintenance. It would be a lot of administration financial expense but on the other hand what you pay out in welfare could be avoided completely if two parents were supporting those children instead of one.

MR. CHERNIACK: All right, we'll move onto that. I should say the income tax, firstly comes a year afterwards, it comes a year late, the report . . .

JANET BERKOWSKI: Well the payments should go immediately, the day it's set and a year later the government will get their money if they have to.

MR. CHERNIACK: The tax return is such that it is made a year afterwards and then they have to trace them so it may be simple to say but it's pretty complicated. Aside from the fact that the principle appears to be that tax returns are so secret that they're just not made available . . .

JANET BERKOWSKI: They are not secret to the government. The government has that information and the woman does not.

MR. CHERNIACK: . . . it's a secret as between, do you know it's secret as between departments, that the Department of Finance may know the tax return but they are not allowed to tell any other department.

JANET BERKOWSKI: Then they have a special department perhaps for payment of maintenance orders.

MR. CHERNIACK: For non-secret information.

Statutory Regulations and Orders
Thursday, December 9, 1976

JANET BERKOWSKI: Why should it be secret?

MR. CHERNIACK: I understand you on that.

JANET BERKOWSKI: To my mind even an animal in the forest feels a responsibility to feed and care for its young, they'll fight to the death to protect them and when you get a person who has not got the same instinct, then if the government can't do anything with them, how can one other sole-support spouse?

MR. CHERNIACK: Right, what you're saying is there are a lot of human animals that don't have that instinct.

JANET BERKOWSKI: That's right and it takes a whole government to fight them and make them do as they should.

MR. CHERNIACK: I appreciate your point and I really have no problem understanding it.

JANET BERKOWSKI: And I believe that it could be worked out.

MR. CHERNIACK: My problem . . .

JANET BERKOWSKI: It could be worked out with less expense in the end to the taxpayer because how many women are on welfare who shouldn't be if their husband were paying their fare?

MR. CHERNIACK: Let's move to that question . . .

JANET BERKOWSKI: This is the question.

MR. CHERNIACK: You described problems of poverty in all the points that you made.

JANET BERKOWSKI: Yes, and these . . .

MR. CHERNIACK: Disgrace and poverty, much of which applies to the poor, married or unmarried, single or not, and therefore . . .

JANET BERKOWSKI: Well my point is though that that person should not be living as though they were very very poor. If they are a hard-working industrious person who is making a good wage in the current labour market, they should not have to live poorly if it were not that they were singly and solely supporting the children, where another spouse is living off the cream of the land. Now what is fair? There is no fairness there.

MR. CHERNIACK: I understand you, Mrs. Berkowski. Let me try and get to my point so you can answer it. You were saying that it would save money for welfare if the money were collected and I was saying that there are many poor people who live under the circumstances you describe who are not separated and who do not have maintenance orders in their favour. So I have to ask you at what level should a dependent person whose maintenance order is not being paid be supported by the taxpayer? At the welfare level? At a different level?

JANET BERKOWSKI: I believe that they should be . . . there must be closer looks at the situation they were in prior to the marriage and the situation they find themselves in after the marriage. How is the one spouse living as opposed to how is the other spouse living? And the maintenance must be set at a standard that both of them are equal, otherwise, as I say, the manipulation of the parent comes into play by the children. The children are deprived by the one parent, not willingly but out of necessity; the other parent frequently — there are a lot of men, from various women I talked to, who make a big show in front of other people of being good to their children. They buy them presents, they buy them gifts, they couldn't care less if they eat . . .

MR. CHERNIACK: So you're saying that the taxpayer should make up that when it's not paid . . .

JANET BERKOWSKI: I'm saying that the government should meet . . . Well, when 75 percent of orders are unenforced or uncollected, then doesn't that indicate that somewhere the government is excusing people from obeying the law?

MR. CHERNIACK: Mrs. Berkowski, I've just agreed with you that the person who is liable to make the payments should be forced to do it. I've agreed with you. Now in spite of that there are still people who will not be making the payments or will not be receiving them with all the enforcement. Then I am asking, what is the logical support that the taxpayer should give to that person whose money isn't being received? At what level?

JANET BERKOWSKI: That is a question I would have to think about and I would come back and give you an answer. Okay? I know that the taxpayer is your consideration too, but this is getting to be a large problem . . .

