



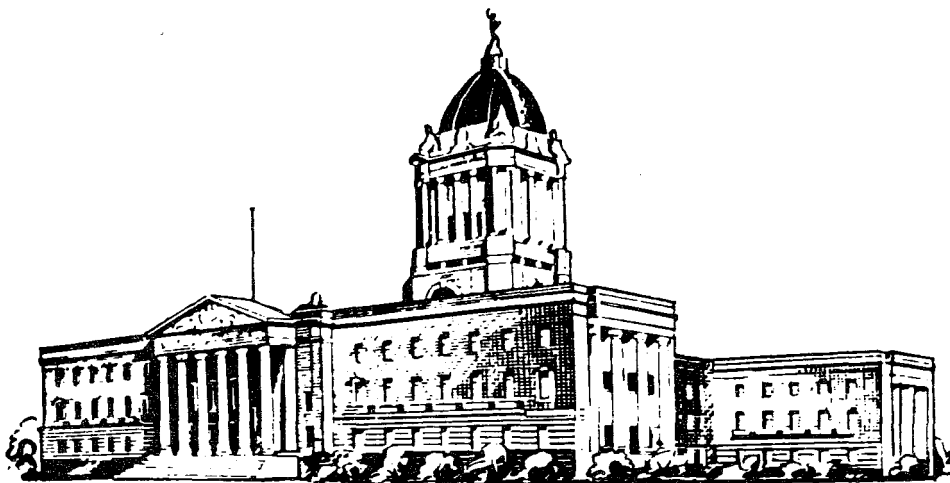
Legislative Assembly of Manitoba

HEARINGS OF THE STANDING COMMITTEE

ON

STATUTORY REGULATIONS AND ORDERS

Chairman
D.J. Walding, M.L.A.
Constituency of St. Vital



10:00 a.m., Thursday, February 3, 1977.

THE LEGISLATIVE ASSEMBLY OF MANITOBA
STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
10 a.m. Thursday, February 3, 1977

MR. CHAIRMAN (Mr. D. J. Walding): Gentlemen, we have a quorum, the Committee will come to order. The first item of business on the agenda this morning, the Chair has received a written resignation from Mr. Cherniack who will be unable to attend any more of the meetings. Mr. Malinowski is prepared to serve on the Committee in his stead. Somebody care to move acceptance of this resignation and move the nomination of Mr. Malinowski? Mr. Barrow so moves. Is it agreed? (Agreed) Agreed and so ordered.

There was no definite agenda for this morning's meeting, we have finished our public hearings, members all have copies of the transcript and other information that has been sent into us.

Mr. Graham.

MR. HARRY GRAHAM: Well, Mr. Chairman, we had public hearings, I don't know if we're finished with the public hearings because we did receive a letter which to my knowledge the Committee has not dealt with yet; a letter from Ms. Steinbart who I see is here today and I am not too sure of the date of this but we received it on the 7th of December. I think every member of the Committee has that letter but I think -- if not I would be willing to read it to the Committee.

MR. HOWARD PAWLEY: Possibly it would be better if Mr. Graham did read it to the Committee.

MR. GRAHAM: Well this is addressed to the Standing Committee on Rules and Regulations. "Dear Sirs: The Coalition on Family Law is concerned about any limitation of the opportunity of Manitobans to state their views about changes in Family Law. We understand that the Committee has decided not to hear anyone at its public hearing of December 9th in Winnipeg who has not asked to be heard at the November 23rd hearing. You should note there are a number of people who could not attend on November 23rd and who were aware before November 23rd that there would likely be a further hearing on December 9th. These people intended to speak on December 9th and therefore did not submit their names to the Clerk of the House for November 23rd. They have now learned of your recent decision and as a result may have again not submitted their names for the hearing. Family Law, as you know, is an area of vital importance not only because it will affect the vast majority of people but also because it will affect them intimately. Anyone who wishes to speak on this important issue should not be cut off."

Now there are several other things in here but I think that is the main point, that if there are any other people or if there are any further submissions, I think that this Committee should hear them. I know Ms. Steinbart was asked a question on the first day and she said they would be very willing to make any further representations on any particular points that have been brought to their attention. I was just wondering if, at this time, the Committee would like to - if she has any further recommendations to make, I think we should hear her, I see she is here at the present time.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I have no objection if the Committee wishes to obtain any further clarification from Ms. Steinbart. I think the issue that Mr. Graham dealt with from the letter was pretty well dealt with because we did proceed on December 9th to receive public submissions and they were not closed off on that day, in fact I believe we had quite a number of submissions. Did we not spend pretty well the entire day. . .

MR. CHAIRMAN: Yes. The letter was inaccurate in that it states that the Committee had decided not to hear anyone. The Committee in fact did not so decide and at the meeting the Committee heard anyone who attended and expressed a desire to speak.

Mr. Sherman.

MR. L. R. SHERMAN: I concur in the suggestion that a wide range of briefs and presentations was heard on that particular date and as I recall we sat till past midnight, Mr. Chairman, and there were no other delegations wishing to appear after the last one which finished a few minutes after midnight, but I think there is an important point that Ms. Steinbart makes in her letter which perhaps wasn't read into the record

(MR. SHERMAN cont'd) . . . dealing with the last two or three hours of that particular day's hearings. And that point is, I think in the opinion of the writer, that perhaps there was neither a fair kind of delivery given to the representations nor a fair kind of reception considering the fact that the Committee had been sitting since 9:30 that morning and it had been a wearying day for delegations and for Committee members. On that basis I think Ms. Steinbart suggested that perhaps there had not been the opportunity for a totally conscientious kind of study of the representations being made and since she is here this morning I would suggest that it would be fair to invite her to comment on that; if she feels that there were representations that were presented at a disadvantage and that could be more effectively made then I would be interested in hearing her comments on that. Perhaps she has revised her thinking on that point.

MR. PAWLEY: I certainly wouldn't want to prolong this, I have no objection as one. Certainly if Ms. Steinbart wishes to add to her comments, to clarify any further points, if some members had some questions of her, I see no reason since she is here that she shouldn't be gladly given the opportunity.

MR. CHAIRMAN: Mr. Adam.

MR. PETE ADAM: Thank you, Mr. Chairman. I have no objections either except that if we are to hear further presentations I think, in my opinion, there hasn't been enough rural hearings and we haven't had an opportunity to hear more presentations in the rural areas and if we are to hold any further hearings, I think we should then have one in Dauphin to allow farm people to come in and make their presentation because they are also affected by Family Law as well. And I am sure that many many farm women were unaware until the Murdoch case in Alberta the little protection they had under Family Law at the present time and as far as hearing more comments by Ms. Steinbart, I don't think I have any objections although I think you can't go on forever hearing more and more and more briefs. We had a lot of briefs here heard in Winnipeg and everybody had a chance. I also think the letter wasn't quite accurate and I was a little bit upset that Ms. Steinbart could not have written her letter directly to you, Sir, without going through the news media. I thought she was just looking for a little bit of publicity.

MR. CHAIRMAN: What is your will and pleasure? Mr. Sherman.

MR. SHERMAN: Well I would be interested in your asking, on behalf of the Committee, Mr. Chairman, of Ms. Steinbart whether she feels that some of the briefs presented late in that day were presented at a disadvantage or whether she, in retrospect, now would have any further comments to make on that point.

MR. CHAIRMAN: Are you suggesting, Mr. Sherman, that she be restricted to that point?

MR. SHERMAN: No. But that is the point I would be interested in. If the Chairman would care to invite her to appear before the Committee at this time.

MR. CHAIRMAN: If I am so instructed by the Committee, I would ask Ms. Steinbart then to come forward and tell us if you have any new thoughts to follow up from your letter or any other comments to make.

MR. SHERMAN: So instructed, Mr. Chairman.

MS. ALICE STEINBART: First of all, it is correct. On the 9th you did take all the people that were present who wanted to make hearings or make presentations to the Committee. I think if there were any other people who wanted to make presentations they may have done it by written form. I don't believe there is any one now who wants to make a presentation, at least I am not aware of it.

Secondly, the Coalition did make a written supplementary brief and I think it was handed out to all of you. You all got copies, at least I hope you did.

And in respect to Mr. Sherman's question about the briefs made late at night on that one particular day, I believe in the letter I recommended that you might want to read over those briefs again so that you could have a chance to think about them, give them more thought, and I wasn't prepared to go into them in any detail at this time.

MR. CHAIRMAN: Are you aware, Ms. Steinbart, that a transcript was taken of the hearings and they have been produced in written form for the members?

MS. STEINBART: Yes.

MR. GRAHAM: Mr. Chairman, I would like to ask Ms. Steinbart or maybe not ask a question but make a statement that she may or may not concur with. I think that

(MR. GRAHAM cont'd) right now most of the people are concerned with what we are going to do with all of the presentations that have been made to us and what recommendations are going to be made by this particular Committee, and most of them, I believe, would like to see those recommendations and I am just wondering if the Committee had made any plans to submit our recommendations or whenever we have them finalized and send copies to all of those people who submitted briefs when the Committee met. Do you think that would be beneficial to those that took the time to make presentations?

