[Chairman: Mr. Musgrove] [1:30 p.m.]

MR. CHAIRMAN: Okay, we can call the meeting to order. To start with, our discussion today will be on Matrimonial Support, but I would like to draw your attention to the fact that we have two recommendations we haven't made a decision on. One of them is Debt Collection Practices, and the other one, contrary to the agenda, is Defence of Provincial Charges. I think we made the decision on Status of Children at the last meeting. Later today I will be asking whether you are prepared to make a decision on those two topics or further delay them. At that time, I would like to see a time set on that delay.

We have here Mr. Hurlburt, Christine Davies, and Mr. Dalton. Maybe you would like to tell us the particular interests of these people.

MR. HURLBURT: Thank you, Mr. Chairman. On my right is Christine Davies. She is a professor on the Faculty of Law at the University of Alberta and is the author of the major textbook on the subject we're talking about today. At the moment she isn't on the institute staff, although she will join us for a year or two this coming June or July. I will be asking her to talk to the legal aspect of this particular subject, simply because she knows a great deal more about it than I do. I make a general claim to knowing everything, but I sometimes recognize that it may be a little difficult to carry off. On my left, again, is Clark Dalton, the Attorney General's director of research and analysis, and a member of the institute's board.

Mr. Chairman, the report we are dealing with today covers the law and a good deal of procedure about the support obligation between husband and wife; that is, the obligation to pay money, if necessary, to enable the other spouse to live. It does not talk about what you might call common-law relationships. It's the married state only. It doesn't deal with the law relating to children or the support of children, and it does not deal with property division, which is the Matrimonial Property Act. It's just the obligation of each spouse to support the other according to the needs and means of each. It's dealing with provincial jurisdiction, not federal, so it does not deal with support that may be ordered in divorce. It deals only with support while the parties are still married but obviously having unhappy differences and usually living separate and apart.

The Queen's Bench deals with what is called alimony; all these words are much the same. In some cases the Family Division of the Provincial Court deals with what used to be called the deserted wives, kind of quick summary jurisdiction, not usually involving very large sums of money, or what have you. An application can be made to the Family Division of the Provincial Court if a spouse has been deserted. Application can be made for support of the deserted spouse and children. It's a first recourse, usually on an emergency basis, and tends to be people who don't have open to them the luxury of going on and having a nice lawsuit in the Queen's Bench.

The Family Division of the Provincial Court is also very important in another aspect; namely, the enforcement of orders for support or maintenance or alimony, which means the collection of the money. They not only enforce their own orders; they enforce orders made by the Queen's Bench, either in divorce or under provincial law, and under reciprocal legislation they also enforce orders made from outside the province. So they are quite an important aspect of the whole thing.

Actually, enforcement or collection is the main problem in the area. Some of what we'll talk about today has to do with that. First, we'd like to deal with the law on the subject: the grounds for alimony and the things to be considered and the orders the court can make. I think it's fair to say that the Domestic Relations Act, in which these provisions are found, is one piece of provincial legislation that you really could call antiquated. I'll ask Professor Davies to go through and talk about the law which applies. She will be referring to the handout that was distributed at the beginning of the meeting.

MS DAVIES: In talking about the law, I will refer quite closely to this handout, which I set out in the form of a chart with three columns. One deals with the present remedy a spouse can obtain in the Court of Queen's Bench. The next column is the remedy presently provided to a spouse when application is made in the Provincial Court, Family Division. The third column deals with the proposals for reform set

out in the institute report.

As Mr. Hurlburt said, the present remedy for support is set out in the Domestic Relations Act, which is remarkably antique. The provisions of the statute are basically provisions that we copied from a 19th century English statute, and they're certainly outmoded. Most of the other provinces in Canada have now enacted much more modern legislation dealing with spousal support.

If I could just run through the present situation as set out in the chart, the present law set out in the Domestic Relations Act bases the provision of support on fault. It's basically a fault statute, and the notion there is that . . . It's always so confusing to refer to spouses and payers and payees. Although the Act says that husbands can apply for support and wives can be required to pay it, in the vast majority of cases it is in fact the husband who is being required to pay and the wife who is the applicant. So for the purpose of clarity I will refer to the applicant spouse as the wife and to the payer as the husband, because that is the normal situation, though the Act is desexed in the sense that either party can apply.

