



**Legislative Assembly of Manitoba**

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**HEARING OF THE STANDING COMMITTEE**

**ON**

**STATUTORY REGULATIONS AND ORDERS**

**Chairman**

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



**THURSDAY, November 25, 1976. 10:30 a.m.**

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**TIME:** 10:30 a.m.

**MR. CHAIRMAN (Mr. D. J. Walding):** Order please. The Committee will come to order. Good morning, this regular Committee of the Legislature has been set up to take representations from the public and to discuss possible changes to the Family Law. We held one hearing in Winnipeg a couple of days ago, this hearing today and we are due to go up to Thompson next week.

Perhaps I can introduce to you the members of your Committee. On my far left is Bill Jenkins, the Member of the Legislature for Logan; next is Tom Barrow the MLA for Flin Flon; John Gottfried, the MLA for Gimli; on my far right is Saul Cherniack, the MLA for St. Johns; next to him is Pete Adam, MLA for Ste. Rose; and on my right is Gordon Johnston, the MLA for Portage la Prairie. My name is Jim Walding, I am the MLA for St. Vital.

I have an indication from three groups wishing to make representation to the Committee this morning: Committee on the Status of Women and Women's Centre; Region 5 of the National Farmers' Union and Children's Aid of Western Manitoba. If there are any others wishing to make representation to the Committee, would you come forward to the microphone and give me your name please.

**GEORGINA BOUX:** Georgina Boux, Canadian Federation of University Women.

**MR. CHAIRMAN:** Thank you.

**MARION BOWEN:** My name is Marion Bowen, and I do have a certain amount to say. I can't say I am representing any certain party.

**MR. CHAIRMAN:** You are just representing yourself?

**MARION BOWEN:** Yes.

**MR. CHAIRMAN:** Thank you. Is there anyone else wishing to address the Committee? If there is not perhaps I can just indicate that the last member to join us is Mr. Harry Graham, the MLA for Birtle-Russell.

I would then call on Judy Springer to come forward please.

**JUDY SPRINGER:** The Brandon Branch of the Manitoba Action Committee on the Status of Women and the Women's Centre supports the Action Coalition on Family Law's recommendations and comments pertaining to the Manitoba Law Reform Commission's Report with two exceptions.

While you are undoubtedly aware of the Action Coalition on Family Law's proposals, I will go through a summary of them stating our differences where they exist.

1. Marriage is an equal partnership.
2. The family home, if purchased during the marriage or with marriage in mind, should be owned by husband and wife.
3. All property bought during the marriage should be divided equally between the husband and wife on separation.
4. The Action Coalition states both parents should be responsible for supporting their children and children of the other spouse, even after separation. We feel the legal parents should be responsible for their children under the age of 18 in almost all circumstances. If one of the legal parents is dead or unable to support his or her children the province should assume a share in the financial responsibility.
5. The Action Coalition states during marriage each person should support the other either by providing money or by looking after the children in the home. While this traditional division of roles should be acknowledged as an equally supportive situation, we are against stating that in marriage the spouses should do either this or that. The marriage partners should be encouraged to share all responsibility.
6. During marriage each person has the right to know the earnings, property and debts of the other.
7. During marriage each person has the right to help decide how the family income is to be spent.
8. During marriage each person has the right to a reasonable standard of living including a private amount for clothing and personal expenses.
9. On separation, maintenance should depend on who has custody of the children, the length of the marriage, how much each has received from the division of the property, the financial circumstances of each, and whether each can become self-supporting.
10. Fault should not be considered in deciding maintenance.
11. The province should assume responsibility for collecting and paying out court ordered maintenance, and in cases of default the Government should ensure payment of maintenance.
12. These reforms should apply to all marriages unless both partners agree, after independent legal advice, to opt out.

As well as supporting the above-stated reforms we also encourage the training of judges so that they are fully aware that this legislation is an attempt to rectify a situation in which women for the most part have been treated unfairly. The law does leave room for gradations in the basic decision depending, other things, among upon the judge's personal beliefs. These gradations will mean the difference between destitution and financial solvency to the marriage partner who has not been in the work force. The judges should therefore be exposed to a course of study which goes into the reasons for and implications of considering in law that marriage is an equal partnership.

**MR. CHAIRMAN:** Thank you. Would you wait in case there are any questions please? Are there any

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questions from the Committee? Do any of the members of the Committee have any questions? If not thank you.

Mrs. Brown of the National Farmers' Union. Would you come forward please?

**MRS. BROWN:** I would like to introduce to you Mrs. Isabel Proven who is representing, along with me, my home Local 516, the National Farmers' Union.

**MR. CHERNIACK:** I did not catch it, Mr. Chairman, the organization.

**MRS. BROWN:** The National Farmers' Union. We, as members of the National Farmers' Union, are pleased to have this opportunity to present our views and recommendations regarding changes in Family Law. The National Farmers' Union is a comparatively young organization which considers the farm family a unit. The unit includes men, women and children of that farm family. Our movement is based on a foundation of understanding. It is our hope and aspiration that our families may live in dignity and prosperity, that we may live in harmony with one another.

We must address ourselves to the solving of human problems created in a technological age, we must affirm our belief that every individual is created equal and is entitled to life and love. Notwithstanding this belief we recognize that in our society we ourselves do not accord to each person equal opportunity to live in dignity and peace without prejudice. We recognize that women in contemporary society must have the opportunity to develop their personhood so that they may participate fully in the political arena, in the economic sphere with the power structure which now tends to subjugate and exploit rather than fulfill their needs. We are concerned because inequities exist in many facets of a woman's life. Equality for all will not come in the near future and certainly not with legislation alone.

It must be recognized that farm women share the workload in farm operations, both outdoors and indoors. Bookkeeping is an essential part of farm business and the most of it is done by the women. They are also contributing, in many instances, by bringing revenue into the business from off-farm employment.

In the past, on dissolution of a marriage, many women have not been granted any portion of assets acquired during the marriage, in spite of the fact they contributed in a major way to the total operation of the farm unit. As women do take the place of hired farm help the children of the family are very often subjected to dangerous situations which can, and do, lead to fatalities.

Day Care Centres are beginning to appear to accommodate the working mothers in urban areas, thereby relieving some of the anxieties of home life.

A year ago we took a position on Women's Rights, and we do agree with the Commission's recommendations on Family Law, that women be accorded half interest in the matrimonial property, regardless of financial contribution. The law must apply to all marriages that have taken place before and following the reforms.

We also recommend that families have the right to Day Care Centres available across Canada, including the rural areas.

**MR. CHAIRMAN:** Are there any questions from the Committee?

**MR. CHERNIACK:** I'm sorry I did not hear the introduction well so I didn't catch the names of the ladies.

**MR. CHAIRMAN:** Her name is Mrs. Brown.

**MR. CHERNIACK:** Mrs. Brown.

**MRS. BROWN:** Yes.

**MR. CHERNIACK:** Mrs. Brown is it the National Farmers' Union you represent or is it any division?

**MRS. BROWN:** I'm representing Region 5 of the National Farmers' Union, and also the women of the National Farmers' Union.

**MR. CHERNIACK:** I did want to know whether you were representing . . .

**MRS. ISABEL PROVEN:** This is the national policy, we took this out of our national policy which is . . .

**MR. CHERNIACK:** So this is a declared policy of the entire organization?

**MRS. PROVEN:** Yes.

**MR. CHERNIACK:** I'm wondering whether a group which has accepted such a broad-sweeping and, I want to compliment you, very fine statement of principle—what effort is being made, and has been made, by the union to try and encourage joint ownership now? That can't be forced, the proposal before us says; "to force it", on families, let me say force it on husbands. Is there an effort that has been made by your organization to encourage members to see to it that their wives share in the ownership, in their lifetime, of the marital home or of property generally?

**MRS. PROVEN:** It has only been suggested to the members that this is the way it should be. We don't force anything, the National Farmers' Union doesn't force anything, but this is our suggestion. I mean we cannot have equality if both partners don't own and share the assets and the debts alike.

**MR. CHERNIACK:** I was hoping that I would hear that there's a campaign of some kind going on within the organization to encourage it, that may be too much to hope for.

**MRS. PROVEN:** Well, I think of all organizations, that the NFU has certainly involved the women to the fullest extent . . .

**MR. CHERNIACK:** I know that.

**MRS. PROVEN:** . . . and last year, coming up with the position paper on Women's Rights, and, of course,

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we weren't able to deal with a lot of issues that the recommendations brought up because we haven't yet dealt with it ourselves. But our convention is just coming up and there will be more added to it this year.

**MR. CHERNIACK:** One other question, Mr. Chairman. I inferred from one of the statements that you opposed the Law Reform Commission's proposal that there be a unilateral right to opt out of the general rule, that is that a person shall have the right, that's their recommendations, shall have the right to unilaterally say within six months after the enactment of legislation; "I don't want to be part of it, I want to keep what I've got." And am I correct in interpreting that you realize that that is a recommendation, that you disagree with it.

**MRS. BROWN:** Yes, I think we disagree with it. I think they should have to take part and it be a 50-50 agreement, and in the past and the future.

**MR. CHERNIACK:** So it would be retroactively enacted, so that anything acquired let's say within the 30 years of the marriage preceding the enactment should automatically become equal ownership?

**MRS. BROWN:** Yes.

**MR. CHERNIACK:** Well that's fine. The other question is a matter that has come up, and will, and that is whether on maintenance, support of dependent spouse, fault for breakup in the marriage should be a factor in determining the amount of maintenance?

**MRS. BROWN:** It takes two to make a marriage and two to break it up.

**MR. CHERNIACK:** So you are not satisfied with the recommendation as to fault.

**MRS. PROVEN:** No, we stipulated what we were satisfied with, and that was the half interest in the matrimonial property, regardless of the financial contribution.

**MR. CHERNIACK:** Thank you.

**MR. GRAHAM:** Thank you, Mr. Chairman. Mrs. Brown I think your closing statement was to the effect that you recommend that there be Day Care Centres established throughout rural Manitoba as well. This Committee is set up only to study the recommendations of the Law Reform Commission, and I was just wondering if you had planned to make . . .

**MR. CHAIRMAN:** Order please. Mr. Graham, just for the sake of accuracy, the Committee was set up to discuss Family Law, it was not set up to discuss the Law Reform Commission's Report.

**MR. GRAHAM:** Very well then. I was just wondering if you had planned to make representation to the appropriate departments of Government with respect to the issue of Day Care Centres throughout rural Manitoba as well.