MS. STEINBART: I think it would be greatly appreciated by all those who made the presentations to know exactly what the recommendations of this Committee are.

MR. GRAHAM: Another question, Mr. Chairman. After having received those, do you think that some of the people may want to make further presentations and I would suggest in that particular case probably written presentations regarding some of the recommendations made?

MS. STEINBART: I think it may be very well the case that they would want to make further presentations.

MR. GRAHAM: I will now defer to the Minister and perhaps he would like to answer that.

MR. PAWLEY: I was going to pursue something of a more substantive area. I am sorry, your last question, Mr. Graham, was . . .

MR. GRAHAM: Ms. Steinbart has just said that all those that did make presentations would very much like to receive copies of the recommendations of this Committee and probably would like to make further presentations on the recommendations of the Committee, but I had suggested that it probably be in written form.

MR. PAWLEY: Well also I would say to Ms. Steinbart that certainly our recommendations I think in the main will be reflected by way of legislation which will appear in the House and which will be followed by opportunity for further submissions by I think the same groups to Law Amendments Committee, so there will be another opportunity to take another second strike at the cat, as to speak, or another bite at the cherry might be a better way of putting it, when the recommendations can be seen in the way of the final draft legislation. Now I would have no objection, I don't see any major mechanical problem in circulating our report, a final report from this Committee, to those that had submitted briefs. I think it will be certainly public in any event, made to the Legislature, and I see no mechanical problem in doing that if that is the Committee's wish, Mr. Chairman.

MR. CHAIRMAN: Our report is a public document. It is available to anyone, of course. Mr. Adam.

MR. ADAM: Well, Mr. Chairman, I am sure that once the recommendations of the Committee are in printed form that it will be available to the news media and it will be public knowledge and very easily available to anyone who is interested in obtaining them. I don't see too much advantage in mailing out a copy of the recommendations to everybody that has presented briefs because it will be public knowledge by then anyway.

MR. GRAHAM: Mr. Chairman, my concern and I am sure it has to be the concern of every member of this Committee is that whatever legislation we bring forward should be legislation that meets the needs of people, that is in the best interests of people and I would suggest to the Minister that would it not be better to hear all the objections on proposed legislation before it is finally drafted rather than go through all the procedure of drafting legislation, bringing it in, going through first and second reading and then hearing presentations which might indicate that change should be made. I suggest to you, Sir, that it is much easier to make the change before the legislation is initially drafted if there are areas of concern that occur.

MR. PAWLEY: Well if Mr. Graham is saying there should be further opportunity for written submissions to be forwarded to the Committee, then certainly I have no objection to receiving written submissions. I don't think Mr. Graham is suggesting another series of oral submissions.

MR. GRAHAM: No.

MR. PAWLEY: I wouldn't think we would want to do that again at this point. But written submissions subject to what the other members of the Committee say . . . I would think at any time we would welcome any written correspondence pertaining to the matters that we are dealing with.

MR. CHAIRMAN: If members of the Committee have no further questions of Ms. Steinbart. . . Mr. Pawley.

MR. PAWLEY: I don't want to abuse the decision to bring Ms. Steinbart forward again, I wanted however to deal with a substantive point, one that was worrying me outside of this area of procedure if that was agreeable to the Committee. The specific concern I wanted to deal with, between your opinion in your submission, Ms. Steinbart, you had indicated support for no-fault insofar as the payment of maintenance inter spouse, that we should eliminate fault, and at the same time I believe you indicated that the main aim and principal objective ought to be to realize self-sufficiency insofar as the spouses were concerned. I want to ask you this question then: if a spouse, separate from the other spouse, receives payment, do you feel there ought to be written into the law, if we did eliminate the fault aspect, a requirement that that spouse receiving those payments make every reasonable effort to obtain self-sufficiency and that a court ought to be able to examine the circumstances in which that spouse is living in order to ascertain whether or not that spouse is attempting to achieve self-sufficiency, to be free of the need for maintenance payments from the spouse to which the court order has been given?

MS. STEINBART: I can't see why it would have to be written into law because our opinion would always be based within our recommendations as to when maintenance would be given and one would be when the children are with the one parent, when the one parent has custody and doesn't want to stay home and look after the children, the parent having custody automatically realizes that it is only going to be a short term and it is not necessary to write that into law.

The second one is for upgrading or training and again that one spouse realizes that it is just a short term maintenance and it wouldn't be necessary to write into the law that this is going to be just short term and this person should try to become self-sufficient.

And the third one is a long term maintenance and the person would never become self-sufficient. This is where there is a long term marriage; it was not anticipated that the person would become self-sufficient. So I don't think it would be necessary to write into the law that the person receiving maintenance should become self-sufficient. I think it would be known to that person. This would be the intention.

MR. PAWLEY: Well could I ask you, Ms. Steinbart, in the event that the spouse receiving the maintenance payments proceeds to cohabit, and it can happen either way with someone else, what do you feel the psychological attitude would be in that situation of a spouse under a court order to continue making payments to a spouse who is in fact cohabitating with someone else of the opposite sex, living in a common law relationship. Do you not feel, even under the area of long term marriage where there has been this separation take place, that there is not some requirement or some qualifications that should be written into your proposals?

MS. STEINBART: Yes, I can understand how one spouse would feel if the other one is living common law.

MR. PAWLEY: Yes, they would slit their throat if they had to continue their payments, wouldn't they?

MS. STEINBART: That's right.

MR. PAWLEY: . . . under a court order?

MS. STEINBART: But presently it is possible to vary a court order if circumstances differ, and I would imagine that would continue, that any court order for maintenance to one spouse can always be varied if the circumstances change.

MR. PAWLEY: But we would have nothing written into this proposed law as it stands if we eliminate the no-fault aspect. I am not so sure whether there would be any provision for a variation of the court order unless we ensured drafting such a provision into the law to provide for a variation in the court order in the event of such a change in circumstances.

MS. STEINBART: I would say if one person is living common law and that other party, the common law spouse, is being supported or is supporting the other spouse that would be a change in circumstances. I don't think it has anything to do with fault, it is just purely economic.

MR. PAWLEY: And you feel that there is sufficient basis now in law to gain

(MR. PAWLEY cont'd) a court order without having to draft any legislation in order to ensure that the court would have the jurisdiction to grant such a variation. You feel it is not necessary to draft anything into our law to provide for that?

MS. STEINBART: Well it is really hard to say how the judges are going to interpret the new law. I know that in the past they always felt they had the right to vary if circumstances changed and again I suppose it would depend on the wording of the section as to whether they felt they had the right to vary again the court order.

MR. PAWLEY: Fine. Thank you.

MR. GRAHAM: I would like to ask another question. Would that not really depend on what present laws we are proposing to delete and replace with this all-encompassing legislation? If we are going to delete some present law such as the Maintenance Act, if that is going to be deleted then we would have to ensure that we wrote into the present legislation the same safeguards that presently are there.

MS. STEINBART: Yes, I understand and I do agree that there should be a right to vary the order. I think that the judge should be able to vary the order and if you feel it would be better to write it in specifically saying that the courts have the right to vary the order, then yes, we would agree with that.

MR. PAWLEY: Yes, the thought was that we would have to write something in to indicate, of course, under what circumstances the order could be varied.

MS. STEINBART: Generally it is on the basis or change of circumstances and I think the Coalition would accept that.

MR. CHAIRMAN: May we proceed, gentlemen. Mr. Adam.

MR. ADAM: Ms. Steinbart, I was wondering when we do make recommendations and legislation is enacted that we would try to remove anything in the legislation that would perpetuate the dependency of one spouse upon the other because traditionally it has been mainly the women, the woman has been dependent in the past and I am just wondering if you would like to see us do everything we can in enacting legislation that would remove the perpetuity of this dependency by the women or vice versa?

MS. STEINBART: I think you can only go so far. The Coalition has said that long-term marriages, where there has been a long-term marriage, the dependency is there and I don't think it should be attempted to be removed by legislation. It can't be. Possibly in time this type of tradition will change but right now I think we have to recognize it.

MR. CHAIRMAN: Thank you, Ms. Steinbart.

MS. STEINBART: Thank you.

MR. CHAIRMAN: You have the transcripts before you and copies of all the submissions made to the Committee. Maybe the Committee could now begin its general discussion on what you have heard and what your feelings are, where areas of agreement or disagreement might be. We could perhaps take it in some systematic form, possibly going through the Report of the Law Reform Commission chapter by chapter or through the recommendations at the back. What is your will and pleasure?

Mr. Adam.