Under the present law, support is based on fault in the sense that the wife can apply for and obtain maintenance if she has been faultless. The husband may be required to pay if he has been at fault: guilty of cruelty, adultery, or desertion. We see that in the chart. The present grounds for awarding support in the Court of Queen's Bench are adultery, cruelty, desertion, sodomy, or bestiality. The bars for obtaining support are condonation, connivance, and adultery on the part of the wife; that is, if she has forgiven the offence or encouraged the offence in some way or has herself been at fault, she can't obtain support. In the family court you see basically the same situation. The only ground for granting support in the family court is desertion: fault on the part of the husband.

The modern pieces of legislation that have been passed by other provinces and which are echoed in the institute report base the provision of support on need and on ability to pay rather than on fault. In other words, if a wife needs support and the husband has the ability to pay, under the institute proposal that should be the primary basis for awarding support. There are provisions in the Act which encourage the obtaining of self-sufficiency. The notion now is that persons should not see support as a lifetime pension payable by the husband to the wife but as a support to enable her to get on her feet again and become self-sufficient. So the threads running through the Act, then, are need, ability to pay, and the acquisition of a degree of self-sufficiency, where it's reasonable to do so. Obviously, in some cases it isn't reasonable to expect a wife to become self-sufficient when, for example, she is in her 50s and has not been in the workplace for 30 years.

Under the institute proposals, conduct is minimized. Although the court, in awarding support and determining to award support, will take into account many of the circumstances of the case — and these are set out in the bottom right-hand corner of the chart — one factor that is minimized is conduct. Conduct is a factor that can only be taken into account in awarding support in extreme circumstances, such as where there has been gross misconduct or where one party, the wife, has not contributed to the welfare of the family in a reasonable manner.

MR. HURLBURT: Mr. Chairman, I think that is the sort of rules of law part and what the institute proposes. I don't know whether you'd like to stop and look at that. On the second page Professor Davies will go on and talk about what the court can do about it, but it may be that the members of the committee would like to . . .

MR. CHAIRMAN: [Inaudible] some questions or discussion?

MR. LYSONS: When was the Act last changed?

MS DAVIES: I think the protection order part, the part dealing with support in the family court, was changed in 1977. The basic changes there were with regard to some of the enforcement mechanisms, the collection procedures, and also desexing that part. Until 1977, I think, the wife could apply but not the husband. Under the present provisions either party can apply for maintenance against the other.

MR. HURLBURT: Apart from making it work both ways, would it be fair to say that really nothing much has been done to the Act for the last 50 years?

MS DAVIES: Something was done recently with respect to collection but very little insofar as the part I've talked about.

MR. LYSONS: Isn't the collection aspect the most serious section we have to deal with?

MR. HURLBURT: I think we would both agree that it's the part that causes the most trouble, Mr. Chairman, and we will come to it later. But in order even to have something that people will agree ought to be collected, you need a good law to start with. That's why we're starting with the law. I think it is true that the great practical problems come from collection, though Professor Davies might also say that because the law here is so bad, the provincial law isn't used very much and people tend to go right to divorce. Is that a fair statement?

MS DAVIES: That is a fair statement.

MR. HURLBURT: If you had a more satisfactory and efficient provincial law, it might mean that some people would take their time, use the provincial support laws, and not rush off to divorce court. That's speculation, but I gather that in several other provinces the provincial law is more used. One of the reasons is that it's better.

MR. BATIUK: Mr. Hurlburt, would this apply to common-law situations?

MR. HURLBURT: Our report deals only with married people. We have another project that's ongoing at the institute, and has been for a long time, in which we will be looking at the common-law relationship, including support, but this isn't it. This report doesn't deal with it. At the present time there is no support obligation between unmarried people living together, and this particular report won't change that.

MR. BATIUK: This entire report will not change it?

MR. HURLBURT: That is correct.

MR. BATIUK: You may be aware — it was actually publicized in the papers — that a couple in my constituency who had lived together for 50 years separated. After that many years the lady was left with nothing, because the decision of the courts was that she had brought nothing into the common-law marriage. I was just wondering whether that shouldn't be looked into.

