

[Chairman: Mr. Musgrove] [10:12 a.m.]

MR. CHAIRMAN: Let's call the meeting to order. To start with, I would like to know whether the committee would like to make a decision at this time on the action taken on the discussion on December 17, Defences to Provincial Charges. Do you have a motion? As I explained yesterday, there are several ways we can handle it. Maybe I'll have Mr. Clegg give us the alternatives.

MR. CLEGG: Mr. Chairman, if any members feel it is too early to deal with this, then it would just be open to move that the committee consider its recommendation on this report at a later date — which is number 6 on the list of alternates I wrote down.

This list is not necessarily exhaustive, but it does include some options. If members feel they have had time to consider the presentation made and wish to recommend adoption of the proposal that legislation provide the character of each provincial offence — as to whether it's a mens rea offence, a strict offence, or an absolute offence — that is essentially what the report is asking for: merely that it become the practice that legislation clarify that, rather than the courts' having to decide by interpretation what was intended about the level of proof that was to be necessary and the defence that's to be available.

If the committee is satisfied that it is ready to make a decision, that motion could be put. If a member wishes to put a motion in the negative and doesn't want it adopted, that would be number 2. If there are some parts of the report which members would not wish to be adopted, that could be in the form of number 3. If the committee feels that more work should be done, that the institute should reconsider or give further consideration to part of the report, then that could be framed as number 4. If the committee feels that the whole matter should be reviewed again, either because of the timing or because of points that have been brought up by committee members, it would be a motion in the form of number 5.

MR. CHAIRMAN: What's your pleasure? Does the committee wish to put a motion at this time?

MR. CAMPBELL: Mr. Chairman, I'd like to make a motion that the committee consider its recommendation on the report at a later date on that particular issue. The fact is that I feel we should have more members of the committee when we make the decision.

MR. CHAIRMAN: Any discussion on that motion? Agreed?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Would you like to make a decision on the discussion we had yesterday, Debt Collection Practices?

MR. CAMPBELL: Mr. Chairman, I suggest that the members who raised some of the points, the hon. Member for Edmonton Sherwood Park and also the Member for Calgary Millican, had some concerns and certainly should be in attendance. So I suggest that we make a recommendation on the report at a further date.

MR. CHAIRMAN: Any discussion? Agreed?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: The topic for discussion today is Status of Children. You have a handout that we passed around. Maybe we could get Mr. Hurlburt to take over.

MR. HURLBURT: Thank you, Mr. Chairman. With regard to the people here, on my right is Margaret Shone, a member of the legal staff of the Institute of Law Research and Reform since 1969, so she's really our senior person. On my left, again, is Clark Dalton, the director of research and analysis for the Attorney General's department.

Mr. Chairman, this report has in it a lot of details and complexities, and that sort of thing. Basically it comes down to one point, that the law presently treats very differently a child whose parents were married to each other when the child was born and a child whose parents weren't married to each other when the child was born. It really imposes both a stigma and quite serious practical burdens on the child whose parents weren't married. Basically the proposition in the report is that the law should

treat people equally and that it shouldn't load one group with burdens or not give them the advantages it gives another group, for something for which the child cannot possibly be held responsible. One thing one can safely say is that the child did not choose to be born to parents who weren't married to each other. That's the fundamental proposition, and that's the basis of this whole report.

In the two-page item that was just handed out, we've set out in very brief terms something about the legal relationships of child to parent. I would like to run through this. There are three columns. The left-hand column is that if the parents are married, certain consequences follow. The second column is that if the parents are not married, certain consequences follow. The third column is what would happen if the institute's proposals were accepted.

The first item doesn't talk about the relationship but about how you establish the relationship. It's really necessary to understand it in order to understand some of the rest of what I'm going to say, because it enters into the institute's proposals. The proof of paternity: if the parents are married and a child is born, it's presumed that the child is the child of the husband as well as of the wife. It's possible to displace that presumption, to prove the contrary, but it's very difficult. If the parents are unmarried, you simply have to bring in evidence and prove it any time the question arises. If a claim for support is made against the father, it's necessary to go through what's called an affiliation proceeding and prove that he's the father.

The institute's proposal is intended to go as far as is reasonable and practical, and so on, in supplying the child who is now called illegitimate with a father, if that is going to be for his benefit. The institute suggests that in two cases there be a presumption that a man is the child's father. One of those cases is if the man and the mother live together for a year before the child's birth. This is a circumstance that suggests there's some sort of continuing family — it may come to an end later — and that the child be given the benefit of that continuing family. The law shouldn't say to the father: "You're a stranger; you have no rights or responsibilities with regard to this child until somebody goes to court and proves it." That's where this presumption leads.

