



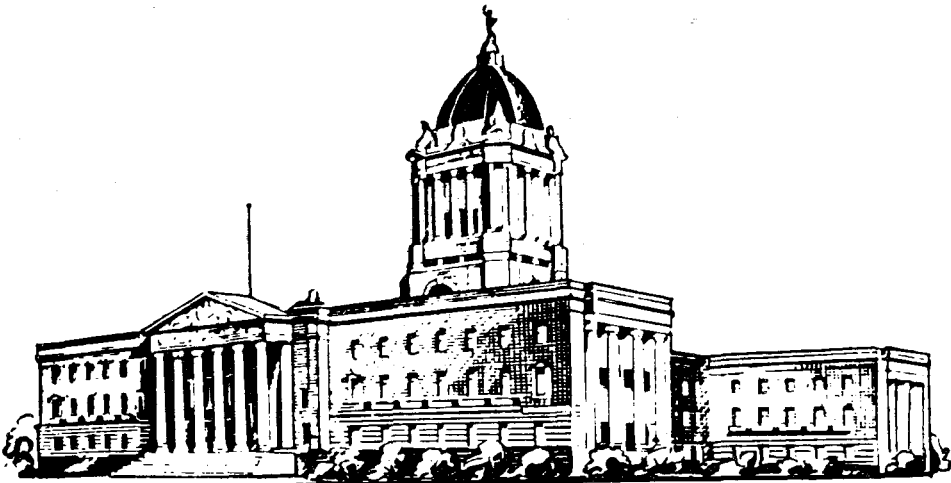
**Legislative Assembly of Manitoba**  

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

**Chairman**

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



**TUESDAY, November 23, 1976. 10:00 a.m.**

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

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TIME: 10:00 a.m.

**MR. CHAIRMAN (Mr. D. J. Walding):** Gentlemen, we have a quorum, the Committee will come to order.

I have an indication that there are nine persons wishing to address the Committee this morning. I'll read them out and then ask if there is anyone else present wishing to speak to the Committee. The following have indicated they wish to speak:

The Voice of Women

The Coalition on Family Law

The Status of Women Committee, New Democratic Party

The Winnipeg Council of Self-Help

The Provincial Council of Women

Mrs. Frances Roskevich

Ms. Berenice Sisler

The Progressive Conservative Provincial Women's Association

Y.W.C.A.

Are there any other members of the public present wishing to speak to the Committee? If so, would you come forward and give your name at the microphone at the front, please.

**BONNIE McDONNELL:** I believe that we did register the Manitoba Association of Registered Nurses. I didn't hear you list that, but we did request that our hearing be later this afternoon.

**MR. CHAIRMAN:** I have a separate list of people wishing to speak this afternoon. If there are any of those who wish to be added to this morning's list, would you please come forward and indicate. If not, I will read a separate list at two o'clock for this afternoon's hearings. If there is no one else wishing to speak to the Committee, I would ask the person representing The Voice of Women to come forward please.

**MS. GRAY:** With the indulgence of the Committee, I would request that you hear the Coalition position first, if you wouldn't mind, because our relates to the Coalition and women. Is it all right if they spoke first?

**MR. CHAIRMAN:** Is that agreeable to the Committee? (Agreed) Who is speaking for the Coalition?

**ALICE STEINBART:** My name is Alice Steinbart, I am here to present the brief on behalf of the Coalition on Family Law.

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

**MS. STEINBART:** I believe you are being given copies of the brief by the Coalition. I believe as well that you have seen copies of the postcards that have been handed in or mailed in — this was something that was started by the Coalition. If you haven't seen copies of the postcards, you will, there were several hundred mailed in or handed in. The postcards deal with the recommendations that the Coalition has endorsed.

The Coalition on Family Law is an organization of various groups and individuals committed to advising the public on proposed family law reform and to obtaining the reform of family law. The Coalition has been endorsed by the following groups: Council of Self-Help Groups; Manitoba Action Committee on the Status of Women; Manitoba Association of Women and the Law; Women's Place; Women's Liberation; The NDP Status of Women Committee; Voice of Women; Congress of Canadian Women; United Nations Association; Fort Garry Family Law Reform Action Committee. Now since this has been typed, there has been another group, that's the Manitoba Teachers' Society, has also endorsed all of our recommendations.

In addition to these endorsing groups of the Coalition, we understand that many organizations will be independently presenting briefs which will be supporting the urgent need for family law reforms, but in specifics expanding on the Commission's recommendations. We refer specifically to groups such as the YWCA, the Conservative Women's Association and MARN.

The Coalition began its analysis of the Family Law Reform Commission's report in the spring of 1976. Since that time, we have met not only with endorsing groups, but with numerous other organizations in an effort to explain our position and our concern with the Law Reform Commission proposals. These groups have ranged from small neighbourhood social and educational groups to annual meetings of organizations like the Women's Institute.

Our position has met with overwhelming support, and I want to stress that. We have received hundreds of postcards from people endorsing all or most of these recommendations. These postcards have not been signed by uninformed people, but by people who have attended our public meetings or have read our complete position. They are aware, interested and committed to the reform of family law, and you will see that when you have a look at the postcards. Many of them contain additional comments.

We have also received a number of letters from women throughout the province supporting our actions. Other letters have indicated to us the tremendous need for immediate reform. We would like to quote briefly from one of these letters to give you an example of how the present law works in real life:

*"Dear Madam, Yes, I think the laws should be changed for the housewife. I have been married for 27 years and have raised a family of four. The oldest is 25 years and the youngest 15 years. I don't have any say in any of the money, I don't get an allowance, I can't write a cheque and I haven't any money in my name. I receive enough for groceries and buy my extra things I need out of that. If I want something for myself, it usually comes out of the family allowance cheque which isn't fair to my family."*

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

---

Last week I was to sign the papers for a large loan to pay off some of our bills. I did not want to but I was forced to and told not to talk back to him. I would like to get a paying job but I was told not to come back if I went to work. I work hard and I feel like Mrs. Murdoch, that I should receive more than I get and don't know how much longer I can last. I feel sorry for the family as it is them that gets hurt the most."

There are many stories such as this and these cases are the reason that family law should be changed.

Now going into our recommendations, the first is an introductory statement on marriage. Marriage is an equal partnership, and each person contributes in his or her own way. This contribution can be by earning money, by looking after the home and children or by doing both. It is an interdependent relationship and the contribution of each spouse should be recognized. We have human rights laws based on the belief that all people should be treated equally, that if one is of a certain race, sex or religion one should not have fewer rights or less protection or recognition. Certainly it is accepted that looking after the home and children is equally necessary and therefore as important as earning a living. And certainly, at long last, this should become part of the basis for our family law.

Recommendations dealing with a marital home: A marital home purchased during the marriage or with marriage in mind should be jointly owned. (That's jointly owned during the marriage.) The procedure for registering a marital home in the Land Titles Office should be very simple and we suggest a standard form to which is attached the marriage certificate. This form should be easy to complete, not require a lawyer, and available free to the public. Registration should not be necessary to create joint ownership; this would be created by the legislation. Registration would simply mean that the property could not be fraudulently sold by one spouse under the pretence of sole ownership. There should be no taxation on transferring title to a joint tenancy.

Couples should be able to contract out of a joint tenancy, but only by joint written consent, after each has had independent legal advice. In this event, an updated Dower Act would still apply.

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

The Recommendation on Division of Property on Separation: There should be a no-fault equal division of all assets acquired during the marriage, on separation. Since marriage is an equal partnership, then each person does their share either by working in the home or outside or both. Each person has helped to build up the family assets and each should share equally.

Property acquired before the marriage by either person would be the separate property of that person and therefore not shared. Also, certain property acquired during the marriage, specifically gifts to only one person, inheritances, trusts and income from them, and damage settlements would not be shared.

In dividing up the property, the individual can either take particular assets or an equalizing payment. The couple can agree to the division of the assets or the time for paying of the equalizing payment or apply to the Court for an Order.

Couples should be able to opt out of these provisions but only by joint written consent after receiving independent legal advice. Under no circumstances should one person be able to unilaterally opt out of this as it would be contrary to the basic principle that marriage is an equal partnership and would negate the whole reform. The Law Reform Commission has made a recommendation that in transition there should be a six-month period where one person can opt out unilaterally. That would be against the whole principle of the reform.

There should be no judicial discretion to vary the principle of equal division.

The Recommendation dealing with Spousal Maintenance during Marriage: Each spouse should be responsible for the support of the other during marriage, and this support can be either by financial contribution or by child rearing and household duties or by both.

Each spouse must give the other full information on earnings, assets and debts. This information can be obtained from one spouse, or that spouse's employer (including the government), partner or accountant. It is difficult to imagine why anyone would refuse to tell a spouse about one's earnings, assets or debts should that spouse wish to know, unless there are marital difficulties. It is even more difficult to imagine why the law would encourage or allow this, this one spouse to refuse the other the information. It seems that such an attitude must be based on suspicion, distrust, miserliness, or basic hostility of one spouse and should not be encouraged.

Each person has the right to participate in making decisions on spending the family income. It is likely that in most marriages one person, by agreement, is responsible for the family finances. It is also likely that in major expenditures, both parties participate in the decision-making. This proposal for equal participation would not affect these arrangements. It would affect the following situation, which we cite not only as true, but all too typical. And I'm giving you this situation as one that I have come across as a lawyer with one of my clients. I have changed the names.

Betty has been married for some years to John Meany. John is a trucker while Betty stays at home to look after their two children. Betty has no idea of how much John earns, nor what he owns, including his bank accounts, other than what she can see. John buys all the groceries after Betty has given him a list. Betty buys the

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

family clothes but she must tell John exactly what she intends to buy and the price and then he gives her that amount. When she needs money for other items, including personal items, (and I don't know if you've ever been in a situation where you had to go to a spouse asking for a certain amount of money for a particular item, it may be that there are some marriages set up where one party takes care of the family finances and gives a certain amount to the other) but that's not what we're talking about. We're talking about a woman who had to say, "I need X" and say exactly what it is, including personal items, state the amount and then get that exact amount. So she had to go to him for personal items, for things like school supplies, bus fare, lunch money for the children, gifts, and so forth. To allow the law to remain this way is to make a mockery of the principle that marriage is an equal partnership and to refuse the recognition of both spouses' contribution to that marriage.

Each spouse has a right to a reasonable standard of living, including a clothing and personal payment. The amount must be reasonable and based on the family's financial circumstances. All of those rights should be enforceable by one spouse obtaining a Court Order.

**Recommendation on Spousal Maintenance after Separation:** There are two questions which must be considered in deciding maintenance, first, when should maintenance be given; and secondly, how much? In answer to the first question of when maintenance should be given, we have the following recommendations: (1) to support a spouse who has custody of a dependent child; (2) to support a spouse during job re-training or further education in order to become self-supporting. Now both of those recommendations are for short-term type maintenance. The third is a long-term type maintenance, and that is to support a spouse for life where that spouse's ability to become self-supporting has been impaired during marriage by age, health or home responsibility. And the common example of that is a woman who's been married for maybe thirty years, she might be say 55 years old and there's no point to give her job re-training to send her out into the job market if she has remained at home and hasn't been out in the job market all those married years.

Once it has been decided that maintenance should be given, the amount to be determined should take into consideration the following factors: (1) the responsibility of each spouse for the custody and support of the children; (2) responsibility of each spouse for the support of others at the time of separation — and we stress that, at the time of separation, it should not be reduced because there is a second family being started; (3) the length of the marriage; (4) the dependency of each upon the earnings of the other and the reasons for such dependency; (5) the amount received by each for the property settlement; (6) the standard of living and financial situation of each; (7) the ability of each to become financially independent.

Marriage breakdown is a traumatic experience for probably everyone who goes through it. While the law must attempt to deal with each party compassionately and meet their needs, it has no business encouraging couples to get revenge or get back at each other. Fault should have no effect on the question of maintenance. Finding fault simply increases the hurt between the couple, but more than that, it hurts the children who are caught in the middle of the accusations and name-calling. In any event, how can you define fault, how can you say one person is responsible? Marriage requires two to make it and it probably requires two to break it. Therefore, the factors cited by the Law Reform Commission that the relative responsibility of both spouses for the separation or marital breakdown or for the refusal or neglect to provide support or the extent to which each spouse has contributed to the marriage should not become part of the law. Nor should maintenance be reduced or denied if the spouse ordered to pay maintenance starts a second family. The person who is receiving maintenance has a right to it, and the person who must pay has a responsibility to pay. The right to receive and the obligation to pay should not be varied by what is in effect a decision by the one to take a new life style, that is a new family.