MR. HURLBURT: As it happens, Professor Davies, as I mentioned, will be joining our staff for a year or two under an arrangement we have with the Faculty of Law, and she will be looking at that precise question. As far as we're concerned, we will deal with it. Whether you want to wait for us, of course, is your affair.

MR. R. MOORE: This is a little outside what we're discussing, Mr. Hurlburt, but you raised a question in my mind when you indicated that this law was antiquated and most people didn't bother with it, that they had a tendency to go directly to divorce. It raised the question: do we need this? Why not strengthen the divorce area instead of having two sets of laws? We're over-regulated; we've got too doggone many laws. Should it be entirely under provincial jurisdiction: strengthen this and do away with the divorce one or strengthen the federal divorce area, rather than run parallel here with two sets of legislation, provincial and federal? That only confuses the issue. It makes a pile of money for you lawyers, I know, but for the average citizen, it's doggone confusing.

MS DAVIES: Insofar as strengthening the divorce laws are concerned, of course, we can't do that. That's within the federal prerogative, and we have no jurisdiction to recommend or make any laws in that particular area.

Insofar as not bothering with provincial support laws and leaving it all to the divorce courts, I'm very dubious about that. I think a lot of people separate and the marriage is salvable. I don't believe we should push people into a situation where, to obtain support, they have to opt to terminate the marriage, as opposed to obtaining some support so they can live and, during that time, work on the marriage. I think it would be a very dangerous thing to push people into divorce court when they aren't necessarily ready for it.

MR. R. MOORE: Supplementary to that. Would it be possible, in your view, for the divorce legislation to have a section governing this area between a happy marriage and an unhappy marriage, let's put it, to have a section saying

that if you're living apart, it could be covered under that statute? Is it possible to have that type of legislation?

MS DAVIES: Not really.

MR. R. MOORE: I wonder whether we need this legislation or whether we can include it in some other.

MS. DAVIES: I don't think it's possible because of our Constitution. The federal Parliament has exclusive jurisdiction on divorce, and the provinces on property and civil rights. I appreciate that it is confusing to have two completely independent laws, but because of the constitutional situation I don't really see any other alternative.

MR. HURLBURT: The feds certainly haven't shown any intention of dealing with support during marriage. I'm not sure whether the marriage head in the British North America Act, or whatever it's now called, would cover it, but they haven't done it and there's no remote likelihood that they're going to. So if you didn't have some provincial law, there would simply be a gap. People would have to either divorce to get support or not divorce and not get any support.

MR. LYSONS: Mr. Chairman, I'd like to ask this question just to get it back home. Martha and Henry aren't getting along, and Martha wants some support. It would appear to me that you're saying that Martha can apply to the court for a settlement based on negotiation — I think that's the term I would use — so she can receive legal support without going through the process of a divorce. Is that what we're driving at here?

MS DAVIES: Basically. And not necessarily a settlement. When you use the term "settlement", one tends to get the idea that you're talking about a final solution. We might, in fact, simply be talking about a temporary solution, so she's got something to live on whilst the marriage is in that state of no-man's-land.

MR. LYSONS: Another thing that I know doesn't deal with this, Mr. Chairman: in a divorce a wife is entitled to one half of the property that's accumulated after marriage, but in a death she is entitled to a third. Would you be going that step farther into that other no-man's-land somewhere in your . . .

MR. HURLBURT: Mr. Chairman, on this one this institute is absolutely clean. When we recommended matrimonial property legislation, we recommended that it operate on death as well as on divorce, but the Legislature, in its wisdom, didn't do that. We probably would not come back onto the turf on something that the Legislature decided, unless the Legislature asked us to. So we won't be making that extra step, in this round anyway.

MR. CLEGG: Mr. Chairman, just a point of clarification. I understand that what is being proposed is not so much the creation of a means of obtaining support during marriage, because that does exist in law now. What is proposed is more flexible grounds for giving support under provincial law. It is possible to get that support now under provincial law without going to divorce proceedings, but it is fault-based and there are a lot of blocks and disqualifications. The institute is proposing a more flexible approach, solution-oriented rather than fault-oriented, to giving support under provincial jurisdiction.

