



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. 10:00 a.m.

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Thursday, December 9, 1976

TIME: 10:00 a.m.

MR. CHAIRMAN (Mr. D. J. Walding): I have a list of 12 people wishing to address the Committee. Do you want me to take them from the top? It has been the Committee's practice to give preference to those from outside of the city, but there doesn't appear to be any. Mrs. Anne Ross, Mount Carmel Clinic, would you come forward, please.

MRS. ANNE ROSS: First, may I congratulate the Commission for tackling such a complex, such a long overdue problem of protecting the family by legal means, albeit late, very late in the day. I admit frankly that I only have some cursory knowledge of their findings and recommendations. What I do know, it would appear, deals primarily with division of property, protection of property, the manner in which each spouse has access to it. Property here I use in the very broad sense. I sat through, by the way, some of these hearings and I listened and we seemed to spend a lot of time asking questions from the people who presented a brief in reference to this very property business. I do not feel comfortable speaking about such matters since I place human life, human well-being and health, the dignity of people above all else. Hence I wish to speak on behalf of the poor, the propertyless, the powerless and their plight in coping with wanton cruelty, physical and mental abuse, fears, anxieties and helplessness. I am talking about the women and the children and the family constellation.

Some examples: Mrs. S, what law is going to protect the woman who housebound in three meagrely furnished rooms with two small children is thrown out into the streets on a cold winter night, naked, knocking on a neighbour's door, hysterical, half crazed with fear for her young children. Did this happen? It did indeed happen. And why did it happen? Because she had refused his drunken attempts to rape her. Yes, legally rape her. So he bodily threw her out. The police were called by the neighbours. They suggested that she lay charges in the morning; they could do nothing; they are legally married, the children are in the house for which the husband pays the rent. Is this a common occurrence? Well I suggest, gentlemen, it is more common than is admitted. Legal rape exists in many ways, in many forms. There are women who are so brutalized, so cowed, so fearful for their children and their lives that they suffer this indignity without hope of obtaining legal intervention. The fear for the life of children by women is a stark reality suffered in silence by the way. Whether married or a common-law relationship, men have consistently abused children when the wife does not bow to his wishes

Mrs. A: It was a clear, cold night in the winter, the police had come and gone but the knife he had wielded against her and the children was craftily hidden. He had sweet-talked the police into believing what a good guy he was. Why, he had married his brother's widow only to care for her and his fatherless nephews, and she spurns him. Minutes after the police left, he beat her mercilessly threatening to kill the children if she dared called the police again. She was black and blue, bleeding copiously when we saw her, helpless in the face of threats to her four young children. What law will protect such women?

Mrs. K: Their battles raged constantly, he promised to be good and was for a few days, then the jealous rages, the insane accusations, the attempts, the threats of murder. To escape him she and her children moved seven times in one year but he found her each time for he was relentless in his pursuit of her. In 1971 he shot her in cold blood in front of her children. This is a matter that can be checked in the newspapers. Could that have been prevented? What law could have saved this young, attractive, 24-year-old mother?

Now before going into what I am proposing, I would like to make a few remarks about someone who made a presentation the last time. She spoke movingly about herself. She revealed herself to you, gentlemen. I know that woman well, she is sitting here, she gave me permission to speak. You did not ask her a single question about which I am disturbed and perturbed. I knew her over 20 years ago as a young, eager, attractive waitress where I frequented when I was working at the Clinic in the '50s. Then she disappeared, I didn't see her for several years. Suddenly she appeared at the Clinic with two children; she was obese, at 20-odd she looked 40-odd, she was dull, depressed, unable to cope with this husband who drank and beat her mercilessly. For about 16 years we worked with Frances, we in the Clinic, six children later, conceived out of rape, gentlemen, because he would break the windows when she locked them against him and he would get in. She would try to keep away from him — no way — and I am very proud of Frances because she was able, despite all that horrible cruelty, she was able when she finally got rid of him to go back to school, to make something of herself and she is on the threshold of going into a career. We are proud that we are associated with Frances, we are so proud that we have her on our board of directors representing the patients. And I want to say that very very publicly.

I don't know whether this is germane to this committee but I would like to propose one of the possible safeguards or attempts of prevention, something I have proposed to the government through the Status of Women way back in 1966 I would think, also in 1967 in a brief to the Senate Committee on Poverty and again in 1973 to the Special Police Inquiry Committee and numerous other times. Nobody so far has listened. Allow me to read what was said in 1967 by our brief: "Immediate liaison with police personnel who are especially trained for domestic situations that require police action. There is no protection for women, especially the poor, who have been brutally beaten and mistreated by their husbands. The police can only admonish since legally the husband is in his own home. Often the husband drunk and vicious continues to pummel the wife after the police leave until tragedy ensues" — and I have indicated that. "We suggest" — and I am reading what I said in 1967 — "we suggest that a domestic police force trained in handling such situations with enlightened staff, educated in

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psychology, sociology and governed by special laws be instituted to save such a woman from permanent harm.” Nothing was done.

A brief I presented to the Special Police Inquiry Committee, I said it a little differently hoping to maybe impress. “There is a dire need in our community for policemen who have the training and authority to intervene in domestic disputes. Women who are brutally beaten and mistreated by husbands and boyfriends have no protection whatsoever and live in constant fear. We are frequently told by the patients that they have called the police only to be informed that the police are powerless to act in these situations. Often the husband, drunk and vicious, continues to pummel the wife after the police leave until tragedy ensues. Hundreds of such cases can be found in our files and I have indicated some of the examples. We suggest, once again, that a domestic police force be established with personnel trained and empowered to deal with domestic disputes. Training should include” — and so on’ I am saying it again — if necessary, provincial laws should be changed in order to save women and children from permanent harm. That special police force be separate and apart from the general police in the same way as the Youth Squad is set up right now.

Now last night I read in the press and I didn’t include it in my brief I think it was last night’s paper, I sometimes have, as you probably have, several papers waiting for me that I haven’t been able to read the day before, but I think it is last night’s — where in B.C. somewhere they have tried this out. I think in other places they have tried this out, so I am not very original. I might have been original in ’66 or ’67, but I am not original now. And they have what they call a special police component with social workers going along with them into the home. After six months they have found that this is a good preventative measure. Now this was in the Free Press, and I am not on the payroll of the Free Press. This was in the Free Press last night.

I respectfully submit this brief to you and I am prepared to answer any questions that you wish to put to me. Thank you.

MR. CHAIRMAN: Thank you. Are there any questions. Mr. Pawley.

MR. PAWLEY: I would like to ask Mrs. Ross one question if I could. It pertains to the violence that you have observed, spousal disagreements. Do you have many instances that are brought to your attention where one spouse has threatened the other’s life and that fact is reported to the police but still despite the reporting of that fact, the police have indicated that it is a family dispute and they are not going to be involved or they feel that they can’t become involved?

MRS. ROSS.: I have had many occasions when the police wouldn’t come because they have visited the home many times before, and they have called the Clinic and we have come to investigate and we have called the police. I remember one occasion particularly because it is very similar to this case which I talk about where he kicked her out of the house and the four children - I don’t mean the naked woman, the four children — and she came to us and she said, “the children are there, I am afraid he will kill them, and I don’t know what to do, I have called the police and they said to lay charges. I am afraid to lay charges because he is really threatening me.” So we got our social worker to go out there, in fact we got some of the patients to go out there’ and Frances might remember that situation because she was in a group, a sort of help each other group, and I had a bunch of women that I worked with for about five years where if anything happened, the homes were open to these women who have to get out of the house, and Frances was one of the ones that offered her home to any woman because she knew what she was going through and we had other women doing the same. Now we had to call the police, what we really had to do was say, “Look this is the Mount Carmel Clinic, we feel that you should be down there like pronto, for the children’s lives are endangered.” So they were there within minutes but not when she called.

Now we have many cases like that but I am not prepared, without permission of the patients, to reveal all that. I asked Frances permission before I spoke about her. Right? So that I am not prepared to give you names, I am not prepared unless I get permission.

MR. PAWLEY: The reason I ask, there is provision in the code that in the event one threatens another’s life that charges certainly can be laid. It is a criminal offence, so that I was interested in knowing whether despite this provision in the code you have case files which indicate that there has been specific threats to take one’s life and yet no preventative action taken in connection . . .

MRS. ROSS: This particular girl that was killed in 1971, Lucille, (Frances, remember?) numerous times the police were called and said, “Oh, not again” and he was threatening her life and that is why we helped her move’ seven times in one year, we would go down and help her move ourselves to keep her away from him. He would come to the Clinic and try to find her, numerous times. The man drank and was vicious, violent and! well I don’t want to lay any blame — I feel that something should have been done and it could have been prevented and we were absolutely, you know, we were appalled and sick and there are two young children now growing up somewhere, fatherless and motherless.

MR. CHAIRMAN: Is that all, Mr. Pawley?

MR. PAWLEY: Yes.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman. Mrs. Ross, I would appreciate some direction from you as to what you think our priorities should be on this Committee, whether you think that our priority should be looking into this area of domestic safety which really is a new perspective in the Committee hearings up to this

point or whether we should be looking at the kinds of things we have been looking at in terms of property rights and maintenance.

MRS. ROSS: As a fellow traveller who comes late, I don't want to scold you for coming late, but I said initially that I am not that concerned about property; that I cannot even speak about it because I am not that learned in that area. But what I see daily, what I know of and have known for the past 27 years — which is the number of years that I have been with the Clinic — I feel that something and that is why I think certainly⁸ this Committee should go further, that something preventative should be done and that women should feel safe in calling the police, the women should feel comfortable in the knowledge that they will be protected. Many of them are afraid because they know that the husband will come back and abuse them again. Many women, you know, the police say, "Oh, well, she is going to withdraw charges." I am going to give you an example. A patient of ours, and this might interest you, Mr. Pawley, a patient of ours who later became a staff member, worked in our Clinic, laid charges against her husband. The police came and asked to speak to her. Now I didn't know, unfortunately, I should not have allowed it to happen on the Clinic property or even allowed them to speak to her, and they said, "Are you sure you want to go through with this? You know you are not going to get very far." In front of me, "You are not going to get very far. I bet you by the time it gets to the Court, you will withdraw the charges. So why don't you just sort of think about it and maybe withdraw the charges." Now in front of me, and finally it just hit me that she ought not speak, and I said, "Margaret, no, I don't think you have to listen to this, you have to make a decision yourself," and I asked the police would they kindly leave. Now I don't know how legal that was.