MR. ADAM: Mr. Chairman, it was my understanding that we would get some sort of abridgement on the presentations that we had received to indicate more or less the areas of concern and we have before us voluminous briefs and while we have read through them it would take some time to memorize or have to go over them once again. I thought we had discussed this that we would have some sort of an abridgement of all these briefs.

MR. SHERMAN: Mr. Chairman, might I just refer, in response to Mr. Adam, to a chart giving a breakdown of the main points of concern and the position that various bodies ranging from the Law Reform Commission to delegations appearing before the Committee took on those subjects. They appeared throughout the hearings to be the main subjects of concern ranging from equal division of property to a question of unilateral opting out of the new arrangement and I don't know if that breakdown was distributed to all members of the Committee but I have one and I assume it was distributed to all members of the Committee. It was prepared by the Coalition on Family Law, computed by the Coalition on Family Law and I put the question to the Committee as to whether that is the kind of thing that Mr. Adam had in mind or whether he is suggesting that

(MR. SHERMAN cont'd) something be done on a Committee basis rather than working from the paper that was put forward by that Coalition?

MR. PAWLEY: Mr. Chairman, I was wondering if the Committee would not think that our most systematic way possibly of dealing with the matters before us would be to commence by taking item by item in the Summary of Major Recommendations, Part I and Part II in the Manitoba Law Reform Commission Report, proceeding through them one by one and as we are proceeding we could certainly make reference to the summary that was prepared by the Coalition and we would arrive at the peaks, so to speak, the more important issues, and I am sure we would relate to the information before us as to what the various groups had recommended. But if we are going to deal with it in a systematic way so that we guarantee that we deal with all the points, I would recommend that we turn to Page 111 of the Manitoba Law Reform Commission Report and start right out, starting with Point 1 and proceeding through the pages that follow, dealing with each recommendation and seeing just how much agreement we have amongst ourselves in connection with those various points. We will find out quickly where we have difficulty and at least then we are doing it in a systematic way and we will be sure when we have finished that we haven't left out any area that we should be considering.

MR. CHAIRMAN: As you know, there is another meeting scheduled for the 15th at which time we hope to have a draft report for the Committee for your consideration. The purpose of this meeting is to get together our thoughts on drafting that Committee. Is the Attorney-General's proposal for procedure approved? If there are no objections then, we might proceed.

If you are all at Page 111 of the Report, A is headed Children. I wonder if I might just go through them by number and I will take your silence to mean acquiescence. No. 1. No. 2. No. 3. Mr. Graham.

MR. GRAHAM: Mr. Chairman, dealing with the recommendations of the Law Reform Commission regarding Children, I think perhaps we should go back to probably Page 10 or 11 or even 13 where we find there seemed to have been an area of difference within the Law Reform Commission dealing with the problem of children, and there was the Memorandum of Dissent and Separate Opinion of Mr. Werier, Miss Shack and Dr. Hanly expressed on Page 13. If I read it correctly I think there seemed to have been a fairly important difference of opinion within the Law Reform Commission body itself with respect to how you treat children in this respect. If you look on Page 11, No. 4, it says: "Subject to the provisions of The Child Welfare Act a parent is not responsible to support and maintain a child over the age of 16 who has wantonly discontinued appropriate formal education and training," etc. or "who is beyond the control of his or her parents or parentally designated person in whose charge he or she is."

We find that the dissenting people seem to have come out and suggested that that section be deleted. Now I wonder if there are those here who have any strong views on that particular point. Would the Attorney-General have anything to say?

MR. CHAIRMAN: That would seem to be the next section, 4, would it not?

MR. SHERMAN: Mr. Chairman, as I read section 3, what it is saying is that the primary responsibility for a child, maintenance for a child under 18 - or recommendation 3 - lies with the natural or adoptive parent; the second level of responsibility lies with the common-law partner of the person who is the parent of that children, and that by implication the state would only be responsible at the third level. Am I correct in that interpretation of recommendation A.3.? What it is saying is that the second line of responsibility is with the common-law parent or the person cohabiting with the parent with which I am in agreement I might say. But we did have representations before this Committee which said that the priority of responsibility should be the natural parent first, the state second. My view is that it should be the natural parent first, then the common-law partner second; the state should not have the second line of responsibility. What I am asking you, Sir, is whether that is what A.3. is saying? I believe it is, that the orders of priority are natural parent, common-law parent and then the state last.

MR. CHAIRMAN: I hope you are not asking the Chair for a legal opinion but I noticed that the Attorney-General was nodding when you were asking the question. Mr. Pawley.

MR. PAWLEY: I would just like to ask one question if I could of legal counsel--

(MR. PAWLEY cont'd) you know, if you wish to take it under review, fine -- pursuant to Mr. Sherman, I agree in general with his question. I just want to further expand the question. The second level of responsibility being the common law, it would be my understanding that the common-law parent would only have responsibility for the child as long as the common-law parent has the custody of the child. Would it be correct in that the custody and the responsibility would have to accompany each other? --(Interjection) -- Are we ahead of ourselves?

MR. GOODMAN: Right.

MR. PAWLEY: But you see that is a point then I would like to have clarified because legal counsel is shaking his head.

MR. GOODMAN: No, but it is dealt with later on. I am just saying that Point 3 doesn't deal with common law at all.

MR. CHAIRMAN: Does 3 then take in stepchildren?

MR. GOODMAN: Children of a marriage, the child of your spouse and No. 5 and 6 deal with common-law marriages and children.

MR. CHAIRMAN: 3 deals with stepchildren.

MR. GOODMAN: Adopted children and stepchildren.

MR. CHAIRMAN: Mr. Johnston.

MR. FRANK JOHNSTON: No, that was just clarified there. I was going to ask that.

MR. CHAIRMAN: Anything further on 3. No. 4. This is the point that Mr. Graham had mentioned.

MR. GRAHAM: Mr. Chairman, it seems to me that the majority of the Law Reform Commission members feel that an unruly child, and when I use the term "unruly" I use it in a very broad sense, here it appears as though they are willing to take that responsibility away from the parents and probably place it with the state. The minority report feels that the parents have a further obligation and they feel that maybe the unruliness of that child still is the responsibility of the parent and I have to say that I tend to agree with them in that respect. Maybe I am not expressing it very clearly here but it seems that if we allow this section to be incorporated, I can see where parents who are maybe in financial difficulties and find that maintenance is a bit of a problem could trump up all sort of excuses to get out of their responsibility under this section and I think that parents have to take full responsibility for their children up to the age of 16 and even further, but I would like to know what the inclination is on the part of the Attorney-General and whether or not he prefers to leave this section the way it is or whether he has some inclination to delete it.

MR. CHAIRMAN: Any other members of the Committee wish to express an opinion. Mr. Adam.

MR. ADAM: Thank you, Mr. Chairman. I see that this section 4 is subject to the provisions of the Child Welfare Act so therefore we would have to know exactly what that means because it appears that the Child Welfare Act would supersede this section here in any event. I wonder if we could get a clarification on that from someone.

MR. WILLIAM JENKINS: Mr. Chairman, this is, if you cast your mind back, exactly the question that I asked of the representative of the child welfare group that appeared before the Committee in Brandon and it was the considered opinion of the child welfare group there that the child after the age of 16, between the ages of 16 and 18, if he was unable to be controlled or not able to be controlled by the parents that then he by court order become a ward of the state and they felt that there should be no change in the recommendation as it is even though some of us may have opinions to the contrary.

MR. CHAIRMAN: Any other members of the Committee wish to express an opinion on this point. Mr. Johnston.

MR. F. JOHNSTON: Mr. Chairman, it says in section (a) of 4 "through gainful employment is able to be self-supporting." If we are going to regard children at age 16 who are basically self-supporting, you know, self-supporting to what? Are they in the work force and living away from home and they are not the responsibility of the parents because they are living away from home, paying rent, doing all those things? I could very well see that that would be a concern for a parent who has a child who has decided to live away from home at that age and be self-supporting, and that does happen

(MR. F. JOHNSTON cont'd)but I don't think it is the majority of the cases. The word "self-supporting" I take to mean just that, away from home and self-supporting. If that is the case maybe the parent shouldn't maybe have responsibility over a child that he hasn't got in his home to be able to say what he is doing or make decisions on what that child is doing. On the other hand, if self-supporting means that some child is living at home and has a job and is maintaining themselves, clothing and maybe paying some board, I think the parents still have the responsibility to the age 18 and I don't know how you make individual rules for children. We basically have to stay at an age.

MR. SHERMAN: Mr. Chairman, just in support of what Mr. Johnston is saying I think that there is a strong disposition in our group to see that the age specified in this section of the legislation is age 18 and not 16, but I appreciate the point that Mr. Jenkins raised during our hearings and that he has referred to again here and I, too, would like some further clarification on that point. But if I can't be guaranteed that there is a responsibility, you know, of a conscientious nature, guaranteed through the Child Welfare Act, legislation or whatever, then I think there is a very strong disposition on our part to opt for the 18 age limit, not the 16.