Secondly, if the man and the mother register the child in the father's name, we say that that's a pretty good sign that the man is, in fact, the father and that he's willing to be a responsible father. He's let his name go in and is presumably aware that that loads him with legal liability, apart from everything else. So if he allows that to happen, it's probably because he's interested in the child. If the mother lets it happen, it's because she thinks it's good for the child. We're saying that, in these cases, give the child the benefit of having somebody who can be recognized by law as his father, in the hope that (a) this will lead to a personal relationship that will give the child a family, and (b) it will also lead to inheritance and that sort of thing — consequences.

MR. CHAIRMAN: Would this constitute the child's taking the father's name in most cases?

MR. HURLBURT: It wouldn't automatically follow from living with the mother for the year before birth. We think that should be a consequence. The registration would give whatever name . . . By the way, I should have said that Mrs. Shone is here in order to pick up any loose ends that I leave lying around. She may be going to pick one up now; I don't know. Pray proceed, anyway, Mr. Chairman.

MR. LYSONS: I have a question. Registration of the child is normally done at birth or within a few days. Are there many situations where the mother doesn't register the father at that particular time?

MR. HURLBURT: The answer is yes, there are many cases in which the mother does not register the father. In fact, consent of both is required at the moment, isn't it, Margaret?

MRS. SHONE: Yes, that's the present situation. I was just checking to see if our recommendations would alter it, but not in either of these presumed-father situations. When the parents are unmarried, a child would normally be registered in the surname of the mother. If the mother and father agree to registration of the father as father, they can then choose a name which includes the father's surname, if they wish. That would continue to be a possibility under our recommendations.

MR. HURLBURT: I think there are many cases in which no father's name is registered. That is my understanding.

MR. LYSONS: It has always been my belief that it took two of them, and I always thought they had to register the name of a known father. It really seems strange. They may have been getting along just fine until the time of delivery, and then the mother could be pretty irritable.

MR. HURLBURT: On the other hand, if you said, in effect, that the mother could always name a father without his consent, you've opened the door for allegations that may not be true.

MR. LYSONS: I didn't realize there wouldn't be an almost automatic registration, particularly in a common-law relationship.

MR. HURLBURT: I'm sure that if there is a continuing, substantial relationship that is called common-law, that would happen. You would then have two parents who are very likely both interested in the child, and if they are both there and feel that way, probably the father will be registered.

MR. BATIUK: Mr. Chairman, to Mr. Hurlburt. In this section where it's proposed that "man presumed father if . . . lived with mother year," I presume that would be 12 months. Or would it be the previous year, 1983-84? Would it be a full 12 months?

MR. HURLBURT: What we had in mind was the year that ended with the birth date; that is, not necessarily a calendar year but the 12 months that ended with the date of the birth.

MR. BATIUK: I think that would be right. Further to Tom's question, I can well agree that if the man and lady are living common-law, it's expected that the child would be registered in both names. But if it's a couple that is not living together, I guess the mother can't register the illegitimate child in anyone's name, because there would be no consent and they're not even living common-law.

MR. HURLBURT: That's correct. Mind you, registration itself doesn't confer rights and that

sort of thing. Vital statistics are just a record. The fact that a registration is made does not mean that it is true. It may be evidence, but it doesn't make it true.

MR. CAMPBELL: In this case, Mr. Chairman, if the child took the father's name and the father left, would the father be responsible for child support?

MR. HURLBURT: Once it is determined that the father is the father, under present law he's responsible for child support. Under our proposal there would again be a presumption; that is, he wouldn't have to prove he was the father — the law would recognize him — but it would still be possible for him to disprove it, if it came to that. We're not thinking just of legal proceedings. We're talking about school, consents: life being lived as it should be lived. If the couple are in that relationship, they shouldn't have to go to court to say who can sign for the child to go on a school jaunt or something like that. We're trying to grease the wheels and make life flow on.

MR. CAMPBELL: Thank you very much, Mr. Hurlburt.

MR. ALGER: This is just a technicality, Mr. Hurlburt, but I can't help but wonder whether a child born out of holy wedlock is classified as illegitimate if the parents of that child are married later on. Does this make him a legitimate child? As I said, it's a technicality.