**Recommendation on the Support of Children:** Both parents have a responsibility to support their children and the children of their spouse until age eighteen. This obligation should not end at an earlier age for any reason. Parents should not be allowed to force children out nor give up responsibility simply because the child is going through difficult years.

A common-law spouse should not be held responsible for the support of the other spouse's child if the natural parent cannot or will not. In common-law relations, the natural parents should have the first responsibility for supporting their children and the province the secondary responsibility. Should the common-law spouse be saddled with this responsibility, then there would be an invasion of the privacy of the natural parent having custody, limiting the opportunities they have to form relationships with other adults. Such a result has been borne out by the experience of women receiving pensions and other forms of social assistance. You've probably heard of cases where women are receiving social assistance and they have workers coming around to see if there is any common-law spouse involved. The responsibility of children belongs to the natural parents, unless any other adult wishes to take on this responsibility through marriage or adoption. And that should be the only way they should be saddled with this responsibility, by assuming it through marriage or adoption.

The amount of maintenance for a child should be based on appropriate total costs of child maintenance including accommodation, a reasonable household assistance, food, clothing, recreation, and supervision in order to secure a stable environment for the children. It is most important that the maintenance be adequate and the children will not suffer because of the parents' separation.

It is also most important that the maintenance payment actually be made. Under the present laws 75 percent

of all maintenance orders are uncollected and unenforced. That will show you the present law is not working. There is not much use of having maintenance orders if that's the case. If a woman has custody of her child, she must support herself and her child either by going on welfare or getting a job. Nearly two-thirds of all people on welfare are women and most of them are sole support parents. A woman on welfare with one child receives \$212.60 per month. I don't know if you could ever feel that you could live on that. I couldn't live on that, just one person' but this is a woman and her child and this is a child under the age of six. That's the actual amount she receives. These payments remain equally low despite the number of children. If a woman is working outside the home, she will receive, on an average, 50 percent less income than a man and it's the children who suffer if the maintenance is not paid. Under the present laws and under the recommendations of the Law Reform Commission, the parent with custody of a child must try to enforce a maintenance order and this is just not working. The government has more resources and powers to enforce an order than a separated parent; therefore, the government should undertake this responsibility. A special agency should be created to: (1) maintain a registry of all maintenance orders; (2) pay all maintenance orders up to a reasonable level of support, whether or not the maintenance has been collected; (3) enforce all maintenance orders; and (4) pay out any maintenance recovered above the reasonable level of support when it is collected.

Maintenance orders, of course, can be varied as circumstances change.

Now there are a series of other recommendations. Maintenance to one common-law partner should be given where a child is born or expected as a result of the relationship or the relationship impaired the economic self-sufficiency of one partner. The law reform should also deal with the distribution of assets acquired in a common-law relationship on separation.

If one spouse dies without a will, the surviving spouse should inherit all of the deceased's estate. The Dower Act setting out how much a spouse can inherit despite what the deceased's will says, should be reviewed, taking into account the position of first and second families in the case of more than one marriage.

Details of the proposed law and final legislation must be widely and well publicized.

The Law Reform Commission did not deal with a number of areas which should be reviewed, namely:

1. Immediate joint ownership and joint management of all assets acquired during marriage. This is sometimes called instant community of property.

Our recommendation: we accept the idea of deferred community property, that is sharing, equal sharing on separation. This is the bare minimum. We should also like you to look at the concept of instant community of property.

2. Principles of custody, including amongst other matters adequate representation of children during separation proceedings;

3. Eliminating the stigma of illegitimacy;

4. Change of name; and

5. Coverage under the Autopac Plan in the event one spouse is sued by the other for injuries in a car accident.

That's the submission of Coalition on Family Law.

**MR. CHAIRMAN:** Thank you. There may be questions by members of the Committee. Order please. Expressions of opinion from the audience are not permitted at committee meetings. Mr. Cherniack.

**MR. CHERNIACK:** Mr. Chairman, I wonder if I could make a suggestion just to see how it would work out if we did it. I've noted questions that I have to ask in regard to Pages 5 and 6 and I think one question on a previous page. I'm just wondering whether the Committee would be as well served if we went page by page to see whether we could somehow relate our discussions, all of us, to one page, thus seeing if we can have some sense of continuity. But if Committee thinks otherwise, then by all means I'll wait and deal with my specific questions separately.

**MR. CHAIRMAN:** Is the Committee agreed? (Agreed) We should start at the beginning, Mr. Cherniack, or at the pages you mentioned?

**MR. CHERNIACK:** I'd suggest that you start at the beginning and see what questions come up. You know, like Page 1, Page 2.

**MR. CHAIRMAN:** Are there any questions on Page 1?

**MR. CHERNIACK:** Mr. Chairman, the point I made was that if there is a question on the introduction, Page 1, you could call that page and then we could each ask whatever we want to ask in connection with that page, then we would go on to the end of the brief, page by page, your calling the page and our discussing it. And at the end then if there's any unanswered questions we could each have the right to raise them. It's only a suggestion as to procedure that might save time. If it won't then let's throw it out.

**MR. CHAIRMAN:** What's the will of the Committee? Mr. Sherman.

**MR. SHERMAN:** I think that's an accepted way to proceed, Mr. Chairman.

**MR. CHAIRMAN:** Very well. Are there any questions on the first page titled Introduction? Mr. Sherman.

**MR. SHERMAN:** On the first page, second last paragraph, I'd like to ask the delegation whether it was intended in the brief to say "You have received hundreds of postcards" or whether it should read, "We have received hundreds of postcards"? Is that remark addressed to the Legislative Committee on Standing Law, to us on Family Law?

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

**MS. STEINBART:** The Committee has now received a postcard that was sent to a box number originally. There were two different addresses, the first batch went directly, I think, to the Committee, the second batch went to a box number; they have now been delivered over to the Clerk of the House and I think you will probably be receiving them or seeing them, the postcards.

**MR. SHERMAN:** For the record, Mr. Chairman, I take it that the postcards have now arrived and are going to be made available to the Committee. Up to this point, to the point at which that comment was addressed to us, I don't think any of us were aware that there were any postcards that had been sent to the Committee.

**MR. CHAIRMAN:** Any further questions on the first page? Are there any questions on Page 2? Mr. Pawley.

**MR. PAWLEY:** On page 2, the example given, I think you would concur that about the only way the . . . situation be dealt with on Page 2 would be if the community property proposals were introduced into law in Manitoba which in fact you have indicated that we give consideration to, in your brief, but haven't actually, as I read this, recommended at this time. It would seem to me that the example that's given, the lady that's written the letter, that her type of case would be best dealt with by the introduction of community property.

**MS. STEINBART:** Well, of course, instant community property is one way but that's not the only way. The Law Reform Commission has made certain recommendations on rights between spouses during marriage, on rights about maintenance and that's on Page 2, the second Page 2, of our recommendations, instead of what I would call basically the four rights: the right to support; the right to know the assets, debts and earnings of the other spouse; the right to participate in decision-making in spending family income; and the right to have a private allowance; and this is the recommendation of the Law Reform Commission and we accept that as the bare minimum, and we have asked you to look at the instant community property as well. I think her case would be covered by these four rights which I proposed. It would certainly help us.

**MR. CHAIRMAN:** Any further questions on Page 2? Page 3, Mr. Johnston, Portage la Prairie.

**MR. GORDON JOHNSTON:** First of all I'd like to congratulate you on the brief. I think it has gone in depth into many of the problems that arise in every marriage I would suggest and not always solved.

On Page 3 you make a number of points about the marriage and the way the home should be conducted after the marriage. Could that be covered by a marriage contract? In other words when a young couple go down and pick up their marriage licence and have their physical examinations, etc., would it not encourage them to think more seriously about what they're doing if at the same time they could obtain a marriage contract form and go over it. And if there's a male approach that says no way will I sign over or agree to allow you to have half the assets, well then at least they know at the beginning of the marriage and even perhaps they would call it off, perhaps they'd call it off. But these problems arise five, ten, thirteen years after the marriage has been on the road and if there was a marriage contract like in some of the European countries where these things are all brought out beforehand, would that help?

**MS. STEINBART:** What in fact is recommended here is a marriage contract. We have a present law that says if you get married certain rights and obligations will be imposed on you. The recommendations by the Law Reform Commission is to change this contract. The contract is applied to anyone who gets married who does not, as we call it, contract out. We are allowing the provision where they contract out by equal consent or joint consent after independent legal advice and in writing. But if people do not sit down and write out a marriage contract of their own, this is the contract that should apply to every marriage that doesn't have a contract. It is a contract and it is implied or outlined by the law. Because what does marriage mean? You have to define it to a certain extent and the law defines it. So we are saying yes, people should be allowed to make their own private contract but if they do not do so, if they neglect to do so, or if they don't think it's important, or they like this law, then this is the contract that applies.

**MR. CHAIRMAN:** Are there any further questions on that page? Mr. Adam.

**MR. ADAM:** Yes, Mrs. Steinbart, if it is possible to have a marriage contract voluntarily between the spouses, I presume there would be certain costs involved would there not?

**MS. STEINBART:** If you are implying that people will go to a lawyer, yes there would be legal costs. We think the fact that there will be a marriage contract, if people want to contract that on their own then it certainly is important enough for them to pay a few dollars for a contract.

**MR. ADAM:** What I'm getting at is that if it is now possible to have a contract agreed upon by the spouses at the present time, if we write into legislation that it be automatic, then I believe any contracts that are now being made between spouses would no longer be made because everyone would want to avoid whatever costs there are at the present time and would all opt for the automatic. Is that what you're suggesting?

**MS. STEINBART:** No, when people get married now they are assumed to accept the contract that the law now applies to a marriage, you see. There are a few people — it's becoming a little more common but it's still very rare — who are drawing their own marriage contracts. It would not really change if the law was changed. When people get married all we are saying is that this is the contract. We feel this is a better contract than the old contract we have had and it will apply to all marriages unless people want to contract out. The procedure does not change, only the law does.

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

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

**MR. CHAIRMAN:** Mr. Johnston, Sturgeon Creek.

**MR. FRANK JOHNSTON:** On Page 3, right at the top, you state it is responsible for the family's finances and then you give an example which is the spending of money, the spouse or female spouse or Betty having to go to John Meane. Can I ask the question, what will be done — and this is fairly common, it happens on both sides of the family — if you get one of the spouses who has a problem let's say with drinking and misuses money, the family money, badly? Now do you think we should go in to some extent to protect the other spouse from that? I'm not saying that's the case in your example, I don't think you're bringing that up but there certainly are cases where money is controlled by one of the spouses because the other has taken money given to them and probably put the family or the children in a very bad position. What do we do in that respect when somebody is — and I'm not really speaking about management here, I'm really talking about possibly a sickness such as alcohol or something of that nature?

**MS. STEINBART:** Well, of course, it's very difficult for the law to solve such problems as alcoholism. The best I think the law can do is protect the other spouse and the children. And we think the recommendations. . . . By the way this I think refers to something on Page 3, we were originally on Page 2 but this refers to something on Page 3. The recommendations of what I call the four rights during the marriage are definitely a protection of the other spouse during marriage in all cases and in particular in the case of an alcoholic or the other spouse being alcoholic. So you see under the present law, if for instance the husband is an alcoholic and he has the money and the woman is staying home, she's going to have to go for a separation because that's all she has open to her. She has no right now to go to court to ask for an accounting or to ask to find out what he is earning. She has no right to say that she should have some say in spending the family income. She has no right to a private income for herself for clothes under the present law. And you know the recommendation that the Law Reform Commission has put forward and that we have also endorsed is that she should have all of these rights and certainly that would protect her in the case of an alcoholic husband.