Just to come back to the point raised by Mr. Moore, one of the practical problems in deciding whether to commence divorce proceedings or to seek support is that quite often the person who needs the support is not the party who wants the divorce. There are many cases where wives have been deserted. They just want support; they don't want to be divorced. Ultimately, the person who has run away is more likely to be the person who will eventually be seeking to fracture the marriage. So the two objectives are quite different. This is one of the reasons divorce is very often an unsuitable solution for the person who is coming to the court for help; it's not what they want.

MR. LYSONS: Dealing with desertion or separation, we presently have a number of programs that deal specifically with a spouse and the marriage, if you like. One in particular is a widow over age 60. She can get a pension and all these other things that go along with it, under normal circumstances. So this would be protecting that, but would it protect it in the

event of a legal separation?

MR. HURLBURT: I'm not sure what you mean by protecting it, Mr. Chairman. Between the husband and wife, as differentiated from a government program, there is a right to support, and we would be making that both more effective for the wife and fairer to the husband. But I'm not sure whether that's answering your question.

MR. LYSONS: We're sort of reaching a bit in this, but we have many situations where, simply because she's divorced, a woman who becomes 60 years of age is not eligible for any of the normal programs that a widow would be entitled to, or she's treated the same as if she'd been single all her life. Many people are saying to us that a divorced woman should be able to qualify under those same rules. The question I'm asking, and it's a legal question, I suppose: is the separation regarded the same, in the widow's pension situation, as a widow?

MR. HURLBURT: Our offhand reaction is that if they're merely separated and not divorced, they would probably be treated as being married, but I haven't looked at the statute or whatever it is that sets up the program.

MR. CLEGG: Mr. Chairman, my understanding is the same. If there has been a divorce and the ex-husband dies, the ex-wife is not treated as a widow; she just remains a single person. But if they're under a separation agreement and her separated husband dies, I believe that she then qualifies as a widow.

MR. CHAIRMAN: If the separated husband dies, she's treated as a widow.

MR. CLEGG: Yes. But if he's a divorced husband, she's treated as a single person and doesn't get a widow's benefit. One of the factors which is taken into account in negotiation for settlement under divorce is that the wife will lose the benefit of her husband's pension and also the benefit of the state widow's pension.

MR. CAMPBELL: Mr. Chairman, what happens in the case of desertion, when the husband leaves and the wife takes up with a common-law husband?

MS DAVIES: In such a situation, the support doesn't end automatically, but the husband can make an application to the court to vary the order or have it rescinded. If she is in fact being supported by another man, it will be rescinded.

MR. CAMPBELL: Thank you very much, professor.

MR. HURLBURT: The second relationship is one of the questions, whichever way it works, that I don't think anybody has resolved. When you have, shall we say, one source of income and two households, which one you treat best and which one you put on welfare is a difficult question. But you're looking, actually, for new means of support, which might have something to do with that result, all right.

MR. R. SPEAKER: On page 16 of the summary that we've received — and I understand the concept of not taking fault into consideration — there are a couple of sentences here that maybe you could explain further, which would help me understand the definition a little better:

> The Institute therefore proposes that in the usual case the conduct of the parties should not be taken into consideration . . .

That's the no-fault.

> However, there may be a case so bad that a spouse should lose all or part of his or her entitlement.

It's not quite two-thirds of the way down the page.

My question is: I see us going back to where we started when we add that sentence in there. We're saying: "I guess we'd better have a look to see who's at fault. If the person who is the recipient of financial support has shown bad conduct, we'd better consider that and maybe there isn't a responsibility to give financial support." Maybe you could just clarify that for me. I can see the problem and understand it, but maybe you have some examples that would help.

MS DAVIES: In the institute proposal it is specifically set out that conduct should not be a relevant factor in assessing support. But

> if the court finds that the party seeking support has contributed substantially less to the welfare of the family than might reasonably have been expected under the

> circumstances or has engaged in gross misconduct in relation to the marriage or the family, it may reduce the amount of support granted or deny it altogether.

So you have set out two rather exceptional circumstances. There has to be a contribution that is substantially less and also gross misconduct, not mere misconduct.