MR. SHERMAN: Mr. Chairman, through you to Mrs. Ross, I am sorry I missed the first few minutes of your presentation, I'll certainly read it in the transcript of the meeting but I still come back to my question which I think I would have asked even if I had heard the first few moments of the presentation. You say that you are not that concerned with property but a major consideration of ours, of course, and of the delegations appearing before us has been the question of maintenance, and what I am asking you is are you saying to us that in your view we should be dealing with a specific problem that you have outlined to us in the area of family law here first.

MRS. ROSS: I am not negating what has already transpired. There exists problems in the area of separations, division of property, etc., no doubt about that. Perhaps what I am saying that there should be a new dimension, that nobody except Frances so far has spoken on behalf of the people who need the kind of protection that I am talking about and they, too, are left without anything; they, too, don't have too much recourse in getting help; that that new dimension should be some sort of protective mechanism which I have indicated, it could be anything else you please, where these women would be at least protected against brutality and against mayhem — a new dimension.

MR. SHERMAN: How do you see that particular police force or arm of the police force functioning, totally independent from the present force?

MRS. ROSS: I would be prepared to discuss it. I have said that when I made the submission to the Police Commission and to the Senate Committee on Poverty, I am prepared to discuss it. I mean I am not a see-all and know-all, I have made, I think by the way and subject to discussion, that if social workers and specially trained police, you know, they have homicide, they just work with homicide, right? They are specialists. They have narcotics, just work with narcotics. Now they have, I believe, a youth squad — do we have one here in Manitoba? I think you have and it is working quite well — all I am saying is, let us have a domestic force, separate and apart, specially trained with social workers. I think every agency would be prepared, including our own, to take a stint with the police in working from 4 to 12 or 12 to 8. Nothing wrong with social workers working — I will get killed — social workers working evenings and nights. Nurses do it, doctors do it, why not social workers? Police do it. Now I am not putting the onus on social workers' I think they are pretty helpless when they get into a situation like that, but there has to be some sort of legal entity which would enable the social worker in conjunction with this police force, this is new, you know I haven't got it in my brief, but this is an idea I picked up from the press really that is happening in B.C. right now, and it works apparently. Or, as I said, a specially trained domestic police force. I think there is one in New York. All right. Does that answer your question, Sir?

MR. SHERMAN: Yes, thank you.

MR. GRAHAM: Thank you, Mr. Chairman, through you to Mrs. Ross. I would like to ask one specific question. I believe somewhere in the material that we have had before now there was a statement someplace that 44 percent of the divorced cases that — and I think this went either '73 or '74 — that 44 percent of them had no property involvement. There was really nothing there even to provide maintenance. Do you believe that that figure of 44 percent is increasing or decreasing since that time?

MRS. ROSS: Well I don't like to play the numbers game, sir, but I would say that family breakdowns are a concern, a great concern in any part of society but particularly the low socioeconomic group because that's where children suffer; that's where the children are left with mothers who are forced either to work and go into low pay jobs or are left on welfare. So that is a great concern but I can't, you know, talk about the 44 percent, somebody must have done some studies. I can only talk about what I see around me and there are many many

break-ups, many break-ups.

MR. GRAHAM: Well in what you see around you, do you believe that that incidence of that occurring is lessening today?

MRS. ROSS: Which incidence?

MR. GRAHAM: Of break-up where there is no financial resource behind them at all.

MRS. ROSS: The people I deal with have no financial resources or not much and the break-ups are numerous. I have not done any studies in that area and, I'm sorry, I don't want to talk knowledgeably about something that I haven't got figures on. I don't know what the percentages are but all I can say is that I can see it. Women come in and say, you know, my husband left me or I left him, or we're having problems, and this is an occurrence that's — I'd go up to 80 percent in our clientele.

MR. GRAHAM: Well is it an increasing problem today compared to five years ago?

MRS. ROSS: I'd say definitely, definitely.

MR. GRAHAM: Thank you then.

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

MR. ADAM: Thank you, Mr. Chairman. Mrs. Ross, would you be aware of any case where a court has ordered a husband not to go near the family or the wife and that he has?

MRS. ROSS: I believe, Frances, you can answer that. Your husband was told not to come near you and how many times did he break the windows and get in?

FRANCES: Three or four times.

MRS. ROSS: Right. There you are.

MR. ADAM: I'm just wondering what kind of legislation could we bring in to prevent that, outside of putting the fellow in restraint.

MRS. ROSS: I would think that there are enough interested people sitting out there, enough people in this city who are sufficiently concerned, including myself, who would be willing to sit down with you gentlemen or whoever and discuss these matters pragmatically, realistically, as to how it can be achieved. It's a problem that should not be ignored.

MR. ADAM: Yes, this is one of the problems that I believe lawmakers face, is to bring in law that would really solve the problem because, you know, as far as the maintenance orders, alimony payments, we are being told that only about 25 percent of these orders are in fact adhered to. So how do you legislate behaviour?

MRS. ROSS: I did indicate, sir, that one of the ways would be to get the Social Service Departments or the government has many social services on its payroll or whatever, or any other social service workers, get together with the police force and in some way, if the law had teeth, if they had a backing and in some way work something out; in the same way, what do you think social workers do when they walk into a situation like that? Perhaps if the husband knew that there would be consequences of some sort and that the social worker was on the side of the woman and police were on the side of the woman' etc. etc., perhaps she wouldn't be as terrorized as she is to call the police again, knowing that all she has to do is pick up the phone and call the domestic police which have a special kind of interest and a special kind of concern and a special kind of legal backing which would enable them to act decisively. As it is, women are afraid to call.

MR. ADAM: You mentioned there's one case' the Frances case — do you have any other cases, are there many cases?

MRS. ROSS: Yes, there are.

MR. ADAM: And do you have any percentages or . . . ?

MRS. ROSS: There again I am constrained.

MR. ADAM: You haven't made any studies in that area at all?

MRS. ROSS: No, but we have them you know, our social workers have these cases, numerous. Look, very recently you read no doubt in the Press that a woman knifed her common-law husband. Or didn't you read it? Well it happens to be one of our patients, okay? We happen to know that he has knifed her many times; I don't mean to death but he has stabbed her with knives and we have patched her up, and for the first time in years, she took the knife to him.

MR. ADAM: Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you Mrs. Ross. Professor Cameron Harvey. Is Professor Cameron Harvey here, please?

MR. PAWLEY: The brief was read to us last committee meeting we held in Winnipeg by Joe Oliver.

MR. CHAIRMAN: Yes, the name was on my list. Is the representative of the Catholic Women's League, Mrs. Wryzykowski, here please? Would you come forward. I hope I pronounced your name right.

MRS. EVELYN WRZYKOWSKI: You did very well, thank you Mr. Walding.

Mr. Chairman, and gentlemen of the Committee, Good Morning. In today's society, as has always been, the family plays a role of vital importance in providing an environment of love and life, and a nurturing of distinct values which are indispensable to the individual and to society. It is from this deep conviction that we, the Executive of the Manitoba Provincial Council of The Catholic Women's League of Canada, address this Committee, as well as to those men and women who, while they may not share our faith in Jesus Christ, carry in their hearts and in their actions a concern for building a more human, more just and more united society.

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Primarily, we wish to congratulate the members of the Commission and the Government of Manitoba for the time expended in bringing forth this topical report on Family Law.

We believe that marriage is both a contract and covenant of love between a man and a woman. It is a partnership that involves a permanent commitment to each other for life. Further, marriage involves a level of communication that includes the whole person of each partner, physical, psychological, social and spiritual.

Now to pertain to Part I and concerning the Support Obligation, particularly children. The responsibility of parents is to provide each child with the kinds of care which are necessary for a sense of personal worth, trust, autonomy, a sense of values, initiative and creativity.

Although we concur with the general principles of child support set out by the Commission in Part I, Section A, we would like to state in reference to Section 3, that we feel it is not enough to protect the economic interests of children involved in marriage breakdown. Steps should be taken to minimize the psychological damage inflicted on children during and after separation or divorce.

With this in mind, we recommend the availability of family counselling during and after marriage breakdown. Where there are children, family relationships do not end with separation or divorce; they enter a new phase with special difficulties and dangers in which the possibilities for conflict are endless. The more co-operatively the parents can function in relation to their children, the better off the children will be. Counselling should be available to promote such co-operation as well as to assist the children in their own adaptation. We understand that very often children have been known to blame themselves for their parents' divorce. Such counselling could also benefit spouses, which in turn could be an additional benefit to their children; a parent shattered by the divorce experience is in no condition to help his or her children.

Further there are issues that these families must face which go far beyond the terms of reference presently proposed. Consideration should be given to laws that help resolve these kinds of human issues.

We concur with the General Principles stated by the Commission in the Section marked Part I - B: Spouses. We wish to have noted that Section 3 - subsection 4 (Disclosure and Allowances) provokes in us the desire to strongly suggest an alternative to the court action procedure. We accept that it may be necessary to formulate such a law to ensure justice and rights. A recommended adversary system may be preferred or used as a last resort and should not be excluded totally within the legal system. However, there should be options that can be legitimately and legally employed. For example, the court could use a recognized mediator who has a good knowledge of the law and other kinds of human knowledge and experience which can be equally and occasionally more important in helping people resolve their human and related problems.