MR. HURLBURT: Under the present law there is the Legitimacy Act, which says that if the parents marry afterwards, the child is then legitimate. Mind you, I suppose the fact that two people with a child marry doesn't prove that the child was the child of both of them.

MR. ALGER: It may be true, but at least it legitimizes his future and has to be more than helpful as he grows up.

MR. HURLBURT: Yes; no question.

MR. R. MOORE: Mr. Chairman, further to Mr. Alger's questions. Mr. Hurlburt, if we were to go along with the institute's proposal, would that make the child legitimate at that time, even though the couples aren't married?

MR. HURLBURT: The fundamental proposal we make is that the law declare that there's no such thing as legitimate and illegitimate, that every child is in exactly the same relationship to his parents whether or not the parents were married and, furthermore, that he would claim through both his parents as if, under the present law, the parents were married. Our proposal is to try to change the law to treat them equally.

There are still some problems about facts left over, and that's partly what this paternity bit is all about. Obviously, the law can't give a child two functioning parents if they aren't there. But the law can at least put them in the same relationship to the child or put every child in the same relation to his parents, and then do what it can to see that parents are encouraged rather than discouraged.

MR. STILES: Mr. Chairman, the question I have to ask is not necessarily right on point with the report and recommendations. I'm curious to know what consideration has been given to this. I'm actually looking at the first item on this little handout we have. With respect to proof of paternity, I'm curious to know if the institute addressed its mind at all to the matter of proving paternity. When there is a child born out of wedlock, the mother has a two-year period, I think, to name who she believes is the father of that child in terms of that person being obliged to support the child. The Act is actually silent with respect to what then happens in terms of a limitation period. In other words, if the mother names the putative father — I think is the language — within two years, the child welfare people can go from there and deal with it. But in terms of a limitation of their dealing with the matter, the Act is silent. I'm curious to know if the institute has addressed its mind to that.

MR. HURLBURT: What we have suggested — and it's a little complicated — starts with the idea of trying to treat the child right and goes on with the idea of not allowing the claimant to bring in a false claim of parentage many years down the road. Our proposal is that any kind of legal proceeding would have to be brought within two years of the child's birth or, while both child and father are living, up to two years after the child's majority. If the father died shortly after birth or even before birth, there

would be two years to do something about it. If the father and child both go on living, there would be 20 years to do something about.

This would be subject to two qualifications. Number one is that if either of these presumptions we were talking about applied — that is, if the man and the mother had lived together for a year before birth or if the joint registration took place — it would be presumed that the child was the man's child. Furthermore, if the man had acknowledged the child as his child, the time limit wouldn't apply. It's a little complex, but it's because we're trying to meet both the principle that you should treat the child equally and the factual problem that we don't want the relationship to be foisted onto somebody wrongfully when they haven't got a chance to repudiate it.

MR. STILES: Just to follow on that. The point I'm really trying to direct this to is the case of the child of unwed parents when the father is not known — in other words, there isn't a living together, there isn't an acknowledgment, and there isn't the consent — and the putative father is named by the mother at some point within the two-year period that is now the limitation period, but then nothing is done. What we're dealing with here is a sort of natural justice situation. Nothing is done. The child welfare authorities are aware of the name of this putative father, but nothing is done to notify him until three, four, or five years down the road, when this mother becomes a dependant of the Crown in terms of welfare, child support — whatever it is. At that point in time the child welfare people suddenly appear and tell this putative father, "There was a child born six years ago, the mother named you as the father, and we're now going to sue you for support, retroactive, and so on." The Act is silent with respect to a reasonable limitation period for that action to be commenced. I'm just wondering if the institute addressed its mind to that.

MR. HURLBURT: What we have said is that on those facts, they would be able to take a claim to court. They would then have to prove it, and the father would be available to disprove it. That would be quite possible under the institute's recommendations. We'd say that as long as the father is still alive, any proceeding — support, parentage for any other purpose

could be brought until the child reached his majority.

MR. STILES: Actually, I'm thinking of the desirability of having the action brought promptly, not having the thing drag on for a number of years and then suddenly confronting the putative father with this cost and financial burden that has been gathering over the years and becomes a fairly crushing blow.

Another point along the same line is that the putative father is placed in the position of having to go to quite a bit of expense to determine whether or not he is in fact the father; in other words, if he says, "No, I don't think I am the father," or if it's conceivable that other men may be involved that could have been the father, he is put to the expense. If it turns out that he was correct and is not the father, there's no provision for reimbursing that individual. We put him, having been wrongly named, to the expense of defending himself, having these expensive tests carried out, and he has no way of recovering that. Has anything been done about that?