MR. CHERNIACK: No, no, I'm sorry, I don't want to leave a . . .

JANET BERKOWSKI: Well this is how I understand . . .

MR. CHERNIACK: Well I want to clarify that. I say that . . . and the very first brief that was presented by the Coalition, I raised the same question. You might have two ladies living side by side with the same responsibilities or the same number of children the same ages, one is bereaved, one had a husband who died leaving nothing therefore that person is on social welfare; the other person has a husband who is a bum and disappeared and hasn't been found by income tax or any other means. But assume that there has been an order made for let's say \$1,000 a month but it's not being paid. Now my question, which is a real question, not related to the taxpayer as much as to these two neighbours . . .

JANET BERKOWSKI: Yes, I see your point.

MR. CHERNIACK: What should this lady get whose husband has run away from his responsibilities, get from the government, as compared with the lady who is destitute and has no one to turn to but the government? That's the big question.

JANET BERKOWSKI: The same amount, the same amount. But where the one lady whose husband has run away and he's making \$1,500 a month and she's trying to make do on \$600 a month, then it's illogical that

Statutory Regulations and Orders
Thursday, December 9, 1976

she should live as a poor woman, as the woman that was bereaved.

MR. CHERNIACK: Well it's equally illogical that the taxpayer should pay her that \$600, they ought to force the husband to pay it.

JANET BERKOWSKI: I believe there would be very few cases where the man could not be located, very few. If he's making \$1,500 his income will show up.

MR. CHERNIACK: We agree then. But that's the husband that you say gives gifts to the children, wins the children over. Obviously he's within reach if he's available to do that and what you're saying is there shall be enforcement.

JANET BERKOWSKI: Yes.

MR. CHERNIACK: But not necessarily payment in lieu of his payment.

JANET BERKOWSKI: Yes, I believe payment in lieu of his payment, especially in the first two years because when a couple is separated at first it's usually not on a friendly basis. The woman is locked in to the financial position she was in at that time and usually in this day and age we have two parents working. You suddenly take away the larger proportion of income, half of it's gone and maybe you're allowed one-third of it back and you flounder, everything is going to go. Those first months are terrible.

MR. CHERNIACK: Well, at that stage, if we accept the recommendations of the Commission, there may have been a split of family acquired assets where they each may have walked out with \$15,000 or \$25,000 worth of assets, would you say that the monies that are being paid in that two year interval the first two years, should be charged to the assets? Or should the taxpayers pay . . . ?

JANET BERKOWSKI: Oh no, definitely charge it to the assets.

MR. CHERNIACK: Thank you.

JANET BERKOWSKI: You shouldn't have to pay for my having a separation. On the other hand, the law should be there to protect the rights of a person. The judge made that law and I can't conceive of the government allowing people to ignore the law. They don't do it in any other aspect that I know of and get away with it and I can't conceive of government allowing it when it hurts the children most of all, they're the least people that can defend themselves or act, and the woman is too downtrodden and depressed to fight usually, they just accept it and it's not fair. Okay?

MR. CHERNIACK: Thank you, Mrs. Berkowski.

MR. JENKINS: Thank you, Mr. Chairman, and thank you, Mrs. Berkowski, for your presentation. Perhaps I should say, as one of my constituents, I'm quite flattered with the remarks that you made, that we're all honourable men and I hope that we are.

JANET BERKOWSKI: You all have honest faces.

MR. JENKINS: I would just like to touch on a couple of points that Mr. Cherniack raised and you've answered some of them. You stated that there should be maintenance, payment should be made by the state

JANET BERKOWSKI: I would like to see that, yes.

MR. JENKINS: Yes, but if the maintenance order against the husband was for \$600 or \$700 a month and we can't catch up with him, and you have stated that in that case you would accept what was available on social assistance.

JANET BERKOWSKI: I still think that 95 percent of the time you could catch up with them. Not many men are going to run away to the States or go to Hawaii so they can avoid maintenance payments but if it's just a matter of crossing the border of the province, yes they'll do it. If they are in Canada then I say 95 percent of those payments should be retrievable by the government, the welfare payments would go down, the subsidy payments would go down. I really believe that's true, that the government would not lose as much money as it's losing right now, if it were to enforce that law.