**MRS. PROVEN:** Yes, I would think so, seeing if we're going to get it.

**MR. GRAHAM:** Very well.

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

**MRS. BROWN:** We do have extra copies if you so wish.

**MR. CHAIRMAN:** Thank you, we'll see that they're distributed to the Committee.

Perhaps I should introduce to you three other members of our Committee who have just joined us. To my left is Frank Johnston, the MLA for Sturgeon Creek; to my immediate left Mr. Bud Sherman, the MLA for Fort Garry; and to my right Mr. Arnold Brown, the MLA for Rhineland.

Can I call upon the representative of the Children's Aid Society of Western Manitoba to come forward please? Would you give your names for the record please?

**MRS. CRYSTAL:** Mrs. Crystal.

**MR. CHAIRMAN:** Thank you.

**JANICE FLORIDA:** Janice Florida.

**MR. CHAIRMAN:** Thank you. Would you proceed?

**MRS. CRYSTAL:** This is a representation from the Family Law Committee of the Board of Directors of the Children's Aid Society of Western Manitoba.

We would like first to congratulate the Manitoba Law Reform Commission on some very excellent recommendations. They've shown a strong sense of justice and remarkable understanding of the equality upon which a marriage should be based.

We agree, with a few exceptions, with the majority recommendations, however, there are many points of disagreement with the recommendations of the minority groups of Commissioners Bowman, Smethurst and Muldoon. Those areas in which we are not in full agreement with the recommendations of the majority are the following: I refer you to Page 111, Section 4 of the Report, referring to responsibility for children, over 16, who have left school and are beyond parental control: Whereas the Law Reform Commission feels that these children no longer deserve parental support, we feel that parents have a responsibility to children until they reach the age of 18, and therefore we suggest that section 4 should be deleted. We concur with Commissioners Werier, Shack and Hanly on this point as stated on Page 13 of the Report. They make it quite clear.

The second point: Page 112, Section 6, with regard to the second part where a child is in the custody or care of the Director of Child Welfare or The Children's Aid Society. We feel this should be changed to include only those children in temporary care and custody. If a child is committed permanently to the director or an agency, all parental rights are terminated and it has been accepted in those situations that responsibility for maintenance should also be terminated.

Point 3: With regard to maintenance payments, Page 112, Sections 8 and 9 and to maintenance collection in

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general. We feel that due to the fact that it is difficult to collect maintenance payments in a great majority of cases, a special agency should be created. This agency should be responsible for collecting and paying out court ordered maintenance and in case of default the government should ensure payment of a reasonable level of support.

Point 4: With regard to Page 116, Section 4(h), we feel the relative responsibility of both spouses for the separation or marital breakdown should be given no consideration in determining maintenance, the reason being that it is extremely difficult to determine fault since detailed knowledge over an extended period of time is required to do so. Therefore we request that Section 4(h) should be deleted.

Page 130, Section 27(c). We disagree with the Law Reform Commission that a partner should be able to opt out of the standard marital regime within the first six months of the proposed legislation. We are in full agreement with Commissioner Hanly's separate recommendation that the standard marital regime should apply universally and retroactively to all couples already married when it comes into force.

Point 6: Page 135, Section 36. If one spouse dies without a Will, the other spouse should receive all the deceased's estate instead of only half as recommended by the Law Reform Commission. Some women will be left with very little if the children receive half and if the children are of an age where they still need maintenance, the wife is obliged to care for them in any case.

There is one further point which is not mentioned in the Report which we would strongly urge and that is that all such matters be heard in a unified Family Court, and that judges of such Courts need to be sensitive and perceptive to human needs and some special training and orientation is required as well as legal knowledge. Thank you.

Do you have any questions for us? — (Interjection) — We feel that the cases, all these type cases should be heard in a unified Family Court by special judges.

**MR. CHAIRMAN:** Order please. Perhaps I should just point out to you what I reminded Mr. Graham of and that was that this Committee was not set up to either accept or reject the Law Reform Commission's Report. The Law Reform Commission made its recommendations to the Committee in the form of its brief, we have had other briefs from other people. The Committee will consider all briefs and expressions of opinion submitted to it. Are there any questions on this brief? Mr. Sherman.

**MR. SHERMAN:** Thank you, Mr. Chairman. Mrs. Brown, a question on the matter of division of the estate or devolution of the estate, as it were. Oh, I'm sorry, Mrs. Crystal. I was catching up from the last presentation. I apologize for arriving late.

You said that the Children's Aid Society favours the passing of the entire estate of the deceased to the widow, if that should be the situation, widow or widower, on the death of the other spouse. Do you make that recommendation within the context of the suggestions for division of the marital estate anyway. I mean we're starting with division of the marital property on a 50-50 basis, so that automatically, assuming that the recommendations put forward in this area by the Law Reform Commission are acceptable to you, we are automatically starting with the decision that half the marital property belongs to the wife, in this example the widow, so half the marital property is in her hands anyway. Now what we're dealing with is the other half that would have been the husband's half. Do you make the recommendation that all the estate should go to the surviving spouse within that context or do you make it because you feel that the estate would not be divided and the property would not be divided on a 50-50 basis to begin with?

**MRS. CRYSTAL:** No, I make it within that context. We believe that when one spouse dies, it is usually relatively late in life, and the other spouse is left with the problem of maintaining himself or herself, and we feel that in most cases the children will be looked after in any case if they are of the age where they still need to be looked after but in most cases there really isn't enough to give only half to the wife and take the remaining half and share it out amongst the children because she really does need to maintain herself or he really does need to maintain himself from that point onward, and after he or she goes, the second spouse, the children will then receive the remaining estate. This is only in the case of no Will.

**MR. SHERMAN:** Only in the case of no Will.

**MRS. CRYSTAL:** Right.

**MR. SHERMAN:** So as far as you are concerned, in your view, there still is a need for The Dower Act to operate fairly and equitably, there still is a need for The Devolution of Estates Act legislation. What you are concerned with here is the situation in the event that no Will has been left?

**MRS. CRYSTAL:** That's right. I'm referring to a particular section in the Report of the Law Reform Commission of Manitoba.

**MR. SHERMAN:** Well could I just ask you by extension then of that initial question, would you regard a division of that half of the estate that belonged to the deceased spouse, would you regard a division of that, under a Will, as being unfair with respect to the children and dependents or would that depend on the individual case?

**MRS. CRYSTAL:** I think it depends on the individual case. It is very difficult to say. It might be.

**MR. SHERMAN:** But you are not arguing that the right to make testamentary decision of your own property should be removed. You are not arguing against the process of decision-making via a Will?

**MRS. CRYSTAL:** No, I'm not. I am just simply stating the case if a Will has not been left.

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**MR. SHERMAN:** Thank you.

**MR. CHAIRMAN:** Mr. Jenkins.

**MR. JENKINS:** Thank you, Mr. Chairman. Just a point I want to get a bit of clarification on, Mrs. Crystal. You stated that you felt that only children in temporary care of the Children's Aid Society, that the parental responsibility existed there, but where the children passed out of temporary and into permanent care of the Children's Aid Society, do you feel then that the parents should be absolved of any financial responsibility to the children?

**MRS. CRYSTAL:** Well it has certainly been the case up to now that the parents once they have given up all responsibility of the child, then it has been accepted that they no longer have any financial responsibility as well. That has been the feeling of this particular Committee.

**MR. JENKINS:** But I mean what is the feeling of your Association? Do you feel that now we are discussing family law, this is part of what we will probably be dealing with, do you have a view as to say a child at the age of 15 passes out of the parental care, and in some cases it may not be the child's fault that he cannot get along with the family unit, that the parents in this case should be absolved of any financial responsibility?

**MRS. CRYSTAL:** Are you asking me for a personal opinion or a Committee opinion? The Committee feels that it should be the responsibility of the Director of Child Welfare. Once he has taken over total legal responsibility then the financial responsibility should also be his — that's the feeling of the Committee.

**MR. JENKINS:** Thank you.

**MR. CHAIRMAN:** Mr. Graham.

**MR. GRAHAM:** Thank you, Mr. Chairman. Mrs. Crystal, the other day we had a very long session in Winnipeg, I think it extended past midnight and we heard many briefs, I think one of my number one concerns has been the lack of presentation to this Committee on behalf of children. Of course we know that children by themselves probably are not aware of this and maybe lack the capability to make representation so I feel that there may be a void in the whole procedure here because of a lack of children's presentation or representation in this whole process of family law review. I have to say that I was somewhat concerned about your proposal that in the case where there is no Will that the widow or the surviving spouse should receive all of the estate without any regard for the children whatsoever.

**MRS. CRYSTAL:** We have a very high regard for the children but the surviving spouse is responsible for the maintenance of those children if those children are under the age of 18, and if they are self-supporting then it seems to me that the surviving spouse requires some concern as well.

**MR. GRAHAM:** Is it not more probably the case that where the application of the devolution of estates would occur is probably when it is a young couple, where a person dies very suddenly. Where they are of more mature age, there is a greater probability that there is a Will in effect.

**MRS. CRYSTAL:** Well if they are younger and the children are younger, then the wife has a legal responsibility to maintain them.

**MR. GRAHAM:** That is quite true, "a legal responsibility," but it could be a wife that died and the husband was left. . .

**MRS. CRYSTAL:** It's the same thing, applies . . .

**MR. GRAHAM:** We are not putting any one gender on the survivor. The concern that I have is that in the past legislation, and we have The Devolution of Estates Act, we have The Dower Act and others, have traditionally recognized that there are certain rights that should devolve to children in particular circumstances, and the laws that we pass have to cover all circumstances, not just the majority, and while we recognize that in the majority of cases, there is no problem whatsoever, in the vast majority of cases there is no problem whatsoever, but the law has to provide for even the very rare cases where there is a problem. In light of that, do you still recommend that the children's rights that are presently in law should be removed from law?

**MRS. CRYSTAL:** No, I don't think I am removing their rights at all. If a young child inherits money, somebody is going to have to look after that money anyway. I think the real problem exists when somebody, say at the age of 60, dies and the remaining spouse has to maintain themselves. Now you take half the money and give it to that spouse and the other half is divided — — amongst children who are probably married themselves and self-supporting, and that other spouse really does not have enough to live on and that is a very primary concern.

**MR. GRAHAM:** Is there not also a greater probability in a case like that where the children also have an obligation to their parents, and if they are mature children, in all probability, they would look after the . . .

**MRS. CRYSTAL:** I think they have an obligation to their parents but it is not always fulfilled.

**MR. GRAHAM:** And the converse is also true, that parents not always fulfill their obligations to children.

**MRS. CRYSTAL:** But there is a legal obligation in that case where there isn't in the others.

**MR. GRAHAM:** In light of that you still recommend that The Devolution of Estates Act remove that section which gives the children the right to property.