**MR. FRANK JOHNSTON:** But that's the alcoholic husband that we — and I'm not saying Betty is an alcoholic, I'm saying it's possible she could be and under those conditions I think there may have to be some management in the family on either side. You've given me the male side of it and I think if Betty happened to have a problem, that when she got money to go down and buy the children's clothes and she didn't buy them, you know this can also be a problem. How far do we go in saying, well, do you suggest we bring this couple in and say, "Well, we have decided or the court decides that that spouse will handle the money because you're not capable," because families have been hurt by one or the other being a spender for some different reasons.

**MS. STEINBART:** That's correct. It is our expectation that in a marriage that is working well these rights won't have that much effect because the parties will work it out between themselves. These rights apply to a marriage which is in difficulty. If Betty happens to be alcoholic and she cannot be relied upon to go and buy the family clothes or the food if she is given the money, then it would probably be John, her husband, who should take over that responsibility of actually doing the buying. It is not said here that they both must go out to the store and decide, well, we'll buy this can of soup. What we're saying is that both spouses should have that right: they should work it out between themselves; if they cannot they can go to court to enforce it. Mostly these are declarations of rights or principles and generally people will respect the law and that will have an effect the fact that there is a declaration that this is what is right or this is the law. People will generally abide by it. If they're not going to the marriage is in trouble and it will probably break down.

**MR. CHAIRMAN:** Thank you, Mr. Brown.

**MR. BROWN:** Under C, Division of Property on Separation, you have a paragraph from there, it simply says "no-fault equal division", then if we turn to Page No. 3 you again have under Spousal Maintenance After Separation, "to support a spouse for life where that spouse's ability to be self-supporting has been impaired during marriage by age, health, or home responsibility." If we had a situation that where the wife was the wage-earner and the husband was absolutely no good, he refused to go out to work, and if she just found it impossible to carry on with the marriage under those circumstances, and if she had become, let's say again, an alcoholic, let's take that as an example, and it was impossible for him to be employed under those circumstances because nobody would employ him, we could find ourselves under this "no-fault equal division" and the other clause on Page 3, "to support a spouse for life where that spouse's ability to be self-supporting has been impaired during marriage by age, health, or home responsibility," we could find that the wife might have to do just that, support this spouse for the remainder of his life. Now, I'm just wondering what your reaction would be towards that.

**MS. STEINBART:** First of all I don't see how a husband who is alcoholic has had his ability to work impaired during the marriage because of the age, health, or home responsibility. We're anticipating it's the marriage that did this. Are you saying the marriage made him an alcoholic? Or her?

**MR. SHERMAN:** It certainly happens.

**MS. STEINBART:** It drives both people crazy. This recommendation about support for life is where there's been a long term type of marriage. The usual example is where a woman has stayed at home for say, thirty plus years, or twenty-five plus years, because this was the arrangement between the two parties, she would stay home and look after the home and the kids and she's not capable now of going out to work because she's probably too old or the job skills have passed her by. This is what we're trying to get at and it would be

wrong to say that maybe in cases of possible hardship — and I'm not prepared to accept the fact that there is an alcoholic husband who definitely thinks he's going to get maintenance — but I think it would be wrong to say that because there might be a hardship there, that there should be no maintenance to a woman who has spent her life at home looking after the home and children.

But going on to alcoholism, I can't foresee or envision a case where a husband has become an alcoholic sitting at home and the wife has been supporting him that long, and therefore that would entitle him to maintenance. That's not what we're trying to get at here, I can't see it.

**MR. BROWN:** Yes. I believe that this no-fault could subject itself to many many questions and I believe that Mrs. Steinbart has explained her side of it.

**MS. STEINBART:** Well, I was talking about maintenance. Now there's two different things here. We're talking about "no-fault division of property", that's one thing. We're talking about the property, the assets of the marriage. On the other we're talking about maintenance.

Now, on the "no-fault division of property" our principle is that both parties have contributed to that marriage. They have built up the assets of the marriage, and it is only the assets acquired during the marriage that should be shared' and because they both contributed to it in their own way they should share it. The maintenance is something different. There's different principles applying to that.

**MR. CHERNIACK:** Well, Mr. Chairman, I wanted to know whether the division of assets and the joint agreement for opting out in relation to what bothers me — that's the retroactive feature for existing marriages — The Law Reform Commission is recommending that there should be a unilateral right to opt out within a year, I think, of the enactment of legislation, and I infer from the second last paragraph under C on Page 2 that the coalition is denying the right of the unilateral opting out for existing marriages

I want to have clarification of the recognition that a pre-marital contract is one where both parties have the same rights and having the option to go through a marriage with an opting out with a pre-marital contract, or to accept the refusal of the prospective spouse to agree to a pre-marital contract saying, "Well, I'd rather get married under the sharing law than not get married at all", so that there is freedom of choice at that stage.

Now, the freedom of choice would be denied if there is a law passed now relating to existing marriages and denying the unilateral right to say, "Well, if I had been faced with the knowledge of this law I might not have gotten married in the first place." I'd like some response to that argument which clearly is in the minds of the Law Reform Commission.

**MS. STEINBART:** Firstly, to allow unilateral opting out we have said, is to negate the whole principle of this law, the proposed law. We say it's a just law and it should apply to everyone.

Most people when they get married have a certain concept of what marriage is, and we think presently people think when they get married the marriage is an equal partnership. They think it's going to be equal sharing, and boy they're surprised when they find out it's not like that. This goes back to rural marriages and Murdoch is an example. She thought that she had the right to that family farm; she didn't. People think that they are getting married, that this is equal' this sharing, and that's not what the present law is and that's not fair. We're saying that this six-month provision would allow this kind of law to continue, this unfair law. We're saying it's unfair if we are going to change it now. Why would we be changing it if we think it's good.

If it's unfair why should one spouse unilaterally be able to force it on the other spouse. They should be able to agree, and that agreement is the most important thing throughout this whole concept. If they don't like the present law they should both agree to opt out of it. It should not be forced on the one spouse. If one spouse doesn't like it and the other does, then why should the one spouse who doesn't like it clean the other spouse out of it when you have some assets built up during the marriage by both of them. It just means that you're not going to recognize the one's contribution.

**MR. CHERNIACK:** Mrs. Steinbart, to me you are dealing with a principle and applying it somewhat differently to both situations, that is an existing marriage at the time the law was enacted, and a marriage made subsequently or a marriage where there was agreement to opt out. You say that you presume that all people entering into a marriage are ignorant of the law. That is your assumption as I read it, because you said people going into a marriage believe they are going to share it like Mrs. Murdoch.

**MS. STEINBART:** That's right. People don't know what they're getting into, in law.

**MR. CHERNIACK:** So you are saying that you are assuming that people entering into a marriage do not know the law and therefore on that assumption the law should be changed retroactively. I understand that, but that is what you're saying.

Then you said, it's unfair to force on a person something which that person doesn't want to do. I understood you to say that in relation to saying that a unilateral decision when the law is changed, a unilateral decision by one spouse not to go along with it is unfair to the person who doesn't agree with not going along with the new law. Would you clarify that?

**MS. STEINBART:** What we've changed is the basic principle of this law, is sharing, and it's sharing because have shared in the responsibility of building it up. If you do not allow this sharing — I mean they can contract out if they both agree — but if you allow one person to say, "No, there will be no sharing," then



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

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basically to me what you are saying is that even though both of you have built it up, that's too bad because one of you doesn't want to share, that's too bad. Then we are starting with the principle that both are responsible for those assets being there, so it should be shared. Why should one person say, "I'm not going to share," when they're both responsible for making those assets or contributing to them. That's the way we attack the problem.

**MR. CHAIRMAN:** Is that all, Mr. Cherniack?

**MR. CHERNIACK:** Yes.

**MR. PAWLEY:** I would like to just follow along the same area of questioning that Mr. Cherniack had entered into with particular reference to those couples that have agreed to contract out in other provincial jurisdictions under their laws — and most provincial jurisdictions are in the process of preparing to or have already commenced to introduce Family Law Reform — what if a couple transfer to Manitoba having earlier contracted out in another province under their provisions which might very well do as the Manitoba Law Reform Commission permits, unilateral contracting out, would you propose under your recommendation that earlier decision in that marriage would be altered upon the arrival in Manitoba, a couple transferring in from one province to another.

**MS. STEINBART:** Are you talking about unilateral contracting out in another province?

**MR. PAWLEY:** Yes.

**MS. STEINBART:** We would not support that any more than in Manitoba. If it's unilateral it's not fair whether it's done in Manitoba or Ontario or any other province.

**MR. PAWLEY:** So once they had moved into Manitoba then you would not recognize . . . Now that non recognition, would that predate the entry by that couple into Manitoba to include that term or that period of the marriage when they were in the other province despite the fact that they would have contracted out under the unilateral provision in another province?

**MS. STEINBART:** I don't know if the law in Manitoba can enforce that.

**MR. PAWLEY:** Well it could. If that was the desire of the legislators, it could go right back to the commencement of the marriage or at some point such as say in the Province of Ontario where it may very well be that there's unilateral contracting out allowed for a certain period of time; again if the couple were in Ontario for two years under that provision, then moved into Manitoba, would the accumulation of assets during that two years in Ontario be changed then from what the law was in Ontario to what you are proposing in Manitoba?

**MS. STEINBART:** If the law in Manitoba could enforce such a thing I think it would be just. There should be no unilateral opting out, whether in fact it's done in Ontario does not mean that it should be enforced in Manitoba.

**MR. SHERMAN:** Mr. Chairman, through you to Mrs. Steinbart still on the same section C at the bottom of the same page, Division of Property on Separation. Mrs. Steinbart, the Coalition takes a very strong stand with respect to the concept of fault and no-fault in terms of the division of assets and property on separation. It's a stand that I gather is at some variance with at least the majority opinion of the Law Reform Commission but it's an interesting stand; it implies and in fact goes on to spell out your contention that there should be no judicial discretion to vary the principle of equal division.

**MS. STEINBART:** May I interrupt right here? We don't differ from the Law Reform Commission's proposal. They have said no-fault equal division of all property. We have differed with them on fault in maintenance. There's a difference between property and maintenance.

**MR. SHERMAN:** I appreciate the correction. What we're talking about here is division of property on separation.

**MS. STEINBART:** That's correct.

**MR. SHERMAN:** You go on from that contention to spell out very firmly that there should be no judicial discretion to vary that principle and I'm wondering how you feel fairness might be always obtained and always assured, at least insofar as that kind of position is possible, without allowing any room for judicial discretion whatever. You're saying in other words that a court has no role to play in determining whether there is an ingredient which can be identified as being a major contributing factor to a breakdown which leads to separation. Is that what you're saying, that there is no role a court could play in determining whether there is some kind of major contributing factor?

**MS. STEINBART:** That's what it amounts to. I would like to point out that again we do not differ from the Law Reform Commission's recommendations, they have said no-fault should be considered in dividing property. The Law Reform Commission has also said no judicial discretion should be allowed to change this principle.

On the case of judicial discretion, we have looked at it from the point of view that if a judge is allowed to make variations in the division of property, then you get into a concept of what every judge . . . every judge has a different idea of what's fair and what's not fair; it's the same for people, what's fair and what's not fair. If you start allowing the judge to divide assets according to his concept, and I emphasize *his*, of what's fair and what's not fair, then too often the woman is not going to get her share. Until the law and everybody in the society, and particularly judges, are willing to recognize a woman's contribution to the family and to the giving up of those assets, then it would be wrong to allow judicial discretion because currently the law does not recognize, and I

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

don't think the judges and most people recognize, even though they may pay lip service to it, a woman's contribution to the family for staying home and looking after the home and the children. It's just not recognized when lip service is given to it but when it comes to the crunch, she doesn't get her share. And that's what judicial discretion would mean, it would mean a judge would have the right to decide whether he thought that this woman should deserve her share or not. It's just too open to change, it's not something a person can know. For instance, if a man comes into his lawyer's office this would increase litigation because she might as well make a go at it if you're going to get equal division, you might get a third, you might get her to get a third instead of half, well you might as well go to court for that, you can fight over it; it would increase litigation. People when they come in should have an idea of what the law is going to be, should have an idea of what they're going to get out of it.