This Section deals with a marriage in difficulty but not at the point of separation or divorce. Now the suggested legal action in Section 3 - subsection 4 is likely to produce further deterioration in the marriage relationship in that the court would impose an agreement. We are suggesting, therefore, that a more constructive course of action be explored to result in a more fully negotiated decision.

Now concerning Inter-spousal Maintenance. Marriage breakdown is, unfortunately, all too common a reality in our society. The Law Reform Commission is proposing new legislation designed to deal with the economic consequences of such breakdowns. On the whole, we believe these proposals are sound. We would, however, like to express our concern that the law should ensure that the spouse with the custody of the child or children be supported in their choice to be a full-time parent and homemaker by the provision of adequate maintenance. Few persons, functioning as single parents, have the personal resources to be self-supporting while at the same time making a home and providing adequate parenting for their children. We would hope that the goal of economic independence for spouses, following marriage breakdown, would not mean pressure on such persons to do the impossible, with consequent injustice to themselves and the deprivation of their children.

Economic difficulties faced by the former spouse in a subsequent marriage should not be solved by sacrificing the welfare of that original family.

Now in Part II, the Property Disposition. We would like to start by saying that confined within the four walls of the home, often ignorant of her husband's work, very quickly losing her exclusive control over the education of her children, more or less condemned to repeat the never ending sequence of household chores, harassed and frustrated by the constant push and pull of commercial advertising, the mother of the house often ends up doubting the worth of what she is doing, seriously questioning her role as a mother, a woman in the family and in society. As for the work of women outside the home, it certainly helps to solve some financial problems, but, except for a privileged elite, it does little to enhance the woman's value as a mother and as a woman. Unless the father takes on a share of the household tasks, which marks the father's entry into a new role within the family, the "queen of the home" risks turning quickly into a tired, exhausted, aggressive or depressed woman, with a sense of being but a second-rate citizen.

So we endorse the general concept of the Standard Marital Regime as presented under the Equal Disposition of Post Nuptial Assets because we see it as a beginning of recognition of the worth of the contribution made by women in the role of a partner in marriage, in the family and in society.

In honesty, we must state that we do not feel sufficiently informed on the full ramifications of this particular section of the Report to make in-depth recommendations at this moment.

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One point we do wish to make is that we are not in favour of the six months time option for unilateral contracting out. We do agree however with the right to contract out of the Standard Marital Regime, with individual legal counsel.

We heartily endorse the contents of the final statement under "Spreading the Word", made by the Commission and in particular the recommendation to compile a pamphlet or booklet for wide and prolonged distribution. We believe that this kind of education will be necessary.

In summary, these proposed changes are welcomed and we believe but a beginning of what could be done, in that, most of this proposed law deals with action to be taken after marriage breakdown and that still leaves unsolved who will, or how to ensure maintenance is collected on a regular basis. It leaves unsolved the emotional damage done to children and spouses by marriage breakdown and the effect that this will have on total society, because a divorce mentality hinders the ability of young persons entering marriage to understand it as a permanent and exclusive commitment.

We had a statistic which stated that right now the highest divorce rate is between the ages of 18 and 25 and over 60, rising number over 60.

The human and financial costs to society at marriage breakdown, which are staggering and largely wasted in unproductive efforts to make the best of a bad situation.

When marriage, still generally accepted as the cornerstone of society, begins to crumble, the whole edifice is in danger. I'd like to liken that to our homes when we find cracks in the plaster, we decide whether it's just a surface crack or if we must go to the basement and see how the foundation is doing and perhaps that's where the shoring up is needed.

We therefore strongly recommend and urge you, our legislators, to seriously consider a further Commission to study such things as: why marriages and families are in a malaise; why the fabric of family life is weakening; to consider what can be done to assist persons to achieve healthy, fulfilling marriages that will withstand the complexity of today's society; and to see what role the state could, and should play.

In making further laws, for example, such as mandatory education before obtaining a marriage license, perhaps we could compare that with obtaining a driver's license and take it further still. A high-risk driver has to go for further education. Perhaps high-risk marriages should get some special support and help. Surely anyone going into marriage wants it to be a success.

The state perhaps could provide public education that would help marriages through the present transition that's occurring from an "institution" concept to a "companionship" concept. This was described by Ernest Burgess, a noted family sociologist, the kind of education to allow for inter-personal competence which this companionship marriage requires.

Now we certainly don't wish to claim competence in determining what such a further Commission should or would discover. We have only made these few points to hopefully spark your further imagination, interest and active concern.

It is our strong belief in you as the law-makers and the law-enforcers of our province, that encourages us to make this recommendation to our government to go a step further, which incidentally, could be complemented and reinforced, enforcing the work already being undertaken by churches; that you would contribute your special insight and support to the new and dynamic movement towards a general improvement of the marriage relationship which you have proven your recognition of and concern for by requesting this study from the Law Reform Commission on Family Law. Respectfully submitted.

MR. CHERNIACK: I must thank you or for your complimentary remarks about your faith in us as legislators; I hope we can deserve it.

I have not noticed any comment in relation to one of the problems that I think we've heard a good deal of disagreement about and that is in the field of maintenance of the dependent spouse. The Commission recommends a number of factors that should be considered. One of the recommendations has not been generally accepted by the briefs and that is whether or not, fault as to the breakdown, should be a consideration in deciding the amount or the term of maintenance.

MRS. WRZYKOWSKI: Incidentally, I have our First Vice-President with me, Mrs. Shirley Scaletta, and we are very frequently able to present things together and if you don't mind I'd like to ask her to come forward to help with answering. I find two minds are better than one.

MR. CHERNIACK: We don't manage too well with twelve, it seems.

MRS. WRZYKOWSKI: You're suggesting that after a breakdown, this is when you have a divorce situation or a separation situation, is this what you are referring to?

MR. CHERNIACK: Yes . . .

MRS. WRZYKOWSKI: To establish whether there is a fault and whether who is to blame should get less money and the one who isn't to blame should get more money.

MR. CHERNIACK: That is the proposal that has been made. I'll read it to you: "There are some eight items that should be involved in the judge's consideration of maintenance." And the final one is: "The relative responsibility of both spouses for the separation on marital breakdown, or for the refusal or neglect to provide support." In other words, the person at fault may, if it is the earning spouse, be required to pay more or for a longer period of time, or if it's the dependant's fault, would receive less or for a shorter period of time. That

would be one of the factors, as just worded. And since there's been quite a bit said in opposition to any discussion or hearing or quarrel as to who is at fault in determining maintenance, I'd like to have the reaction of your organization.

MRS. WRZYKOWSKI: Well first of all, I think that it's very difficult to establish a fault in a marriage breakdown and I can speak only there from experience in the sense that I think that marriage breakdown is really a responsibility of the two persons and that it is a difficult task for any judge, who simply has these people come to him, to establish which one is at fault. And therefore to say that we would favour a no-fault or that a fault has to be found is not really dealing with what the initial problem is, which is to understand why the marriage has broken, rather than to lay blame.

MR. CHERNIACK: Well I appreciate that response, it sort of supports your own statement on Page 2, that it's important for the children that on a breakdown there should be cooperation between the parents rather than, as I read it, a quarrel that goes on that may affect the children. I'm ready to move on then to another point.

On Page 6, I think it is, you make a suggestion which I tried to make about twelve years ago and it was laughed out of the Legislature and that is - premarital well I refer to it as counselling; you call it "mandatory education". When I tried it, many years ago, all I suggested was that, before a marriage takes place there should be some sort of certificate by any one of a number of presumably people trained in counselling such as ministers, teachers, even lawyers, social workers, or anything like that, that there should be a requirement that at least the couple about to be married will have interviewed someone, whether or not they took their advice was beyond me. But you're saying much more than I tried to do, which I failed very much to accomplish, and that is mandatory education. Now really, are you seriously considering the possibility of forcing people to study and pass exams or something like that? To what extent can you do this? — and I give you my experience that nobody thought you could even force a visit to a counsellor. I'll try it again.

MRS. WRZYKOWSKI: Could we refer you to some of the things which are already happening within some of the private schools that we are aware of, whereby there is a very in-depth study course going on in marriage at the Grade XII level, and I refer to St. Paul's High School in particular.

MR. CHERNIACK: I would very much like to hear that although that's probably information that could be filed with us. I don't want to take up too much time of the Committee, although I'd be very interested.

Then do I understand you to mean that in the educational system there should be a requirement for education relating to marriage?

MRS. WRZYKOWSKI: It certainly can begin there.

MR. CHERNIACK: Well that's something I understand. The way you word it is, mandatory education before obtaining a marriage license, like a driver's license, etc., which is different to the educational system.

MRS. WRZYKOWSKI: I think we're saying both, really. This is a suggestion that could come out as a result of a further study, if it was feasible that it could be enforced, if it was realistic. But in the first place, I'm sure that education towards understanding how marriage relationship really could and should work, would begin in the schools, education in many areas, but to consider the possibility of mandatory. Some ministers, are doing that now, are saying, "I will not marry a couple because in conscience I feel that they should have a certain knowledge about marriage; if they're not prepared to take it, I'm not prepared to say that I think your marriage is going to work and so I won't legally bind you to each other." Then they will go to the state of course, and be married usually . . .

MR. CHERNIACK: Then they'll go where?

MRS. WRZYKOWSKI: To the state, they will go for a civil marriage. They will do that or they will take the course and say, okay what you're saying is right.

It's also interesting that a couple in a recent class of marriage preparation — there were two persons who were coming as a result — were going into their second marriage, and they said, following the course, if we had known what we learnt now, we would not have failed in our first marriage. Which says something, too, that very often those preparing for marriage can only absorb a certain amount; it's those of us who have been married for awhile that can understand and therefore there should be even further opportunity. That's what I mean a "high-risk". When a marriage breaks down people need some help to see, well what is it that we're doing wrong? How come we can't get along? We were in love, what's wrong now?