MR. GRAHAM: Mr. Chairman, I think there are two points to consider here and No. 1 is the Age of Majority Act which I believe places the responsibility for children under 18 with the parent and I say that in all contractual obligations, I think it requires parental consent, etc. However the main point of issue here, I think, is section 16 of the Child Welfare Act which provides that a child who is beyond the control of his parents or whose behaviour, condition, environment or association is injurious to himself or others may be taken into protective custody, and I think if those provisions are left in the Child Welfare Act then I don't see the need for including section 4 in the recommendations. The minority position taken was that they thought these conditions were sufficiently broad to cover all this and they didn't see the necessity nor the need for the state to further relieve parents of their obligations to children under the Age of Majority. I think that is a rather significant point in that in my opinion these were the viewpoints of lay people in most cases on the Law Reform Commission as opposed to those of the professionals. I think there is a desire on the part of society for parents to assume their responsibility and their full responsibility, and any move towards lessening that responsibility and transferring it to the state to me I think is a step that would not be in the best interests of society.

MR. CHAIRMAN: The Chair does not sense any particular enthusiasm by members of the Committee for this section. Might we pass on to No. 5. Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I would think that insofar as necessities are concerned, food and clothing, items that are required for the bare necessities of life, that a parent would be accountable for same up until the age of 18. Where there would be a problem of course is as was spelled out, Mr. Graham, where there was a thing that went beyond the area of necessity, with the child moving out of the home at the age of say 17 or 18, renting a suite, spending, entering into commitments of an area that didn't necessarily relate to the very necessity of living. Then the question, of course, is to what extent does that parent's responsibility follow that child beyond basic necessities. I have no particular enthusiasm for the clause as it is worded here. Mr. Chairman, if members would like to accept the minority recommendation of Werier, Shack and Hanly in that connection, I would think that that would be a realistic approach to take.

MR. F. JOHNSTON: I have one question to legal counsel. If a child leaves the home before 16, does the parent legally have the right to say "come home" at the present time or could there be some situation, you know, can they legally be brought home if they leave before they are 16 to 18?

MR. GOODMAN: I don't have an answer for that, Mr. Johnston, but certainly children do leave home in many cases before they are age 16 and do set up on their own. I would think certainly a parent is responsible for the necessities of life for that child up to say age 18 in this province. The only concern, as the Minister expressed, about deleting section 4 was just to determine that the child who went out on his own at say age 16 and 17 and rented an apartment whether or not the parent would be responsible for that. Certainly, let's say, if the parent complains - obviously in many cases a parent can't get a 14 or 15-year-old to come back, they just won't come back, for one

(MR. GOODMAN cont'd)reason or another they have decided "I am not going to stay at home" - certainly the parent can complain to the child welfare people and the child welfare people will look at the case, I should think, on its own merits. In a lot of cases I think they are going to determine it is not worthwhile to put that child back with the parent. I just don't know the answer to that but I am certain they are not going to force let's say a 14 or 15-year-old child to go back to a home where that child was mistreated and, of course, I am afraid that happens.

MR. F. JOHNSTON: Well then in that particular circumstance we come under the Child Welfare Act as to whether the child should be forced or not and if they are not forced the state would probably become concerned as to the living accommodation, etc. of that child. I see only one area here when a child 16 is completely on their own, making their own decisions, earning their own money, they are not in the home for the parent to make any decisions at all for them so therefore there could be a problem. Is there anything in the way of if a child leaves home with the parent's consent? Or vice versa. I, personally, might state right now, I am not disagreeing with Mr. Sherman when he says our side leans toward the 18-year-old situation. I don't think we should be rushing to any great extent to take parental guidance away from children or lowering the age at all but I do see a problem in one area. I don't know whether that problem comes up, quite frankly, all that much. If a boy or girl happens to leave Winnipeg and goes to work somewhere in Toronto for that matter of fact, earning their own living, that could be a problem in this section but I am not disposed to changing it from 18 unless that is a big problem.

MR. GRAHAM: Mr. Chairman, I think the question here is not one of whether the child can be forced back under the parental roof or not, it is a question of while they say here the responsibility, I think it is a question of the legal responsibility. If something goes wrong, if that child makes a contractual commitment that they are unable to live up to, the person who is holding that contract, where does he go for redress? The question to me anyway is whether the state assumes the legal responsibility if the parent has the opportunity of evading it. I think this is the question -- the legal responsibility for that 16 or 17-year-old child -- that is the question that concerns me.

MR. PAWLEY: Are you referring to both necessities of life and non necessities of life? In Mr. Johnston's case where the youngster leaves home and spends money lavishly and recklessly, obtains credit through rather foolish means and people provide credit foolishly, non necessities, should the parents still be encumbered with that debt?

MR. GRAHAM: The Age of Majority tells us that.

MR. PAWLEY: For non necessities. Well I don't think that's the case now, Mr. Goodman, the parent would only be responsible with the bare necessities of life. If that youngster leaves home and rents a suite and runs up a two hundred dollar telephone bill over the space of a month, would the parent be responsible for that? It is certainly not a necessity. The telephone company provided that youngster with the access to that telephone, provided credit to the youngster for that one month period. Is it fair in that situation to have recourse to the parent for payment of that bill?

MR. GRAHAM: Well what does the Age of Majority presently tell us in that respect?

MR. PAWLEY: Well as I understand it presently the parent would only be responsible if the bills related to - and correct me if I am wrong, Mr. Goodman - the necessities of life or that which is required in order to carry on the subsistence of life. So certainly the example that I provided, there would be no responsibility attached to the parent. Am I correct?

MR. GOODMAN: The only area, and perhaps this could obviously be clarified by legislation, is perhaps you could put something to say that, for example, a landlord could not go after a parent of a child under the age of 18 just to clarify that. Now I am not sure, perhaps it doesn't even need clarification, that may be the law now. As long as the parent is prepared to have the child in the home, that, for example, if my son rents a suite when he is 16 at Sutton Place, I am not going to be responsible for the payment of his rent and as I say that can be easily clarified and the law is that a parent is only responsible for necessities purchased by the child.

MR. PAWLEY: . . .in this approach that a parent would be responsible for all necessities to 18, for all other expenditures by the youngster that were encountered either through expressed or implied consent of the parent but beyond that, between 16 and 18, there would not be responsibility.

MR. SHERMAN: Just a question, Mr. Chairman, to the Attorney-General and the legal counsel. At what point in the present situation does the state become responsible? We're looking at the group between 16 and 18 and I recognize the point that my colleague Mr. Johnston raises about the burden of responsibility and in some situations it might be unfair for a parent, but at what point is the state responsible, or is the state responsible at all?

MR. GOODMAN: I think that a parent can legally hoof out his child at age 16 now - I could be corrected on that - but I believe that to be the law that at age 16 the parent can say all right, you are on your own, I don't want to have anything more to do with you and then, of course, the state would become responsible for that child and let's say welfare may come into play if the child can't get a job and I think that is really the change that is recommended in the law now, in effect, in extending that to age 18.

MR. SHERMAN: . . . in terms of the legal responsibilities that we are talking about here, responsibilities for payment and for follow through on financial undertakings and commitments and obligations.

MR. GOODMAN: Well the law is that the parent is only responsible for necessities purchased by the child.

MR. SHERMAN: Well what happens to that 17-year-old boy that you and Mr. Johnston - through you, Mr. Chairman - that Mr. Goodman and Mr. Johnston are talking about who has run up a bill? How is that bill collected now? Who pays it now? The state?

MR. GOODMAN: No. In effect, let's say if a landlord rented the suite to that boy, he is going to have to collect from that boy. If he doesn't collect from the boy, he doesn't collect. It is as simple as that.

MR. PAWLEY: If I could just add to that, the common law is basically established that a creditor cannot recoup from an infant unless it can be shown that that bill, that sum of money run up by way of debt, is for necessities, so if the suite is one that is way beyond the necessity of living, a luxury suite for a 17-year-old, then I would think a court would be very very reluctant ever to award a judgment in favour of the landlord now. So the landlord who really through his own foolishness rented the suite would have to write off that debt.

MR. GOODMAN: Well the court may well determine that it is not necessary in any event as long as the parent is prepared to have that child in the home and right now, as I say, let's say if it was a 15-year-old and the parent was prepared to have a child in the home, certainly it is not a necessity it seems to me. . . .

MR. F. JOHNSTON: . . . I raised this originally and I was very surprised at one time early in the discussion when I said is the parent responsible for a child who goes out and breaks windows and does these sort of things, and everybody said, no, that is not really in the law in Manitoba.

MR. PAWLEY: Could I just interrupt for a moment. There is an interesting case in British Columbia and I believe there is an appeal now where it was held in the lower court that the Children's Aid Society was in fact responsible for the very type of activity that you mention which could have far-reaching implications. Up until now that has not been the case, parental responsibility.