**MR. SHERMAN:** Would you say the same thing about a judge who imposes her concepts not just one who imposes his?

**MS. STEINBART:** There's not enough judges imposing her concepts because there's very few women judges. No, I don't think it's right for anybody, whether it's a woman or a man to impose bias, this is why we're proposing this law, we're saying: each contributes in their own way to the marriage and it just follows from there that if each contributes, then each should share.

**MR. SHERMAN:** Well Mr. Chairman, through you to Mrs. Steinbart, I don't think you'll run into much argument with that general concept, if each contributes then each should share equally. What I am trying to determine for myself is whether you assume and whether your position is based on the assumption that each does contribute equally, then it seems to me that you do leave that assumption, you say that since marriage is an equal partnership then each person does their share either by etc. etc. What I'm asking is how this can be assumed, how can you assume that each person does his or her share? And since you can't accept that as an absolute fact of life that in each domestic situation, in each marriage, each person does his or her share, then it seems to me that it's dangerous to remove that whole avenue of judicial discretion.

**MS. STEINBART:** You're right of course. We like to assume that and of course there's always exceptions to every rule. It may be that there are cases where there is not equal contribution, but you say it's dangerous to remove this avenue **we say it's dangerous to put it in because too often it's going to happen where one person is done out of an equal share because of a certain person's bias. We should not be encouraging bias, we should not allow bias. And of course there will be some hardship situations where there should perhaps not be equal sharing. But if we allow it the other way, if we allow judicial discretion, there's going to be more hardships because there's going to be every man coming in or every woman coming in is going to want litigate this to see if he can increase his share or . decrease the other person's share. And that's a hardship too. You have to have a balancing. We think it's wrong.**

**MR. SHERMAN:** Well I agree but you don't think that that hardship that you're so fearful of would be ameliorated to a certain extent by reforms in the family law and by the climate that would result in reforms from the family law without eliminating the whole avenue of judicial discretion.

**MS. STEINBART:** But this is a reform, equal sharing, they don't have equal sharing now and that's the point. If we allow judicial discretion we go back in the same law we have now, not equal sharing. Well right now we have no equal sharing unless the woman has paid money into the asset.

**MR. SHERMAN:** That's all, Mr. Chairman.

**MR. F. JOHNSTON:** Mr. Chairman, my question was answered.

**MR. G. JOHNSTON:** One point that I don't see any coverage given to it is the fact that a marriage that is breaking up and they're going to divide the assets as you suggest in your brief, what about the case where the man or the woman has a business and if they go by the strict letter of the law they wreck the business. Should there not be someone who can give a judgment to make the division and leave the business to run in either one person's name or the other?

**MS. STEINBART:** That is the recommendation. Our recommendation is that there can be either taking a particular asset or an equalizing payment. So if a man has a business that he's built up he'll probably want to keep that business and if there's sharing of the assets, then she would just get an equalizing payment, she won't take the business ...

**MR. G. JOHNSTON:** But who decides that?

**MS. STEINBART:** Well the parties can decide it, either themselves or if they can't decide it then they can go to court.

**MR. G. JOHNSTON:** I don't know, if there's enough bitterness and hatred in a marriage that is breaking up, it's going to be an emotional decision on either one or both their parts on how they do it.

**MS. STEINBART:** Then the court intervenes. If they cannot decide on their own, if they cannot agree, then they go to court and the court will decide.

**MR. G. JOHNSTON:** Supposing one of the parties, if the business is worth \$100,000, one party said I want nothing more and nothing less than \$50,000 right now and I don't care how.

**MS. STEINBART:** If it's not acceptable to the other party then they have to apply to the court and the court decides what can be done.

**MR. G. JOHNSTON:** Okay.

**MR. GRAHAM:** Thank you, Mr. Chairman. Through you to Mrs. Steinbart. There is a section in the report on family law dealing with child support where we seem to find a difference of opinion in the various members of the Family Law Commission, where we find Mr. Werier, Miss Shack and Dr. Hanly have a separate viewpoint with regard to child support than the other learned members of the Commission. I would like to know which report your group has — have you considered this very much in depth and which segment do you support on that respect?

**MS. STEINBART:** Yes, we spent some time considering this and this is the proposal where the majority of the Commission has felt that parent's should not be responsible for children's support if the child is over the age of 16. I don't know the exact wording but something to the effect: "has left school," or "wanting to quit school and cannot be controlled." I believe the wording is somewhat similar to that, that's not the exact wording.

The recommendations that we have supported, we have endorsed is that parents should be responsible for the support of their children till age 18, no exceptions.

**MR. GRAHAM:** Well your more in favour then of the the recommendations of Miss Shack, Werier and Dr. Hanly.

**MS. STEINBART:** The minority, that's right.

**MR. GRAHAM:** While we're still dealing with the question of child support, I would like to ask if you had at any time considered not only the question of support but whether or not children should have any say or any right when it comes to the eventual breakdown in marriage and the disposition of property and assets? Should children be considered at all when it comes to that aspect of it?

**MS. STEINBART:** This is one of the recommendations that we would like to have the Law Reform Commission or yourselves look at further, and that's representation of the child in separation proceedings. I don't know how the child would have any say perhaps on how the property should be divided, I can't see that but certainly perhaps the child should have some kind of representation particularly in the bitter separations. So often the children get hurt in those kind of situations, and we have recommended that this be looked at and looked into further, yes.

**MR. GRAHAM:** Ms. Steinbart, do you ever read the comics at all?

**MS. STEINBART:** Depends on which comics.

**MR. GRAHAM:** Have you ever read the comic strip "Peanuts"?

**MS. STEINBART:** Yes, I have seen Peanuts.

**MR. GRAHAM:** I'm not too sure of the characters in it but I believe it is Linus or one of them, you always see him carrying a blanket.

**MS. STEINBART:** Right.

**MR. GRAHAM:** Well I just refer to that to bring up a point which I consider to be very important, that there are times I think when property and the possession of property has a very emotional impact on the child and not only emotional but it could seriously affect the future of that child. And I think that if I have any criticism of the Law Reform Commission, I think that they haven't properly dealt with the matter of the right of the child when it comes to the disposition of property and assets on the breakdown of a marriage.

I can think of a case, hypothetical maybe, where Mary and John have one child, maybe it's a boy 16 or 17 years of age, and Mary and John are not too concerned about their own financial aspects, John is maybe a pilot drawing down maybe \$1500 — \$2000 a month or more and Mary herself is a Registered Nurse drawing down a thousand, twelve, \$1500 a month so they have ample money and probably very substantial amounts of property. But the boy has just, because his father is a pilot and he idolizes his father, that is his burning ambition to become a pilot, he has graduated, got his wings he has his private pilot's licence, and when the marriage goes to breakdown, it happens that John has an aeroplane and the son, if he could just have that aeroplane until he gets his commercial licence, it would have a tremendous impact on his entire life. Do you think that that plane should be sold to satisfy the rights of the two primary people in the marriage without any consideration for the right of the child to further his education and probably would have a dramatic impact in his own future.

**MS. STEINBART:** Well I can say again, I do think, and we have recommended, that the law should look or we should consider the position of the child in the separation. But quite apart from that, the recommendations made by the Law Reform Commission and which we have endorsed would probably be helpful to that kind of situation because assets on separation the parties can decide what happens to those assets. And if the parties decide, yes, if the mother is getting custody of the child, then she should have the aeroplane. It can be done that way. If they cannot decide, to make the application to court and probably if that kind of submission was made to the court the court should say, yes, this asset would go to the parent having custody of the child and the equalizing payment go to the other spouse. So even there it would probably be taken care of. But definitely yes, the children's right should be considered.

**MR. GRAHAM:** Well, Mrs. Steinbart, the Canadian Law Reform Commission I think did look at the advisability of including the children in the division of properties. They had some recommendations in that respect. I know that this committee will in all probability not complete all the briefs that we expect to hear today, we will be probably holding future meetings. I was just wondering if your group would be willing to look

into that particular aspect and maybe give us some further benefit of your knowledge in that at a later date.

**MS. STEINBART:** Well we're always willing to present more recommendations to you.

**MR. GRAHAM:** Well thank you very much.

**MR. PAWLEY:** If I could just place a proposal to Mrs. Steinbart and obtain her response to it. In connection with spousal maintenance and the issue of fault, if we could divide our considerations in three different areas: 1. That of course where there is custody of dependant children involved, the spouse would be supported without a reference to fault in that type of instance. 2. That where there was the impairment of one spouse's earning capacity which was a consequence of the marriage relationship, then there would be a term of maintenance during that period of time, that job retraining period of time. So no fault in those two instances.

But then if we turn to the third area mentioned, Maintenance for Life, would it be unreasonable to suggest that would only take place if in fact there was a finding of fault. No fault in the first two categories, finding of fault insofar as the third category was concerned.

**MS. STEINBART:** No, that is not our recommendation. If a woman, and it's usually the woman, that's why I'm using this example, has stayed at home for quite a long period of time during the marriage, then she's not able to go out and work probably and she must be taken care of. This was the arrangement in that marriage. When they got married they probably agreed, maybe they didn't discuss it, maybe they did and it was just implied, they agreed that he would go out and work and she would stay home. You can't change the rules now because there's a separation. If she stayed at home on the anticipation that this was what was expected of her, he let her stay home or he wanted her to stay home then that's the way it goes all the way through. It shouldn't be changed simply because it becomes inconvenient for him now that he wants to separate and he doesn't want to pay maintenance to her any longer.

**MR. PAWLEY:** But under my example, he would be required to make maintenance payments to her until such time as she was able to re-establish herself in a retraining or . . .

**MS. STEINBART:** The anticipation is, I mean if it's a long-term marriage how can she re-establish herself. Supposing she's 57, if she took retraining it might take two years, by then she's 59. What's the point going out to work for six? —(Interjection)— Beg your pardon?

**MR. CHERNIACK:** My wife wouldn't like that statement. My wife would resent that thought.

**MS. STEINBART:** What would she resent?

**MR. CHERNIACK:** That she couldn't look after herself very well at that age, she's not too old . . .

**MS. STEINBART:** Well I'm not saying she couldn't look after herself but when she comes to the point, say 59 years of age, she goes out to work for six years. Is there any point in it? Well maybe some people would, definitely they would have that right, we're not saying a woman cannot go out to work.

**MR. CHERNIACK:** Thank you.

**MS. STEINBART:** But I would think most of them at that age feel there's really no point.

**MR. ADAM:** Thank you, Mr. Chairman. On page 3, in regards to John Meane and Betty. Do you think that we can legislate how two married people will behave towards each other in all these items that is mentioned here in this example?

**MS. STEINBART:** You can't legislate behaviour, you can legislate love and rights, and these four rights of maintenance during the marriage are declarations basically. I had a number of men into my office who have come in and said, "I'm not paying maintenance, not even for my children", and I tell them, "You have to pay maintenance for your child if you have the money", and their attitude changes. And this is what this is going to be about too. These are declarations of love? And if men go into an office and say, "I'm not going to do this and this", and you tell them, "This is the law", quite often their attitude will change, and that's what you can do, you can legislate these rights and people will follow the law. But you can't legislate behaviour if a man's going to break a law. That happens in every law, if people are going to break the law they're going to break the law, does that mean you don't have laws?

**MR. ADAM:** But you're asking, in this paragraph, you're asking for those rights to be enshrined I understand.

**MS. STEINBART:** Right.

**MR. ADAM:** All these rights should be enforceable.

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

**MR. ADAM:** So you're asking that all these details should be enshrined in the statutes.

**MS. STEINBART:** They're not details, they're rights' definition of rights.

**MR. ADAM:** Like Betty and John, all those things.

**MS. STEINBART:** If those four rights were part of the law now John should not be able to or would not be able to behave as he did. If Betty did not like it she could take him to court and if he refused to obey the law then that's when she can decide maybe she'd want to separate from him; it's up to her to decide. But yet if those are the laws and she went to court to enforce them possibly John would change his ways.

**MR. ADAM:** Would John be so resentful, and would that not hasten perhaps in some cases the breakdown of the marriage?

**MS. STEINBART:** That's a possibility, but then on the other hand if you don't have those rights what have you got Betty doing, she's becoming very resentful too. I would suggest that this kind of situation when you

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

have the laws and when you have Betty going there to enforce her rights in the court, generally at that point is where you can get marriage counsellors involved, and if she is at all interested in the marriage then they can make a go of it.