MR. CHERNIACK: Thank you.

MR. PAWLEY: I wonder if I could just deal with some of the other areas that had been dealt with by various submissions and I would very much like to have your views regarding them. .

First is, we've had a number of briefs proposing that the sharing of property under the Standard Regime at the time of the termination of the marriage, that in fact that should be an immediate sharing of community property, immediate sharing, immediate joint ownership, management, and that that ought not to wait until the termination of the marriage, that should take place immediately. I'd just like to have the views of your group on that.

MRS. WRZYKOWSKI: I think that it would be proper that there should be a waiting time which would allow for one of the suggestions that we are making for more of a mediator services, auxiliary services which would provide the couple with the opportunity to negotiate more fully in the division of their properties. We

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would favour a deferred situation rather than an immediate one.

MR. PAWLEY: Deferred. I'm just wondering so that there's no misunderstanding that in preference to a policy that would mean that from Day One of the marriage there would be joint ownership of all the assets accumulated during marriage. You would say, no, leave that until such time as the marriage is terminated and then if the matter has to be adjudicated, then the property will be divided at that point rather than earlier.

MRS. WRZYKOWSKI: It seems to me that couples have to be allowed to do that. In other words, I wouldn't want that to be mandatory that you know, the line is drawn and this is . . .

MR. PAWLEY: From Day One?

MRS. WRZYKOWSKI: Yes, and I believe that that was the concensus of our group. Not mandatory that immediately on marriage that it's automatic that all assets and everything are immediately divided down the centre. Is this what you are saying?

MR. PAWLEY: Jointly owned.

MRS. WRZYKOWSKI: Jointly owned. In other words, that my husband couldn't buy the house without my signatures . . . would be a joint ownership immediately.

MR. PAWLEY: If I could just expand further. Under the proposal, all assets brought into the marriage by the parties of course would remain separate, a gift inheritance would remain separate property, but all assets accumulated during the marriage, leaving aside those other separate assets, would be joint assets, and as those assets accumulate during the course of the marriage, they would be jointly owned, jointly managed, jointly controlled, and that therefore community property relationship rather than deferred relationship.

MRS. WRZYKOWSKI: Yes, we accept the community property, sharing equal possession of the assets gained from Day One of the marriage' during the marriage.

It seems to me if I could recall — I listened to Mr. Huband, when he presented his, and I listened well because he was speaking as a lawyer as well as a family man, and I could identify with some of the things he was saying. I'm having difficulty to use the right terms to express to you what it was, but as I understand it, we wouldn't see that it should be mandatory in terms that there would be situations where one would not want that to be. And I think that Mr. Huband expressed it well. As a lawyer he has a company or he's involved with a firm. How involved does that get? It's the ramifications of all this that we find it difficult to really say. Do you know what I mean?

MR. PAWLEY: Would I be fair in saying that I would sense that you have some sympathy towards the proposal, but it's one that you would like to see much more study and examination on.

MRS. WRZYKOWSKI: Yes, thank you . . .

MR. PAWLEY: Another area I would like to explore with you then is the entire question of judicial discretion, whether you feel there should be any judicial discretion permitted or that the division be equal and clearly established without any judicial discretion. Would you open the door at all, in other words, to any judicial discretion as per the Ontario legislation on family law that is presently before their House?

MRS. WRZYKOWSKI: I find that a difficult question to answer. First of all I think it puts such a tremendous onus on the judicial person and this is why I think it goes again to our recommendation that there should be other people to offer advice in that, you know, to help people to try to understand what it is that they are saying or doing and that they would be encouraged to express and to discover what is just and right; definitely that is the important thing.

MRS. SCALETTA: We believe that people will accept a decision much more readily, much more responsibly, if they have had a full part in making that decision and that doesn't always happen when we have his lawyer and her lawyer meeting together but the people themselves never sit down to negotiate their own . . . you know even at marriage breakdown or divorce there is still that possibility, as adult human beings they should be able to sit and negotiate the future of their lives and the lives of their children.

MR. PAWLEY: Would you agree then that once we allow judicial discretion, the judges, as human as he or she is, to exercise their own possible prejudices and biases or the lawyers that are involved to exercise their expertise in the court, that the permitting of judicial discretion could sometimes create more problems than it would remove and that we are better to establish by statute a very clear standard regime without the possibility for deviation from that regime as a result of judicial discretion.

MRS. SCALETTA: We think there is a place for both, Mr. Pawley, we believe that there is a place and a need for both kinds of experience for a decision-making policy, that the courts, that the judiciary still has a very definite place in assisting in the decision of properties and what will happen with children.

MR. PAWLEY: Even insofar as the equal division of assets are concerned, though accumulated during marriage?

MRS. WRZYKOWSKI: Yes, I would . . .

MR. PAWLEY: You would still permit some judicial discretion there?

MRS. WRZYKOWSKI: I must say that we certainly didn't go into that particular area with our group.

MR. PAWLEY: If you would like to discuss this, I'm sure the Committee would welcome any further views you might have on that because this will be a very important area to the Committee. One further question. Where there is no Will and the estate has to be distributed, would you do as has been recommended by a number of briefs, the entire estate transfer to the spouse rather than the present division of the estate . . . ?

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MRS. WRYZYKOWSKI: That has ramifications again in terms of if this is a second marriage or third marriage, and it's really hard to just make a statement on that just that way, there are these things to be considered, in fact they're a must.

MR. CHERNIACK: (Inaudible)

MRS. WRYZYKOWSKI: Yes, this is unfortunate I realize. We didn't again, as I say, get into that but we could mark it as a question to be deliberated.

MR. PAWLEY: Yes, I think the Committee would appreciate your views on those areas because we have received other views and if we could receive your views I am sure it would be very helpful.

MR. SHERMAN: Mrs. Wryzykowski, on page 4 of your brief you say "that we are not in favour of the six months time option for unilateral contracting out. We do agree, however, with the right to contract out of the Standard Marital Remine, with individual legal counsel." I wonder if you could tell me just exactly what you mean by that. I'm not sure whether you are opposed to the six months time option or you're opposed to unilateral contracting out.

MRS. WRYZYKOWSKI: Unilateral contracting out.

MR. SHERMAN: The contracting out must be bilateral, mutual agreement?

MRS. WRYZYKOWSKI: Yes.

MR. SHERMAN: Thank you.

MR. JENKINS: Mr. Chairman, I have a question here, I think it is on page 6. Mrs. Wryzykowski, on page 6 in your brief you state here in your summary that the proposed changes are welcomed and you believe are a beginning of what could be done. This is dealing with spousal maintenance and also child maintenance after a marriage break-up either by separation or by divorce. We have had some very strong presentations that the state should take over the payment of maintenance and in turn collect it from the spouse that is responsible to make those payments. You don't seem to come out too strong one way or the other and I just wondered what the position of the Catholic Women's League would be on this question. Are you in favour that the state should make the payments and make the collections from the spouses, and if so, how could we do it because sometimes they go from one province to another?

MRS. WRYZYKOWSKI: This is really why we put it in our summary in the sense that we certainly didn't come up with any recommendations or it would have said "and we suggest that this is the way to resolve that problem." We only see it as still unsolved and definitely a problem, but to have come up with a specific method I think that we would have to go into a great deal of study with lawyers and social workers and those kinds of people in order to suggest a method by which this could be done. And certainly when we say that we believe that the homemaker should receive sufficient maintenance in order to stay home and be a homemaker as long as the children require that, then I speak that we probably are suggesting that the state would have to be concerned that this maintenance was coming through and the state would have to supplement it until such time as it was found.

MR. JENKINS: That leads me then to a further question, it's one that has been asked; you know, we have one household that has been broken up by death and because of insufficient funds left by the marital relationship this woman is forced to go on social assistance and in that case it's "x" number of dollars. Now in the other case it's marriage break-up by one or the other partners deciding that they want to take off. What would you say then that the maintenance level should be, provided by the state in that case? Should it be the total amount that say the judge, under the discretion system that we have now, has decided that say . . . Oh, just for sake of argument, he's decided \$700 per month total maintenance and he's not making those payments. Do you feel that the state has to make that total payment or just up to the level of the social assistance at that time? I mean if the state can collect it, fine and dandy, that's a saving; but if we can't collect it?

MRS. WRYZYKOWSKI: At this point you're getting some personal opinions, all right?

MR. JENKINS: Right.

MRS. WRYZYKOWSKI: Because certainly there has to be a discretion on the part of the state to the extent to which it is able to provide for all these things. We'll be seeing gentlemen walking out of divorce and taking off and saying it's really a safe place to hide out in the hills of Alberta, you know, and this is why we go back again to saying the problem isn't there, this is a result of other problems that we're not dealing with. The Commission has to deal with how to ensure the kinds of marriages that this doesn't happen so frequently. It's happening so frequently that it's a major problem and I think we're just patching the plaster cracks with the law and that we have to go down deeper and say, "Okay, what's wrong here?"

MR. JENKINS: There's one more question. This deals with your recommendations to the Committee here with the unilateral opting out. I want to pose to you a question and you said that you feel there should not be unilateral opting out of the Standard Marital Regime that is recommended but that this only come about at the break-up, not that it takes place that there would be joint ownership of property. Now supposing one member or other of the marital team, shall we say in this case, is anticipating deserting his wife or vice versa and he or she owned most of the family assets and over a period of a few months gets rid of them, that leaves the spouse who is going to be deserted in a pretty destitute position. Now you say you want to wait until either there is a break-up or something but you don't favour the joint ownership of property accumulated during that marital regime but wait until it breaks up. Can you not see that there will be cases where there actually will be nothing left?

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MRS. WRZYKOWSKI: I think that someone helped us to clarify ourselves to say that we didn't want it unilateral in the terms of one person being able to do that, but bilateral, and that we did favour the six months period if that were going to happen but that each person had to have counselling on that, each person had a right to their own counsel.