**MRS. CRYSTAL:** Yes, we still make that recommendation.

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

**MR. CHERNIACK:** Mr. Chairman, before I move to the same two fields that have already been covered

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with Mrs. Crystal, I would like to make her aware of The Testators Family Maintenance Act which Mr. Graham may have overlooked where it provides that where a person dies leaving a Will and without making an adequate provision for the proper maintenance and support of his dependents, or any of them, a judge may, in his discretion, order that such provision as he deems adequate shall be made out of the estate of the testator for the proper maintenance and support. So our present law does provide . . . that there is a provision in the present law for any dependent to be able to apply where there is a Will. I assume that the reason there isn't one where there is no Will is that the present Devolution of Estates Act does provide for the children automatically. So that may be some protection for the concerns of Mr. Graham. But I wanted to ask Mrs. Crystal a little bit more about the principle of an estate passing to the spouse. You seem to protect the right of a testator to deal with his estate other than under The Dower Act where now he is required to provide one-third to the spouse. Why should a testator have a different right to dispose of the estate other than to the spouse than a person who doesn't leave a Will?

**MRS. CRYSTAL:** Are you asking me a personal question, Mr. Cherniack, or are you . . .

**MR. CHERNIACK:** No, Mrs. Crystal, I am speaking to you in the capacity in which you find yourself now. If your Committee has no answer then say so.

**MRS. CRYSTAL:** Our Committee has not discussed this point as to when a Will is left. Are you asking me what happens when a Will is left? We did not discuss this point so I can't answer for the Committee.

**MR. CHERNIACK:** So you are saying that where there is no Will, then there should be a transfer to the spouse, but you are not going into the question of where there is a Will.

**MRS. CRYSTAL:** We did not go into that question.

**MR. CHERNIACK:** You answered Mr. Sherman on the question of whether it is all of the second half after the division of the property.

**MRS. CRYSTAL:** Could you clarify that?

**MR. CHERNIACK:** Don't worry about my question up to now, I am going to enlarge on it. The difference has arisen between the Law Reform Commission recommendation and that of other groups that have presented petitions here or briefs, that differ from the Law Reform Commission which recommended that the division of the assets should take place on the termination of the standard marital regime, not during the marriage. There have been briefs presented, the majority I believe disagree with that, and they say that there shall be immediate joint ownership and joint management rather than deferred until the termination of the marriage arrangement. Do you have a view on that?

**MRS. CRYSTAL:** I am afraid that I can't be as positive on this point as I would like to be. I believe that the committee decided that it should be joint from the beginning but we did not discuss this at our latest meeting and I'm trying to go back into the past to remember what took place but I believe that was the opinion.

**MR. CHERNIACK:** Because that then poses the two possibilities; (1) that there is immediate joint ownership and management in which case the spouse owns half and the testator or the deceased therefore owns only half.

**MRS. CRYSTAL:** Right.

**MR. CHERNIACK:** Whereas if the Law Reform Commission Report were accepted or recommendations were accepted then there would not be a passing of half to the spouse unless there is a termination of the marriage before death. And if there has been no termination and therefore no passing at time of death then the estate of the deceased may be the entire assets. So there is that important distinction.

In the light of that, do you see that there is a difference between The Devolution of Estates Act . . .

**MRS. CRYSTAL:** There could be.

**MR. CHERNIACK:** Yes. So I'd like to move to The Dower Act which deals with the law whether or not there is a Will and the present law says that a spouse is entitled to the first \$10,000 of the estate, or the spouse is entitled to one-third of the estate, with a minimum payment of \$10,000 and thereafter the children, if there are more than one, are entitled to two-thirds. I am wondering whether the concern you have for the spouse could be satisfied under The Dower Act which would apply equally to whether or not there is a Will, if the \$10,000 — which I think is ludicrous — were increased to a substantial amount and say if The Dower Act provides that there shall be a minimum of a figure like \$100,000 passing to the spouse, then possibly The Devolution of Estates Act could provide for less than all to pass to the spouse and possibly then some of it be left over for children, which would be the principle of the present law.

**MRS. CRYSTAL:** That might be consistent I think with the ideas of the committee. It might be, it's hard to say . . .

**MR. CHERNIACK:** Well you haven't discussed it, thank you. The other point was the one that Mr. Jenkins started on. I'd like to understand and I don't know the law or the concepts that you speak of that well, if a child is temporarily in the care of Children's Aid then the parent is responsible?

**MRS. CRYSTAL:** He may or may not be. I think the judge makes that decision as to whether he is financially responsible.

**MR. CHERNIACK:** All right, but in the event that it passes that permanent custody is given to the Children's Aid then is it your understanding that the court will not order a parent to pay maintenance for that

child?

**MRS. CRYSTAL:** It's my understanding but I believe Mr. Fraser is here and perhaps he could answer that question.

**MR. FRASER:** That is correct, Your Honour. It is the practice in the courts at the present time not to order any maintenance against the parents in cases where a permanent order of guardianship is granted.

**MR. CHERNIACK:** Well, Mrs. Crystal seemed to be separating her personal opinion from what she reported to the Committee and therefore she didn't, to my mind, justify this practice or the principle behind it. Would either of you care to explain why that is so?

**MR. FRASER:** The principle is that all the rights of the parents are terminated and it serves really no useful purpose to maintain an on-going obligation and relationship which might influence some parents whose rights have been terminated to think that if they are paying maintenance they still have some rights.

**MR. CHERNIACK:** So you say the practice has been accepted on the principle that if a person pays that person might interfere in the future of the child, that it is not worth getting the money out of the parent in exchange for the threat that parent might want to become involved in control or custody or want access.

**MR. FRASER:** I can only speculate that it would seem to me that is the rationale or one of the rationales.

**MR. CHERNIACK:** Is that then the reason for the recommendation?

**MR. FRASER:** Yes.

**MR. CHERNIACK:** A permanent transfer of custody to Children's Aid is surely only permanent until the Children's Aid can find an adoptive situation, I assume.

**MR. FRASER:** That would be correct, Your Honour. Many children who have severe emotional or severe mental retardation problems or severe physical problems may not be able to be placed for adoption.

**MR. CHERNIACK:** Mr. Chairman, I wonder if we should tell Mr. Fraser that we are all honourable but none of us are entitled to be addressed that way.

**MR. FRASER:** I feel like I am in court.

**MR. CHAIRMAN:** This is not a court, Mr. Fraser.

**MR. CHERNIACK:** So that it is a matter of principle on the part of your Society to say, "We don't want the parent to pay for the child's support if the parent has lost custody lest the parent assert other rights that have been denied to the parents."

**MR. FRASER:** That is correct. It is not restricted to our Society, it's . . .

**MR. CHERNIACK:** It's a general principle. So we can have a situation of parents that are wealthy, that have treated a child so cruelly or have proven that they are so incapable of looking after the child, being able to transfer permanent custody to an agency and relieving themselves of the responsibility for that child even though they may well be able to care for it.

**MR. FRASER:** I suppose hypothetically there is that risk but to my knowledge there has never been an actual situation. Hypothetically that could be.

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

**MR. SHERMAN:** Thank you, Mr. Chairman. Mrs. Crystal, Mr. Cherniack opened up an area of questioning that I would just like to pursue for a moment so that I understand the Society's position. Mr. Cherniack was attempting, it seemed to me, to elicit from you a statement of opinion as to whether the Society favoured the concept of immediate joint ownership of property as against deferred sharing. You have said that you did not take a definitive position on that question. We've had a fair amount of persuasion on both sides of the question in hearings we've had to date, but I would say that the preponderant opinion has been that there should be immediate joint management and joint ownership of property. Many groups did not ask for that. They were prepared to go for the deferred sharing approach on the basis that there were other changes in the law they would prefer to see, so they were prepared to sacrifice that ambition.

But Mr. Cherniack posed a situation, the difference with respect to the amount of the estate that would pass to the surviving spouse in the case of death, and what I would like to know is, in your opinion, if death were considered a termination of marriage for the purposes of whatever laws are forthcoming from these deliberations — if death were considered a termination of marriage in that context — would the Society then be prepared to accept the concept of deferred sharing as against immediate joint ownership? Because if death were considered a termination then presumably if we reached the decision that there's joint ownership, 50-50 sharing then that would apply on death anyway, so that half the estate as I suggested in our earlier exchange, half the marital property would be the rightful property of the spouse anyway. So if that happens to be the case then do you feel any strong preference for immediate joint ownership as against deferred joint ownership?

**MRS. CRYSTAL:** If you're asking me a personal question I would like to see immediate joint ownership. I can't quite recall what took place in our discussion. Our earlier discussions on this particular change in law took place in 1975. We met several times at that point and made a presentation at that point to the Law Reform Commission of Manitoba. So I'd have to go back into my memory about that particular point as to what the whole committee felt. I know what I feel personally. We didn't discuss it again last night when we had our first opportunity to have a look at this document and put together our report for you gentlemen. We didn't get a hold of a copy of this until yesterday. It made it very difficult to look into everything carefully, and so this particular point, I'm afraid, was not discussed last night. I can't clarify it any further than I already have.

**MR. SHERMAN:** But immediate joint ownership is not one of your top priorities. It's not the top priority



that you're seeking in reform.

**MRS. CRYSTAL:** It certainly wasn't one of the ones we discussed last night.

**MR. SHERMAN:** Could you just recap for me your position on the question of whether or not fault should be a consideration in maintenance?

**MRS. CRYSTAL:** Yes, we feel quite clearly that it should not.

**MR. SHERMAN:** It should not be a consideration in any context?

**MRS. CRYSTAL:** In any context.

**MR. SHERMAN:** Regardless of whether there are dependent children involved.

**MRS. CRYSTAL:** In any context.

**MR. SHERMAN:** Therefore by definition you automatically rule out the principle of judicial discretion in maintenance awards.

**MRS. CRYSTAL:** Oh no. In all other cases, yes, but not with regard to fault. There are many other considerations besides the fault one that the Judge will have to decide on. But fault is not one we would like to see considered.