MR. F. JOHNSTON: Well quite frankly I think it should be parental responsibility, be responsible for some little rascal going out and smashing a window or something, but that is another subject. Quite frankly, I am of the opinion that the parents should be responsible for the necessities up until 18 years old and in fact when Mr. Jenkins has mentioned the point of the Children's Aid Society, I think a parent who has children under 18 who are in the hands of the Children's Aid Society, if they can't or are not capable or for some circumstance of the child's makeup cannot handle them in the home and they are in the care of the Children's Aid Society or such, I think they should still be wondering and be taking the responsibility of making sure the Children's Aid Society is doing the right thing by that child. I think the responsibility is still there to see that

(MR. F. JOHNSTON cont'd) that child is being looked after properly in some circumstances.

I only bring up the other thing because I know of boys and girls that are over the age of 16 who just didn't make it academically in school and doing a damn good job at a trade that they are taking up, and are living on their own completely, and as I say with the consent of the parent, I might add, you know, if he happens to be working out of town and doing a good job, under those circumstances I think that there is an area where the parent would have problems paying the telephone bill, I won't even go so far as suite or telephone bill, but some other small debts or whatever it may be that the parents should end up being totally responsible in that case. I think that the person who signs the contract should be much more cautious as to who he signs contracts with, quite frankly. That's the only area that I have any hangup on and unless it can be solved in a pretty good way through discussion around this table, I would stay with 18, but I know of circumstances that are perfectly legitimate for boys and girls to be out working when they are over 16.

MR. PAWLEY: I wonder if there would be agreement in this approach, first that the parent would continue of course to be responsible for all necessities up to 18; the parent would also be responsible for all non necessities to 18 if the parent expressly or impliedly approved. Now I am thinking of the type of instance where the parent may not have expressly approved but the parent knew damn well that the youngster was piling up bills and made no effort to assume some parental control yet knew that the youngster was piling up bills of a nature that weren't for necessities. It seems to me there should be some responsibility there for the parent to attempt to correct that type of situation if a parent isn't completely innocent in that type of situation. Where the parent is unaware, the child leaves home and is completely unaware of what is happening, with reasonableness, then I don't see how we could attach the parent with responsibility if a creditor is unwise enough to advance sums of money for non necessities. And I would like to guard against a parent just wilfully closing his or her eyes to his or her parental responsibilities between 16 and 18. Now I don't know just how we. . .

MR. F. JOHNSTON: If they are at home.

MR. PAWLEY: Well even if they are away from home, I am wondering if the obligation should cease. Certainly for necessities I think it should continue away from home until the child reaches 18.

MR. F. JOHNSTON: Necessities?

MR. PAWLEY: Yes. Necessities of life.

MR. F. JOHNSTON: If the Chairman doesn't mind the interchange, it is on the subject, if a girl or boy 17 is living up in Thompson in an apartment and decides to phone California and can't pay the bill and their parents are living in Winnipeg, how are they going to collect that? I think the legal counsel may have had something here. If the parent says, well that child is perfectly welcome to come and live here, there is no necessity for them to be out in the working world but I agree to the fact that he or she is, we have a mutual agreement that they are better off working on their own, I think in that circumstance the child is then on their own.

MR. PAWLEY: In that example that you gave, in reference to a suggested term of reference, I would say in that situation the parent would not be responsible for that call from Thompson to Calgary unless the parent had entered into a contract with the telephone company by which they would pay the bills of the telephone company involving the minor or if the parent knew that the youngster was going to run up such a bill and yet made no effort to contend with it. I don't know whether I am off base here but it seems to me that if a parent closes his or her eyes to the knowledge, the obvious knowledge that a youngster is going to run up bills of this nature, makes no effort to correct that situation, knows the child is going to make arrangements with the telephone company to run up such a bill, that even when away from home the parent should have some responsibility.

MR. F. JOHNSTON: But how are you going to know? You know what happens in my house with the telephone right now, and I don't know what happens until I get the bill. You know, when they decide to wish their mother Happy Birthday and we are 3,000 miles away, it is very nice but very expensive. But the thing is you don't know.

(MR. F. JOHNSTON cont'd)If the child is working, earning money, living in an apartment - and I might even go so far as to say that I don't think the telephone company or anybody should put a phone into that apartment or should rent or anything else like that unless they have some guarantee of income, signature of income. There's a point, if the child through consent or agreement between the parent decides to live away from home, if the landlord says, okay, you can live here but you are under 18, will your parent be prepared to put their signature on this that the rent will be paid, and if they don't, well you can't go, that is all there is to it. They have to take responsibility.

MR. CHAIRMAN: The Chair doesn't want to cut off discussion on this point but I would remind you that you have 34 pages of recommendations to work through; we are still on Page 1 and it is nearly 11:30. We are merely trying to give an indication of opinion here and not to, you know, dot the "i's" and cross the "t's". Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I was just going to say that recognizing all the problems that had been alluded to for the parent, if the age is established at 18 or maintained at 18, I think there are greater evils that would result in total from lowering it to 16 because in my view the lowering of the age to 16 would be an open invitation for some parents to abdicate from the responsibilities of parenthood. I recognize what my colleague is saying about the irresponsibility of some young people in terms of the credit society that we live in but I think there is a greater danger of parental irresponsibility and it would be an open invitation for a lot of people who don't get along with their children anyway to literally throw them out at the age of 16. That is what bothers me about elevating it to 18. I think that the Attorney-General has suggested a couple of protections that could be built in which could enable us to live with 18.

MR. GRAHAM: Well, Mr. Chairman, we have got fairly well off course on this and I think I have to assume some of the responsibility for that, but really what section 4 says is that a parent is not responsible for any kid who goofs off from school at the age of 16 - in essence that is what the sections says - and kids do that all the time and I still think it is a parental responsibility, but this section says a parent is not responsible.

MR. CHAIRMAN: I still sense a lack of enthusiasm for the section. May we move on to section 5.

MR. PAWLEY: Mr. Chairman, just on a point of clarification. When we have a section where we seem to have some doubt as to where we go would you just -- we are going to try to narrow down those sections and then return to those that we have difficulty with. Is that the procedure that you are proposing? On this No. 4 then we will have to return to that later I guess.

MR. SHERMAN: Mr. Chairman, we could sort of move along on the basis of ones that we are accepting outright, ones that we are rejecting outright, and ones that we want to re-examine. This would be in the re-examination category.

MR. CHAIRMAN: You can have another go at it when the report comes back - a couple of weeks time anyway. No. 5 then.

MR. PAWLEY: Mr. Chairman, if I could ask legal counsel the question that I asked that was out of order a few moments ago. The worry that I have here is natural parents find first responsibility; common-law parents the second responsibility, common law step-parent; I am assuming though that that means that common law step-parent loses that responsibility here if he or she no longer has custody of the child. Am I correct on that?

MR. GRAHAM: The third responsibility then would be the state. That is the natural assumption.

A MEMBER: That comes in 6.

MR. CHAIRMAN: Section 6. Any comment on 6? Mr. Brown.

MR. BROWN: . . . expand on that a little bit for us. I would like to ask one question in this regard. Let us say that we have a case of an unwed mother and let us say that she is of the age 16, how would she be treated under this particular section?

MR. PAWLEY: Does legal counsel wish to deal with it.

MR. GOODMAN: The question was an unwed mother, and I am sorry, I didn't catch all the question.

MR. BROWN: The question was if we had an unwed mother, like under this particular section, and she was of age 16, now would the parents still be responsible for total maintenance?

MR. GOODMAN: The parents of the unwed mother being responsible for the baby of the unwed mother?

MR. BROWN: Yes.

MR. GOODMAN: Well that seems to me is not even contemplated in the section at all. It is not contemplated anywhere that I am aware of in the Report of the Law Reform Commission.

MR. PAWLEY: . . . Mr. Brown, that the Law Reform Commission hasn't considered.

MR. GOODMAN: They are responsible for her, they would still be responsible for her and I would think that it would naturally follow that obviously they have to be responsible for that child and perhaps in some cases the parents would throw the girl out with the baby and, no doubt, that has happened in some cases. But if we accept 3, certainly the parents are responsible for their daughter until age 18 and I think it would be well nigh impossible to somehow maintain and support her without supporting her child.

MR. GRAHAM: Is this in conflict with section 15(1) of the Child Welfare Act where it states that notwithstanding any other section of this Act an unmarried mother may by agreement on a prescribed form surrender guardianship of her child to the Director of the Society and an agreement entered into by an unmarried mother under this section is a good and valid agreement notwithstanding that the unmarried mother is under the age of majority?

MR. GOODMAN: I don't know if there is any conflict. In effect any unmarried . . .

MR. GRAHAM: No, but under an agreement that is signed there, the responsibility then becomes that of the state and here we find that notwithstanding that, it does not of itself relieve either natural parent of the obligation. Is there a difference there?

MR. GOODMAN: Well what happens, of course, once they are taken over by Children's Aid or the Director of Child Welfare is the child is put up for adoption and the adoptive parents will take care of the child so that no longer will the natural parents have any responsibility.