MR. JENKINS: I can quite understand that but when does this joint ownership come into effect? Six months hence and they can bilaterally opt out or what do we do with marriages that are already in existence? Do we wait until there is a break-up because the house, the car and the boat and the other things could be all owned say in one or the other spouse's name and if that spouse wanted to get rid of them and was contemplating a marriage break-up, you know, let's face it when we get to a marriage break-up both sides can be very bitter and one can become very vindictive and make sure that there is nothing left for the other spouse to share.

MRS. WRZYKOWSKI: Yes. I find it really difficult to give you an opinion, you know, by the Catholic Women's League on that. These are unjust situations and we hope that somehow the law can find a way to ensure that this injustice doesn't happen. I think it's beginning to deal with it but I think it's leaving us with still a lot of questions.

MR. JENKINS: But your group has not really come to a solid position say on whether . . . a position that was asked I think by the Action League, that their be joint ownership of assets from Day One.

MRS. WRZYKOWSKI: No, we didn't really deal with that fact as a group. We felt that this other focus that we were taking was really the one in which we find that perhaps these kind of problems would be far less evident.

MR. JENKINS: Thank you. Well perhaps when you are deliberating on some of the things that Mr. Pawley has suggested, you might deliberate on this one too and give us the benefit of your thoughts on this matter.

MRS. WRZYKOWSKI: It perhaps will come out as we have on the last page there issued to you, a possible resolution which would be coming out of our convention and perhaps we could prepare those kinds of things with just a brief on that.

MR. JENKINS: Fine, thank you very much.

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you ladies. Mrs. Jean Carson, please. Mrs. Jean Carson, would you come forward please. The representative of Christ the King Parish Council.

MRS. CARSON: Mr. Chairman, members of the Committee, Mrs. De Baets will present the brief on behalf of the Catholic Women's League of Christ the King Parish Council and I intend to answer any questions that may be brought forth.

MRS. DEBAETS: Good morning, gentlemen. As Catholic women, we wish to express our views in regards to some laws that may affect us in the future.

We believe the law should be just and protect the vulnerable from injustices. An example would be that the law should protect the widow or widower who may marry out of love or loneliness, only to find that the other spouse is a scoundrel whose only interest is a financial gain.

We agree that women should be given equal rights in property disposition. A woman who contributes either as a homemaker or gainfully employed outside the home should be entitled to equal benefits. A woman who chooses to be a homemaker, should be regarded as making valuable contribution to the welfare of her household as well as to society.

We have only taken one portion of the proposed recommendations by the Law Reform Commission to express our comments and opinions.

Part I - The Support Obligation, Spouses, General Principles.

We recommend an additional clause inserted in No. 1 to read as follows: EVERY MARRIED PERSON IS OBLIGED TO CONTRIBUTE TO THE SUPPORT AND MAINTENANCE OF HIS OR HER SPOUSE BY SUCH FINANCIAL MEANS AND/OR SERVICES AS SPOUSES MAY BY WRITTEN OR ORAL ARRANGEMENT OR BY CONDUCT AGREE — in accordance with the family's available means and financial circumstances. Disclosure and Allowance.

We recommend complete deletion of No. 3 for reasons as follows:

1. When a spouse has to court action in order to receive information about the spouse's earnings, financial decision of household operation or to receive a personal allowance, such a marriage is in need of family counselling, and they should be referred to a church minister, pastor or marriage-family counselling agency. The emphasis should be on preservation of marriages rather than the dissolution. It should be a requirement for those wishing to get married to receive marriage preparation courses that include money management, communication, understanding, legal rights of each spouse and their responsibilities. The recommendations put forth in No. 3 should be the objectives of marriage preparation courses rather than legislated law.

2. If the Disclosure and Allowance law were to be legislated, it may bring about greater conflict in a marriage over petty incidents whereas the marriage could have possible been considered workable.

3. This law if enacted may be difficult to administer and could result in greater bureaucracy.

4. In order for democracy to survive, married spouses should be encouraged to work out their own problems rather than have laws that will state when, how, where or what they are supposed to do. People

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should be encouraged to think for themselves. When conflicts do arise, emphasis should be placed on family-marriage counselling.

5. Marriage should not be regarded as a commercialized business partnership, but rather as a personal commitment of spouses.

Respectfully submitted.

MR. CHAIRMAN: Thank you. Are there any questions? Mr. Adam.

MR. ADAM: Thank you. I didn't get your name properly but anyway . . .

MRS. DE BAETS: My name is Mrs. De Baets.

MR. ADAM: . . . through you, Mr. Chairman, to the witness. What is your opinion on the fault clause. Many of the briefs have indicated that there should not be any fault involved as far as marriage breakdown.

MRS. CARSON: Our brief did not deal with the fault as we just took one portion of it So if we speak on the fault it would be our own personal opinion.

MR. ADAM: You don't have to answer the question but would you want to elaborate on that?

MRS. CARSON: You mean personal? Well that's something that's very difficult to establish as to the fault. However, if one spouse makes no effort to make a marriage work then I think there should be some consideration in that area but I couldn't . .

MR. ADAM: Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any further questions? Mr. Barrow, use the microphone, please

MR. BARROW: Thank you, Mr. Chairman. One part of brief that I find very interesting is on page 2 in your second paragraph, "*If the Disclosure and Allowance law were to be legislated, it may bring about greater conflict in a marriage over petty incidents whereas the marriage could have possibly been considered workable.*"

Do I understand from this , if the government did set up an agency to make the payments available on a monthly basis and take the chance of collecting this from the spouse who is supposed to pay. If this were done, then would you think that more marriages would break up because this is readily available? Marriages that are not working but not bad, that they would be more tending to break this off because they have a steady income. Is this the way you see that in that paragraph?

MRS. CARSON: I think that section deals with those that have not broken down. This is disclosure, this is a husband and wife living together. Now we feel that if you are going to do it in a household where both husband and wife are together in the same household, it creates a climate that is undesirable. Sometimes little things can be overlooked in a marriage and if you have a law that forces people to disclose certain things it can create more problems than really solve them.

MR. PAWLEY: I wonder if I could relate back to the question dealing with no-fault for a moment in which I believe you did indicate you felt that fault should play some role in the determination of maintenance, and I wonder if I could break it down into categories and see whether or not you would attribute fault in each of the types of categories that I would like to present to you. One, where there are children involved and the spouse who might be considered to be at fault would on the other hand be also considered to be the one for the interests of the children should remain with that spouse, would you allow for any consideration of fault there insofar as the amount of maintenance payment made to that spouse and children?

MRS. CARSON: I think the children should come into consideration to begin with as I think they are the ones that suffer more than the husband and wife when they separate, therefore, I think the children should be the main consideration in maintenance.

MR. PAWLEY: So where there are children attempting to reach maturity, then you would be prepared to eliminate fault as a consideration there if the children would better be with the spouse that would be considered by a court say to be at fault.

MRS. CARSON: Yes, I think this is something that the decision should be left up to the courts really where all the facts are presented and I think that is who should deal with it in that area.

MR. PAWLEY: Well let me present to you another type of category where one spouse has lived for many many years with the other spouse, and during that period of time that spouse's ability to develop talents or develop earning capacity has been impaired, would you, and where obviously that spouse upon separation would have to obtain some retraining, some improvement if he or she were to obtain a position of independence, would you allow for maintenance by the so-called faultless spouse to that spouse until such time as that spouse was able to re-establish his or herself rather than that spouse becoming a dependent on the state, for instance, for social assistance?

MRS. CARSON: Well there again it is very difficult to know. Each person is different, each one is individual and they have their preferences, and circumstances, and the health of the spouse would be one of the considerations. Again it would be very difficult for me to answer that.

MR. PAWLEY: Would I be fair in saying that you feel that fault ought to be a factor, but would I be correct in saying that you would have reservations about the present, you know in the present Wives and Family Maintenance Act a court must be satisfied that the one party has been guilty of a number of things such as assault, persistent cruelty, you know the list to my mind it is a very archaic list of grounds. Would you agree that that list ought to be removed and that there should be some movement away from the present established list of

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things that must be proved in a court before one spouse can separate or obtain maintenance from the other, and here I am referring to persistent cruelty, assault, you know there is four or five different items, desertion, neglect, persistent neglect.

MRS. CARSON: Speaking personally, I would say that I would not like to see the laws become where individuals become irresponsible for their actions. I think that in that area there should be fault to that extent that every individual should be responsible for what he does. In other words, if he is brutal to his wife, there should be a law to protect a woman from that brutality, but I wouldn't like to see an irresponsible type of an approach.

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

MR. SHERMAN: Mrs. De Baets, in paragraph one of your recommendations on Page 2 on Disclosure and Allowance, you take the position that I might say or it seems to me is a position that I have taken myself in discussion with a number of people on this whole subject. What you are saying in effect is that if it is necessary to resort to court action for disclosure and information with respect to the financial affairs of the marriage that that marriage is already in trouble, that marriage has gone beyond the point of creating a compatible condition for problems to be worked out in mutual discussion, the marriage is already in trouble.

MRS. DE BAETS: That's right.

MR. SHERMAN: And the problem really goes back to whatever tensions exist between those two persons in that marital state.

Let me just ask you about one other point in that respect. Are you saying in effect that it should be made more difficult for people to get married? It should be tougher to get married rather than easier?

MRS. DE BAETS: That's right.

MRS. CARSON: Yes, we do wish that.

MR. SHERMAN: So you would see that the kind of marriage preparation course that you suggest which would include information on rights, family rights, spousal rights, money management, etc., would have to be taken by both partners before a marriage licence was granted or a marriage service was performed. That would have to be done officially either through one agency or another, perhaps through the churches, before the licence could be granted and the marriage ceremony performed.