MR. JENKINS: The other question I have, Mrs. Berkowski, is — we've had, you know, briefs presented by other people here and they stated that in many cases there is not much of an estate to divide up anyway. In your experience, do you feel that this is general, that in most marriage break-ups that take place at this time, that there is not really very much of any tangible value to divide up?

JANET BERKOWSKI: Right. Most of the marriages break up in the early years of marriage, occasionally it's in the later years, but in the early years there's usually, especially if the couple don't get along and there is now solidarity there, they haven't accumulated a lot of personal goods. I'm thinking the average separated sole-support parent that I can think of is usually about 24, 25 perhaps — I'm thinking of the ones that it's typical for the husband not to pay — and they had a baby, they've been renting an apartment, sometimes they don't even have their own furniture, they've been renting a furnished apartment, so what has she got out of it to start with? And you cannot wait a week to get money for milk for a baby and you can't wait for . . . when they say they are going to disconnect something, you must give them the money, utilities and so on. If you're working . . . people have gone to welfare because they were suddenly in a bind and they were told, well you make more than what we would give you on welfare but you've been living in a situation where you used a certain income to keep that home or place going and all of a sudden that income is gone and even for a temporary period of time, you don't qualify for any assistance. So, you know, you are left, there is no money for food, there's no money for the

Statutory Regulations and Orders
Thursday, December 9, 1976

children, to give them a quarter or something they have to have in school. And little amounts of money become millions of dollars to you.

I think if a woman knew that on the first of every month she was going to get the sum of say \$150, that she would know that's her limitations to live in, she would budget it, she would have her own income to go with it. If she thinks I might get that \$150 but I might not, that changes her whole perspective on what she can do with her money she's got and frequently she will dribble it away, waiting to see if the other cheque will come in. By the time she gets the maintenance cheque, her money is gone from her income, it's completely . . . you know, it's impossible to run a normal budgetted income unless you know for sure that that money, regardless of how small it is, is coming in. I'm suggesting it is not good enough, it causes an awful lot of upset, physical illness I believe, mental strain. You wouldn't have so many people in the psychiatrist's office, I think, if they at least knew where they were.

MR. JENKINS: Thank you, Mrs. Berkowski.

JANET BERKOWSKI: Okay.

MR. GRAHAM: Thank you, Mr. Chairman. Through you to Mrs. Berkowski. So far we have talked about maintenance orders where there seems to be a fair degree of money available, it just hasn't been collected. I'd like to pose a question to you. What do you do where the courts have ordered a maintenance payment that exceeds the power of the person that it has been put on, exceeds his power to produce? What do you do in a case like that?

JANET BERKOWSKI: That person must go back to court and prove to the judge that the maintenance order was unjust. That's the only answer to that.

MR. GRAHAM: Well, we just heard a case here previously where a person because of payments and couldn't make them, ended up in jail. Do you think we should do that with people?

JANET BERKOWSKI: Well there again the law is completely lax on maintenance order. It proves that there is a real need for you men to get busy and look at what's going on, isn't it if a man ends up in jail, because a judge made a poor judgment, and he has no recourse but to do what that judge has told him. And this man pleaded. Now he didn't skip the country and he didn't use dodges, or he tried to and he went under, I didn't hear all his terms, but I'm saying that there is a real need to look at your maintenance laws, and it's been sadly neglected for 20, 30 years now and everybody's known that these problems exist and everybody's looked the other way because it's a nuisance and it's a lot of money I imagine to straighten this out. It's going to take a lot of time and money to straighten it out and as long as the Government doesn't do it then there's going to be men ending up in jail unfairly, and there's going to be women absolutely at their wits end, ready to commit suicide sometimes. I've known people that remarked this to me. The Government has to do something about this problem, the courts are unbelievable. I've been in court and I've heard from other women, remarks that have been made to them by judges, and it's unbelievable. There's no rhyme or reason. one time they're for them, the next time they're against them and the circumstances might be exactly the same. And there really is a need to look at those maintenance laws and get them straightened out.

MR. GRAHAM: Well then there's another question that I'd like to pose and it goes back to what Mr. Cherniack had talked to you. You had recommended that the state make those maintenance payments to the individual and then hopefully collect.

JANET BERKOWSKI: No, definitely collect, through the income tax., the same system with just their income tax.