I certainly see your point about letting fault back in by the back door, but I think society generally feels that if a wife has put absolutely nothing into the marriage and has behaved in an utterly selfish and gross fashion, it somehow isn't fair to make the husband, whom she's treated so badly, support her. Because of that basic feeling of fairness, I think the institute has let fault remain but in that rather limited sphere. This suggestion — that is, that only gross misconduct should be taken into account — is mirrored in the legislation of Ontario and Prince Edward Island and, I believe, B.C. and Nova Scotia too. So it's not novel to our proposal.

MR. HURLBURT: Mr. Chairman, you might just put it this way: I think you can push human nature only so far. We're all in favour of the principle of support according to wants and needs, but there probably comes a time when nobody is going to go that far.

MR. R. SPEAKER: In terms of the process in the court — I'm not quite familiar with how you would avoid this — I notice in the second sentence of that same paragraph:

> Usually an inquest into who was at fault is pointless and merely results in each spouse throwing as much mud as possible at the other at great cost to the parties and in court time.

I can understand that. From dealing with some of the husbands, I know that there is bitter hate in their minds. They've come to me and said, "Look; what do I do in this circumstance? My wife has done this." I'm not sure how an MLA solves some of these problems, but you get involved in them. I couldn't see in those circumstances — I knew both parties. The wife certainly wasn't at fault, and in some of these cases the husband was certainly at fault. But even though he was at fault, the husband was bitter against the wife, thinking the wife had done something: taking his money, going to take his land, et cetera. In cases like that, in the court process how do you keep those feelings out of the submission? Is there a way to do that, or will we be back to where we started? Will fault always enter into that court discussion?

MS DAVIES: I certainly see your problem: the notion that if you let people introduce fault at all, they may start introducing it all the time. Probably the only way to deal with that is to make it very clear that if people bring conduct into the proceeding when it is clearly not gross misconduct, they will be penalized in some way, such as in matters of costs. I believe that problem has been encountered in the Ontario courts, and if my memory serves me right, they have in fact penalized in costs the party who has done that.

MR. R. SPEAKER: That helps to answer the question. Thank you.

MR. CHAIRMAN: As I understand it, the less you emphasize conduct in these types of settlements, the less relevant it will be. That's what your intentions are. That brings us to the last sentence on page 1. It says, "Conduct is not relevant except in restricted circumstances." That's what we actually are looking at agreeing to. Do you have another comment?

MR. LYSONS: Yes, Mr. Chairman. I would like to have someone tell me what gross misconduct is.

MS DAVIES: At the moment I think adultery is a bar to obtaining relief completely. An act of adultery that occurs after the parties have separated and which has not gone on throughout the marriage and which has not led to the breakdown is clearly not gross misconduct but under the present law is sufficient misconduct to prevent that spouse getting any maintenance. I appreciate that I'm telling you what it's not as opposed to what
is. One is looking at something considerably more than that; complete dereliction of matrimonial duties in the house, for example. Someone who has not maintained the house, not looked after the children, and yet not brought money into the house would perhaps be guilty of gross misconduct. In Ontario and Prince Edward Island, which have similar legislation

and which have retained gross misconduct as a bar to obtaining relief or as a relevant consideration, the courts have in fact set down various rather strict criteria as to what gross misconduct is. It is restricted very much to conduct of considerable magnitude which has to a large extent resulted in the breakdown of the marriage. There has to be that causal relationship between the misconduct and the breakdown. So the misconduct, such as something that occurs after the separation, doesn't cause the breakdown and therefore doesn't constitute gross misconduct.

MR. HURLBURT: Mr. Chairman, I think there's also a reference to conduct in the Divorce Act. The courts have minimized it even there. Is that a fair statement, Christine?

MS DAVIES: In terms of support, yes.

MR. HURLBURT: We are dealing with a sort of background in which there has been more and more of a general understanding that bringing your dirty linen into court, throwing mud and so on, is not exactly the way to settle these things. Burning the toast or serving a cold egg is not gross misconduct.

MR. LYSONS: Just normal.

MR. CHAIRMAN: Are there any other questions or comments on the first page? If not, could we agree to the last sentence, "Conduct is not relevant except in restricted circumstances"?

MR. LYSONS: The part that is bothering me a little is the "restricted circumstances". It seems so vague. As Ray said, you have people who come to you and want to know what you would do or why the law is so old-fashioned. From my experience most people think that conduct, other than physical abuse, shouldn't play a part in it.