MRS. DE BAETS: It could also begin in school, like the brief previously stated, in Grade 12. There could be some counselling given there already, children of that age on marriage and that marriage is a commitment. You know you do not go into it and then just opt out of it whenever you feel like it. And as far as money management, that is another area. I can give you an example of my own little daughter. She is only in Grade 10 and she is going to a school in St. Boniface and there is a Sister teaching her. Now the Sister has taught these little girls how to manage on a budget should they be away from home. I think this is very very good. She is doing this on her own, but my daughter came home, she had a certain sum that she would be earning a month, could you live in an apartment, could she budget her own clothes and her food and her shelter, and I think this is just fine. Something in that regard, you know' on marriage also.

MR. SHERMAN: Well I can certainly see the value of that kind of counselling or instruction at the school level but that presumably would not be sufficient to meet the requirements that you are spelling out here.

MRS. DE BAETS: No, I understand it wouldn't but I am just giving you an example of one little area that this happened.

MR. SHERMAN: Right. And that would be highly desirable.

MRS. DEBAETS: And most of the marriages break down on account of money. The young people today, a lot of them today, you know, they get into financial difficulties, without their fault, with all these credit cards that are around. There is sometimes the breakdown of marriage right there. I have known of cases where these young couples they didn't know how they got themselves into that. There is another area of why marriages break down. Sometimes it is not for other reasons only but you see they cannot take it any more. This is what I mean to go back to the school, you know, about budgeting, about managing your finances. This is good education for all of us, isn't it?

MR. SHERMAN: Yes it is. And then when a couple decides to get married, . . .

MRS. DE BAETS: Yes, they'll have . . .

MR. SHERMAN: . . . but then even at that point they cannot just rush off and get married, they have to go through the necessary medical examinations and they have to go through or demonstrate to a qualified authority, either a civil or religious authority that they have taken a course in marital preparation covering the kinds of areas you are talking about, and that becomes part of the institutionalized process of getting married.

MRS. DE BAETS: That is right. That is what we are proposing. We now have family counselling in our church as it is even for people who are having difficulties. This exists right now.

MR. SHERMAN: Thank you very much.

MR. CHAIRMAN: Are there any further questions? Hearing none. thank you ladies.

Is Mrs. Havelock here please? Is Yana Berkowski here, please? Mrs. Cramer. Is Mrs. Cramer present? Professor Sokoloff. Is Professor Sokoloff here please? The Family Services of Winnipeg, Lois Emery. Would you come forward please.

LOIS EMERY: Thank you, Mr. Chairman. It is Lois Emery, and I am a staff member with the Family Services of Winnipeg which some of you may know as The Family Bureau. We have been in existence since 1937, and over the years and through such services as marital and family counselling, homemaker service, family day care and family life education, we have tried to help families with the challenging tasks of becoming, being and sometimes separating, as families.

Our experience has taught us that families exist as families before and after any marital separation. It has taught us that there is pain for all members of the family when marital breakdown occurs; that this pain can be exacerbated by laws that seem unfair or no longer fit the realities of today's families, and that such laws can continue to affect families adversely long after the legal separation has taken place.

Within this kind of context, we would like to comment on certain aspects of family law that are of particular concern to us as a family agency.

We believe marriage is a partnership in which there should be mutual responsibility and sharing. We hope this principle can be supported as fully as possible in the law. Therefore we question the concept of "deferred community of property" because we feel the principle of partnership would then seem to be linked, in a legal sense, largely with the ending of a marriage.

When marriages must end, we are primarily concerned for the future of all members of the family. Separation is painful, but it should not be completely destructive of the family. It has been our experience that the process of fixing blame has often only increased the stress for the whole family. We are therefore opposed to "fault" as one of the conditions of determining spousal maintenance. Much more important are the financial needs and resources of the family members involved.

We should like to point out, in connection with maintenance, that many of the families we encounter in our work would be more directly affected by the possible changes in the obligation to support than by the division of property. Often there is very little property to divide between the separating partners of the families we know.

When spousal maintenance is assigned because of the needs of one partner, we feel it should be done with a view to the eventual economic self-sufficiency of that spouse. In today's world, families seem to be able to function more effectively when each of the separated spouses is economically independent of the other and where both can be responsible for their children.

We want to emphasize that, although we are suggesting that spousal maintenance should be viewed as temporary in nature, we believe that both parents, whether together or separated, are responsible for the maintenance and support of their children. And we believe that this responsibility should continue until the age of majority, 18, of the children. We also want to affirm the principle that supervision is among the needs of the child for which both parents share responsibility.

As an agency involved with many separated families, we know that the collection of maintenance can be one of the major stresses for a separated spouse. For this reason, we would recommend the establishment of a public agency for the collection of maintenance.

Finally, we should like to speak about one aspect of family law which may not be a direct concern of this Committee, but which is of great concern to us as a family agency, that is the custody of children in a legal separation or a divorce.

We know from many years of experience that it is the children who stand to lose when parents engage in a long, drawn-out legal dispute as to who is to have custody. And we know that no other area of contention whether it be maintenance, division of property or whatever, can be as destructive of the future of the whole family as that of custody.

We haven't any instant or simple solutions to offer. We would ask, however, that this Committee consider recommending that some provision be made to look at this most complex issue — the question of custody.

The Family Services of Winnipeg appreciates the opportunity to present this brief to you. As a social agency whose purpose is that of enhancing, restoring and sustaining families, we are very much aware that good family law is the cornerstone of all aspects of family life. Thank you.

MR. CHAIRMAN: Thank you. Are there any questions? Mr. Graham.

MR. GRAHAM: Thank you, Mr. Chairman. Mrs. Emery, I commend you for your brief in this particular aspect regarding the custody of children. I know that while you consider it the number one problem and you have no simple solutions to offer to us, I was just wondering if you could advise us where we go for advice to find solutions to these problems because we are the ones that are ultimately going to be charged with this and we are looking desperately for advice in that respect. Can you make any suggestions to us?

LOIS EMERY: Well I think certainly agencies like our own in which one of the areas of concern is marital and family counselling, we have a lot of informal knowledge certainly from our many marriage counsellors. I think services like Family Court and the Family Court counsellors would certainly be aware of some of the problems and I think perhaps that's where we have to start, is to define more clearly what the problems are.

I think certainly the material in the report on Family Law will clear away some of . . . well they're important, but some of the areas that can be cleared away more easily by law so that there is perhaps more of an opportunity to look at some of these more difficult areas. I know that there have been suggestions as long as we have an adversary system in matters of separation and divorce that perhaps one aspect to be considered might

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be that of the child advocate, I'm sure this has been suggested to you before, that someone who is primarily concerned about the rights of the children . . . as I say, I think that there is much advice perhaps from social workers and others involved working with families, who would be willing, quite willing to sit down with you at any time to discuss this in more detail and with some of the thoughts that have been made, both in the writing and in our experience.

MR. GRAHAM: Do you think it is possible for us to write into legislation the custody of children or should that be left as a judicial discretion of those that are intimately involved in the particular case that is in question?

LOIS EMERY: Well legislation certainly can't legislate the pain and the suffering and everything else that goes with marital separation whether there are children or not. It can't end the confusion of kids who don't know what's happened and may have some feeling that they've been responsible. But I think perhaps in areas such as maintenance, if this is clearer there may not be as many family fights, and perhaps there can be in areas like child advocacy. It would seem to me, and I am not a legislator, that it might be possible if this was felt advisable that a protection of children like child advocacy could be written into the law. You can't solve the problems; I think judicial discretion has to enter into this but it might be possible in certain areas to write in laws.

As you see, I can't be of great help to you because we realize it is a problem. We see the after effects of the battles over custody. As I said in our brief, we haven't too many instant answers.

MR. GRAHAM: Well the reason I asked the question is we have had briefs before us previous to yours which have more or less indicated they would like to see written into law as much as possible, and the removal to as great a degree as possible, the judicial discretion in the disposition of a divorce case. There are people that would like to see all the i's dotted and the t's crossed so that you could just refer to it and say this, this, this, this and that's the way it's going to be. I think that's rather a utopian view of it.

LOIS EMERY: Yes, you can't legislate and I don't think we should try, human emotions and a sense of responsibility. We can say that the family must take a certain responsibility for its members by law but we can't legislate a sense of responsibility. I wasn't quite sure about your question and I may be wrong in my answer at this moment. Certainly I would think that judicial discretion should not be permitted in terms of property but I here am talking more about people than property and here perhaps we need as many wise heads as possible. The child advocate does not necessarily have to be a lawyer, it could be — it sounds as though I'm selling my own profession — but it could be a social worker or someone like that who is used to working with children, who has some awareness of the terrible confusion that they are going through as much as anything else and can help sort things out — as much as can be sorted out by law. Not all of it can.

MR. GRAHAM: We had a proposal put forward to us at the last session of the Legislature to establish a unified Family Court which would have support services and I had looked forward in great anticipation to seeing this in operation. I think that had that been done for a period of a year or two, we might very well look on the operation of that court and draw from the experience of that court before we start passing legislation that would maybe affect the operation of that court.

LOIS EMERY: Yes, I was not with the Family Services at the time this was done but it's my understanding that our agency was very much in support of the unified Family Court. Certainly, thinking of my own experience as a social worker which has in part been in child welfare as opposed to family services, I believe anything that can be done to make clearer and simpler and more humane these legal processes which are difficult for all of us, the better it is. It seems to me a unified Family Court in which your resources are all under one roof, if only the fact that you don't have to go ten blocks away for every little bit of help you need, is worth it, apart from the fact that I think if you have a unified Family Court then perhaps you can also gradually engender and develop a kind of unified philosophy towards this whole area of marital breakdown, and all the family members involved, the husband, the wife and the children.

MR. GRAHAM: One final question then, Mrs. Emery. In the dissolution of a marriage through divorce and the fact that we are dealing not only with maintenance but disposition of property and the protection of the rights of one spouse as opposed to the other' in your opinion is there not a great danger that the rights and the duties of the parents to the children may become forgotten?