MR. HURLBURT: Number one, my impression is — and this is only an impression — that you don't get retroactive maintenance. I could be wrong about that. Once you start to bring the proceeding, it would be for the future.

MR. STILES: They go both ways.

MR. HURLBURT: I can't really fight on that one, except that I don't think so. But there you are.

At this point you really are again in a balancing position. Sure, it's tough on the alleged father, particularly if he isn't the father, to have to go to court and disprove the fact that he is. It's equally tough on the kid if, through the negligence, carelessness, or illness of those who should be looking after him or her, nothing is done. So this is where your balancing question is. We thought that fairness to the father, or the alleged father, doesn't really take you further than giving him a chance to defend himself, because all of us are capable of being sued about anything any day of the week and being put to expense to disprove it — balancing against that the fairness to the child.

Yes, it would be nice if we could compel the guardians, custodians, or whoever should be

looking after the child's welfare, to push things along, but we can't do that either. And the child would be the loser if your limitation is too short. But that's the balance, anyway.

MR. LYSONS: Following up on Stephen's questioning, it just seems a little difficult. I can certainly understand that the law should be very specific. If a man has lived with a woman for a year and a child is born, it should be the law that the man would be presumed to legally be the father of the child. If the father wants to register a disclaimer, it should be that he must do it at that precise time. If there is to be a release granted, it's better to release someone from responsibility at that given point rather than somewhere down the road. Certainly there's no reason we should have a country filled with illegitimate children. In my mind, I don't think any child is ever really illegitimate. They're there, and they're physically a legitimate person. To call a child illegitimate is a misnomer, but that's not the point here.

My argument would be that we should have it in legislation some way that a man is presumed to be the father unless there is a disclaimer at that time rather than somewhere down the road.

MR. HURLBURT: Are you thinking of the living together situation?

MR. LYSONS: Yes.

MR. HURLBURT: Actually, our recommendations would do this much — I think I'm right in this; I suppose I'd have to check it. He would be able to bring an action for a declaration either that he is or is not the father of the child. That means going to court, which you may or may not think is sufficient.

MR. LYSONS: If it's presumed that he is the father, then there is no problem. He is aware of that. It would be considered, for all rights and principles and so on, that he is the father. But if he feels he isn't the father, then it should be his responsibility and his right, if you like, to disclaim it at that point. If we could word that somehow, rather than this two- or 20-year situation. There are a lot of other people involved at that stage: the mother could be married, or he could be married, or any number

of situations.

MR. CHAIRMAN: What the marital status of the parents of that particular child was later?

MR. LYSONS: If it is proven in court that the child was not his child, then that's the end of it. But if it's not proven that it's not his child, then he would be responsible for that child.

The reason I'm bringing this up is that I had a situation where we were dealing with a living estate. A man wanted to set up an estate trust situation shortly after he had had a heart attack. He had been a married man with three or four children, and he was then living common-law. After he had a heart attack, three other children showed up, their mothers claiming he had been the father of these children. He was worth an awful lot of money.

I happened to be sitting in the man's home when one of the phone calls came in, and it was quite an experience to see this kind of thing. We thought he was going to have another heart attack right there. But the strange thing was that he admitted to everyone present, including his new common-law wife — and she was as surprised as everyone else — that he was the father of that child. Then he admitted to two more while we were there. There was no problem; it was just drawn into the will. It was as close as I have ever seen a man have a heart attack because of a phone call.

That's why I was surprised, in my first question, when these mothers don't register the father at the time of birth. I can understand why they may not want to. But surely if they've been living common-law, that shouldn't be a problem at that stage.

MR. HURLBURT: Well, you can impose duties on people to do things, but if they don't carry them out, we don't think it should be the child that suffers. We think it should be left open to the child or somebody who then does do right by the child to come forward and say that so-and-so is the father. If he doesn't agree, you then have a court situation.

MR. LYSONS: There should be some way the man is notified. You could well imagine what would happen if a mother had to put down a father's name. She could pick anyone. The man would have to disclaim this, and sometimes it might be very difficult. But if it's going to be

done, that would be the time.