**MR. ADAM:** I would perhaps like to ask a question on the "fault", like "no-fault", that you are proposing. Let's just presume a hypothetical case of John and Betty: John is a hard working trucker and Betty is maybe working in an occupation where she meets a lot of people and a lot of other men. John comes home every night and he's dog-tired, he reads the paper and maybe Betty would like to go out and John is too tired and will say, "Well I can't go out". Eventually Betty meets somebody of a nicer model and so on, and John is a good hard worker, brings money home every night, every pay-day But then he finds out that Betty has found a new interest so their marriage starts to break up. How would you approach that kind of a situation?

**MS. STEINBART:** You can always start off with the first question. Do you have the right to receive maintenance? And we have given you the three principles, maintenance here to be given where some spouse has custody of the other child and therefore must stay home looking after that child. I take it your case doesn't fall into that situation because she's already out working so she doesn't have to stay home and look after the child. Okay.

Second example: Does she need job retraining? I would presume again that she does not fall into your example because she's out working and maybe she's happy with her job.

Third example: Long-term type marriage. Is it a long-term type marriage? Well maybe it is but she's still out working so she doesn't need support there, so she wouldn't get maintenance, it has nothing to do with fault.

**MR. ADAM:** Okay.

**MR. F. JOHNSTON:** Mr. Chairman, I've brought this particular point up originally and it has been carried on a little bit by Mr. Adam, and I'm the fellow that mentioned alcoholism and it seems to be a word that's stuck with us this morning.

Let me put it another way. If a fellow gets his pay packet but before he arrives home at night he's bought three new suits and he has mismanaged the money of that family; or on the other side of the coin if he has given the wife the family allowance, then she goes down and buys a flock of new dresses and the family doesn't eat for awhile.

**MS. STEINBART:** From Family Allowance?

**MR. F. JOHNSTON:** Yes. Well, you know, I merely am coming back because I am concerned about, I think what Mr. Adam is getting at, how far do we go? Are we saying we're going to get to a point where somebody is going to have to make a decision on who's going to manage that money for some reason whatsoever. I'm concerned about . . . there are cases where money is lost at racetracks, and by both, and you've mentioned men quite often, where women go down and all of a sudden a guy's got a bill a mile long for dresses or vice versa. Where do we stop in this management business? Or where do we get to in that?

**MS. STEINBART:** First of all, these laws will not apply to marriages that are working well, only to marriages that are in trouble. And how far do you go? You go as far as is necessary to protect the rights of the parties. As to the management, we're not talking about management, we're talking about rights, the rights of a spouse to participate in how how to spend the family income. If he doesn't tell her what he's earning, if he doesn't let her decide how much money she can spend on racetracks or whatever, if he wants to go out and waste his money at the racetrack, if she wants to go out and waste her money on the dresses, that's wrong. So you make a simple statement that each has the right to participate in the spending of family income, that's as far as you go, you don't have to go any further.

**MR. F. JOHNSTON:** Yes, but you gave the example here, not me. You gave the example of a very one-sided case. I'm saying in cases such as this there may be reason and that has to be something that's taken into consideration.

**MS. STEINBART:** You're saying that there may be a reason. For instance, if the wife is a spendthrift and goes off and buys dresses away beyond the family means.

**MR. F. JOHNSTON:** Maybe that's why this guy here is — I enjoy the name Mi. Meane by the way -- but the example you have given is one that obviously, maybe I'm saying there's a reason for it and that reason should be looked into. Are we going to decide the reasons for these things?

**MS. STEINBART:** No, it's not for you to decide the reasons, it's for you to decide whether you feel that this is the kind of law that we should have. And if a law states that she has the right to know what he earns, he's not even telling her what he earns. I can't see any reason for that, that doesn't make her expensive. If the law says that she has the right to know what he earns, and then if the law says that she should have a right to a private income, like we say she should . . .

**MR. F. JOHNSTON:** Okay.

**MS. STEINBART:** . . . why should she have to ask for things like lunch money for the children, and ask for the exact amount of money? And then, maybe the one that's bothering you, is that she should have the right to participate if she's a spendthrift. Is that what's bothering you?

**MR. F. JOHNSTON:** Yes, just a little, it's not bothering me. Let's go back to the other where you just said that, involved with the handling of the money, maybe there's a reason why he or she shouldn't be involved in it.

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

I don't want to dwell on it, I'm just trying to say how far do we go in this? If there's a reason — you're saying it's an absolute necessity for these things, and I'm not against quite frankly the knowledge of one spouse, or the knowledge of both spouses having knowledge of these different things about the money, how much either one makes, it doesn't bother me, I think they should probably both know. It bothers me that we might eliminate looking into the reasons why this happened.

**MS. STEINBART:** Well perhaps you're right about that, but let me tell you how it would probably work in practice, what happens. If you had a law saying that each one has a right to participate in spending the family income and Betty does not like what's happening here and she knows the law so she goes to see her lawyer and her lawyer says, "Yes you have the right to participate," and she can bring on a court action. And what happens? Usually in these cases, after John is served, he will see his own lawyer and the lawyers start negotiating because they probably want to make a go of the marriage instead of having to separate. Why do they want to separate? They don't want to separate, they want to make a go of it. Then we say, "Go see a marriage counsellor," and it's set up. If they are at all interested in making this marriage work it probably won't go to court, it will go to marriage counsellors, and that's what this forces them to do, start talking about it.

**MR. F. JOHNSTON:** Thank you.

**MR. JENKINS:** Thank you, Mr. Chairman. I'd just like to ask a couple of questions of Mrs. Steinbart and this goes back to the recommendations that you're making to the Commission, or to the Committee here, that there actually be a grandfather clause for present marriages, is that correct?—Interjection— That the recommendation you're making to the Committee that this joint sharing of property would have a grandfather clause which would go back to marriages solemnized 50 years ago.

**MS. STEINBART:** It would be retroactive, yes.

**MR. JENKINS:** Yes.

**MR. CHERNIACK:** A grandperson clause.

**MR. JENKINS:** A grandperson clause or whatever you want to call it. Maybe it's a grandmother clause. But do you anticipate that if this became, and I know this would apply to marriages after the enactment and proclamation of the proposed legislation that we have now, do you see that this might in some case be the cause for a break-up of a shaky marriage that is now a bit on the rocky side in that respect, if we go back.

**MS. STEINBART:** It's hard to say what's going to break up a marriage. You know, it may be breaking up marriages if we don't bring in this reform. That breaks up, I think, a lot more marriages.

**MR. JENKINS:** One other question I had. If we pass legislation with a retroactive date — and I personally am not opposed to that, I can assure you that it's my own opinion speaking for myself — what percentages of marriages are we dealing with here, have you any idea through your . . .

**MS. STEINBART:** I have no idea.

**MR. JENKINS:** You have no idea? Thank you.

**MR. CHAIRMAN:** Gentlemen, it's 11:30 and you have eight more briefs before you this morning and 11 for this afternoon, are there any further questions on page 3 of the brief? Page 4 of the brief? Mr. Sherman.

**MR. SHERMAN:** Mr. Chairman, if I could just return to the delegation, Ms. Steinbart, for one more moment. I was ahead of myself somewhat when we were discussing the question of no-fault with respect to division of assets and we're now at the point where we're looking at fault or no fault in the area of maintenance which concerns me more than the earlier question. I'd like to ask Mrs. Steinbart whether the kind of declamatory position that the brief appears to take with respect to fault, and that it should have no effect on the question of maintenance, whether she can't see situations where that kind of an attitude could encourage irresponsibility among persons who are inclined to be irresponsible. I say that we have to start from the assumption that all marriages are not made in heaven and all people are not perfect; some are, or very close to it, but most of us are not, and for everyone of us who is relatively responsible there probably is another, perhaps in our own household who is irresponsible or not as responsible as we would all like to be. And I wonder, Mrs. Steinbart to what degree you can justify this position to me, which I'm prepared to accept with justification, that it would not encourage irresponsibility among those who are inclined to be irresponsible, simply on the grounds that if there's going to be no question about maintenance either party to a decaying marriage which has not yet divided but is in a state of deterioration, either party can do anything they want to do and the person, whether because of our conventions it's usually the woman, but the woman or the man, the wife or the husband, knows that they're entitled to maintenance with no-fault taken into consideration whatever.

**MS. STEINBART:** They're only entitled to maintenance under certain circumstances and I've cited the three, support if there's dependent children. Fault should have no effect on that. If you're saying . . .

**MR. SHERMAN:** Well, accepting those circumstances, I'm asking you whether it does not encourage irresponsibility among the irresponsible within the context of those circumstances.

**MS. STEINBART:** I can't see people sitting down saying, "Well now there's no-fault maintenance, therefore I should go out and be irresponsible." People don't do it that way, they're either responsible or they're irresponsible.

**MR. SHERMAN:** Exactly.

**MS. STEINBART:** But you don't sit down and say, "Well because now I can get away with it I'm going to do it."

**MR. SHERMAN:** Well, but exactly but given the starting point of irresponsibility, which I suggest to you does exist in the breasts of some people in this world, given that starting point, and within the context of these three circumstances that you've outlined for us, I repeat the question, rather than creating a climate that produces an effort to prevent the marriage from deteriorating further, does it not create the opposite climate indeed and in fact give persons a reason for saying, "Well to heck with it I'm going to be all right anyway in terms of maintenance and I'm not going to make the effort that would be quite a severe effort on my part so I'll walk away from it." Are we attempting here to try to preserve marriages or preserve households and family roots or are we just saying that once they start to crack then all avenues should be available for people to dismantle them?

**MS. STEINBART:** Can I turn this around and put it the other way, that if you allow fault to be a factor and if you accept these principles that I've outlined here as when maintenance should be given, then you have the first instance, support to a spouse who has custody of a dependent child, meaning that she has to stay home or he has to stay home to look after the children, if there is fault on the part of that person and that person gets left for no maintenance then who is going to support that spouse. That means that spouse by staying home would be living off child maintenance which means the children suffer. Okay?

The second one: Support to a spouse during job retraining or further education to become self-supporting. If you allow fault to be a factor in that then you're saying that this person who may have been all right for the first several years of the marriage, may have not been at fault or whatever is now going to be paying for that one indiscretion or whatever you wish to call it. That person may not become self-supporting, that person may go on welfare then. Are you going to allow that?

The whole question of the job retraining or the further education. For instance suppose you have a marriage of say six years duration, she's been at home for six years. She has been out of the job market for six years, she has lost six years of seniority, she's lost six years of contribution to a pension, she has lost opportunities. For all purposes the job retraining has to start her from scratch. You won't replace those six years, no one's going to replace that because they're not going to replace the pension she's lost, the seniority she's lost or anything; it just means she can now go out and start working where she had stopped six years before. If you bring fault into that it means she's losing everything, she has no effects whatsoever.

Support of the spouse for life where it's been a long term type marriage. Are you going to say that if a woman has been married for 30 years and the last year she's found out this is not the marriage for her and she's started whatever she may be doing, that you consider it fault. Are you going to say that she should get nothing then for her 30 years? Again she'd probably have to go on welfare. Is that what you want? Is that what fault is all about?

**MR. SHERMAN:** Well may I answer that question, Mr. Chairman?

**MR. CHAIRMAN:** I would remind the honourable member that this portion of the proceedings is for members of the committee to ask questions of those who are presenting briefs and not the other way around.

**MR. SHERMAN:** Perhaps I can approach it from another perspective. Maybe I could answer my own question. The point at issue here it seems to me is not that anyone is saying no maintenance, that didn't come into my question. My question revolved around the concept of no fault. There are varying degrees of maintenance and I would hope that implicit in my question was not the suggestion that there should be a condition of no maintenance. I simply am seeking justification for what could prove to be an inequitable situation in specific circumstances and circumstances that do occur. But I have Mrs. Steinbart's very informative and helpful answer and I'm willing to sit with it on the record. Thanks, Mr Chairman.