MR. GRAHAM: Or the child could be placed in a foster home.

MR. GOODMAN: Correct.

MR. CHAIRMAN: Any further discussion of 6? Section 7. Section 8. Section 9.

MR. GRAHAM: Section 9, it says: "Restored to the maintenance debtor with interest." Now has the government a standard interest rate that it applies in most cases or is it a varying interest?

MR. PAWLEY: Would that be the rate of interest, Mr. Goodman, that would be paid normally in the courts on judgments not paid from the date of the court order until the date of the satisfaction of the judgment?

MR. GOODMAN: I figure that is what it means.

MR. PAWLEY: Which is what? Five percent now, six percent?

MR. GOODMAN: I am not sure what it is but it is five or six percent I believe now.

MR. GRAHAM: It is a set rate, is it?

MR. PAWLEY: Yes.

MR. GOODMAN: In all cases. Not necessarily dealing with maintenance but in any case the rate assessed.

MR. CHAIRMAN: Nothing further under section 9? Section 10.

MR. GRAHAM: Mr. Chairman, I believe section 10 deals with a point that was raised by Ms. Steinbart here which leaves the court at all times the right to vary any orders.

MR. PAWLEY: . . . yes. Agreed. Mr. Sherman.

MR. SHERMAN: Well just with the observation that section 10 deals with that point insofar as we are dealing with children, it doesn't deal with it carte blanche. We will still face that question that the Attorney-General asked of Ms. Steinbart when we get on to interspousal maintenance.

MR. CHAIRMAN: Do you want to make a note of it and bring it up at that time if it is not one of the recommendations. Mr. Jenkins.

MR. JENKINS: It is just the point I was going to raise, and I would like to ask a question through you to the Attorney-General, I see Mr. Goodman's gone,

(MR. JENKINS cont'd) is this thing being done at the present time. One of the things we seem to hear from some of the people that appeared before the Committee was that once a judgment is made, that seems to be it for all time; they don't seem to make any variances. I remember asking a question in Thompson to that effect and it seemed once a judgment was made, a court settlement was made, that seemed to be it.

MR. PAWLEY: Variations are made from time to time. If I might be so bold as to say that I think there is a lack of information, but those affected, they can obtain a variation of the order. Probably in some instances, there is a lack of knowledge because they feel stung in some way or other by the proceedings before, and hesitate to go back for further legal advice, and because of that lack of legal advice they are not aware that the order can be varied.

MR. JENKINS: Well, Mr. Chairman, through you to Mr. Pawley; one thing that seemed to come out, and perhaps I am jumping the gun. I should leave that until we do come to spousal maintenance and I will raise the point there.

MR. CHAIRMAN: Anything further on 10? We can move on to Part B having to do with Spouses. General Principles, section 1; section 2. Mr. Graham.

MR. GRAHAM: Mr. Chairman, dealing with section 2, I would like some clarifications on the final two sentences or two lines - "to be a full and equal partner in the economic and financial aspects of the marriage." Could the legal counsel give us the full significance of that statement.

MR. SILVER: Well everything will belong to both of them, both partners in equal shares. One cannot say to the other, "you are not entitled to any more maintenance than you are getting because you are not working for it" - or something like that.

MR. GRAHAM: Mr. Chairman, I was referring to: "to be a full and equal partner in the financial aspects." Now does that require all bank accounts to be joint bank accounts or joint signatures on all cheques? I just wonder how far that financial aspect is intended to . . .

MR. PAWLEY: If I interpret your question, Mr. Graham, you are wondering the use of such words "full and equal partner in the economic and financial aspects of the marriage." It doesn't in fact say community property rather than deferred sharing because of the very width of the words used "full and equal partner." Am I correct?

MR. SILVER: What was that? Is there a question?

MR. PAWLEY: Yes. Do you feel that that would imply community of property, the use of the words "full and equal partner in the economic and financial aspects of the marriage," would that imply community of property, immediate vesting of all property by the utilization of the words there?

MR. SILVER: No, as I read this paragraph it doesn't deal with property ownership at all. It talks within the framework of maintenance and it doesn't deal specifically with property. I don't think this paragraph has the intention to deal with the aspect of ownership of property. I think it simply deals with the aspect of use of property perhaps. The matter of property ownership will be dealt with later in another part of the report.

MR. GRAHAM: . . . just general principles. It says nothing about maintenance. Well can we set this section aside and come back to it later.

MR. CHAIRMAN: Probably, but the following sections seem to flow from that, sort of spell it out a little bit more.

MR. ADAM: Mr. Chairman, I interpret this section here as establishing that the homemaker which is unpaid work will be considered as to equal contribution to the working partner. That is all that that establishes as far as I am concerned.

MR. F. JOHNSTON: Further to Mr. Adam, that full and equal partners as far as income -- how did you put that, Mr. Adam?

MR. ADAM: It establishes that the unpaid worker in the home, the work that she provides which is unpaid will be equal to that person who works outside of the home. The contribution to the marriage will be equal.

MR. F. JOHNSTON: All right. So her work at home is equal to his income or salary coming in, but this says a general principle and, you know, you read the general principle of it and the general principle is very broad here but in the aspects of full and equal partnership in the economic and financial aspects of marriage, that's a general

(MR. F. JOHNSTON cont'd)principle that is put out by the law reform group here, but there is an awful lot of figuring out on what the consequences of that general principle could be. Now if we want to say that we accept, I am not quite prepared to say that I agree on a general principle of full and equal partnership in the economic and financial aspects of the marriage. When counsel says "use of property," the selling of a piece of property could be the use of property. I just would like to add at the present time that just to maybe give an example or a clarification, the Federal Government at the present time will make it beneficial to one of the spouses not to own a home by putting \$1,000 a year away for tax reasons. Now if we could just merely clarify what the general principle here we are agreeing to is, I would like that clarified a little.

MR. PAWLEY: I think that we have first the principle and then the consequences of the acceptance of that principle really do flow, as the Chairman said, in 3 under Disclosure and Allowance, Interspousal Maintenance, etc. So that I think the suggestion to hesitate in accepting the wording of 2 until we have dealt with the balance of this section is a wise one because we may not accept the consequences as spelled out here and that might require some rewording in the general principle, but I think the general principle foresees us accepting the principles that have been spelled out which flow from it.

MR. CHAIRMAN: The Chair would ask the Attorney-General if general principles would go into legislation as a general principle or is it only specifics that go into a statute?

MR. SILVER: Well I can say that this particular general principle, worded as it is, I would not put that in legislation, indeed I have not put it into the draft that I have so far prepared.

MR. CHAIRMAN: Perhaps that would take care of the objection. We can come back to it later. Can we then go on to 3 under B, Disclosure and Allowance. "Every spouse during cohabitation is entitled: (1)" - could we deal with that subsection (1) in its entirety or do you want to take it part by part?

MR. F. JOHNSTON: Mr. Chairman, quite frankly I, personally, don't have any objection or personally, I am saying, my personal opinion on this, I don't have objection to disclosure except in one area here, and it is fairly important: "Provided that if the other spouse be a principal or partner in any industrial, commercial or professional firm or undertaking" - and it goes on to say that you can find out about your spouse. But if two people or three men or four or there is an equal partnership or an industry or anything of that nature, disclosing or finding out the income of one automatically tells you the income of the other. That to me is maybe not that important a point but, you know, I just don't know how to overcome it but there is no way that by finding out about one in a firm you are not going to find out about everybody. I don't know how you can hide it. Or the other equal partners, I should put it that way - not everybody.

MR. GRAHAM: What do you consider to be a principal in a commercial or professional firm? Would that be a 10 percent interest or a 5 percent or 51 percent? What would you consider to be a principal?

MR. PAWLEY: It doesn't refer to money. It means simply if the spouse is the only member of a firm, principal in that sense, were a partner, then there would be other members to the firm. . .

MR. F. JOHNSTON: Mr. Chairman, I would regard the principal could be the same as any person who works for a firm, it could be the same as any person working in that firm. They might be a principal and be the manager of a firm and not be an owner. I can't really see any objection to a spouse wanting to know the earnings of a man who may be the manager of a company and he could very easily be a principal. I am more concerned with ownership or partnership.

MR. CHAIRMAN: The concern has been noted, Mr. Johnston. Any other discussion on that section (1)? Mr. Graham.

MR. GRAHAM: Mr. Chairman, there has been figures bandied about at other meetings of this Committee regarding section (2), "to participate in decisions concerning expenditure of all spousal income."

MR. SHERMAN: We haven't come to that, have we?

MR. CHAIRMAN: If there is nothing further on (1). . .

MR. SHERMAN: We are marking down (1) for re-examination.

MR. CHAIRMAN: I sense general acceptance with the one reservation that Mr. Johnston raised.