MR. CHAIRMAN: We seem to get off the topic a little. Ron Moore is the next speaker, but I wonder if from now on, on this particular topic, we could talk about whether we want any changes made to what they're proposing. As we go through this, I would like to ask the committee if we could either agree or disagree, so when we come to making a decision, we will know whether we're agreeing to the whole proposal or part of it or whatever. That way we can come to some consensus at the end of the meeting.

MR. R. MOORE: Mr. Chairman, I really support the three proposals that are here. I'd like to ask Mr. Hurlburt his opinion regarding the first point. If they lived together a year before birth, the man would be presumed to be the father. When we look at parents that are married, it's automatically presumed that he's the father when a child is born. Everything that's been brought up here this morning relates to that same situation. He may not be the father. In wedlock there are lots of reasons a child is born and the husband isn't the father, so it does relate.

All we're saying is that we presume that when a man goes to live with that woman, he takes on that same responsibility of marriage as the fellow who signed a piece of paper and said, "I abide by such and such, and we are married." He goes through the marriage procedure. Every man that's old enough to father a child and goes to live with a woman knows when he goes there that he accepts the same responsibility as the guy that went through a marriage deal 10 years down the road or a year before. Is that what we're saying here? It's assumed, by the fact that he lives there, that he is the father.

MR. HURLBURT: I don't look at it from the point of view of the responsibility undertaken by the man. I think what we're saying is . . . Maybe I could back up one step. With regard to the relationship between the child and the parent, there are really two great areas in which the law is interested. One is the personal relationship; that is, who is going to look after the child, who is his guardian, who is going to talk about his religion, about his education, who can tell him when to go to bed and when to get

up. There's that one cluster that the child must be personally looked after and brought up and succored and all this sort of thing. On the other side, there is the bundle of property and inheritance rights; that is, a child can claim from his parents if there's no will or can claim maintenance from his parents' estate if he isn't properly maintained up to majority or if his grandfather leaves property to his grandchildren or that sort of thing. We have those two clusters of things to think about.

We then say that, where reasonable, we want to put the child in the same position whether or not his parents are married. Then we say, under what circumstances is it really reasonable to assume that you have a father who is likely to be interested on the personal side? We would like to have responsible fathers looking after children; we don't want irresponsible fathers just trying to cause trouble. That's one aspect. Secondly, under what circumstances is it reasonably clear so that you should let all the property consequences follow too? We settled on one year. We know perfectly well that a child can be born within less than a year of people setting up households. Secondly, we know that there may be responsible fathers who haven't lived with the mother for a year, and that sort of thing. But we've said that we think this category gives a reasonable assurance, like marriage — not a perfect assurance but a reasonable assurance — that in fact the man is the father of the child. There may be the isolated case in which he isn't, so we don't say that the law says he is; we just say that the law presumes he is, and he can come in and upset it.

MR. CHAIRMAN: It would be his responsibility to prove otherwise.

MR. HURLBURT: If you prove that they lived together for a year before the birth date of the child, you have for the moment proved that the man is the father of the child. He then has the opportunity, if he chooses to exercise it, to come in and say, "No, I wasn't," and testify and bring evidence and do whatever. We don't look on it so much as the assumption of responsibility as that these circumstances usually indicate so and so.

MR. R. SPEAKER: Is the definition you've just given of the presumed father all-inclusive? Is what you've just said the all-inclusive

definition, according to your recommendations? For example, on page 60 of the white notes we have:

The first thing the law should do is to presume that a man is the child's father if he lived with the mother for the year preceding the birth.

Is that the all-inclusive definition of "presumed"?

MR. HURLBURT: The second one, the registration by consent of both, is — the registration of the man as the child's father, with the consent of both that man and the mother. Those are the two. You can also say "marriage", which is a third one. The problem, again, is that we want to give the child a father but we don't want to open the floodgates to fraud and imposition on men and so on. This is where we think the balance might usefully be struck.

MR. CHAIRMAN: Is there anyone who would like to recommend any changes to this first part? Otherwise, we'll move on.

MR. R. MOORE: I would like to make a motion that we accept these three principles under that first section.

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Just a minute.

MR. CLEGG: Mr. Chairman, I'd just like to clarify one point in the column on the right-hand side. I understand that the man is presumed the father if he lived with the mother the year before birth or if he was registered as the father with the consent of both parents. Those are alternates and not additive conditions?

MR. HURLBURT: If either is satisfied.

MR. CLEGG: I see. We would write the word "or" between those two conditions.

MR. HURLBURT: You're quite right; it is not "and".