**MS. STEINBART:** I'd like to say something more to that if I may. You were saying that fault would not eliminate maintenance so I imagine then you mean it would reduce it. If that's the case then what do you do. how do you define fault? Do you say if a woman hasn't been keeping house very well, she only swept the floors once a week instead of twice, does that mean she has her maintenance reduced by \$20.00?

**MR. SHERMAN:** No, that's trivial.

**MS. STEINBART:** Well then how do you do it? That's the point.

**MR. SHERMAN:** With respect, that's trivial, Mr. Chairman. I'm not talking about somebody who doesn't sweep the floors, I'm talking about someone who is deliberately and paramountly, if I may use somebody else's term, responsible for decay of the family unit.

**MS. STEINBART:** Well then the question is how do you decay the family unit? There's a number of ways you can do it. You can go out and be an adulteress or you can just be a lousy person to live with, incompatibility. Do you take something like incompatibility and you say that that makes you at fault?

**MR. SHERMAN:** Well perhaps we could leave those questions on the record, Mr. Chairman, and I will certainly address myself to them.

**MR. CHERNIACK:** Mr. Chairman, I'm moving to the bottom of page 4 and the top of page 5 and before I pose my questions to Mrs. Steinbart I want her to know that I'm trying to understand the problem and the reaction of the Coalition, I am not anxious to have her inquire from me as to my opinion because I am trying to keep an open mind. On that basis I would like clarification rather than argumentation from Mrs. Steinbart.

I am looking at the top of page 5 and this deals with common-law spouse should not be saddled with the responsibility for maintenance of a child of a previous marriage, not that of the person expected to support.

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

Now I want to clarify it for my better understanding. If there should be a second marriage then I believe that the law is and is expected to be that the step-parent becomes liable for the support of the step-child if the step-child is brought into the marriage.

**MS. STEINBART:** That's correct and that's our recommendation as well.

**MR. CHERNIACK:** That's if there is a second marriage. Now suppose instead of a second marriage there is a common-law relationship which is a second relationship for one of the members of that, does that then mean that a man entering into a common-law relationship where the woman has a child from a previous arrangement is absolved of the responsibility? Does that then mean that a common-law arrangement is a greater protection to the man than a second marriage?

**MS. STEINBART:** That is our recommendation. The point of a marriage is to assume certain responsibilities. If a person refuses to get married then it's an implied declaration on the part of that person that they are not assuming those responsibilities. That's why there's a difference between assumption of responsibilities in a marriage as opposed to a common-law relationship. That's why we are distinguishing between the two.

Secondly there's different kinds of common-law relationships. There can be long term common-law relationships . . .

**MR. CHERNIACK:** I'm talking about long term where there is a precondition preventing the marriage. That's an example.

**MS. STEINBART:** There's also the kind that are very short term.

**MR. CHERNIACK:** I know that but I'm talking about the possibility of a long term where the man has assumed responsibility for a child of a previous marriage of the woman for a number of years and shown everything he can show to assume responsibility and then there's a breakdown. You're saying he should not be responsible for the child, the state should be.

**MS. STEINBART:** That's what we are saying because if he intended to assume responsibility legally after a breakdown then he would have married or adopted. Those are the two avenues for him to declare that he is taking responsibility. If he is not going to take those two avenues then it should be an implied declaration on his part that he doesn't want that responsibility.

**MR. CHERNIACK:** So you are giving him a unilateral right to make that decision.

**MS. STEINBART:** No we're not giving him unilateral rights because certainly the other party has some say in it. If she doesn't like that kind of situation she doesn't have to live in it.

**MR. CHERNIACK:** So you are saying that she has a right to say, "If you don't assume the responsibility I will not enter into this arrangement." Would there be a retroactivity feature to this?

**MS. STEINBART:** I would think that all the laws that will be passed should be retroactive.

**MR. CHERNIACK:** What is the present law relating to the responsibility in a common-law arrangement for children not of that arrangement.

**MS. STEINBART:** The present law is where a person has what we call stood in loco parentis then that person is responsible for that child.

**MR. CHERNIACK:** You would change that then.

**MS. STEINBART:** I don't believe that applies now to a common-law spouse, I believe it applies to marriages where a person has married then they're standing in loco parentis of that child. I don't believe it's been changed. I may be wrong.

**MR. CHERNIACK:** I would be prepared to move on, Mr. Chairman, that is dealing with the paying of maintenance by the province. I'd like to go into that on the bottom of page 5 unless somebody wants to deal with something before that.

**MR. CHAIRMAN:** Proceed.

**MR. CHERNIACK:** I am now looking at the bottom of page 5 where, the government shall be given responsibility for maintenance if the parent bound to pay does not do so then the state shall maintain a registry, pay all maintenance orders up to a reasonable level of support. Would you say that that level of support should be greater than what is paid on welfare?

**MS. STEINBART:** Yes because if you look at the recommendation above on the same page, "The amount of maintenance for a child should be based on appropriate total costs of child maintenance."

**MR. CHERNIACK:** Well then are you saying that a person who has been separated by divorce or by separation shall receive what is considered reasonable — and you say in excess of welfare — whereas a person who is bereaved is not entitled to more than welfare. Would you say that?

**MS. STEINBART:** I'm not sure I understand.

**MR. CHERNIACK:** Well a person who is, let's say a widow whose husband did not provide for her in his lifetime and on his death becomes a recipient of provincial maintenance, taxpayers' support, she is then limited by welfare, with a means test I believe, so she has a certain income. Her neighbour with exactly the same economic situation you say should be entitled to a reasonable level of support if the husband doesn't pay it even though that's in excess of welfare. You're saying it should be in excess of welfare. Why is that if the same government agency and the same taxpayer is providing for the same individual people with the same economic



circumstances?

**MS. STEINBART:** You see then perhaps that's another area of the law that you should be looking at. We're saying it should be in excess of welfare because welfare is too low and I gave you this quotation of \$212.00 a month for a mother and child and that is low.

**MR. CHERNIACK:** I'm sorry, Mrs. Steinbart, but if you want to discuss welfare then maybe welfare should be \$500.00 a month or \$1,000.00 a month.

**MS. STEINBART:** That's another area of the law. That's what we're saying.

**MR. CHERNIACK:** I'm saying that if the government assumes a responsibility for support at a certain level, do you feel that somebody is entitled to a greater one than that because the spouse is not paying what was ordered by the court to pay.

**MS. STEINBART:** I'm saying it should be looked at definitely.

**MR. CHERNIACK:** I want to get you down to the practical aspect. You're saying somehow that the province should say, our welfare is inadequate therefore when it comes to a person who has been separated, whose husband is not contributing, that the province should pay more than the welfare. That to me is a difference between principle and what you consider money sufficient for maintenance. If you think welfare isn't enough then you should come here at another time to maybe another committee and argue on the question of welfare. But accepting welfare being what it is and that is a recognition by the state to support people who are not otherwise capable of it, then the level of support by welfare I don't think is a matter for debate when you are discussing people, individual people dependent on the state for one reason or another. Now could you clarify your justification of discriminating as between the two.

**MS. STEINBART:** I'll attempt to clarify it. You have asked whether we feel that the welfare support given is what we consider reasonable.

**MR. CHERNIACK:** No. I'm not asking you the amount, I'm saying the principle that the state has to assume responsibility for some family and you seem to distinguish between a bereaved person without any claim on anyone and a person who has a claim on someone who has maybe left and gone to Timbuktu. You seem to make the distinction.

**MS. STEINBART:** I don't believe I'm trying to make a distinction. All I'm saying is that the question of welfare, the amount, is another matter that we're not dealing with. You have asked whether we consider the welfare to be a reasonable level, we have said no, the question of welfare is another matter to be dealt with. We are not dealing with it here. If you want me to answer questions on welfare I can only do it from my own personal belief and I can't do it for the Coalition.

**MR. CHERNIACK:** Mrs. Steinbart, I'm sorry. I am not asking you whether welfare is reasonable. I am asking you whether whatever state agency is responsible at whatever level, whether there should be a difference between what the state pays on welfare — let's assume that it's a pretty good payment or let's assume it's whatever it's decided to be — do you distinguish between the two recipients, one the person on welfare as I say, a bereaved person and a person whose husband has deserted a responsibility. Do you think there should be a difference? I'm not asking you whether the welfare is reasonable, that's really not part of what I think should be the matter we're discussing which is principle.

**MS. STEINBART:** If you ask me that you will only get my personal opinion because the Coalition has not considered the possibility or the question of a woman being a widow on welfare and therefore getting less.

**MR. CHERNIACK:** You haven't. Then that covers that. Do you believe that a person for whose benefit there is an Order to maintain a standard of living at a pretty high level, let's say \$2,000 a month because the style of life of that family justified that, and who has through the separation of assets acquired substantial assets, let's say half a million dollars, and the husband does not pay that \$2,000 a month, do you think that person is entitled to any money from the state?

**MS. STEINBART:** First I'd like to clarify that these maintenance orders apply only to children. Now you're talking about a lump sum and that is a lump sum or division of property to the spouse.

**MR. CHERNIACK:** I'm sorry, you've pointed out something I omitted, it's for children only

**MS. STEINBART:** We're just mentioning children support not . . .

**MR. CHERNIACK:** Are you saying that the state should not acquire a responsibility to enforce the payments and support for a spouse?

**MS. STEINBART:** We did not make that recommendation, just for child maintenance.

**MR. CHERNIACK:** Thank you. I'll wait for page 6, Mr. Chairman.

**MR. CHAIRMAN:** Any further questions on page 5? If not, page 6, Mr. Cherniack.

**MR. CHERNIACK:** By the way was there a correction on the second line? I don't quite read it. "As a result of the relationship or the relationship impaired the economic self-sufficiency."

**MS. STEINBART:** It's typed correctly. I don't know if I read it to make it sound intelligible.

**MR. CHERNIACK:** All right. Let's move on to the question of all of the estate. We have a case where there are premarital assets and where there may be gifts or inheritance or the kind of assets acquired by one spouse not as a result of the standard marital regime. Now we're saying that in the case of a separation then each spouse is entitled to one-half of the S.M.R. assets. Then we're saying that on a death, not a separation, then the survivor shall have all of the estate which of course means all of the premarital assets and all of the assets acquired during the marriage by way of gift and otherwise. I'm looking at let us say two different kinds of cases:

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

One is where marriage has been in existence for some 30 years and the person is entitled to half of the standard marital regime, that marriage ends and another marriage takes place which lasts a year and we now have the right of the testator denied him to say, "Well the money, the pre second marital assets shall go to my children of my first marriage." That's what he today would have the right to do I believe. I don't know if the Law Reform Commission dealt with it but he would have the right to say, those assets which are not half of the S. M. R. assets shall go to let's say the children or even the wife of the first marriage, it being moneys that have been acquired all my life through whatever way and I feel I have a responsibility to my children, so I may say half of my assets should go to my present wife, my survivor, the other half should go to responsibilities that I acquired before I ever met the survivor. It seems to me that you are denying him that right and you're saying everything he dies with shall go to the survivor. You're shaking your head. Am I misunderstanding you?

**MS. STEINBART:** No we're not denying him. That's what happens if there's no Will. Of course the person always has the right to make a Will and say, just as you have said, or whatever that person wishes to say. It's only if there is no Will, what is going to happen? So the state, when there is no Will has to, as it does now, make an assumption as to what should happen, as to what is just. We're saying if there is no Will the surviving spouse should take all. If the deceased or the testator does not like that then the testator has a right to make a Will and change that.

**MR. CHERNIACK:** Well now what is there really wrong with our present Devolution of Estates Act which does recognize the rights of children to inherit. You're saying we want that changed, we want to say that children should not be entitled to share in that. Does our present Devolution of Estates Act provide a minimum to the wife before distribution or is that the Dower Act?

**MS. STEINBART:** It does. It does provide a minimum but I'll tell you what it is.

**MR. CHERNIACK:** Ten thousand.

**MS. STEINBART:** The present Devolution says the first \$10,000 goes to the widow, everything over the \$10,000 is shared. If there's only one child the widow takes half of everything over \$10,000 and the child takes the other half. If there is more than one child then the widow takes a third and the remaining two-thirds is divided between the surviving children. That's the present law.