MR. GRAHAM: Well, let me finish the whole thing. Supposing the person requires, and the court can prove that the person requires \$350 a month as a very minimum for a maintenance payment, and the ability of the person that the maintenance order is being served on is only \$200 a month, should the state make up the \$150 difference?

JANET BERKOWSKI: If it comes within the limitation of the amount given to people . . . that's the question that Mr. Cherniack raised and I couldn't give him an answer right away because it is a question of contemplation, I guess. No, but I believe that maybe this person, who says they have to have \$350 to survive?

MR. GRAHAM: I don't know who says that.

JANET BERKOWSKI: If the person on welfare can survive on \$200 then I think that has to be a starting point to decide on what these other people can live on. And that would be a question again for a lot of study.

MR. GRAHAM: We do know this that almost half of the divorce cases that do come up for settlement, neither member of the marriage has anything of any consequence. that finance is the number one problem in almost half of the divorce cases. Now if the maintenance that is required to maintain and support the children, and the one spouse, if the ability of the other spouse is not sufficient to meet the basic requirements what should the state do about it? Should they try and . . .

JANET BERKOWSKI: Subsidize.

MR. GRAHAM: You think they should subsidize in that case?

JANET BERKOWSKI: To a degree, but I really believe that if you take the total number, across Canada of men, or women recently who are not supporting their spouses at all, and you forced them to meet those payments that it will balance out that your welfare payments now will not be anything the amount they are now. I really believe this will happen, and regardless of whether it happens or not, there's a real need to start

Statutory Regulations and Orders
Thursday, December 9, 1976

enforcing the law.

MR. GRAHAM: So you think they should make every effort to collect a maintenance, even if the person is only able to pay \$25 or \$30 or \$50 a month, you should still make every effort to collect whatever they can possibly get from that person.

JANET BERKOWSKI: You see, this is again where the problem comes in. I can't imagine any judge with any sense ordering a man to pay \$300 a month to somebody if he only earns \$400. I've never heard of this sort of thing happening. In the majority of cases the man gives a very small proportion of his salary people that ' and I've personally known. Now, if a judge makes such a poor judgment they shouldn't be a judge, get rid of the judge, never mind the . . .

MR. GRAHAM: But all of those that get divorced are not salaried people, some of them are — and we had a person before us — . . .

JANET BERKOWSKI: Yes, that's true, that's true, there is a problem.

MR. GRAHAM: . . . where they themselves don't know until the end of the year whether they have any money or not.

JANET BERKOWSKI: Okay, I'm here speaking for sole-support working parents. Now I don't know too much about the other population, the rest of the population, but I know that there's a desperate need for people to look into the problems of sole-support working parents. Now that's a different situation and that's something you have to look at, I guess. I don't know the solution for that, I know the solution for most of the people that I know in this situation.

MR. GRAHAM: We're trying to get as much assistance from anybody that's willing to give us their advice.

JANET BERKOWSKI: Well, I'm not familiar with that; I am very strong on this because I work in a place where every second person you talk to it seems is a sole-support parent, and they all know that the other parent is absolutely living very comfortably, and this is very common, it's not a once in a lifetime thing, it's happening in this city, and they don't have to leave the province, somehow, to evade payment, and I can't understand what's wrong with the law.

MR. GRAHAM: Well thank you very much.

JANET BERKOWSKI: Okay, thank you.

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you. Gentlemen, it's about the hour of our usual adjournment hour, there is one further person who has indicated a wish to speak to us. Do you wish to hear that representation now or come back this evening? Proceed.

Mrs. Havelock would you come forward please.

MRS. HAVELOCK: Gentlemen, I'd like to thank you for waiting to hear me. I work all day so I wasn't able to get here any sooner.

I am speaking for myself, but I think I represent a group of people who do not feel that dividing the assets at the conclusion of a marriage, whether by separation or divorce, is a fair and just way to divide property, and I would like to recommend judicial discretion in certain specific cases, such as, provable gross non-support, temporary or permanent insanity, or some miscellaneous situation which I hadn't thought of, and could be covered in various aspects.

I would like to say that I think the Law should be set up for fairer treatment for everybody, not just 90 percent. And while I have been told that 90 percent of the separations involve a woman who has worked at home and, therefore, may or may not be employable at the end of the marriage, still there is that other 10 percent, and I think that they deserve fair treatment as well.