MR. CHAIRMAN: Thank you, Ron. Agreed?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Let's move on to the next one.

MR. HURLBURT: I'd just like to state the main point again before going on to these other things, because they flow from it. The institute is saying that insofar as possible, the law — and that is except when the facts stop it from doing so — should treat the child equally whether or not his parents were married. We hope that that will affect social customs, because law is related to social customs. It's hard to know which causes the other.

Moving on, we've called the next item guardianship. That includes all the personal relationships between parents and child. The parent can require the child to live with the parent. I don't know whether you can say that the parent can enforce religious views, but at least he can influence religious views. He has something to do with education. He has a great deal to do with discipline and the proper bringing up of the child. When we talk about guardianship, we're talking about that whole bundle of personal relationships. At the present time, under the present law, both parents are joint guardians if the parents are married; that is, they have an equal say. While they're getting along happily, obviously there's no problem. If they go to court, the court may cut away and say one of them has custody and that sort of thing. But they start out even, as joint parents. If the parents were not married, the mother is the child's guardian at the present time, but the father is really a complete stranger in law.

We are suggesting, firstly, that one of these presumptions actually carry with it guardianship. So, again, if the man and the mother lived together for a year before marriage, he is presumed to be the father and is a guardian until either he is no longer presumed father or the court does something about it. Secondly, if these presumptions don't apply, he would be able to go to court and say, number one, "I am the father," and prove it, and secondly, "I am a proper person to be a guardian of that child," and prove it. That mechanism is specifically provided for. What this is trying to do is give the child the benefit of a father and a guardian when it can be assumed to be correct to do so or when a court says so. That's the effect of that part of it.

MR. CHAIRMAN: Any questions or comments?

MR. LYSONS: On this next part — and it would go back to proof of paternity — dealing with artificial insemination and embryo transplants and things like that. On page 59 of the status of children thing I see that you deal specifically with artificial insemination, and I don't see anything about embryo transplants. Should that not be written in as the same thing?

MR. HURLBURT: Which kind of transplants?

MR. LYSONS: Embryo.

MR. HURLBURT: At this point I would have to say that this report was written in 1976. We thought we were being pretty bold to talk about artificial insemination. This might well be a place where the report should be updated.

One of the things I will be saying to you, by the way, is that this report was written in 1976, as I've just said. It refers to a lot of 1976 legislation. It would have to be updated. There are certainly areas of detail — while that may not sound like detail, for this purpose it is — that should be looked at again.

What we said about artificial insemination was that the donor of the sperm, the man whose sperm actually fertilizes the ovum, should not in law be the father, because that simply isn't contemplated by anybody. Secondly, if there's a husband and wife or even a common-law situation and the man agrees, then the man should be a presumed father.

MR. LYSONS: The wording here is:

that of a child born by artificial insemination with semen all or part of which is donated by a man other than her husband.

That should be as well. A child born to a family situation . . . It shouldn't really matter that much whether — it's sort of like an adoption, an automatic presumption of adoption.

MR. HURLBURT: Assuming that the man goes along with this, we are saying that the law should then treat him as the father. But again, we've only talked about artificial insemination; we haven't talked about the other things that have come up since. If the committee, or the Legislature, is in favour of going ahead with



this sort of thing, that's certainly a point we can update and look at the new things that have happened.

MR. CHAIRMAN: What's your pleasure? Would you like to see it updated before we take any action on it?

MR. HURLBURT: If we assume for the moment that the committee is generally in favour of this report, I think the way to get on with it would be for the committee to say so and say to us, "Go back and update your law." We've talked about the Child Welfare Act that was in force in 1976. That's going to be very different now. Secondly, if the committee thought there was any further way we should move, then send it back to us for that. I would prefer — and I think it would get things on faster — if you moved that way rather than saying, "Go away and do something and then come back to us with the whole thing." Once you say, "In principle we're with you," then we know it's time to get out and start sharpening our pencils and taking into account things that have changed.

MR. CHAIRMAN: Agreed, then?

HON. MEMBERS: Agreed.

MR. HURLBURT: Mr. Chairman, the heading Financial Support During Life: basically the father is now financially responsible during life, if you can find him and prove it. We would say that a presumed father, like a husband, should be taken to be the child's father without having to go through an affiliation proceeding. Or if a court has found that the man is the father, that should be automatic proof, in the absence of proof to the contrary, that he is the father and financially responsible.