MR. PAWLEY: I am just wondering, can legal counsel deal with that question of Mr. Johnston. You raised a question pertaining to principal. I don't think you felt that . . .

MR. F. JOHNSTON: Well, Mr. Chairman said to me that my concern had been noted and that it would be looked at if we want to come back after; if there is something going to be looked at and explained later or a different explanation, that's fine. Let us just say that I am concerned that any investigation in an ownership or partnership, a partnership especially, once you know the information about one partner, you will know it about all of them, and I am not concerned about principals in a company, I say a principal can be an employee. But the Chairman said my concern had been noted and maybe this section is going to be looked at or something of that nature.

MR. SHERMAN: Just one question, Mr. Chairman, when we conclude that we are going to look at or re-examine a couple of these points of contention again, does that mean the Committee or do I understand that the Committee will, in this kind of setting, re-examine them again, re-examine these points of contention or will they be examined by the government in preparing its draft legislation or will the Committee meet further to consider these?

MR. CHAIRMAN: The Committee has another meeting scheduled for the 15th when we will consider the Committee's draft report to the Legislature. That will give you an opportunity, at that time, and if you feel that there is need for another meeting before that, that is up to the Committee.

MR. SHERMAN: We will be examining them again before we get into the draft legislation stage?

MR. CHAIRMAN: I would think so, yes.

MR. F. JOHNSTON: Mr. Chairman, when the report is being made up and somebody is looking at draft legislation, I have raised a concern that should be looked at in either the report or draft legislation and I would like some study made in that area. Now if you are asking me at this present time to make a recommendation or say that I don't like that part of the report, I am not going to go that far because I am not against disclosure, I just see a concern where partnerships are involved or ownership.

MR. PAWLEY: Mr. Chairman, . . . by the very fact that the partnership may be an equal partnership, that that in fact will immediately disclose the interests of the other members of the firm.

MR. GRAHAM: . . . doesn't necessarily have to be equal either.

MR. SHERMAN: My concern, Mr. Chairman, is in the light of Mr. Johnston's concern, you know, as we address ourselves to this over the next few days, formally and informally, there may be, hopefully, some ideas or suggestions that any member of the Committee may have to get around that. We are not likely to come up with those ideas in the next five minutes because we have got a lot of ground work to get through but my concern is that we then have an opportunity as a Committee to hear the suggestions that any member may come up with given five days to think about.

MR. PAWLEY: Obviously this same problem bothered the Law Reform Commission because the words are there, "nothing herein entitles the applicant spouse to any information or knowledge of the personal income, drawings or deductions of the other principals or partners in the firm or undertaking." But the question still arises, what if, by the very providing of the information allowed here, it does in fact display the knowledge as to the other members of the firm's income, drawings, etc.

MR. F. JOHNSTON: . . . it doesn't have to be given. Well if it reads that way that the request would automatically disclose the business of somebody else, it wouldn't have to be given. If it is that way, fine.

MR. GOODMAN: I would just like to comment that certainly, for example in a law firm where there may be ten or twelve partners and some of them may be getting the same percentage, some of them will be getting a higher percentage and some of the junior partners a lower percentage, basically it seems to me this provision only requires that the information as to gross and net earnings be given, it doesn't mean that

(MR. GOODMAN cont'd)you have to give that his percentage is 4 7/8ths percent of the total but merely what his gross and net earnings are, and that doesn't mean that you give that spouse anything more than that, not even the 4 7/8th percent - that's his share - or what share goes to anyone else. If there are two partners, it need not be told that it is a 50-50 share. The only information that is required to be given is the gross net earnings and deductions.

MR. F. JOHNSTON: Well on that basis, if it is only the gross and net earnings of salary paid to the person in that company. . .

MR. GOODMAN: But I am sure in many cases they will know otherwise, that they are 50-50 partners. They may know because their husband has told them that I am getting 5 percent and Joe is getting 10 percent so that once you find out what 5 percent is, you know exactly what the 10 percent is. That is not the information that is given under that particular subsection but they can find it out otherwise, no doubt.

MR. SHERMAN: . . . Mr. Chairman, the information will be contained on the income tax return. The sources of income will be defined on the income tax return.

MR. GOODMAN: They may well be.

MR. SHERMAN: That the spouse knows what amount of the income came from the business. There might have been securities and investments that provided other parts, but it can be pinned down on the income tax return and in the case of a 50-50 partnership, then that's it.

MR. GOODMAN: Right.

MR. F. JOHNSTON: Just one quick point. As you interpret your paragraph, basically you will find out the same thing from an income tax return.

MR. GRAHAM: Mr. Chairman, I think this goes further than that because we have been looking at the exception, that under section (b) of (1), if the husband refuses to give the other spouse or if one of the spouses refuses to give that information, the other spouse then can go directly to the employer, partner, principal or the accountant or bookkeeper or any of them to get the information.

MR. CHAIRMAN: Or under 4 she can go to court for the enforcement.

MR. GRAHAM: May I say, Mr. Chairman, that I took this particular section to two or three legal people in the province and their only comment was that this will break up an awful lot of partnerships in the Province of Manitoba.

MR. F. JOHNSTON: Well, Mr. Chairman, on that again, even with section (b), if the rules are sort of laid down as to what information is given, that is the information the court will get. Harry, I am not disagreeing with you, all that says to me is that if the one spouse will not give the information required to be given to the other, that they can go and get it some other way. But it is the information required to be given that the interpretation is of.

MR. CHAIRMAN: Anything further on (1)?

MR. SHERMAN: . . . we are relooking at it, we should look at the whole thing, not just the section having to do with the statement relating to partners, principals, etc. but also to subsection (a) having to do with the income tax return. If we are going to look at it, we should look at the whole thing because the information is available from any of those sources. I can live with it frankly, but since the point has been raised, I think we should take into consideration the section dealing with the income tax return too. I would go with the Committee's feelings on it but I think we should look at that. I quite understand it applied to probably the mass of us in the community, but if you are going to be considering the community of business partnerships, and there are many, then the income tax return is as vital in this consideration as the statement relating to partners and principals.

MR. CHAIRMAN: Are you objecting then to subsection (a)?

MR. SHERMAN: Yes, I think that we should re-examine the whole of section (1), Mr. Chairman.

MR. CHAIRMAN: Any further discussion on section (1)? Maybe we can run through the rest of that to the middle of Page 115 and, if necessary, come back to it. Would that meet with your approval? Section (2).

MR. GRAHAM: Mr. Chairman, "to participate in decisions concerning expenditure of all spousal income," I think one of the members of the Committee who is no

(MR. GRAHAM cont'd) longer with us did on several occasions use a figure during discussion - I think the figure he used was \$500 - I was wondering if the Attorney-General can give us any inclination of putting a specific limit on this particular aspect of it.

MR. PAWLEY: I had thought that the reference earlier to a five hundred dollar limit pertained to those that proposed that we enter into community of property which would have meant immediately that every time a transaction was entered into or a cheque written out, that there would have to be joint consultation and involvement - the cheque would have to be jointly signed, etc. I thought that was the reference. I don't think, Mr. Chairman, the reference was pertaining to the participation and decisions concerning expenditure of all spousal income, I might be wrong but I didn't think the discussion related to that particular item. If I could just mention my own personal thoughts which I have been trying to relate to this because this is not a clause that causes me great enthusiasm, on the other hand I see some advantages to it. The reason it doesn't give me great degrees of enthusiasm is that I don't see it as an enforceable thing and if a marriage has reached that point that it has to be enforced by way of this type of order, then it may be very very difficult to save anything in that marriage anyway. On the other hand, there is a very strong argument for inclusion on the basis that like so much legislation, legislation recognizes proper behaviour; human rights legislation, much of it is of such a nature that it certainly doesn't abolish all racial and religious discrimination but does establish a standard within society by which one member of society is expected to relate to the other and not discriminate on that basis but we know that discrimination continues. It is difficult to enforce. Sometimes there is enforcement. And the same way here, I don't think it is going to be an easy provision to enforce. From a practical point of view I think it is going to be very difficult and it is simply just a statement of recognition, of a principle.

MR. GRAHAM: Mr. Chairman, I was just wondering how the Minister was going to reconcile (2) with (3) where in (2) it says that decisions concerning expenditure of all spousal income required participation, and yet section (3) gives two specific exemptions from that, just two, where it is the sole discretion of one spouse regarding clothing allowance and a sole discretion on personal allowance. Now is No. (2) subject to the provision outlined in section (3)?

MR. PAWLEY: Yes, it is.

MR. GRAHAM: That means then that anything other than clothing allowance and your own personal allowance, there has to be a joint decision making it? This is the thing that bothers me to some extent. I think there are other areas and that is in the field of business. According to this if there has to be participation in decisions concerning the expenditure of income in a business sense, I can see considerable difficulty.