**MR. SHERMAN:** Thank you.

**MR. CHAIRMAN:** Are there any further questions? If not, thank you Mrs. Crystal and Mr. Fraser.

**MRS. CRYSTAL:** Thank you.

**MR. CHAIRMAN:** Georgina Boux, please. Would you come forward? Do you have copies of your brief?

**GEORGINA BOUX:** No, I'm sorry. We'll point out at the beginning why there are no copies of our brief.

**MR. CHAIRMAN:** Proceed please.

**GEORGINA BOUX:** Thank you. Miss Georgina Boux, Canadian Federation of University Women. Since September 1974 our organization has had close contact with the Attorney-General's Department regarding these two items in the Law Reform Commission. The Family Property Law, originally we had a meeting with the Attorney General. We did respond to the original Working Paper. We sent a letter along under my name, and we also sent a night letter to the Attorney-General's Department before he went to Vancouver on the Federal aspects of this question.

Now it's very distracting to us that we were not sent a copy of the report from the Law Reform Commission on Family Property Law. As a result we have had no chance to study the report. The Children's Aid Society managed to get together last night and hunt all over the city for a copy of the report, and we weren't quite so lucky. So that's why we do not have a written response today.

We are also unhappy about the time of the meeting. One of the gentlemen had said that you met in Winnipeg till all hours of the night with some people. It was very very difficult for us, and I know for some of the organizations here to date, to get anyone to this meeting. I'm the only person who was able to make it and that's just by sort of sneaking off my job, so that a daytime meeting is very difficult when the majority of women or men are working nowadays, and a small opportunity to have met in the evening would have been very helpful.

One of the things that we did learn and has been substantiated so far by the proceedings here is that fault is still in the report in a small way. We agree whole-heartedly with the Children's Aid Society and we had worked together with them several times at our meetings, and had joint meetings. I'll just read what we said in our original paper.

*"Our opposition to any effort to lay blame for the marriage breakdown on one spouse or the other cannot be too strongly stated. We feel that the adversary position should be taken out of Family Court as much as possible for the benefit of all concerned. We also feel that it is, in reality, impossible for a Judge to conclude who was truly responsible for the breakdown of the marriage and that it should at no time be even discussed." This is the very strong feeling of all the members of our organization. This is unanimous agreement.*

*One other point that I will make is that from listening to the recommendations of the Children's Aid Society I would say that from the deliberations and hours we've spent in the past studying the original working papers, that we would be in full agreement with what Mrs. Crystal has told you.*

*Particularly I would like to agree with point No. 3 with regard to maintenance payments. We feel that the Government has a responsibility to see that maintenance payments that have been awarded by Judges should be paid, indeed paid some way or other by the setting up of an agency or in some other way.*

*Now I would like to conclude by saying that we will study this report. We will get a copy and study it and send a written submission to you as quickly as possible Thank you.*

**MR. CHAIRMAN:** Thank you. Are there any questions? Before I call on the first one, I neglected to introduce to you the latest member of our Committee to arrive, the Attorney-General, the Honourable Howard Pawley, MLA for Selkirk, to my right. Mr. Cherniack.

**MR. CHERNIACK:** Thank you, Mr. Chairman. Miss Boux, the maintenance payments to be enforced by Government would mean that instead of a lady having to hire a lawyer to find the defaulting husband to enforce payment by garnisheeing orders or whatever, the Government would be expected to do that.

**GEORGINA BOUX:** Yes.

**MR. CHERNIACK:** Would that, do you think, have greater results than if a lawyer does it?

**GEORGINA BOUX:** It couldn't be worse. For most women they can't afford a lawyer in the first place if they're living on maintenance payments, and oftentimes these payments are almost the difference between food

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on the table one day and off the table the next day.

**MR. CHERNIACK:** Is Legal Aid involved in assisting women in that situation?

**GEORGINA BOUX:** The cases that I'm personally aware of have had very little assistance from anyone.

**MR. CHERNIACK:** Very what?

**GEORGINA BOUX:** Very little assistance, almost no assistance.

**MR. CHERNIACK:** Why would that be?

**GEORGINA BOUX:** I don't know.

**MR. CHERNIACK:** Or why do you think you could rely on Government to have a better result?

**GEORGINA BOUX:** Well, government seems to be quite capable of getting the money from our salaries in taxes, and I'm sure if they were determined to get money from salaries there would be a way to get the money and pay it.

**MR. CHERNIACK:** Well, of course, the courts can order a deduction or receivership of a husband's wages just like the government can do with taxes but what does the court do when a husband is out of the province or is an itinerant traveller who doesn't have that kind of income?

**GEORGINA BOUX:** Right. I believe that is one of their problems right now. From what I know if the husband or wife, whichever, skips the province then they get off relatively scot-free and I would say there has to be some sort of interprovincial arrangements for this.

**MR. CHERNIACK:** Well there is that but still it doesn't work too well. So the next step then would be I assume that the taxpayer would be required to make the payments.

**GEORGINA BOUX:** Yes, and if the taxpayer has to make it then possibly it will work better because someone will work harder to make it work.

**MR. CHERNIACK:** So you say that the situation you described were mainly in food on the table or not food on the table. Is that really correct? Wouldn't that person obtain immediate and supplementary or emergency welfare assistance?

**GEORGINA BOUX:** Well, you can't get emergency welfare assistance just at the snap of a finger.

**MR. CHERNIACK:** You can not? Well I don't have the

so I'm really asking quite sincerely. Do you really experience' mean that people don't have food on the table and can't get assistance?

**GEORGINA BOUX:** I mean when a person is expecting a cheque tomorrow and it doesn't come for a week, it makes it very difficult for a mother with children who has depended upon that cheque coming tomorrow and it doesn't come. And maybe it doesn't even come that month, it makes it very difficult.

**MR. CHERNIACK:** I appreciate that. So really what you're saying is that that cheque should come from government regardless of whether or not it is paid by the delinquent spouse?

**GEORGINA BOUX:** Yes, I would say that probably is the solution to the problem if there is no other solution.

**MR. CHERNIACK:** Yes, because then it means that the taxpayer generally is required to make up for the default of the spouse and then I have to ask you, what standards would have to be established by which payment would be made in relation to what welfare is being paid. Welfare is paid at a certain level, not too adequate, I believe, but is paid at a certain level and after the welfare recipient is pretty well broke. Now how do you envision — there be a different attitude to people that have an order against a delinquent husband.

**GEORGINA BOUX:** Well if we are speaking of husbands, it could be either, we just say husbands because it's more normal.

**MR. CHERNIACK:** Well let's face it, that's usual. Most husbands are the vultures in this . . .

**GEORGINA BOUX:** I would say that the same criteria that are used now would be used there, the criteria of the husband's ability to pay and support his own children, they are after all his own children, and the ability and the needs of the mother.

**MR. CHERNIACK:** That's for the amount of the maintenance order?

**GEORGINA BOUX:** That's right, yes.

**MR. CHERNIACK:** Well then I'm asking, what should the taxpayer pay, the amount of the order or some criteria related to some standard of minimal needs or something like that? There is a difference. An order could be for \$1,000 a month and it could be in payment to a person who owns forty, fifty thousand dollars of assets, or an order could be at the welfare level to a person who has no assets. Do you see that there should be some minimum standard or I should say, maximum?

**GEORGINA BOUX:** Mr. Cherniack, I can see the point you are making and it's my belief that if a maintenance order is reasonable and is based on the person's ability to pay this maintenance order, then if the government is obliged to get this money for the wife or whatever, then the government will find a way to get it.

**MR. CHERNIACK:** Do you really believe that the government is so powerful that it could get that money regardless of where they had to get it?

**GEORGINA BOUX:** Yes, I do. Right. Even if it had to take it out of his final April 30th income tax.

**MR. CHERNIACK:** Even if he is in Australia or Timbuktu?

**GEORGINA BOUX:** Well, maybe out of the country is a different matter.

**MR. CHERNIACK:** Well out of the province or . . .

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**GEORGINA BOUX:** Out of the province, within Canada, I should think it should be able to be arranged for the . . .

**MR. CHERNIACK:** So may I ask whether you don't think that this could almost be an invitation to a court to make an order of almost any reasonable amount, and remember that's discretionary, knowing that if the husband doesn't pay, the government will; because it is my impression that courts, when they take into account a person's ability to pay, they consider what other dependents there are and they don't want to impose an obligation on a husband which will go beyond his ability to pay because he might then be almost pushed into leaving the job, leaving the province, deserting the whole situation. So they try to make it within his ability. Now if somebody is very wealthy and the court gives a substantial order, then you say the taxpayer should pay that regardless of whether or not that gives a very fine living to the dependent spouse or not.

**GEORGINA BOUX:** As I said, I feel inadequate because I haven't read the report but I remember originally, in the original report, that there was discussion about lump sum payments rather than maintenance and also that the wife would be encouraged to be self-sufficient as quickly as possible. And we felt honestly that the wife should be encouraged to be self-sufficient and that there shouldn't be moneys coming from the man to support the wife in the style to which she is accustomed until she dies at 76 or for the next 30 or 40 years. They should only be temporary payments until a wife has the ability to stand on her own two feet. The younger the person is, of course, the more apt this situation will occur more quickly. And the older a person is, at 60 or 65, maybe never having been into the work force and being unable at that time of life to gain the necessary skills to be self-sufficient, then it is another problem.

**MR. CHERNIACK:** I appreciate that but you know you haven't really dealt with the original matter I raised; and let me put it to you once more and I'll leave it then. It seems to me that there would then be a difference in maintenance to a bereaved person, a widow whose husband is dead, who will then receive welfare, and a person whose husband deserted her and who may even have assets, who will then be receiving a larger amount because the husband, who is not there anyway, whether he's dead or disappeared, was required to pay a larger amount than welfare. And it seems to me you might have two people living side by side, both in need of taxpayer assistance, one getting the welfare level, whatever it is, and the other getting what a judge thinks a disappearing or a disappeared husband ought to be paying her. Doesn't that seem to you to be a problem, it may be a social problem?

**GEORGINA BOUX:** I think it's a hypothetical problem all right. I'm sorry, perhaps I really don't understand. I can see what you're getting at that nobody should get more than welfare and we are asking for reasonable amounts, and if this husband has disappeared and there's no chance of maintenance payments at all in one way or the other, then perhaps it's just beyond my understanding at this point that this is a very important point. I think it's more important that those who need the money should get the money they need rather than that we worry about them getting too much. I think getting too much is probably not a common thing and it probably never will be common that a person will get more than they deserve or a great deal more than they deserve. Perhaps we can study this and give you in writing a better answer to the question.

**MR. CHAIRMAN:** Any further questions, Mr. Cherniack?

**MR. CHERNIACK:** No, thank you.

**MR. PAWLEY:** I wonder if I could just ask for some clarification on some areas. You mentioned in connection with no-fault that you would like to see maintenance paid regardless of fault. It seems to me there are three areas that we have to divide this consideration into; one is where there is children, I don't want to argue with you on that respect, I concur that the fault ought not to enter. Secondly, where the wife's ability to earn has been impaired by the marriage and a period of retraining or education is required in order that she can make a new life for herself.