The next heading, Family Relief Act, is basically maintenance after death, if you like, or maintenance from the estate. The Family Relief Act says that if a person dies and he or she has not made adequate provision for the proper maintenance, or something like that, of the other spouse and of the children up to 21, or over 21 if they can't look after themselves, provision can be made from the estate. It's maintenance, just like child support during lifetime. Again, we're saying that if you've got a man who is presumed to be the father, let him and his estate be responsible in the same way as

he's responsible for the children born in wedlock. I guess that's about as far as it goes. If he isn't a presumed father and hasn't acknowledged it and isn't proven so, there would still be no liability. Basically we are saying that if there's a presumed father or if he is a court-declared father, he is in the same position as a married father.

MR. CHAIRMAN: Is it agreed?

HON. MEMBERS: Agreed.

MR. HURLBURT: Finally, Mr. Chairman, you come down to the property and inheritance side of things. At present, if the parents were married or the child is legitimated by later marriage, as somebody mentioned, the child claims from either parent on death; that is, if the parent dies without a will, the child comes in under the Intestate Succession Act and gets his share. Furthermore, if something comes from a grandfather or something like that when the parents are dead, the child gets his share. All the consequences of family relationships, which I think everyone is generally familiar with, follow if the parents are married.

On the other hand, if the parents are not married, the same things apply with regard to the mother but not the father; that is, if the child is illegitimate, under present law he doesn't claim through his father and he doesn't claim from his father. So we are really saying, change that. There is one qualification mentioned here to the statement that he doesn't claim. If a person leaves no will and no spouse and no legitimate child, then an illegitimate can claim. But it's only if there's nobody else in between, no marriage lines between him and his father.

MR. CHAIRMAN: Is there any time in a child's life when it's restricted that he can make a claim on his father's estate if he could prove he was a child of that parent?

MR. HURLBURT: Under the present law, I can claim whenever my father dies if my parents were married.

MR. CLEGG: Illegitimate.

MR. HURLBURT: Oh, illegitimate. At the moment he can claim against his mother in

exactly the same way a legitimate child can claim against both, but he cannot claim against his father's estate, except in this one case.

MR. CHAIRMAN: But at some time in his life, say at the age of 20, if he were able to prove that that was his father, does that rule out his right to claim on the estate?

MR. HURLBURT: He is still an illegitimate child, and he cannot claim against his father's estate. That's the general rule. It doesn't matter that there's a court decision that says he was a child of that man. He cannot claim against that man's estate, and he doesn't share if the grandfather has left something, and that sort of thing.

MR. CHAIRMAN: That's the present rule?

MR. HURLBURT: Yes, except in the one case of somebody who dies without a will and without a spouse and without any legitimate children. What happened there was that there was a case of that kind 30 or 40 years ago. I've forgotten where the money was actually going to go. There was a great furor, and the Legislature amended the Act to say that if there's nobody else, the illegitimate child can have it. But that was just a specific amendment to meet a specific case.

MR. CHAIRMAN: Thank you.

MR. HURLBURT: Mr. Chairman, that really goes through the specific main proposals. There are a multitude of others. But on the main proposal I would like to say that I've tried to make the position that the law shouldn't treat a child differently just because of the marital condition of its parents, that that isn't fair and isn't just.

In 1973, which is now a long time ago, a survey of public opinion was made by the Department of Social Services and Community Health. If these things have any validity, and if a 12-year-old study has any validity, I think a fair summary of that is to say that when you put to the public the question, "Should children be treated the same?" there is an overwhelming answer, "Yes." If you then get into some of the details, when people actually start to think of what that means, it becomes not overwhelming but still quite strong, if you follow me. It's one

thing to say, "Yes, you should treat a child equally"; it's another thing to say, "He should stand in the same inheritance position as the other child," because then you're starting to think about things in a little different light. But in general, even there, there were strong percentages in favour. I don't know whether that's of any use to the Legislature in the year 1985, but I would have thought that if anything, attitudes would be more likely to favour the equal application of the law than they did then.

There are a great bundle of other things in here, Mr. Chairman. I don't know what you want to do about them. One of them was this artificial insemination thing. We've also made some proposals about the use of blood tests and genetic tests as evidence of paternity.