MR. F. JOHNSTON: Mr. Chairman, I have a hard time with the section generally even looking at (3). If you are going to set up a clothing allowance and you are going to have personal allowances, if you think for any one minute that whether you have a clothing allowance or whether you don't, if my wife goes walking downtown and decides to buy a new dress, if you think there is going to be any decision-making about it, you are wrong; she is going to buy it. And by the same token, I am probably going to buy a new suit, clothing allowance or no clothing allowance, and whether we write the cheque or not there is not going to be phoning around getting permission to do so. And I have a hard time with the whole section in a business sense, and as the Attorney-General says, you look at some of the personal things, and you know the position of a person who happens to be as I am, a manufacturer's agent, and the income of the house is the spousal income, but I still may make a decision to have more stock than I did last month on some particular thing and I decide to purchase it or I don't, and that decision does not really come - and basically on a commission or agency business as a lot of people work, that is income and if I decide to use that income for the betterment of that business or to increase the income, I don't know how you are going to possibly police that the way it is worded. It just isn't going to be done. You could get in such a turmoil over the way that is worded. I just say to you a person who is a farmer and decides to buy a new tractor for the benefit of the farm and he is in town buying it and he happens to have a good deal that day and there is somebody standing

(MR. F. JOHNSTON cont'd)behind him ready to take the deal if he doesn't, what are we going to do in that particular case and that's spousal income. What the Attorney-General says is the principle of people sitting down and discussing with one another how the spousal incomes are going to be spent is a very desirable one and a principle I think everybody at this table agrees with. But to say all spousal income gets into a very wide area. Maybe we can look at it from a different point of view.

MR. ADAM: Mr. Chairman, I think the section (2) is pretty well all-embracing but what I was referring to in my question to Ms. Steinbart, the section (3) which again gives the impression that one of the spouses was perpetuating the dependency by putting in these sections and this is what I was trying to get away from, is not to have things in this legislation that would give a connotation that one is dependent on the other, and I think that if section (2) the wording can be changed to satisfy some of the concerns that have been expressed then I don't see why we need these other sections under (3) which is, in my opinion, demeaning to have to say, well, you know, this is how much you are going to get.

MR. SHERMAN: Mr. Chairman, maybe I am being a devil's advocate here but I think that there is a danger of falling into a trap here of approaching all these recommendations from one economic perspective. I think that we have to remember that there are a lot of families in the province who are not manufacturer's agents, and whom the breadwinner is not a manufacturer's agent or a publisher or a lawyer or a farmer, and we have to take into consideration the fact that the spouses in many of those situations are completely shut out of the decisions related to the family income and of any right to any money in their own right. So I just offer that caveat to remind us that all these are valid objections, I agree. I can't concern myself too much with the question of Mrs. Johnston buying a new dress on whim or Frank Johnston buying a new suit on whim. I would consider that a periodic clothing allowance. It hasn't been spelled out that one or the other shall have \$50 a month to spend on clothes but certainly that kind of an arrangement where one or the other partner can buy a new dress whenever they feel inclined implies that there is a mutual sharing or a mutual respect for each other's personal clothing needs. So you don't need to put it down as a fifty dollar monthly allowance. What this is intended to do is provide it in those thousands of families in the community where there is no mutual respect for the individual's clothing needs. So while I agree with what has been said here, I just run up that one red flag that I don't think we should fall into the trap of approaching it all from one economic perspective.

MR. BROWN: Mr. Chairman, I would just like to say that as far as No. 2 is concerned, it is not practical. If you were ever going to enforce it, your jails would not be able to hold enough people, you would have just about half your population in jail in Manitoba. There is just no way you can work this particular section. In my own circumstances I am involved in a couple of businesses, this would mean that my wife would have to be with me all the time, I would never get any meals at home, it is just unworkable. So I would just like to make those comments, Mr. Chairman. There is just no way you can make this section work.

MR. PAWLEY: A few things could flow from this: (1) I think it is a worthy declaration, I think sometimes declarations are a good thing. I agree, I don't think it is something you can enforce but we have many statements of principle even within legislation. I don't know whether that could be so worded and so framed or not but I think that could be examined but as only a statement of principle or declaration and that the words do deal with the concerns about each and every item being embraced by this participation - if we deleted the word "all" before spousal income and just said "expenditures of spousal income."

MR. F. JOHNSTON: The words "participation in decisions concerning expenditures" to me is as bad as "all," you know. There is just no participation in certain decisions that are made regarding business transactions, say on farms or something of that nature, or in business and Arnold speaks of that. But I know we have mentioned declarations - if there is a deal to be bought but can be sold at a better price to get somebody a higher income and a decision has to be made by the person who knows that, it has to be done. I just wonder if we aren't . . .

MR. PAWLEY: Excuse me, could I just interrupt for a moment because legal counsel has pointed out to me, and I think he is right, that the section doesn't relate to business considerations but only to the family income so it wouldn't relate to the type of examples that have been given.

MR. F. JOHNSTON: Well when you talk about family income on a farm that is not a registered business, when you talk about family income that is, as I mentioned, an agent, that is the income of that family - or self-employed, let us put it that way, self-employed people - the decisions are not there, but why are we going to this extent when just in the section previous we say that we believe and want to find a way for disclosure of income. Now when that income is disclosed to one spouse or the other, if she finds out or he finds out that this guy has been giving her \$10 while he takes \$100 or blows it, then I think there is a case as to whether those two should be living together or not and let them decide it themselves. Once you have disclosed the income and there is dissatisfaction between the two people on that income sharing, then that is a problem they have got to solve.

MR. PAWLEY: It seems to me though that we are dealing with income after the process of earning it has been completed so that we are really not engaged in the participation till we have ended up with that income in the possession of the married couple. So I think in that way it doesn't suggest or imply joint discussion as to every item that is involved in respect to business transactions or farming transactions in order to realize the income when the income is finally in the hands of the married couple. So I don't think we have a really heavy problem. I think, legal counsel, that would be your view, too, that we are dealing with income when it is finally arrived at, when it is finally received.

MR. SILVER: I think the only way this section can be understood, although I admit that it isn't worded that way, but I think the only way it can be understood is that it deals with income that has already been appropriated, so to speak - although that isn't the right word - for use as support and maintenance income and I am drafting it on that assumption.

MR. PAWLEY: I think what the concern, what motivated the Commission to include that clause is where you do have one spouse that is wasting income or extravagantly spending income without involvement, without discussion with the other partner. I think this is probably the motivation and certainly we have received briefs which dealt with that concern. I do agree though that it is a near impossible thing to consider enforcing but I want to comment on (3). I know there have been comments on (3); is it in order for me to respond to some comments, Mr. Chairman, on (3) at this point?

MR. CHAIRMAN: I believe it comes in the same general area, the Chair will allow it.

MR. PAWLEY: I would like to ask on (3) of legal counsel, the reason I leaned towards leaving (3) in is simply the fact that I gather that there is no way or means now by which - and please indicate - a spouse can receive an allowance short of the launching of separation proceedings with a request for maintenance payments. There is no way now that legally that is possible so that the marriage has to be wrecked, in fact, by the launching of those proceedings before a payment can be made at the present time. Am I correct?

MR. SILVER: Well in practice that is the way the present Wives and Childrens Maintenance Act is being administered. However the Act itself doesn't require a separation in order to make it possible to have an order for payments. You can have an order for payments without an Order for Separation.

MR. PAWLEY: . . . the present Act?

MR. SILVER: Yes.

MR. PAWLEY: Within the present Act, in fact, it has the power of (3) as it is, eh? Under (3) a spouse can obtain an order now for a maintenance payment or an allowance payment.

MR. SILVER: Without an Order for Separation.

MR. PAWLEY: Oh, well then we have (3) basically.

MR. SILVER: I mean that is the way I read the Act but it is not being administered in that way.

MR. PAWLEY: I wasn't aware of that.

MR. GRAHAM: Mr. Chairman, my concern is I think a legitimate one and you have to take a rather broad look. We are dealing mainly with bringing forward legislation which will encompass all existing marriages and society as a whole. Now if we are going to attempt to cross the "t's" and dot the "i's" and put forward certain standard regulations that have to be lived up to, I would want to look at whatever recommendations we make in the light of what will be the effect on existing marital relationships. Will it, in effect, cause more problems than it creates? Will it lead to the division of an existing marriage which may not be getting along too well but is hanging in there and still pitching, or are we going to create animosities to the point where we will cause those existing marriages to break up. I think that is something we have to look at very carefully. If we are going to, by legislation, almost invite or incite divorce then I think we have to be careful in what we put into that legislation.

MR. CHAIRMAN: I wonder if that would be a suitable time for us to break for lunch. It is almost 12:30. Maybe members can give that a little bit of thought over the lunch hour. In view of the work that we still have before us, maybe we could resume at 2 o'clock this afternoon. Maybe the Chair could just give another thought to members to mull over over the lunch hour and that is Section (5). They might want to ask themselves how the Crown is bound in the decisions between two people considering the expenditure of money.

Committee adjourned.