The third area though that causes me concern, and I would like your views on, is no-fault payments when neither of those two items are involved but rather we're looking at maintenance payments for life, for age or health reasons, or some other aspect though fault remained on the part of the one spouse.

I'd like you to expand on that area as to whether you feel that clearly and definitively in your mind behaviour or fault should not enter into the picture even in that third category. I'm agreeing whole-heartedly with you in respect to where there's children and where there's need for retraining because of the impairment that has been introduced by the marriage process.

The third category, I'm not so sure that the responsibility for the parties ought not to be a factor and I would like you to expand because I believe you indicated, that in all instances, you felt fault should not be introduced into the considerations.

**GEORGINA BOUX:** That's right. We had rather lengthy discussions on this point when the committee met two years ago, spring of '75, and as I said it was unanimous, there was no one who disagreed with the position that I have stated. This is because — well fault is usually considered adultery, I would think, eh, we're talking primarily?

**MR. CHERNIACK:** Desertion.

**GEORGINA BOUX:** Desertion, adultery. Psychologically speaking, we felt that though one spouse may commit adultery or desert, it could be that the harmony or the lack of harmony in that family situation or just between the two, the marriage had broken down a long time before this ever happened. It must have broken

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down before. So it's our definite feeling that it would be very hard for even a psychoanalyst to decide at what point and whose fault it was that this marriage began to break down. Adultery may have been the last of a series of many years of problems and problems may not have arisen because of that particular person, or it may be, generally speaking, when two people have communication problems it's as much one's fault as the other; but to prove that it is one or the other person's fault is extremely difficult and we felt it was well nigh impossible to prove at what point the marriage broke down and exactly whose fault it was that this process began.

**MR. PAWLEY:** So you do not view desertion as sufficient cause to, in effect, penalize one partner over the other in that type of situation?

**GEORGINA BOUX:** Not any more than adultery, if those are the two prime serious types of fault. Even desertion could be, you know, that the person just couldn't tolerate the situation any more. He could have a screaming, nagging wife, you know the usual, and the man just simply couldn't . . .

**MR. PAWLEY:** I want to certainly agree with you that I've never seen a case in which, in my own experience in law, where one party was entirely in the right and the other party entirely in the wrong. There certainly is a mixture. Sometimes it stands out rather clearly that one party has contributed much more than the other to the situation, but certainly there has been a mutual contribution. It's only that third category that concerns me, however, in the proposal that you've introduced.

Another question in connection, I don't believe you dealt with this, that dealing with immediate, instantaneous sharing joint management versus deferred division. I'd like to have your views in that connection.

**GEORGINA BOUX:** Yes, unfortunately I don't know what the report says here but I can see that there is controversy about the two.

I think one of the problems that we discussed before was that immediate joint ownership allows in a business partnership, for both of them to have a say on how it is operated, but it does have the problem that one person — it may be really the business of one person — and the other person knows nothing about it at all and so it would be sort of ridiculous for the one person to have joint ownership of a business with which they know nothing. It's hard for me to remember exactly the discussions on this topic. I remember that we did discuss it. Personally, I would like to study it a little further before making any statement.

**MR. PAWLEY:** How many members in your group participate in these discussions? What is the extent of the involvement?

**GEORGINA BOUX:** Around ten.

**MR. PAWLEY:** I see.

**GEORGINA BOUX:** And then our proposals would be discussed with the general membership.

**MR. PAWLEY:** What would the general membership be?

**GEORGINA BOUX:** We have altogether 45 members. At any one meeting we could have maybe 20, 25.

**MR. PAWLEY:** I just want to complete my remarks by saying that I did appreciate receiving your telegram just prior to the conference of Attorneys-General. We received a number of telegrams, I should just mention, from many different groups.

**GEORGINA BOUX:** Good.

**MR. PAWLEY:** Well some of them diametrically opposed to the position that you were taking.

**GEORGINA BOUX:** It's bound to happen.

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

**MR. SHERMAN:** Could I just ask Miss Boux, Mr. Chairman, whether when her group re-examines this question and she has told the committee that she and her group intend to look more deeply into it ...

**GEORGINA BOUX:** Most definitely.

**MR. SHERMAN:** ... and to finalize some more conclusions, just following up on the Attorney-General's line of questioning, could I just ask you, Miss Boux, if you and your committee would have a look at this question of fault and grounds of fault and consider whether or not there are other grounds and other manifestations of fault of a serious nature other than the two which you have identified as being the most serious and perhaps the only ones worthy of consideration, adultery and desertion. And I just ask you to consider other grounds and grounds and expressions of fault such as alcoholism, gambling, extravagance, poor parenting, to name four. It would help the Committee if you did examine that subject and reach your final conclusions based on a look at that whole area, because this whole question of fault related to 1, 2 or 3 of the conditions outlined by the Attorney-General is pretty crucial to our deliberations.

**GEORGINA BOUX:** Yes, we certainly will discuss the Attorney-General's point about fault in the third level. I would say it could be that adultery is committed before the legal definition of adultery is really reached. So that, maybe not legally, there are forms of adultery that are just as bad perhaps as the final legal definition of adultery; so there are all sorts of aspects. But we will discuss that, Mr. Sherman' and have a further statement about it.

**MR. GRAHAM:** Thank you, Mr. Chairman. Miss Boux, I would like to get into this question of fault, whether or not fault should be any consideration or not. I would like to state to you an actual case — names of course will naturally not be involved in this — and this involved a young person who — I believe it would be in 1970 or '71 — he and his wife purchased a half section of land and went farming. In the '71, '72, '73 period the farming

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business was not a very profitable one and in 1973 his wife left him. She was a very professional woman and she got herself a very well-paying job, I believe it was the West Coast.

Now, when it comes to the case of divorce and you say nono-fault, if you were the Judge in this case how would you make any award? Should she pay him part of her salary if his earnings are less than hers? Or should he pay part of his possessions to her, such as the farm, because now the price of land is rapidly increasing? How would you deal with a case like that if no-fault was involved?

**GEORGINA BOUX:** Well, it's my opinion that if one of the spouses is earning enough money to pay the other spouse maintenance and the other spouse needs maintenance, then it doesn't matter which is the man and which is the woman, the needy one should receive the maintenance as long as it is absolutely necessary.

Now, as far as splitting up of the property is concerned, I think the feeling was all along that any of the assets that are acquired during the marriage have been acquired through the efforts of both spouses in one way or the other. One spouse may have been looking after the children to free the other to concentrate solely on acquiring these assets; or it could be that one spouse has been working outside of the home with pay and this sort of thing.

**MR. GRAHAM:** Excuse me just a minute. There are no children involved in this marriage.

**GEORGINA BOUX:** Oh. Also one or the other of the spouses — the term extravagance came up — the acquiring of assets often depends upon the thriftiness of the other spouse. It is possible to be the faulting partner in a marriage by spending and accruing a lot of debts for the husband to be saddled with in the end; and many wives are very thrifty and that has made it possible for their husbands to acquire a great deal of property or acquisitions in their name. Have I avoided the answer, Mr. Graham, or did I answer it?

**MR. GRAHAM:** No. I just posed it as something that is actually happening, and while we tend to deal with problems in general we have to make sure that when we are passing laws that they are applic. able to specifics.

**GEORGINA BOUX:** We really feel that marriage is a partnership and it takes two to acquire these assets, one way or the other, the sum total.

**MR. GRAHAM:** Very good. Thank you.

**GEORGINA BOUX:** There's a question back there.

**MR. GRAHAM:** It is in the process of going to the Courts at the present time.

**MR. CHAIRMAN:** If there are no further questions, thank you Mrs. Boux. Mrs. Bowen' would you come forward?

**MRS. MARY BOWEN:** I'm Mary Bowen. This is not what you are expecting to hear. I didn't realize what type of meeting this was going to be. I have not got things properly ready, and I'm going to ask if there's an address I can write to' to give me more information, ask more questions when it is ready. I would like to have brought these matters out here in front of the other ladies because it's something I feel that everybody should be able to discuss and know about. But as it is not ready, I cannot do so and my apologies for not having it completely ready. One thing I will say, it's not because I'm chicken about saying it.

**MR. CHAIRMAN:** A written brief is not necessary to the Committee. It can be an oral brief.

**MRS. MARY BOWEN:** No, I haven't got things figured out properly to . . .

**MR. CHAIRMAN:** As long as your concern has to do with the area of Family Law it is admissible to the Committee.

**MRS. MARY BOWEN:** Yes, but I have to figure out exactly what I would say and how I would say it.

**MR. CHAIRMAN:** If you wish to put your thoughts down in writing and send it to us, just send it to this Committee at the Legislature.

**MRS. MARY BOWEN:** And the name of the Committee is?

**MR. CHAIRMAN:** Address it to Mr. Reeves, at the Legislature.

**MRS. MARY BOWEN:** At the Legislative Buildings?

**MR. CHAIRMAN:** The Legislative Building, Winnipeg.

**MRS. MARY BOWEN:** Room number?

**MR. CHAIRMAN:** No. 237.

**MRS. MARY BOWEN:** Yes. Well, seeing I worked for the Civil Service for nearly three years I have a good idea of how they like things put.

**MR. CHAIRMAN:** Very good. Your brief will be copied and distributed to the members of the Committee. Is there anyone else in the audience wishing to address the Committee this morning? Would you come forward, please? Would you give your name for the record and proceed, please.

**LUCILLE TOLAINI:** I am Lucille Tolaini.

**MR. CHAIRMAN:** Would you spell your last name?

**LUCILLE TOLAINI:** T - O - L - A - I - N - I. I also don't have a brief but I'd like to speak on behalf of the women that are going through divorces, and I am going through one right now.

I have three children. My husband is very well off, and I am left with nothing. I cannot go to Legal Aid because of my husband's standards, so therefore I have to go to another lawyer and pay him on the outcome of what my husband will end up giving me at the end.

Now, this thing about whose fault it is, someone was saying that you can't really say whose fault it is, because it

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has happened all through your married life. Maybe I'm not coming out clearly. I'm not very good at explaining myself. You really can't pin down — like there are two things right now that we can go on for a divorce, right, and that is adultery and cruelty which I, myself, do not want to do these things because of the children. Now I do not want to prove to my children that their father has gone with other women, and the same with cruelty. Cruelty is a very hard thing to prove unless you have someone around that can prove that he has done some things to you.