MR. ALGER: Mr. Chairman, if I could. Before you get into that, Mr. Hurlburt, I'd like you to express your opinion about the fear that is sometimes expressed that improving the legal position of the illegitimate child would remove respect for legitimacy. I'd like you to talk to that paragraph for a little while. This is one of the things that I personally think would develop in our era of promiscuity, if you like, because it's just getting wild. For some reason or other, I have a notion that we as lawmakers, if you like, would have some bearing on the feelings of our younger people if we asserted somehow that the way to go is to get married. It's hard to say that, in view of the fact that our divorce rates are so blessed high that you can hardly keep up with it. By the same token, there's something respectful about legitimacy, if you like. I would enjoy your comments, Mr. Hurlburt.

MR. HURLBURT: Number one, in the survey I mentioned, 76 percent of those inquired thought that eliminating distinctions would not contribute to the breakdown of family life — that isn't quite your question, but I think it's somewhere close to it — and 95 percent thought there should actually be no legal distinction.

I have to say that I don't see how treating a child unfairly is going to add to respect for legitimacy. I understand your point. This is not an attempt to put in the permissive society. This is not saying to parents, "Go off and do what you want, without regard to decency, morality, or anything else." This is an attempt to treat the child fairly, and we look at it from the child's point of view. I really can't believe

that the institution of marriage or the institution of the family depends on mistreating children. That is my answer to you.

MR. ALGER: It's not the one I'm looking for. I'm trying to figure out a way to put some teeth in the law, to indicate to parents that they blessed well should be married. You know, it's happening all over the place. Are we indeed encouraging them not to be if we make it any simpler? At least the way things are going right now, people can live together till they're sick of it and then part. There's no divorce action, no problem, except for illegitimate children. And even they don't really have to be a problem, I suppose, but in a sense they are. I just feel that it's a misdemeanour to the child no matter what the occasion. I'd like to see more encouragement of marriage.

MR. HURLBURT: This I understand. This doesn't do anything positive for what you're saying. I don't really think it does anything negative either. The people you would get at through the children are the responsible people. The irresponsible don't give a damn anyway, so what do they care what their child is called?

MR. ALGER: It's like locking the door, Mr. Hurlburt. You keep the honest people honest, and that's about all you accomplish.

MR. HURLBURT: There's a lot in that.

MR. CHAIRMAN: Mr. Clegg has a comment.

MR. CLEGG: Mr. Chairman, on this question of the effect on the institution of marriage. I think it's quite likely that if the rights of illegitimate children are increased in law, it will engender a greater feeling of responsibility in the wandering husband if he realizes that if he does father illegitimate children, they will then share equally with the children of his marriage. I think it might make some people think a little more carefully before they have casual affairs which could destroy their family in yet another way, years down the road.

MR. R. MOORE: Mr. Chairman, I feel that the resource people here have presented this very, very well, and I think they've covered all their points. I don't think we have at our disposal the

time to go on to the broader field of artificial insemination and blood tests and all that. That's a very broad field. I would like at this time to make a motion that we accept the institute's proposal as brought forward, with the proviso that they do further work and update it to today's climate and the present-day legislation as it relates to other Acts. At that time we may review it again or proceed with it through the proper channels.

For the sake of this proposal that is before us this morning, I feel it's a good proposal, a realistic proposal, but we do need it upgraded in these other areas. So I make that motion.

MR. CLEGG: Mr. Chairman, from a procedural point of view, I suggest that this motion will have to specifically direct that the institute, having updated the report, either bring it back to us or present it to government in the normal way. I would suggest the latter: that having updated it, they present it to the government in the normal way. It still might come back to this committee anyway.

It takes some time to update reports. It might be a year or two, and this committee might not be under any particular instruction from the Assembly at the time they finish. Therefore, I suggest that the motion be that the committee approve the principles in the report and that the institute update the report and resubmit it to government through the normal channels. If the committee does specifically wish to have it presented to the Assembly and tabled in the Assembly, then under another alternate the Assembly could refer it back to this committee.

MR. R. MOORE: I agree with that assessment: that they proceed with it under the terms the Parliamentary Counsel outlined and that they proceed through normal government channels with it.

MR. CHAIRMAN: Thank you. Is it agreed?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: That covers that part of the agenda today. We had a motion to defer the decisions on Debt Collection Practices and Defences to Provincial Charges to a later date. So at the next meeting I will be calling for either a decision on those two or a time

when we will be making a decision on them.

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Thank you. Looking at the hour, it would appear that we would only be able to partly finish another discussion, so a motion to adjourn would probably be in order.

MR. CAMPBELL: I so move, Mr. Chairman.

[The committee adjourned at 11:24 a.m.]