**MR. CHERNIACK:** Suppose it were changed to say that the widow should be entitled to 100,000 or 500,000 . . .

**MS. STEINBART:** Then that would be like you're taking all. In most cases, most people have estates below that . . .

**MR. CHERNIACK:** I am talking about the principle . . .

**MR. CHERNIACK:** And I'm saying is there something wrong with the principle of the Devolution of Estates Act recognizing that children are entitled to share in the estate to some extent which is what it does now, and I interpret what you're saying as saying, "no, everything goes to the spouse."

**MS. STEINBART:** That's right because we have taken the principle that it is the couple who have built up the assets of the family and on death the person who survives should take all on that basis because they've built it up — the children didn't really. If the testator doesn't like that, the testator always has the right to change that. But it's because basically the couple built up the assets, the couple should take all.

**MR. CHERNIACK:** But what does society say as to what ought be the rights of a child, and let's say a minor, whose one parent is gone or in this case whose step-parent is the survivor, and as I see it, there is no recommendation in your brief that would say that that child is automatically entitled to some share of the estate and I am now suggesting that if I were approaching this without having thought it through at all (and that's why I want to hear your response) I might say I'd like to raise that minimum, the first payment to the spouse, 10,000 is insignificant, but I would say to the marital home plus 50,000 or 75,000 or 100,000 or related to the age of the survivor and still leave that society should say that the children of the marriage should in the absence of a will have some share in the estate providing there is enough there to provide for the surviving spouse. Now that would be my inclination — what's wrong with that because you disagree with it?

**MS. STEINBART:** Well you see the children are protected because the surviving parent is obligated by law to support those children.

**MR. CHERNIACK:** So you have to enforce that against that parent?

**MS. STEINBART:** Of course, they are obligated until the child is the age 18.

**MR. CHERNIACK:** I have not persuaded you that there might be some room for reconsideration?

**MS. STEINBART:** No.

**MR. CHERNIACK:** No, you're still adamant that the spouse gets it all and the children only get it if the testator thought of looking after them?

**MS. STEINBART:** That's correct.

**MR. CHERNIACK:** Thank you.

**MR. GRAHAM:** Well, Mr. Chairman, I think Mr. Cherniack has covered most of the points that did concern me other than probably the fact that I believe when it comes to the death without a will, quite often in those cases it's quite unexpected and that is why there is not a will left. But it does seem to me that probably the viewpoint that your particular group is taking does seem to be rather harsh on the children because you talk about the estate and the courts have the right to force the surviving spouse to maintain the children up to a

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

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certain age but that maintenance is maintenance only. There is no sharing of properties or anything which is covered under the Devolution of Estates, the sharing of the properties and it's basically a question of whether or not children have any right to any property during and after a marriage. That is basically the question and according to what we've heard here this morning, you feel they don't have any right to that. I have to say that I am somewhat surprised at that stand.

**MS. STEINBART:** Did you say that the children have rights to the assets of the marriage then I would have to reply that the person having the greater right are the people who built it up. Now that's both spouses, they built up the assets so they should have the greater rights to it. To say that the children should share in it, to say that it's harsh to say that only one spouse, the surviving spouse gets it all is to anticipate that the surviving spouse is going to be a true parent. To ignore the child, to say as soon as that child is 18, "you are on your own, I don't care, I don't want to hear from you again," most parents are not like that. But when the two spouses have built up the family assets, then it's to those two spouses that that should be given. And when you are talking about, well what do most people want, well I can say that the majority of people coming into my office, when they make wills they say "to each other and on the death of myself and my spouse then to the children." They usually give it to each other completely.

**MR. GRAHAM:** But we're not passing laws that govern just "most people," we're passing laws that govern all people, and we have to cover all possible situations.

**MS. STEINBART:** That's correct. But I would think that most people would not necessarily consider it unfair for the surviving spouse to take all providing that the surviving spouse has to take care of that child up to age 18.

**MR. GRAHAM:** Just up to age 18?

**MS. STEINBART:** That's right. And most parents would not totally write off a child as soon as that person became 18. There is usually a continuing interest.

**MR. GRAHAM:** That's all, Mr. Chairman.

**MR. F. JOHNSTON:** Just on that point, if a spouse remarries and then happens to make a will leaving the estate to the spouse that was not responsible for those children or to his side of the family, then all of a sudden the children that were involved are left out of what was built up by that family, and I submit that the children are as much a part of building up the family unit and success of it as a lot of people or more than others that might not have been there at the time.

**MS. STEINBART:** In that case you always have, and we are not advocating that this Act be revoked, you have the Testator's Family Maintenance Act which is a discretionary type Act where certain categories of people, relatives, close relatives, widows, children, can apply to the court and say, "This is not a fair distribution." But it's a discretionary type thing.

**MR. F. JOHNSTON:** Well then I seem to be — from around the table and from you, Mrs. Steinbart, that we have fairly good laws at the present time — I was part of one myself, as a little boy, with a lawyer sitting there representing me in estate, and my interests were SRO 23/11 030-5 DA looked after as part of that family. I don't see an awful lot wrong with what we do now, but you are saying right now that in all those, to the other and the rest is left out. I can't understand hhu.

**MS. STEINBART:** In the present Devolution of Estates the law says that the widow gets the first 10,000 and then must share it.

**MR. F. JOHNSTON:** Well that's a principle there. Again, with all due respects, Mr. Chairman. Mr. Cherniack brought that up, the amount is not at question here, in fact I could agree that it's low, too, but to say that the children, it would all go to the other spouse doesn't seem to be right if there's no will.

**MS. STEINBART:** Well our recommendation is based that the spouses have built up the assets and therefore should share before the children.

**MR. F. JOHNSTON:** . . . some children pay board.

**A MEMBER:** . . . second marriage.

**MS. STEINBART:** Second marriages are always a problem and this is one of the things that we've said you should look at in considering The Dower Act, the position of first and second marriages.

**MR. CHERNIACK:** We're talking of The Devolution of Estates Act.

**MS. STEINBART:** That's correct.

**MR. CHERNIACK:** With a second marriage you're not saying look at it, you're saying all of the . . .

**MR. CHAIRMAN:** Would you use the microphone if you have a question, Mr. Cherniack.

**MR. CHERNIACK:** I'm sorry, Mr. Chairman, I'm out of order./

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

**MR. F. JOHNSTON:** Mr. Chairman, we must thank Mrs. Steinbart for being a tremendous person representing these 11 groups, possibly 14 as I read it, so it's very important, I think, that we have some answers from you. On this recommendation, "immediate joint ownership," does that mean when two people get married, immediately everything is in joint ownership from then on or that you're saying "immediate joint ownership" — (Interjection) — joint management. Does that mean that the house they buy has got to be in both their names?

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

**MS. STEINBART:** Yes, immediate joint ownership would mean everything bought during the marriage or with marriage in mind, but the present recommendation of the Law Reform Commission is that the marital house would be jointly owned during the marriage; not just on separation but during the marriage. But immediate joint ownership means that all assets, including the house, would be jointly owned during the marriage and not just on separation.

**MR. F. JOHNSTON:** But you are saying this must be, that we don't have a choice in it.

**MS. STEINBART:** We're not saying it must be, we're saying that you should look at that. We have endorsed the concept of deferred community of property as a bare minimum and that instant community of property should be looked at. The Law Reform Commission didn't go into it in great depth.

**MR. F. JOHNSTON:** Oh, I see, because I don't want to own a house, personally. I want my wife to own it. So I hope you're not saying that you believe that we have to have it 50-50.

**MS. STEINBART:** I'm saying it should be definitely be looked at by the Committee.

**MR. CHERNIACK:** Mr. Chairman, I would like clarification of items 3 and 5. Firstly, how do you eliminate the stigma of illegitimacy? Just what ideas do you have in mind?

**MS. STEINBART:** We can only eliminate it in law, and that's a start. Well starting off with this stigma where it starts coming about is right from /; the beginning the child who is born illegitimate must take only the mother's name. This ties in with the change of name. There should be flexibility where the child. . .

**MR. CHERNIACK:** You say that the child should be required to take the father's name?

**MS. STEINBART:** No, we're not making any recommendations about what must be done. I'm saying that

**MR. CHERNIACK:** I want to know what is the stigma. My understanding of the present law is that the father may agree, on registration of the birth, to the child taking the father's name; (2) I'm under the impression that the present law provides that birth certificates may be issued in such a way as to not reveal the marital status of the parents. I want to know just what stigma of illegitimacy should be erased in law rather than in conscience or social attitude.

**MS. STEINBART:** Before I answer that question, I must point out that the Coalition did not make specific recommendations on the agenda — that it should be looked at.

**MR. CHERNIACK:** I know but what is there to look at?

**MS. STEINBART:** The stigma, I think, starts at the beginning with the name. You are saying the father has a right to agree. Supposing the father doesn't agree and the mother still wants to register in the father's name, possibly that should be allowed. I'm not saying that we say it should be allowed, I'm saying that these are some of the things that can be looked at. And it just starts right from the beginning, illegitimacy is still recognized in law. Maybe there should be no recognition that there's a difference between a legitimate child and illegitimate — maybe, I'm just saying that's a possibility you can look at, I'm not saying you have to agree with that, or this is the recommendation of the Coalition.

**MR. CHERNIACK:** I would like to ask finally a clarification of 5.

**MS. STEINBART:** Coverage under the Autopac plan in the event one spouse is sued by the other for injuries in a car accident. Well if one spouse is responsible for the accident and the other spouse is injured in that accident, Autopac will not pay for any damages.

**MR. CHERNIACK:** You mean Autopac or our insurance laws, there's a difference between Autopac and other insurance agencies?

**MS. STEINBART:** There is a provision in the Manitoba Public Insurance Corporation Act which says Autopac will not pay for those type of damages.

**MR. CHERNIACK:** Where you say type, you mean those parties?

**MS. STEINBART:** That's right, just between spouses.

**MR. CHERNIACK:** That the wife has no right to sue. . .

**MS. STEINBART:** She has the right to sue but she can't recover on the basis of the insurance, the Autopac plan. Autopac won't pay. The husband may have to pay but Autopac won't.

**MR. CHERNIACK:** And this is different from the general law of automobile insurance, from liability?

**MS. STEINBART:** Well I don't know whether the private plans used to include that kind of a term or not.

**MR. CHERNIACK:** There are no private plans.

**MS. STEINBART:** Not now but it's been covered in the past.

**MR. CHERNIACK:** No, no, there's private insurance now. You say that they do pay?

**MS. STEINBART:** I don't know, I haven't seen any of those insurance policies.

**MR. CHERNIACK:** So you are really talking about the insurance law, not about the Autopac plan.?

**MS. STEINBART:** No, I'm talking about the Autopac plan specifically because there is a term in that Act which says Autopac will not pay those damages between spouses.

**MR. CHERNIACK:** You are saying a husband can sue a the wife but not collect from the insurance.

**MS. STEINBART:** They can sue. . . That's correct.

**MR. CHERNIACK:** And is that regardless of whether there is a contractual relationship or a gratuitous arrangement?

**MS. STEINBART:** It makes no difference.

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

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**MR. CHERNIACK:** It makes no distinction. Thank you.

**A MEMBER:** I can check that out.

**MR. CHAIRMAN:** Are there any further questions on the brief? Mr. Graham.

**MR. GRAHAM:** Mr. Chairman, I'm not a lawyer and I don't know too much about the law but at the present time, in a case of joint ownership, can one member of that ownership agreement sue the other under present law?

**MS. STEINBART:** I'm not quite sure I understand your question.

**MR. GRAHAM:** In No. 1 you recommend immediate joint ownership and joint management of all assets, and I would assume . . .

**MS. STEINBART:** We don't recommend that, we recommend that you look at it.

**MR. GRAHAM:** No, but I would assume that that would include an automobile and if both spouses own the automobile and it's involved in an accident, are you recommending that one spouse should be able to sue the other spouse?

**MS. STEINBART:** They have the right to sue now, it's just that Autopac won't pay for the damages.

**MR. GRAHAM:** I'm not too well versed in the law. If they both own the automobile, at the present time one can sue the other? Autopac won't cover any insurance under a joint. . .