**MR. CHERNIACK:** Three years' desertion.

**LUCILLE TOLAINI:** Okay, three years is a long time. I've put twelve years into it and tried to keep it together. Here you've got the three years of desertion, well that's fine, but I really don't think that that three years is — it would be all right for some people that their husbands just take off, or their wife takes off — but really and truly you can't say who is at fault because you're both at fault, and it takes 50-50 to keep a marriage going, or 100-100, whatever you want. If there are any questions, I could answer them better I think, than speaking like this.

**MR. PAWLEY:** We're concerned to hear you indicate that you were unable to obtain Legal Aid. I believe you indicated, if I heard you correctly, you have no assets of your own?

**LUCILLE TOLAINI:** No, I don't.

**MR. PAWLEY:** Or earnings of your own?

**LUCILLE TOLAINI:** No, I don't.

**MR. PAWLEY:** Did you actually make an application to Legal Aid?

**LUCILLE TOLAINI:** I was told by other lawyers that I couldn't go to Legal Aid because of this other reason that it depended on what my husband made, or could give. That's another thing, it's pretty hard to prove unless through Income Tax and things like that how much your husband does make.

**MR. PAWLEY:** Yes. I just want to say that I would like to, if I could have your name and address, check that out because I really can't understand that explanation given to you if you yourself are without earnings. I'd like to explore that further, because I think without earnings you should have been entitled to receive Legal Aid.

**LUCILLE TOLAINI:** With what earnings? I don't have any money.

**MR. PAWLEY:** Well, that's the very thing. There is a schedule showing when you are entitled to Legal Aid as per a schedule of earnings as against the number of dependents, and that is to be followed by Legal Aid. You indicated that you were without earnings.

**LUCILLE TOLAINI:** I have gotten earnings now since I have gone to the court and got it.

**MR. PAWLEY:** But you were unable to obtain Legal Aid to go to the court to obtain that payment.

**LUCILLE TOLAINI:** Well, from what I understand Legal Aid would not take my case because of the simple reason that my husband is making X number of dollars.

**MR. PAWLEY:** So, I would like to look into that because frankly I don't understand the reasons given to you by the lawyers in that connection. If you would like to give me your name and address I could check that out.

**LUCILLE TOLAINI:** Okay, fine.

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

**MR. CHERNIACK:** I don't want to get involved too much in your discussing your personal affairs, but you have come here because of your problem and this might help for us to better appreciate the problems that we are attempting to deal with. So may I ask, was there difficulty in getting quick response in relation to maintenance for your children?

**LUCILLE TOLAINI:** No, I didn't have any problem at all.

**MR. CHERNIACK:** No. Was this voluntary on the part of the husband or did you have some legal proceedings in aid of it?

**LUCILLE TOLAINI:** My lawyer had to go to court for me first.

**MR. CHERNIACK:** But there was no problem you say in getting it?

**LUCILLE TOLAINI:** No, but I'm living on very little.

**MR. CHERNIACK:** I appreciate that. I'm just trying to explore the extent of it. Did you have to prove fault in order to get support for your children?

**LUCILLE TOLAINI:** Yes, I did.

**MR. CHERNIACK:** Yes, and did you have to make a special plea for custody or was that not a problem?

**LUCILLE TOLAINI:** Yes I did.

**MR. CHERNIACK:** So you had to go through a court proceeding, and was it opposed on the custody question?

**LUCILLE TOLAINI:** Well, it can be.

**MR. CHERNIACK:** I'm sorry, but you did get custody did you?

**LUCILLE TOLAINI:** Yes, I did get custody of the children.

**MR. CHERNIACK:** Yes, and you had to fight that out, did you, in order to establish your rights?

**LUCILLE TOLAINI:** Yes I did because the divorce situation is so hectic as it is. I don't know how to explain it. Why should a woman have to prove how good she is or whatever the case may be just to have her children because she's the one that bears them and she's the one who wants to look after them.

**MR. CHERNIACK:** Well, you see, again I hate to involve myself in your own particular case. I'd rather try and

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speaking theoretically. Would you not think that there is a time when the child's interests would be better served with a father than a mother?

**LUCILLE TOLAINI:** I think that the children should have the rights to have both parents.

**MR. CHERNIACK:** I know, but that being impossible.

**LUCILLE TOLAINI:** But that's impossible, like I was just going to say, that it is impossible. I don't know just how to say that.

**MR. CHERNIACK:** Or don't if it's difficult for you. I have really no time to . . .

**LUCILLE TOLAINI:** Well, I think it's very very hard on the children. This is one thing that hasn't been brought out that divorce is very very hard on the children and trying to prove who is at fault, I don't really think that it should be because you don't want to hurt the children any more than they are already hurt, and they were hurt very badly.

**MR. CHERNIACK:** I should tell you I agree with you and I'm trying to see that your statement is that in an effort or attempt to prove faults, it acts adversely for the children's benefit. That's really what you're saying, that a husband and wife fighting, whatever the fight is, is harmful to the children.

**LUCILLE TOLAINI:** Yes, that's true. They don't want to put up with this just like we don't want to put up with this fighting and arguing and what have you. But I really don't think that there should be anything, especially this adultery. Now I mean, who can afford to have a private detective following your husband or your wife. I think this is absolutely unreal. You shouldn't have to do these things. If you just can't make it in a marriage, the thing should be put down so that we don't have to prove these things. It would just prove that we just can't live and that's it.

**MR. CHERNIACK:** An agreement not to live together.

**LUCILLE TOLAINI:** That's right, and that we don't hurt the children any more than they're already hurt because nobody realizes how hurt those children . . .

**MR. CHERNIACK:** Well then what you're saying as to fault in that respect, would I assume you would feel that you would not be entitled to use the fault feature as part of your claim for support?

**MS. TOLAINI:** Yes, I think that's the lowest thing you have to do is to hurt someone else all the more than they already are hurt. And we each have feelings.

**MR. CHERNIACK:** Please don't tell me who you think is at fault in your marriage.

**MS. TOLAINI:** No, I'm saying, we both are.

**MR. CHERNIACK:** Well all right, what I want to bring out is, would you feel entitled to a larger maintenance if your husband was clearly and obviously at fault in the marriage?

**MS. TOLAINI:** Yes, but — say that again?

**MR. CHERNIACK:** If your husband was clearly at fault in the marriage, absolutely without doubt, would you think you'd be entitled to a greater maintenance than you would otherwise?

**MS. TOLAINI:** You're saying that he's at fault, right?

**MR. CHERNIACK:** Assuming.

**MS. TOLAINI:** Assuming. I'm not saying that anyone is at fault, I think that we're both at fault.

**MR. CHAIRMAN:** Are there any further questions? If not, thank you, Mrs. Tolaini. Yes, would you come forward, please. It's Mrs. Crystal, is it?

**MRS. CRYSTAL:** I have been digging through my files and have found the minutes of the meeting of our committee of May 5th, 1975, and I can now answer a question that you asked me previously, Sir.

With regard to whether property should be shared at the beginning or whether it should be deferred sharing. The committee did discuss it at length at that point. The committee felt that the community property concept is an ideal which would strengthen the institution of marriage. But having regard to the realistic difficulties involved and the massive changes required in present laws, it was decided that deferred sharing was the most practical and readily instituted and would provide a great deal more protection than current legislation. So as I see it, we prefer the sharing at the beginning but we saw a great many legal difficulties and thought well, in that case, then we would go along with deferred sharing, but it wasn't our first choice. Does that answer your question, Sir?

**MR. SHERMAN:** Well it does, Mrs. Crystal, through you Mr. Chairman, to Mrs. Crystal and I appreciate that information for the record and for the committee. I might say, it parallels the position taken by a number of groups, women's groups in particular, who have appeared before the committee, that they intellectually perhaps prefer the immediate community sharing concept but they are prepared to settle for deferred sharing. We also have had presentations which have pointed out some of the things that you have alluded to, and your committee has alluded to the difficulties involved in introducing the immediate community sharing concept. I would just add to that that if death, as I suggested earlier, is accepted in this legislation as a termination of marriage the way separation is regarded or dissolution, divorce or separation is regarded as termination of marriage, then on the basis of what you told me, presumably that kind of arrangement would satisfy your committee because the marital property would be divided 50-50 anyway. You'd only be dealing, if death is accepted — I appreciate that it has not been, but if — (Interjection) — well exactly, but what I'm talking about is the marital property, the property assets, the property acquired during the marriage would then automatically be divided 50-50 anyway. What you were really concerned with after death is that part of the property that

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belonged to the spouse who died, either brought in before the marriage or acquired through gift or inheritance, etc., during the marriage, but the actual marital property would be divided 50-50. But it's very helpful to have that for the record. Thank you very much, Mrs. Crystal.

**MRS. CRYSTAL:** You're very welcome. Are there any other questions?

**MR. CHERNIACK:** Mr. Chairman, since I am searching to understand what these problems are because I favour instant joint ownership and joint management, I'm looking for the justification for the other side so I can study it. I'm not yet satisfied. Were you really satisfied that you knew that there were such tremendous problems involved or did you just take somebody's word for it? Because if you knew and accepted it, I'd like to know what they are because I'm not clear on the problems of joint ownership and immediate ownership.

**MRS. CRYSTAL:** Well I don't have any personal experiences so I really just simply have to hear the stories that other people told me about some of the problems they had. So I imagine I'm very much in the same position you are. I don't really know.

**MR. CHERNIACK:** I have to find out though, you don't.

**MR. CHAIRMAN:** If there are no further questions, thank you, Mrs. Crystal. Do you wish to address the committee, sir? Would you come forward, please. Give your name for the record and proceed, please.

**KEITH HONEYMAN:** My name is Keith Honeyman and I don't have a written presentation either due to lack of a copy of the report of the Law Reform Commission. There are a few areas that I think show up some inequities and I'd like to mention them to you.

First of all, I think I should mention that you've taken on an impossible task and I imagine by this time you realize that you can't come up with any blanket rules to cover all situations. This first one will illustrate that. The Law Reform Commission discussed the marital home, and as I say, I don't have their final report but they took as their definition of marital home, the definition used in the Dower Act. The Dower Act used the one under the term of "Homestead". I think there's some inequity here as far as homestead between a city dweller and the urban dweller.