LOIS EMERY: I must admit I haven't thought of it this way because it seemed to me, accepting the report on Family Law as a kind of guide, that they very clearly stated the responsibility of the family towards the children in the area of maintenance. Could you amplify a little better and then I can answer more.

MR. GRAHAM: Well you have expressed a concern here for the custody.

LOIS EMERY: Yes.

MR. GRAHAM: Custody and maintenance, not only that but the rights of children may very well extend beyond the rights of just maintenance. We have never addressed ourselves to that question as yet, but in the matter of custody and the maintenance quite often we get so embroiled in the cutting up of the pie that the children's rights, I think, may very well become a secondary thing rather than being the main thing. I, myself, have to say I believe the children's rights should come first before those of either spouse.

LOIS EMERY: Yes, I had noticed and this is one of our reasons for bringing up the matter of custody apart from our own real concern about it, is that the report on Family Law takes custody for granted in the sense that

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custody has already been determined at the time we are discussing these other things. I would agree with you, I think children who cannot legally be responsible for themselves must be the first concern of all adults, their parents and others. However, I think that by looking at some of the questions of custody then perhaps the questions of maintenance may be a little easier. Certainly in the majority report it does suggest that there are several aspects to be considered in maintenance of children, all of which we agree with really, such as supervision, care, you know, who has custody and so on. And I think if we can be guided by the very very clear statements that the report made on the children and their rights, that this is the kind of philosophy to help us move forward in looking at some of the other issues.

I can't be much clearer than that and I know I'm not very clear.

MR. GRAHAM: Well then, finally, would those rights be safeguarded if we removed judicial discretion from the whole realm?

LOIS EMERY: It's my understanding that judicial discretion, at least as recommended, only concerns the property rights and not certainly maintenance and maintenance must be looked after first I should think. My, or the agency's reason for considering that community of property and judicial discretion really are in a sense two separate things, that our concern is, at the end of a marriage, we know the emotional, mental and physical anguish that people go through, that if we can at least remove those areas that can more easily be handled in a legal sense and a straight forward practical sense, the better, because people still have to deal with the actual feelings of a marriage breaking down and a family breaking down, at least temporarily. And therefore in the question of property, apart from, I think, the rights of the spouses concerned, both having contributed to the marriage presumably, that if one can say that at the end of the marriage it's a 50-50 division of property, this is not maintenance, then that's one more thing that is clear and need not be argued out and need not be made another issue of contention.

Maintenance must be different, particularly spousal maintenance I should think, because there we need to look at the particular needs. But I think with property, both on the basis of marriage being a partnership between husband and wife, I think there should be equal division and I think it should be clear and simple for the sake of it being one less thing to argue and get involved in hassles over at the end of a marriage.

MR. GRAHAM: Well then, at the present time under The Dower Act, children do have property rights. You're suggesting then that those rights be abolished?

LOIS EMERY: No, The Dower Act to me — and I must speak personally here because this is something that we haven't got into in any great detail. My own reaction to the recommendations or the comments that have been made about the rights of the wife and children on the death of a spouse, are a little mixed but I would basically say that I would agree with the Commission's suggestion that it be made a 50 percent division, because again we do have this question as I think was raised earlier this morning, of the fact that this may not be a first marriage or even a second marriage for a couple and I would question leaving 100 percent to the remaining married spouse if there are still young children of an earlier marriage that should have some rights in here. But as I say, this is very much a personal reaction to it.

MR. GRAHAM: Well I won't pursue it any further then, Mr. Chairman.

MR. PAWLEY: I would like to just pursue this area of the child advocate. I was wondering, Mrs. Emery, if you were familiar with British Columbia where they do have a Child Advocate, a lawyer that may intervene at any time in any Family Court matter involving children.

LOIS EMERY: Yes, I am only just familiar with it. I am aware of it. The one comment that I can offer, and this is out of a personal discussion with someone who lives in B.C., is that again we have the problem of one lawyer for how many hundreds or thousands of cases, but that certainly the person concerned who is another social worker, felt that at least it was a step in the right direction.

MR. PAWLEY: I was just wondering, you had indicated that your personal preference would be that it be a social worker.

LOIS EMERY: No, I was suggesting, if I may correct myself, I was suggesting that it need not be a lawyer, it could be someone else who was knowledgeable about children and also, I think very necessarily under our present legal system, also knowledgeable enough about the law too. I think these are the two parts of it. Let us say just as an example because there might be other professions who would be equally capable, but let us say it might either be a lawyer with a good social welfare background or a social worker with a good legal knowledge.

MR. PAWLEY: It seems to me that the person involved should have some background in both aspects, investigative and understanding plus the capacity to intervene if need be in a hearing in a Family Court. Just if I could follow through on one of Mr. Graham's questions . . .

LOIS EMERY: May I just add one little comment to that. . .

MR. PAWLEY: Yes.

LOIS EMERY: . . . your last statement. You were saying must have both backgrounds and so on. I would say also, and I think this is where the law is very important, must have some teeth to work with, that it is not enough to be able to try to persuade the lawyers or the judges that maybe this child has particular needs and rights that need to be considered. I think that that is the part, that if there is to be a system such as this, and I have mentioned it only as one possibility, there must be something in law which gives that advocate some

power as well.

MR. PAWLEY: I would just like to pursue one of Mr. Graham's questions in connection with the unified Family Court, I think a suggestion that it might be better to have left Family Law reform until after the results of the unified Family Court project. I'm just wondering on your views on that, because I would like to simply mention that a Family Court project, to have the results of that evaluation would be about a three or four year project before one would have meaningful results. I'm wondering what your views would be on timing of legislation; whether you would share the sentiment that it's better to wait until after results of the Family Court project or to move first with legislation and develop your projects in connection with court structure afterwards?

LOIS EMERY: I would suggest that if the unified Family Court had been developed and was being researched — almost jargon — primarily as an experiment for changes in family law, then perhaps that is the way it should be done, but it seems to me that family law is such a major area, and also because of timing. I think the things that have already been suggested and reported are terribly important. That perhaps laws can be changed again; certainly it's hoped that we'll gain a fair amount of knowledge out of the unified family court, some of which will be applicable directly to the law, some of which will be more applicable to ways of making things more comfortable and — I can't say happier in a marital breakdown situation, but at least than is true now. So it seems to me that the two may have to go along together just because of timing.

MR. PAWLEY: But you would like to see government proceed with the family court projects as soon as possible?

LOIS EMERY: I certainly would, yes, very much so. I'm sure it's part of our society today but I get very upset, and I've had the same kind of run around myself, when you are trying to deal with a very important, very serious personal problem, and marriage breakdown is certainly one of those, to find yourself being shunted from one place to another, to another, to another, when at least with a unified court, the resources are just that much more accessible and as I say, let's hope with a kind of philosophy towards helping people that will make it less difficult.

MR. PAWLEY: Could I ask you a question pertaining to procedure. Procedure can be quasi criminal as it is in the existing family court, or can be more civil with the involvement of petitions and pretrial examinations rather than the quasi criminal procedure in the family court. Do you, from your observations, have any comments you would like to make in connection with the present procedure, leaving aside for the moment the question of the unification of the family court?

LOIS EMERY: My own experience with this has been rather limited. I've seen more in the children's court areas. By the way * if you have specific questions about marriage counselling and would accept this, there are two of our marriage counsellors here just observing as well. But I would suggest, again we're dealing with something terribly personal and yet terribly important for the future of the family, I wonder if it is possible to have the kind of thing you're suggesting in your second suggestion, that is less of a quasi criminal. Marriage breakdown is marriage breakdown. There are very few of us who walk into a marriage breakdown saying, "oh boy, isn't that great, now I've got rid of everything and everybody." Most of us are going to feel a lot of pain and hurt if only because we failed, no matter what we think of our other partner. But if we can have something that is a little more supportive as I understand the unified court hopes to be, or had hoped to be, along with, I think, a certain formality of demeanour because I really do feel that this is also extremely serious, if two people have made a commitment to each other and I think that there needs to be recognition of this; as an example, I'm only saying that I think the judge should be clearly identified as a judge and recognized as such and treated as such, rather than someone sitting there with a coat off and smoking a cigarette saying, well now let's get down to this kind of thing. You know, I think there needs to be a certain formality as a part of this as well.

MR. PAWLEY: Earlier I had wanted to read out the present grounds, if I could just for a moment, because I'd like to have your comments on them because they certainly read in a very quasi criminal way. "Application to judge or magistrate in the case of assault, desertion, etc. Where here a married man has been convicted of an assault upon his wife; b) has deserted her without lawful excuse; c) has been guilty of persistent cruelty to her; d) is a habitual drunkard; or e) has neglected or refused without reasonable excuse to provide reasonable maintenance support for her or her children, the wife or any person on her behalf, may from time to time make an application to either a county court judge or a magistrate, for an order." How would you like to comment on those?

LOIS EMERY: I'm horrified by it.

MR. PAWLEY: Would you like to comment — I / wished I could have asked this question earlier too, that there may be a discharge order. The provisions go on as against, even when the wife has succeeded in proving one of these items. "Where a married woman against whose husband an order is made for the payment to her, or on her behalf, of a weekly, biweekly, semi-monthly or monthly sum for her maintenance and support: a) voluntarily resumes cohabitation with her husband; or b) commits adultery, the wife may apply to a judge or magistrate sitting in the judicial district in which the order was made, who upon proof of such fact, may discharge wholly or in part, the order." You are horrified . . .

LOIS EMERY: I am horrified by that, and then my own . . . as a female in today's world, I notice that it's all the husband and wife. Maybe the wife could also beat the husband as far as that goes, but you know, it is of

another age and let's hope we can get rid of as much of that as possible.

MR. CHERNIACK: Thank you, Mr. Chairman. Miss Emery, two questions so far, one specific, one general. The specific one; you are recommending that there be a public agency established for the collection of maintenance. Some of the briefs we've had recommended that in addition to the collection of maintenance that there should be provision that the taxpayer should pay the maintenance when it's not collected from the delinquent spouse. What's your comment on that?