Now, I would like to mention a few cases, I cannot mention the names of the people involved. One couple, that I know, has been married for 22 years, the husband drank a little before the marriage, and the marriage went along not too badly for about six years and then the drinking became more frequent and the gas bills and so forth, and the usual notices of whatever it was, was going to be cut off because of non-payment. So eventually the wife herself went to work and the husband got a job which was paying very little, but he liked it because it involved travelling about the country. The wife worked, paid all the bills, paid some of the bills from before the time that she went to work, paid a babysitter to look after the children, went to university, got one degree within four years, got a second degree within five years after that. In this way she increased her earning capacity, salary increased from something like 4,200 to 21,000. Part of this, of course, is the natural inflation, but most of this increase comes from her ability to improve her own qualifications. I would like to repeat that this woman has supported the family, she's paid the rent, the house payments when the house was bought or paid cash for the house, paid the babysitter, paid the light, the gas, the telephone, and paid for most of the groceries. The husband has lingered around in spite of two or three attempts at separation, he always manages to evade this somehow and is still there. His salary is approximately 9,000. She will get a pension, he will not. She is willing to give him some alimony if she could only get a divorce, but the courts won't accept the excuses that she has. You must have proved that your husband is unfaithful in reality, although the law says that mental cruelty is a reason for granting a divorce, such isn't the case when you go to a lawyer to consult. Now, I ask the question: Is it fair that the wife should, in this case, be forced to split assets on a 50-50 basis with someone who has certainly contributed very little to the financial assets of the marriage, and very negative things to the

Statutory Regulations and Orders
Thursday, December 9, 1976

emotional aspect of the marriage, and yet there is no infidelity? I feel that it's most unfair in a case such as this.

Now, I quote or cite another case in which the couple is much younger. They have been married for about five years. The woman supported the husband while he got a degree of a sort in which he increased his earning capacity but she remained where she was. She is more thrifty than he and so there are indications that in the long-run she might end up with more than he does, still I feel that the contributions to the financial assets of the marriage should be considered.

Another case of which I know is the case of a woman who had five children, her husband beat her up regularly so eventually she got a separation. He provided himself with a girl friend so she was fortunate enough to get a divorce. In the meantime she'd met somebody else, she married him, he seemed to be quite responsible, but after a few years of the marriage he turned into an alcoholic. In the meantime they'd had a child, she went back to work after the child was born, started payments on a house, and I'm not just sure what her legal situation would be in this case, whether she retains the home because she has the child, I assume so. But supposing there weren't a child, would it be fair that he should get half of what she has managed to save up, in spite of his lack of ability to handle money. And she said to me that she was far better off financially when he wasn't around because she was no longer responsible for his debts.

I'd read as much of this as I could, I do not understand all the legal terminology, but in many cases the assumption is stated that marriage is a partnership on a 50-50 basis and that would be marvelous only in most of these cases it is not on a 50-50 basis, one person puts in much more than the other, one person is irresponsible while the other is thrifty, and yet at the end of this the suggestion is that they split whatever financial assets there are on a 50-50 basis.

I don't want to take up too much of your time, but I would like to comment on a few more things. The gentleman who was speaking when I came in spoke of his lack of desire to become involved in any marriage, and I can understand his feelings. I see young people shacking up, as he put it, because they are afraid of the legal consequences of a legal marriage. It's happening all the time and some people say, "Oh, well, but they get married later". That to me doesn't really rectify it too much, I don't really think that this is a good thing for society, but they see the problems involved in removing yourself from a situation which has become impossible, either because of irresponsible spouses, physical cruelty, mental cruelty or some other things that have not been mentioned so far. I'm sure you've heard all of this many times before.

I would like to say then that I recommend that there should be judicial discretion on certain very very obvious things: such as: gross non-support, certain cases of what fringes on insanity, or on complete inability to handle money. And I think that covers most of the points that I wish to mention.

MR. CHERNIACK: Mrs. Havelock I'm interested in this couple where the lady earns 21,000 and the husband earns 9,000 dollars. They're living together?

MRS. HAVELOCK: As yet.

MR. CHERNIACK: As yet. That means that during the time that she has been able to improve her educational qualifications and earn more money she has had some sort of arrangement in her mind that made it possible for her to continue that marriage, otherwise she'd have broken up, surely.