The urban dweller, the Dower Act covers up to 320 acres and I find this inequitable with for instance, a city dweller who has only his own home for instance, his business is elsewhere if he's a self-employed businessman. The city dweller does not give his wife any dower on any part of his business property, it's only the home in which he lives. I'd like to see the Dower Act cover only the residence and I would think a good definition for this would be the definition of residence as it's used in the "Income Tax Act" under the Capital Gains section where it says that the residence may include up to one acre of land. So I would think for the rural dweller this, the farmer, this would be the equitable way of going about it. —(Interjection)— Right. Well the Income Tax Act states, I believe, one acre or more if it's deemed necessary to the enjoyment of the property. Something along that line. But it's generally the residence plus one acre of land. Certainly I would think that was equitable. I'm concerned about the equal distribution of assets and again I'm not sure if the Law Reform Commission Report came out in favour of this but I understand it does. I'm concerned from the area of a small businessman or a farmer, whichever; I am wondering how these businesses are going to survive literally. It is a matter of survival, business just isn't that easy in this day and age either from the farm standpoint; or another business probably I could give you that would relate quite closely to it would be the hotel business. If you take a man who owns a small hotel in this day and age, he has got it mortgaged up to the hilt and if he separates or divorces from his wife, where in the world can he get a second mortgage or how can he pay her out? There's no possible way. And if he can't pay her out, if he operates her share, we are not working towards his financial independence that we are talking about, and I think that is really an important thing.

The farm situation points up something that is important as well. The situation that Mr. Graham brought up, I would like to carry it a little farther, actually bring it more up-to-date than he has. The last probably four years, farmlands have approximately tripled in value. And what happens to a fellow who purchased a farm, for instance, for \$100,000 four years ago; three years later or four years later, his wife leaves for whatever reason, we are looking at a farm now worth \$300,000. Where can he go out and borrow money to pay his wife out for something like this? It's totally unrealistic. And what is going to happen to ownership of these businesses and farms is more than I can imagine. Is this going to split up economical, efficient operations?

If I could say a couple of words about the fault situation, I would like to see that left in; I would agree with all the speakers pretty well that it is almost impossible to determine. But, again, going back to one of my first statements, I think you can't make a blanket rule for these things. There are obvious areas where there are faults and there are some not so obvious, but I don't think that we can make up a rule which would cover the whole thing. I think we have to do away with the adversary system. We have had a little taste of it and it is utterly ridiculous. We have to get to the point where we can sit down and discuss things reasonably and determine something from that. As long as we carry on with an adversary system in family law, I can't see how we can make any equitable settlements that please all parties.

That is all I have, Sir.

**MR. PAWLEY:** I would just like to have clarification in connection with the comments about the difficulties for business or agriculture. Were you proposing then that there should be something written into the legislation to provide for the payment of the wife's share to be paid over a period of time, amortized over a period of time



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rather than immediate receipt by her of her share or are you saying that she should not receive any share at all?  
**MR. HONEYMAN:** Well if they are splitting up the unit, I can see no other way unless a second mortgage or maybe a first mortgage is available, then maybe something could be worked out there, but the combination of principal payment plus interest, you would . . .

**MR. PAWLEY:** So you are not opposing equal sharing in itself, you are simply saying that there should be some provision for a time period, a reasonable time period in which the spouse in that type of situation would receive her fair share rather than disrupt the business of the farm itself. You are not saying you oppose it, you don't oppose the very principle . . .

**MR. HONEYMAN:** I am opposing the equal sharing. I believe that somewhere we have to come to a standard here and if we take a man who has worked 30 years of his life as an employee, he maybe manages a small business, whatever, what's the difference there whether he manages that small business or whether he owns that small business. If he manages it, he is working on a salary, his wife and/or family are entitled to maintenance out of that but they don't get a share of that business if he is an employee, so why should they if he has owned his own business and if the wife hasn't contributed to that business appreciably, other than she would have if he was playing the role of an employee.

**MR. PAWLEY:** But would you not be prepared to acknowledge that the wife need not necessarily contribute in a financial sense but that she in fact would be contributing to her husband being able to prosper, become the manager of that business by the fact that she took care of the home, she raised the children, she probably from time to time performed a very important role for her husband by entertaining and being what a couple are expected to do. That was not a one-way street, it was not he himself but that she did contribute, and if it wasn't for her and her contribution over the 30-year period, that he might not have accumulated those assets.

**MR. HONEYMAN:** In the majority of cases that I have seen, there would be no more contribution to the business by the wife, either to the business or to the family unit, there would be no more contribution by her to that set-up if the man owned his business or if he did not own his business, if he was an employee.

**MR. PAWLEY:** Are you suggesting then that you don't feel there is any form of contribution the spouse can make except for a monetary contribution?

**MR. HONEYMAN:** Well there are a number of situations. For instance, with the farm situation where yes, there is a great contribution in a number of areas but again there are a number of areas there aren't contributions, too.

**MR. PAWLEY:** But what about the housewife that simply remains at home, raises the family, performs the expected role being a good partner at home, assisting him really in his career, entertaining, giving him support at home, moral support, are there not many non-monetary ways in which the wife in fact is making a real important contribution?

**MR. HONEYMAN:** Well let me ask you, what is the difference if that man is the manager of the business or the owner of the business, and if she stays at home and does not work in the business? She would, in her entertaining as the manager's wife, enhance his position. . .

**MR. PAWLEY:** That's right.

**MR. HONEYMAN:** . . . but she does not share in any share of the total assets of the business. What I am saying is that she can contribute from a family standpoint the same way if she is an owner's wife or if she is the manager's wife, and would be probably — well we can't use the word expected — but probably would entertain, probably would further him in his position as manager of the business even though there may be no possible ownership ever in the future.

**MR. PAWLEY:** But in either event whether it is through development of an ownership interest in the business or in the fact that her husband drew a good salary and was able to accumulate assets, shares, bonds, savings, whatever it be, from that salary over a period of time, still assets were accumulated because of the joint effort.

**MR. HONEYMAN:** This is something I didn't bring out further. I only think the business assets are the ones that should be kept separate, I think there should be equal sharing of all other assets, for instance, the home, the furniture, the camper, the trailer, the boats, cottage or whatever, the family assets I think . . .

**MR. PAWLEY:** What about the savings that have been accumulated over the years.

**MR. HONEYMAN:** I would say that's part of the family unit as well and I would feel that that's something that should be shared, but I feel a business is on the outside of all that.

**MR. PAWLEY:** And you're including in that reference a farm, a farmer.

**MR. HONEYMAN:** That's right, as a business. This is where you can't make one blanket rule .

**MR. PAWLEY:** But we go back to your example of the manager. You say, "fine," that the manager allow the sharing of the family assets, but the wife, where the husband actually owned that business himself, he is still accumulating that wealth in that business in the same way that the manager is accumulating wealth from being the manager of a business though he doesn't show title interest, the very same way. How would you possibly explain . . .

**MR. HONEYMAN:** I have no argument with the accumulation. I feel that the wife is part of the family unit certainly and she should share in all the family assets, but I don't think a business is a family asset, unless she is working in it. I'm a retired farmer, I still live on the farm, and I know different people in my neighbourhood that the wives do a pile of work on the farm, they take the place of a hired man. But there are other instances, and

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more of them . . . —(Interjection)— Okay, I'll agree with that. I guess the tape should read that. One of the members of the panel held up two fingers indicating they took the place of two people. But there are just as many more situations where wives don't do anything on the farm other than what they would do as the business manager's wife. They do the entertaining, this type of thing.

**MR. PAWLEY:** What about in the case that reference was made to where the wife really has carried the whole burden on the farm and the husband hasn't pulled his share, though all the farm lands may be in his name?

**MR. HONEYMAN:** Well this is where I'm getting back to saying you can't make a blanket rule, it depends on what work has been put into this thing.

**MR. PAWLEY:** I was rather curious about the two comments that seemed to me to be somewhat , I wonder if they're at variance with each other. One that we ought to do away with the adversary system completely — I believe that was your view in family — in family matters, family issues, . . . —(Interjection)— in support matters.

Secondly, however, earlier you had indicated that you felt that fault ought to be retained, and my question to you is: "How can we hope to do away with the adversary system if we retain fault as an issue to be resolved?" The very fact that we're going to be involved, it seems to me, in determining who's at fault, measuring fault, means the calling of witnesses, the hanging out in court of all the family linen. How are we going to possibly avoid an adversary system if at the same time we're going to retain fault?

**MR. HONEYMAN:** I think what we're discussing are areas of the adversary system — I'm trying to relate to my situation where I would like to get across to you my thinking.

**MR. PAWLEY:** You surely would admit, if I could just help you along here, that as long as fault is an issue, that certainly legal counsel on each side have every right to use their powers to cross-examine, to elicit information, to call witnesses, to introduce documents, dispute the evidence and the documents presented by the other side.

**MR. HONEYMAN:** I would agree with that.

**MR. PAWLEY:** You're not suggesting that as long as fault is there that you wouldn't be able to proceed in the normal way to adduce evidence in a court room.

**MR. HONEYMAN:** I would agree with that, I think there should be some really responsible interviews, there should be some situations where you could sit down and discuss these things. First of all, my personal situation turned out to be a hassle due to the legal people involved actually.

**MR. PAWLEY:** That's not unusual.

**MR. HONEYMAN:** I was speaking to the wrong member of the Committee. I think in the beginning you should be able to sit down and talk responsibly and reasonably about things, and where there is at least one party of the group willing to sit down and discuss it, I think that they should be heard.

**MR. PAWLEY:** But surely that is the case now if the two parties agree mutually that they would like to sit down, and to avoid the court proceedings.

**MR. HONEYMAN:** If they mutually agree, I guess so, yes.

**MR. PAWLEY:** There's the Family Counselling Service, there's their own minister, there's every availability, every means is made available to them, and it seems to me that in most instances even the judge will inquire first whether there'd been any efforts made to reconcile. So once you've gone through all that, and it hasn't worked out, how do you avoid the adversary system and still have fault?

**MR. HONEYMAN:** In the end you have to come to the adversary system, but I think there should be grades of it.

**MR. PAWLEY:** But still have vagaries of fault, as to who is at fault, as an issue to be resolved. That's what I would like to find out from you?

**MR. HONEYMAN:** I still think we have to maintain fault in the final result. I think we have to — going back to Mr. Graham's situation. If there was actual fault here, I feel this should come into play before there's a payment either way. We're talking in his situation, from what I understood of it, that there could be a payment either way. There could be a settlement by the husband of part of the asset of the farm, there could be payment from the wife to her husband due to the high amount of income that she's earning at the present time. It could go either way just from the sketch that we were given. But if they think there's fault involved here, obvious fault, then I don't think we can just say we equally share things and that's it.