LOIS EMERY: Yes, I heard some of those statements and I think I got caught up in the same thing that many of us did about that as to, is it fair? Is it fair to the taxpayer, is it fair to the wife, is it fair to the husband or whatever? I know that the collection of maintenance is such a terrible problem that I want to emphasize that. How it's to be done is another question. The only suggestion, and it's not a suggestion, the only thought I had as I listened to the other briefs, and I listened to some of the questions and answers was that, might it not be possible that as in other situations, the court has ordered let's say, well X number of dollars be paid to the wife, that this amount could be paid by the public agency until there was confirmation whether or not it would be collectible. As I say it is only a thought, because it seems to me otherwise one is requiring a woman to immediately go on social assistance, really because maintenance can't be . . .

MR. CHERNIACK: Without a means test.

LOIS EMERY: Yes, Without any warning; that perhaps if it might be possible at least to consider paying the amount ordered by a court until such time as it could be determined either that it was collectible or not collectible; or perhaps that there had been a time period established in which this fact was to be made clear. And if at the end of that time it was not, then other arrangements would have to be made, just as now they have to be made because the person left without maintenance, if unable to go to work, let's say because there are infant children, usually then will have to seek public assistance anyway.

MR. CHERNIACK: I'd like clarification on what exists now. I have, let's say, a situation of a lady deserted, children, she has a home, she occupies the home, she has assets, she has a car, she has furniture, whatever assets there are; maybe acquired through her own endeavours or maybe as part of the joint property or communal property, or maybe as the result of the law that we may yet pass that gives her equal rights on termination, but she has no cash. Now Friday the cheque is due, it didn't come. She's got to buy groceries Saturday. What is the present law? How does she get the money with which to buy her absolute needs immediately?

LOIS EMERY: If she can't borrow it from friends or family, there isn't someone to help her out, and a great many women in particular, because more often they're left in this situation, do have to beg, then the only other possibility is for them to apply for social assistance.

MR. CHERNIACK: Well then what are the mechanics of that? Is there a time period? Is there an investigation? Is there a lien put on the property or is there an investigation made if she has the ability to go to a hock shop to sell.

LOIS EMERY: Yes, there certainly is an investigation made. I have never worked in the public welfare field or the social assistance field, but from my knowledge of it as another worker in a different kind of setting, I have been aware that in most situations the agencies are pretty good about recognizing that there is going to be no food in the house this weekend and they may temporarily make some arrangement. But ordinarily, she will then have to go to court and order against her husband because he is not paying maintenance, may or may not have a lien put on her house. There seems to be some difference here between the city and the province.

MR. CHERNIACK: What does your agency do when that is drawn to your attention? Yours is one of the doors at which they would knock. They come to you on Friday evening and can't find anybody in but somehow they ask for help. What is the response? Go to the public welfare or is there some . . . ?

LOIS EMERY: Well whatever way we can, actually. There are various . . .

MR. CHERNIACK: Pardon me. You don't have funds available for that, do you?

LOIS EMERY: You'd have to ask my Executive Director about that, I haven't had to make use of them yet and as a result I'm not aware. Yes, we do have limited funds for emergencies such as that, very limited of course.

MR. CHERNIACK: So that means, if they happen to come through the family services there are limited funds which . . .

LOIS EMERY: Let's say if this is after hours or everything else is closed and these people aren't. . . one ne can make referrals to the Salvation Army which are usually pretty good about helping. But people can get pretty frightened when they finally realize, and especially if they've got four kids at home to feed. But eventually, of course, they must make proper application to the agency concerned.

MR. CHERNIACK: Then during that period, and I'm still really dealing with the proposal for taxpayer support because of lack of maintenance. What is your opinion, and don't state it if you feel that you don't have that competence. In the event that the taxpayer does support, should there be a lien placed on the property or an order to sell property in order to come down within the financial ability qualifications of welfare.

LOIS EMERY: I don't feel I have the competence to answer, Mr. Cherniack.

MR. CHERNIACK: I don't want to put you on any spot and I don't want an offhand casual response. One other area of this is, whether the amount, and you say maybe temporary, whether the amount paid should be at a greater or lesser level related to state supported people now.

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LOIS EMERY: Well I think it should certainly not be at a lesser level.

MR. CHERNIACK: Even if the order is for less?

LOIS EMERY: I'm sorry, I hadn't thought of that.

MR. CHERNIACK: It's not conceivable.

LOIS EMERY: You were correct, yes. No, I hadn't thought of that as a matter of fact, and perhaps it is rather difficult to think of.

MR. CHERNIACK: Yes, I see. Well what about more than?

LOIS EMERY: I'm caught really about this.

MR. CHERNIACK: Well, again, I don't want to rush you into . . .

LOIS EMERY: I think perhaps what I am saying, that is if we are to say that it is to be social assistance, then let's get these people, as quickly as possible, to the proper authorities for social assistance. If there is any possibility of considering even a short term, temporary granting of maintenance, at the level prescribed by the court, then there is a purpose for a public agency to collect maintenance and to provide this.

MR. CHERNIACK: I must confess Miss Emery that I have not reviewed recently the question and answer submission that we received from your staff, and . . .

LOIS EMERY: Oh yes, this is an earlier one in response to the working paper.

MR. CHERNIACK: Yes, and therefore I am not at the moment familiar with this question that I've been raising. You say you have some counsellors here who may have some opinions. I, for one, will look again at the paper we had before, but I would think that your agency would be one of the more competent agencies to give an opinion in answer to the questions I've raised. I would very much welcome a subsequent written response if that could be done, and if it can't then I'll have to look for it elsewhere.

LOIS EMERY: No, we are planning as an agency to continue studying this material, looking forward to the legislation so that we can again make our position known.

MR. CHERNIACK: All right, then I want to move to the general question that I had. You said that you weren't sure that you were really responding to Mr. Graham's questions about the dominant right of the child, and I think that may be because you may not have been clear about his line of questioning. I admit to you I wasn't clear on it, so I couldn't really expect more from you than I thought I could do myself. I do want though not to lose the advantage of your presence, because you say that you have been involved in the child field for quite a while, to explore what are the rights or the dangers, the infringements on the rights of the child. I expect that the law, as it is now relating to protection of an infant — and I mean a person under 18 — protect that child from the undue rigors of court proceedings by sending the child to Juvenile Court rather than to the adult court, by preventing serious charges to be on the record of a child by charging them with delinquency. Then there are the standard laws that relate to making sure that a child has maintenance, and then support in an emotional sense by referral to agencies which involves us with custody. The question that I'm not clear on, and this is not the time for me to ask Mr. Graham to elaborate on it, we are talking about custody and the right of the child to have custody awarded to such a parent or agency which will be in the best interests of the child. I think we have that law now, whether or not it works is a question which certainly requires investigation to see if there should be more laid down as to how it should be handled, but that's custody. The other is maintenance which we are discussing; , and frankly I cannot think at the moment of any other rights of the child that should be protected as against the child's parents, other than custody and maintenance, except what may be the field of succession, and I for one am not enthused about worrying too much about the rights of succession of an adult child where the parent who is going to die doesn't make adequate provision or make a decision by Will, because I think that the only rights a child has by law on a death of a parent are in the event that there is no Will, in which case The Devolution of Estates Act tells the child how much the child is entitled to under The Testators Family Maintenance Act where if the child is a dependent then the child can apply for support. Have I covered what you know to be the field of child protection, and would you want to see changes in the law on succession from what I have just described to you as what I believe the law to be, or have I ignored other rights that a child should have and doesn't have now?

LOIS EMERY: I think if one speaks in very broad areas that you have basically covered it, Mr. Cherniack; I think when we were speaking of custody we were thinking about some of the rights within the area of custody. I think the right of the child not to have his parents use him as a weapon against one another; the right of not using visiting privileges of one parent or the other as a weapon against a parent. It was this kind of aspects of custody that we were concerned about. And you used the term at the beginning "child protection"; of course protection itself, you know, the whole area of neglect and abuse of a child, child welfare protection, yes, this is one aspect which I assume you were including in your list.

MR. CHERNIACK: Which we presumably have laws

LOIS EMERY: Yes.

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

Gentlemen, it is nearly 25 past 12, I have Mr. Murray Smith on the list who could be heard now or after four o'clock. He cannot come back before that time. Do you wish to hear one more brief before we break for lunch?

MR. SHERMAN: How many are there on the list, Mr. Chairman?

MR. CHAIRMAN: I have three more on the list including Mr. Smith.

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MR. PAWLEY: Mr. Chairman, I don't know whether there are others that are here that are waiting that wish to present briefs. Though they are not listed I would think that the Committee would certainly hear from anybody in that category, would they not?

MR. CHAIRMAN: Oh, I assume that they would.

MR. PAWLEY: If there is anybody.

MR. CHAIRMAN: It was my intention to deal with the list before us, those who were left over from the previous meeting before asking for further representations.

MR. PAWLEY: But I think it would be a good idea for them to know now if they would be received so they would know whether to return or not after lunch.

MRS. TRACY: I would like to speak later on if that is possible.

MR. CHAIRMAN: Would you come forward to the microphone and give me your name please.

MRS. TRACY: My name is Mrs. Tracy, I live at 120 Allenby Crescent in Transcona.

MR. CHAIRMAN: Thank you.

RUTH PEAR: Ruth Ayer, 600 Patricia Avenue.

MR. CHAIRMAN: Thank you. Is there anyone else present who would like to speak to the Committee today?

MR. SHERMAN: That, Mr. Chairman. Right? That makes a total of five

MR. CHAIRMAN: Five, yes.

MR. SHERMAN: Why don't we adjourn for lunch and come back at two and hear the five during the afternoon?

MR. CHAIRMAN: Is that your will and pleasure? (Agreed) That being the case, the Committee will recess and stand recessed until 2 p.m.