MRS. HAVELOCK: There is a strong pressure from society to retain the home as it is.

MR. CHERNIACK: Do you regret that?

MRS. HAVELOCK: No, I don't think that that is a bad thing, I think that pressure from society is good. You asked me why did she put up with this?

MR. CHERNIACK: Yes, well then I want to go further. If she has made the accommodation, that she obviously has made for whatever reason, and they are having a joint life together, then would you say that money should be kept separate but their whole lives together are justified as a partnership except for money?

MRS. HAVELOCK: I'm saying that in case of separation I don't feel it's fair that the irresponsible partner should get fifty percent of the financial assets.

MR. CHERNIACK: Well now, we've had instances — or if we haven't had them here so much I'm aware of them and you may be — of a hard-working man bringing home the money every week and his wife being carefree and careless and incompetent in managing the financial affairs, and probably they've been pretty good marriages except that he becomes irritated every so often that she isn't — I'm trying to remember the word you used — careful with her money (that's not the word), that therefore in that marriage he may be the provider, she may be the one who wastes money, yet they have a good marriage. Would you say that there, too, she should not be able to share in the assets acquired during their marriage?

MRS. HAVELOCK: If they have a good marriage they won't be getting a separation.

MR. CHERNIACK: Oh, well, the same applies to your 21,000 and 9,000 income group family.

MRS. HAVELOCK: I didn't say that it was a good marriage.

MR. CHERNIACK: Well, you said if it's a good marriage then there wouldn't be a separation. The same may apply to this couple that is together today and maybe together forever.

MRS. HAVELOCK: Well, I don't quite know how to answer your question. I'm saying that after twenty-two years of marriage the wife wants a separation, she wants to get out of it.

MR. CHERNIACK: Well, why doesn't she?

MRS. HAVELOCK: I have already said so, that the pressures of society and her desire to bring about some

Statutory Regulations and Orders
Thursday, December 9, 1976

kind of reformation, you know, hope springs eternal.

MR. CHERNIACK: Well then she's not ready for a separation, obviously.

MRS. HAVELOCK: Well, that's a matter of opinion.

MR. CHERNIACK: Well, if my opinion from what you have said that she's not ready for a separation because of pressures of society or she hopes for a reformation, both of which are valid reasons, therefore I would conclude that she's not ready for a separation if sbe has not taken the steps to carry it out.

MRS. HAVELOCK: The separation procedure is before the court.

MR. CHERNIACK: Well, are they physically separated?

MRS. HAVELOCK: No, legal separation.

MR. CHERNIACK: Well, what bothers me, Mrs. Havelock, and I really don't want to prolong it, it seems to me you've given almost every argument against the recommendations of the Law Reform Commission that we're considering, because you have continued to maintain a difference between the couple and sort of, to me, I think you've denied the concept of partnership; and if that's so — you know I don't criticize your opinion, I just want it clarified — I have not seen any support on your part for the recommendations that we've been considering; and you know if you don't support them then fine.

MRS. HAVELOCK: I support many of the recommendations. I appreciate the immense number of hours that have been put in on this. I'm saying that while you provide for the welfare of ninety percent of the people there should be some allowance for the ten percent who are entitled to some form of judicial discretion; and I agree with the previous speaker that if they don't have judges who can evaluate fairly it's time for the judges to go.

MR. CHERNIACK: What you're really saying is a hundred percent of the cases ought to have judicial discretion because in every case there is a difference of opinion as to right and wrong, therefore it seems to me every time there is something there will be a court trial and the question will be gone into as to fault so that the judge can make that decision or judicial discretion, so in a hundred percent of the cases there would be that, and then are you prepared to rely on the calibre of the judges that we have been appointing up to now and — when I say "we", I mean society — are likely to continue to appoint in the future.

MRS. HAVELOCK: I have had no experience with judges on a formal basis, so I don't feel in a position to make any statement about them. I am repeating what was said to me.

MR. CHERNIACK: Okay, thanks.

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

MRS. HAVELOCK: Thank you.

MR. CHAIRMAN: That seems to conclude the work of the Committee for today, gentlemen. Mr. Pawley.