**MS. STEINBART:** It doesn't matter whether they both own it or only one owns it, it is a matter of who is responsible for the accident. The spouse causing the accident can be sued by the spouse receiving injuries from the accident. They have the right to sue but Autopac won't pay the damages.

**MR. CHAIRMAN:** Are there any further questions on the brief? Thank you for appearing before us, Mrs. Steinbart.

**MS. STEINBART:** Thank you for listening to the brief.

**MR. CHAIRMAN:** Order please. Will the representative of the Voice of Women come forward please. Would you give your name for the record please.

**MS. GRAY:** My name is Cherry Gray and I would like to present at this time our support for the Coalition's recommendations although most of the points have been dealt with this morning so well by Alice Steinbart. I also want to comment just briefly on how pleasant it is since you have No Smoking signs on the wall, it's nice to conduct a meeting in this atmosphere of fresh air.

The Voice of Women (VoW) is a national organization of women working for peace in the world. VoW is involved in international exchanges and educational activities at local, national and international levels. The welfare of children and the equality of men and women is an integral part of VoW's concern for humanity. It is with this in mind that we are here today to support the recommendations of the Action Coalition on Family Law.

We support all the Coalition's recommendations; however we will comment today only on the Property Disposition aspect of Family Law. That's on Page 6 of the report.

VoW believes that the marital home purchased after marriage or with marriage in mind should be jointly owned and that a spouse should be able to enforce joint ownership by filing a document along with a marriage certificate in the Land Titles Office. There should be no taxation on the transference of titles to joint tenancy when this Act comes into effect. Joint tenancy should not be able to be transferred without the consent of the other joint tenant. The sale of the marital home should not be forced on the spouse with custody of any child if it is in the best interests of the spouse and child to remain in the home. If the marital home was acquired before a marriage, it could be separately owned but the Dower Act should still apply.

It is important to recognize that marriage is a partnership and that each partner does their share in working, either outside or in the home and that each should share equally in the assets that are built up. There should be no fault attached to the division of the assets upon separation.

Assets and property acquired by one spouse before a marriage or as gifts, inheritances or trusts, etc., should remain separate property and not be divided upon separation.

Couples should be able to opt out of these provisions, but only again by joint consent with written agreement and independent legal advice. It is a partnership.

If a spouse dies without a will, the other spouse should receive all of the deceased's estate. This does not involve the woman, again, appealing to a judge, putting the woman again in the position of a supplicant to receive what this organization does believe is a right, that the woman is responsible to administer the estate in such a case.

Again, because improvements in Family Law will affect so many people, the Voice of Women urges that these changes be well publicized.

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

**MS. GRAY:** Thank you.

**MR. CHAIRMAN:** Order please. Would the representative from the Status of Women Committee, New Democratic Party, come forward please. Would you give your name for the record please.

**MRS. TURNBULL:** My name is Alita Turnbull. As the previous speaker noted that the group that she represented was also operating under the umbrella of the Coalition on Family Law, the NDP Status of Women Committee is also operating under that umbrella. In general we agree with all the positions that have been put

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

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by the wcoalition.

8 We are here today to expand on a specific area that is of particular concern to us and not to disagree with the position that has been put by the Coalition.

The NDP Status of Women Committee has been working on its position on Family Law for some two years now, so we do not come before you on the basis of hasty ill-considered opinions. The area that we want to deal with specifically today is the area of spousal maintenance, which you've had one go-around already, and we want to expand on that area and try to delineate as clearly as possible the principles that we see as being necessary in this area of Family Law.

In terms of background for this area we feel it's very important to understand a couple of things that are occurring in society presently which means that Family Law with regards to spousal maintenance needs to be changed. These are basically that society is moving towards more equity, more equality between men and women, more equality between persons throughout all of society, and that means that the old laws which were based on husband managed, husband dominated marital regimes, are no longer sensible or applicable to modern conditions.

Secondly, regardless of the position that one takes on marriage, it is a fact that more and more marriages are breaking down so that there is a greater requirement that the law be fair because more and more people are being affected by the settlements that are being made in court. More children are being raised in broken families, more women are being required to support themselves and their children, so that society really is having to move into this breach and take some responsibility to establish conditions in which women and children, because they are generally the ones who are left because of these changes in society, that they are treated more equitably, that the old system just is not working any more.

Now with these two things in mind, that we are moving towards more equity and that there is more marital breakdown in society, the NDP Status of Women feels that we should move away from the position that there should be long-term maintenance which should be given forever to any person. We feel that this was a system which was set up when hardly anybody divorced and when it was a very unusual situation and that really women didn't have any choice in the job market and really they were life-long dependents. That is not the case any more. As other people have pointed out to you, that didn't tend to protect very many women because most of them had to go onto welfare rather than depending on their husbands' largesse in any case. But we feel that as a principle the idea that one person should support another person in perpetuity is not a principle which is in line with the ideas of equity in society. Now you may say, well, why are you talking about spousal maintenance then. Basically we feel that spousal maintenance should be established on a new principle and that principle is need, that the only reason that one person should maintain another person is because of need, not for any other reason. And we feel that there are three conditions under which a person could establish their need of maintenance, short-term transitional maintenance. The first condition would be the care of infant children. We feel that there are not sufficient day care arrangements in society, there are not sufficient supports in society, to ask a person to leave infant children or to be required to leave infant children and go out into the work force and that while children are under seven years old that someone has to look after them in the home very often, and that for that specific purpose, that there should be maintenance. So that is a short-term need-based reason for giving spousal maintenance.

The second condition that we feel should be covered in spousal maintenance is retraining. We feel that in many many marriages there is a real or implied contract between the partners that the roles will be split, that one person will earn the money and the other person will run the home. And that as a result of this real or implied contract, that job skills are either retarded, not developed or rusted as a result of this contract. So, if the marriage breaks up, these job skills need to be refurbished so that the person can re-enter the work force and that this is a legitimate charge upon the person who has been working to retrain the non-working person who was asked to stay at home as a result of the marriage and the implied contract there and that this retraining should be a charge upon the family, upon the marriage. But again, this should be a time-limited, short-term reason for maintenance. It's not maintenance in perpetuity.

And thirdly, the third category is that we feel that there should be some area of judicial discretion for a person who can prove to the satisfaction of the court that they are unemployable. We do not see this as being a very big category but there are some people who, because of health or perhaps age, are not employable and we feel that that is an area where a judge could look at the facts and say that a person, you know, really isn't employable. But the principle behind it really would be that those are the very rare exceptions, that the law would tend to push people towards self-sufficiency and the onus would be on the person who is claiming this kind of maintenance to prove that they were in fact unable to get employment.

Now we feel that given these three areas, the care of infant children, retraining and some long-term maintenance for people who can prove in a legal sense that they are unemployable, that fault be removed as the basis of establishing spousal maintenance.

Now I know that there is some opposition to this idea because people feel it discourages morality. Our position is, you know, that we support the idea that people should be faithful to one another, that they should try and make their marriage go and so on, but that if marriages break down, and they are breaking down more

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

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and more, that society has to address itself to the question of re-establishing the persons of the marriage and setting up a system in which they can become equal and free and able to maintain themselves in the market, and that that principle doesn't really have anything to do with fault for marriage breakdown.

Now the other problem with using fault is that it operates in an inequitable way as between people. If a man is judged to be legally at fault, he leaves the marriage with all his job skills, with all his business contacts, with all his years of experience. He's at fault but he still has all those things to go on. And for most people the money that they have in this life is what they earn from their job not whatever money they get from half of their unpaid mortgage on the house. But if a woman is judged to be at fault, if she's the person who has been at home and who has been asked to stay at home and look after the children and she has committed a marital fault and as a result of that the marriage has broken down, she leaves with no job skills, no business experience, no work experience, no contacts in the work world. As a result of that, a situation which is very inequitable arises, the one person being at fault leaving with a tremendous amount to go ahead on and the other person, having committed say the same fault, leaving with practically nothing. And, of course, this is exactly the reason that women do so poorly in the work force, because they have stayed home to look after children, because they have supported family values, because they have done those things that are generally subsumed under the title of motherhood. And they are being punished in the workplace for having supported these values at home.

I think that if the law is changed and it doesn't give support to women to besat home to look after their children, if it says that you are a danger in the workplace and we are setting up a system which is going to continue to keep you at da ger if your marriage breaks down, then women are going to be forced into the position of saying well, I can't really afford to stay home and look after our children because if this marriage doesn't work out, you and the law are not going to help me out of that position which I have been put into as a result of being a mother and performing those roles at home.

So that I think it is a very serious issue to which the legislators are addressing themselves and not one which is trivial and which can be dealt with by looking at. . . you know, by bringing up stories of women who have acted indiscreetly. Of course, the law is there to deal with people who break it but the system of the law has to support people's equal chances in the workplace if they are going to be supporting themselves after marriage, and if it doesn't do that then it's going to cause a lot of disruption in family life.

So in closing then I would reiterate that we do not support long-term maintenance; we only support transitional haintena ce and only in areas os need, those being the care of infant children, for job retraining where a person can prove that their job skill has been rusted or retarded as the result of the real or implied contract; and thirdly, that there be an area of judicial discretion to look at people who can prove to the court that they are in fact unemployable.

**MR. CHAIRMAN:** Thank you, Mrs. Turnbull. Before you sit down perhaps I can get an indication from the committee as to what time they wish to recess for lunch. It was expected that we would recess at 12:30 and come back at 2:00. What is your will and pleasure? (Agreed) Are there any questions for Mrs. Turnbull? Perhaps we could ask her to come back at 2:00 if there are.

**MR. CHERNIACK:** Mr. Chairman, on the point of the hour of return, I'm wondering about the dinner hour whether committee could now indicate the times for the dinner hour so that we have some idea, capability to plan; like do we want two and a half hours off, do we want one and a half hours off, two hours off? No. no. I say the evening.

**MR. CHAIRMAN:** Oh the evening.

**MR. CHERNIACK:** We are coming back in the evening we've agreed on that so I don't know. Mr. Chairman, I think the committee has it within its own discretion as to when to close up shop in the afternoon and when to return in the evening. I know for me it would be helpful if we made the decision ntw rather tha later sor my plans.

**MR. JENKINS:** Mr. Chairman, I would suggest that we adjourn at 5:30 and return at 7:00 or 7:30 whatever the case —(Interjection)— 7:30 or 8:00 o'clock, whatever the case may be.

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**MR. F. JOHNSTON:** Mr. Chairman, I would like to speak on that particular point but Mrs. Turnbull is waiting to know if we have any questions of her now, so she may not have to come back.

**MRS. TURNBULL:** Well I can be back, it's no problem for me.

**MR. F. JOHNSTON:** Well if there's no question of you there's. . .

**MR. CHAIRMAN:** We will return from our lunch break at 2:00 o'clock, Mrs. Turnbull. I will ask again then if there are any questions. Thank you.

**MR. F. JOHNSTON:** Mr. Chairman, at our first meeting of the committee to decide whether -- (Interjection)— I was going to say "thank you" — to decide about coming back tonight. We obviously had nine briefs this morning and we still have six of those left. We have ll this afternoon and I'm sure the committee is prepared to go in the evening but is this the time to maybe discuss with the committee what we discussed before. If there is a reason for us to have another meeting in Winnipeg for briefs that we're not able to hear today, should we be considering that now? Have the dates been set for that or are they just. . . We don't need to set dates, Mr. Chairman at the present time but I think we should really be thinking of the people who may not get

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

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on today having a chance after we're back from Thompson let's say.

**MR. PAWLEY:** I wonder, Mr. Chairman, if there has been any indication given to you or to the Clerk as to whether there are any briefs that would have to be given in the evening.

**MR. CHAIRMAN:** Yes, I have an indication of five people wishing to come this evening to speak to the committee. What is your will and pleasure for a time this evening? 8:00 o'clock? Agreed? (Agreed) Agreed that committee will recess and stand recessed until 2:00 o'clock this afternoon. maintenance and only in areas of need, those being the care of infant children, for job retraining where a person can prove that their job skill has been rusted or retarded as the result of the real or implied contract; and thirdly, that there be an area of judicial discretion to look at people who can prove to the court that they are in fact unemployable.

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