**MR. PAWLEY:** Do you agree that the finding of fault depends a great deal on the attitude of the particular judge hearing the case, the skill of the competing lawyers in representing their clients and adducing evidence, and the effectiveness of either one of the parties in presenting his or her evidence in the court, that there are many many imponderables that we're dealing with that can sometimes bring about an unfair, a very unfair decision.

**MR. HONEYMAN:** Well I haven't any experience in that regard, but I can see where there could be. On the other hand I can see where we wouldn't want to eliminate the fault. I think we can be obvious on each side actually.

**MR. PAWLEY:** You think that there can be cases that will be so obvious on each side that it will be very clear . .

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**MR. HONEYMAN:** Right, it's the middle of the road ones where all the problems lie.

**MR. PAWLEY:** . . . without too much of an adversary situation to discover that.

**MR. HONEYMAN:** Right.

**MR. PAWLEY:** You do.

**MR. CHERNIACK:** Mr. Honeyman you raise two points. Firstly, on the fault issue. Did you actually mean there should be a penalty, like a punishment?

**MR. HONEYMAN:** Well I don't know how you could determine the term punishment. I suppose if you say that if it was to be shared equally, the spouse's equal share was \$100,000, and due to some fault or whatever the share turned out to be \$25,000, I suppose you'd consider that punishment. It depends on how you want to look at it.

**MR. CHERNIACK:** You know this is not in the recommendation at all, there's no recommendation, nor have I heard anybody propose that in the distribution of assets the fault should be a factor. The only place where fault is suggested as a factor is in maintenance, and therefore gives . . . Pardon?

**MR. HONEYMAN:** The term maintenance has been used so often this morning . . .

**MR. CHERNIACK:** It's support. Support.

**MR. HONEYMAN:** It's said as "only maintenance." Does that mean family maintenance, spousal maintenance or both?

**MR. CHERNIACK:** Support of the spouse, the children are considered to be without fault. But support of the spouse, the suggestion is and it is argued about whether there should be a fault factor, and I'm asking you whether you, therefore, say in that connection that there should be a punishment attached to blame, with blame, in money, more or less money?

**MR. HONEYMAN:** Well, again we've so many different situations to look at. We've got first of all the husband who runs off, commits adultery or whatever. We could punish him in higher maintenance or if, for instance, the wife did the same thing, do we punish her by less maintenance.

**MR. CHERNIACK:** That's exactly my question.

**MR. HONEYMAN:** I suppose I'd have to agree. If we eliminate the fault principle we have to average it out.

**MR. CHERNIACK:** And pay what is considered reasonable need. The argument that has been presented is that what should be . . .

**MR. PAWLEY:** Excuse me if I could just for a moment. I know that some are concerned about noon hour and are wishing to leave. What time do we resume hearings this afternoon?

**MR. CHAIRMAN:** That's for the Committee to decide. There's no one else who has indicated a wish to speak to the Committee. I would presume . . . —(Interjection)— No one else has indicated a wish to speak to the Committee so I would presume the Committee would wish to adjourn following Mr. Honeyman. Mr. Cherniack.

**MR. CHERNIACK:** You understand Mr. Honeyman the proposal has been that support or maintenance should be based on 1) need of the dependent spouse; 2) the ability or the resources of the providing spouse to provide that support. Now the Law Reform Commission has recommended, amongst various factors, fault should be brought in, and I am not clear on what that means. Does it indeed mean the way you described it, and I think it does, that if the husband is the deserter or adulterer and has to contribute he should pay more, and if the wife is the deserter or adulterer she should get less? And that to me is what fault means. I'm wondering if you see it any other way?

**MR. HONEYMAN:** No, I don't exactly see it that way.

**MR. CHERNIACK:** Or should I move on to something else?

**MR. HONEYMAN:** No, I'd like to comment, I just haven't put it together yet. Would you run through that again for me . . .

**MR. CHERNIACK:** Well I'm using your example which I accept as my example, simple. First we say that support should be reasonable, and we have said already and in the paper they propose that support should be of such a kind as to attempt to rehabilitate the dependent spouse, make him or her, and usually her, self-reliant, that is trained so that she can earn enough to be independent of any needs. But subject to that that maintenance should be based on the need of the dependent spouse, and on the resources of the spouse who has to make the payments. You know, if he's rich or poor.

**MR. HONEYMAN:** Yes, I would agree with the terms of that without fault, as far as maintenance is concerned.

**MR. CHERNIACK:** Thank you. Then I still want to move on to something else. You said that you were fearful, and I share your fear, that if there was a hard approach it might destroy a business or break up a farm, and that I recognized as a problem as you posed it. But then you went along and you said, "Well I don't think that the business or the farm should be split." To me that's two separate approaches, the second one I can't agree with simply on the basis that that manager that you described may have \$100,000 in Government of Manitoba bonds, and the owner of a business may have \$100,000 in the business, both acquired out of the hard work of the person and/or with the assistance of his marital partner. The one who has \$100,000 in cash, you say, yes split that. The one who has taken \$100,000, rather than in cash and bought into or acquired the business, you say, don't split that. So I can't go along with you on that, I think that an asset is an asset. But the

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first point you raised about forcing the sale or in some way damaging the business is, of course, a problem and I thought I should make you aware that the Law Reform Commission did deal with that and they did say that where there's no sense to sell the assets, then provision could be made to permit time in which a spousal share could be paid by installments. And in some circumstances to account for payment in specie by outright transfer of other available assets as equivalent of a payment of money. In other words if a man is worth \$200,000, consisting of \$100,000 cash and \$100,000 in the business, then they say, "Well value the assets and then let him pay it out of his cash resource and leave the business alone." But if he doesn't have that ability to pay in specie, that is in some other means, then they say deferred payments would be more logical so that he have time over which to spread the need to share. Would that not help in dealing with the problem you raised, because you said

**MR. HONEYMAN:** Yes, I believe it would.

**MR. CHERNIACK:** Thank you.

**MR. G. JOHNSTON:** Mr. Honeyman in one of your remarks you stated that you'd be willing, in the case of a business or a farm where the wife worked, and you used the term "as a hired man", then you'd consider that that farm should be split on shares depending on how long they were both married and how long they were acquiring the assets. Is that correct? I'm talking about the marriage period only.

**MR. HONEYMAN:** That's right.

**MR. G. JOHNSTON:** What about the case where a man who has control of the finances in the family decides with his extra profit every year, or his extra income, to instead of acquiring a camper or a cottage or a better house, to pour every spare dollar back into the farm or back into the business. Now do you still hold to your view that a wife should only be entitled to share the home and the savings, but the business should be left aside? One family may have provided by common consent or by the will of the husband to have a camper or a cottage or a better house so there's more to share.

**MR. HONEYMAN:** This is true. In conversation with Mr. Cherniack I think he mentioned that we could have \$100,000 in bonds or we could have it in the business. If we're talking inventory in the business, I'd have to take a look at that, but I understand what you're referring to.

**MR. G. JOHNSTON:** Either you have a law that says that the division of assets are made that were acquired during the marriage, or else you have a judgement or a Judge decides, if the two parties can't agree. What would you prefer?

**MR. HONEYMAN:** To me one of the problems in this is that we have to — again going back to the first thing I've got noted here — is that we can't make a blanket rule on all these things. There are going to be a number of settlements, but the final settlements that have to go to court are going to follow these reforms that are set up. I guess my answer to your question would be that, to me I think it depends on a time period. I can see where a husband and wife have farmed together for forty years, if something happens at that point and it has to be determined, then I think the time period should be taken into consideration. Where it's a short period of time, five years or whatever, I think we have to look at it in a different light.

**MR. G. JOHNSTON:** Then only dividing the assets that are built up.

**MR. HONEYMAN:** But we're talking of being from the date of the marriage, aren't we? From what I gather that's what the report says.

**MR. G. JOHNSTON:** Well, are you shifting your ground a little now in saying — I gave you the example of one family that put all their money back into the business of the farm — and if the breakup time came, your suggestion is that they only divide the house, the cottage, the savings, but the farm or the business is left to the original owner.

**MR. HONEYMAN:** No, I would say this should remain the same.

**MR. G. JOHNSTON:** So that the family that made sacrifices for 20 or 30 or 40 years and end up with a very valuable farm but nothing else, the wife is going to be very poorly done by under your rule. Isn't that a fact?

**MR. HONEYMAN:** I can see your point, yes.

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

**MR. GRAHAM:** Most of my questions have been asked, Mr. Chairman.

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

**MR. SHERMAN:** I just wanted to ask Mr. Honeyman one question, Mr. Chairman' and it has to do with his whole approach to the area of fault which is, I think, pretty central to everything that the Committee is studying at the present time.

You have said Mr. Honeyman, you don't think you can make blanket rules to cover all these situations, and it seems to me that what you are saying is that because of unusual circumstances you can never probably come up with a law that is going to be totally 100 percent fair to everybody, and I would agree with that. I think that there are always going to be some inequities at some end of the scale and the trick, I guess, is to minimize the inequities.

What I would like to know from you, because this fault question is one of the centre pins on which the whole Committee examination turns, is whether you think that there would be more inequities in society generally if you eliminated the fault system than there are under our present system for separation and division of property and maintenance. I gather from you that you think that if you eliminate fault that there are going to be some

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spouses — and in most cases it would be the husband because of the nature of society — that there are some spouses who are going to be discriminated against who are going to wind up being treated unfairly, who are going to wind up paying penalties that they shouldn't morally have to pay. So you're worried about that area of inequity which, I think, is a reasonable concern. But what we have to do is look at the inequities on the other side as the system presently operates and consider the inequities for wives, the inequities that work against wives generally in the present circumstances of the law. So I'd like your opinion as to whether you think if we eliminate the fault concept notwithstanding the difficulties that the Attorney-General pointed out and there are many and they're considerable, but if it were possible to make the comprises that you suggest and retain the fault concept, do you think there would be more inequities if we eliminate fault than there are with fault in there?

**MR. HONEYMAN:** I don't really think I've got enough experience to answer that. It's something I'd have to do some research on, I think.

**MR. SHERMAN:** But would you agree that your main concern is as I've described it, if fault is eliminated, that there will be husbands who would find themselves with unfair burdens placed upon them?

**MR. HONEYMAN:** I would think there will be instances, yes.

**MR. SHERMAN:** Well, that's all I have, Mr. Chairman.

**MR. CHAIRMAN:** Are there any further questions? Hearing none, thank you Mr. Honeyman. Is there anyone else in the audience wishing to address the Committee? Now the motion to adjourn would be in order. Moved by Mr. Barrow. Is it agreed? Agreed and so ordered. The Committee is adjourned.