MR. PAWLEY: Mr. Chairman, before we adjourn I believe that we were slated to return on December 16th. It seems to me that certainly for our group, and I know Mr. Graham can speak for his group, that we have a great deal of discussion to do within our individual caucuses and I'm wondering if rather than return on the 16th of December we could return at the call of the Chair and the Chair could check some way or other to ascertain, hopefully, by about the first week in January we would have met as individual caucuses and developed a position so that we could discuss this sensibly to develop recommendations to the House. I just don't feel we're in a position yet — but certainly by the 16th — to develop recommendations after the very meaningful and complete submissions that we've heard over the last number of meetings.

MR. GRAHAM: Well, Mr. Chairman, with respect to the suggestions of Mr. Pawley I would have to say that I don't think that we could possibly make any recommendations on the basis of one meeting. But I still think that a meeting on the 16th even just to go through a preliminary sifting would be a useful exercise so we can get some interchange of ideas. I think it would prove very beneficial to the Committee to have one initial go-around and then have a two or three week break to think about it.

MR. PAWLEY: Well, I have no objections if that is the wish of the Committee. I suspect on the 16th we'll be meeting without the benefit of our discussions in our various caucuses, so I'm just wondering in what way can we really present positions at that time unless they're very individual positions of the Committee.

MR. GRAHAM: Well, Mr. Chairman, we will have the benefit of having had a chance to take it to our caucus.

MR. CHERNIACK: I'm just saying, Mr. Chairman, I must admit that I'm influenced by the fact that I have a conflict next Thursday which could be resolved by a decision not to meet. But aside from that I'm really not sure what procedure we're going to take. Are we going to go along with the recommendation of the Law Reform Commission saying agreed, agreed not to agree, or still in dispute amongst us? I don't really know. We're not really charged with that report in itself, although we would be foolish to ignore it. It may be that we should start ourselves going through the recommendations and noting our own opinions; and I don't know the nature of the report, would it be a comprehensive one like a duplication of the Commission's report or is more likely to be very brief with just points saying, you know, going along with the recommendations. I don't know what other members feel it should be. I think it's a little premature for next Thursday.

MR. CHAIRMAN: What is the practice with other Committees in similar circumstances?

MR. CHERNIACK: It's whatever the Committees decide.

MR. PAWLEY: Well I would think, Mr. Chairman, that the reason that I felt probably we needed a little

Statutory Regulations and Orders
Thursday, December 9, 1976

bit more time than to next Thursday is that probably the most organized way would be to take each recommendation of the Law Reform Commission and relate that recommendation to the submissions that we've received in our Committee hearings to ascertain whether or not in view of what we've heard we still want to accept the recommendation of the Committee.

I think that it's so organized in the Law Reform Commission Report that we could proceed in a rather systematic basis, with the Law Reform Commission Report on one hand and the submissions on the other hand after we've had a chance to properly organize the submissions and to again review the arguments presented. I, for one, would like to read through some of the Hansards that have just been released today, and there are other Hansards yet, the Brandon and Thompson. Today's, certainly we won't have those by next Thursday, I suspect.

Certainly I would like the benefit of the views of my own colleagues in our caucus. Mr. Graham is fortunate in that he says that he will be able to ascertain the views of his caucus members. Otherwise I think we're going to be gathered around the table chewing over these recommendations and some of us might be wasting the time of others because we really haven't had a chance to properly develop a position.

MR. GRAHAM: Well, Mr. Chairman, the reason I say that we may be fortunate is that having known for quite some time that a meeting was slated for the 16th of December we took the necessary steps to ensure that we would be able to hold a caucus meeting before that date.

MR. PAWLEY: Well, Mr. Chairman, let me warn Mr. Graham that we took the necessary precautions. Too, and we commenced to discuss recommendations last Friday, I guess it was, in caucus; but let me warn Mr. Graham that we only managed to cover about one-third of the recommendations and he might find himself in the same position as we were in with the bulk of the recommendations not discussed yet.

MR. CHAIRMAN: What is your will and pleasure?

MR. GRAHAM: Well, Mr. Chairman, I would hate to see the Committee get into a major hassle about when we should meet again. So in that case I think that it should be left to the C Chairman, then, to call the next meeting. — (Interjection)—

MR. CHAIRMAN: If that then has the agreement of the Committee? (Agreed) Committee adjourned.