MR. CHAIRMAN: The question is: what does that have to do with the need for support?

MR. LYSONS: It just says, "Conduct is not relevant except in restricted circumstances." What I'm trying to narrow down here is the restricted circumstances.

MR. HURLBURT: Those two words are a very short summary, Mr. Chairman. The actual wording is what Christine already read out: "contributed substantially less to the welfare of the family than might reasonably have been expected" — that's your drunken layabout — "or has engaged in gross misconduct in relation to the marriage . . ." I am quite sure that doesn't mean any normal, day-to-day life.

We would certainly be happy to look at the wording. It wouldn't even hurt my feelings if you ruled out misconduct entirely. But we thought — and think about your other constituents — that if you have a truly bad case where the wife, if we're using the wife, simply hasn't turned a finger and the poor old husband has supported her for 20 years and finally got tired, should somebody who has made no contribution at all be entitled to a meal ticket for any length of time? I think you can envisage extreme circumstances in which anybody would say there should be no payment. We may not have got there; we may have worded it too broadly, so we'd let in things that shouldn't be. But I think you need some safety valve way down there somewhere.

MR. LYSONS: In thinking about this a little longer, let's say that a wife is working as a schoolteacher or nurse or has any other sort of job, and her husband is an alcoholic and has been lying around home drinking for 20 years. She gets tired of it and wants a divorce or separation. She shouldn't have to support his habit. If that's what that means, then naturally I'm all for it. This country is full of that.

MS DAVIES: I think that's what it means.

MR. CHAIRMAN: Does that satisfy you, Tom?

MR. SHRAKE: Just one question. As I understand this, as we go through this material, you are saying that either the husband or the wife could be asked to give support. If they have a few kids and for some reason she has became unhappy and left to set up housekeeping on her own, and if she has a reasonably good job and makes almost as much as he does, the husband could go after the wife and request support to assist with the kids. Would that be a reasonable assumption?

MS DAVIES: It would. Under your

hypothetical, he has custody of the children, does he?

MR. SHRAKE: Yes, but almost by default. I'm speaking of a case that exists in my constituency. She left; he came home one day and she was gone. He has the three kids and is struggling away, and she has a reasonable income. Would it be fair for him to ask for support?

MS DAVIES: It would. But in his situation, if he is a wage earner, he would be looking more for child support than support for himself. This particular proposal deals with support between adult spouses. We will have another proposal dealing with support in respect of children. I think your problem is more one of child support than spousal support.

MR. SHRAKE: One last question. Will we at any time go into looking at the settlement of property if they get a divorce? Do we have anything like that on our agenda, Mr. Chairman, or will we ever get into something like that later?

MR. CHAIRMAN: That's divorce settlements. I don't recall the topics we have yet to deal with.

MR. CLEGG: Mr. Chairman, matters of divorce are beyond the jurisdiction of this Assembly, because divorce is in the federal jurisdiction. Anything which relates to or depends upon a divorce is something we can't deal with. We will just have to urge our federal colleagues to look at the matter.

MR. HURLBURT: We do have the Matrimonial Property Act, which deals with that. Actually, the institute has been asked by the government to do something about splitting pensions on divorce or separation. We will be coming back with that at some point.

MR. CHAIRMAN: Could we ask for agreement on page 1 if we were to say that conduct is not necessarily the most important thing to do with support but should only be considered under severe circumstances?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Thank you.

MS DAVIES: Turning to page 2 of my outline, Mr. Chairman, the next topic to look at is the types of orders that can be made. As you see from the outline, the types of orders that can presently be made are of a very limited nature. The family court can only order periodic payments. The Court of Queen's Bench can order periodic payments, property settlements in limited circumstances, and variation of ante- and postnuptial settlements in other limited circumstances. The term "periodic payments" generally means payments granted on a monthly basis, something such as $200 per month, but not a lump sum.

Under the institute proposals the Court of Queen's Bench would have a great deal more latitude in awarding appropriate support. They could order periodic payments — that is, monthly support orders — but they could also order lump sums. They could order property to be transferred and, again, the variation of ante- and postnuptial settlements. They could order secured sums and impose trusts on property. The family court would again be limited to the awarding of periodic payments.

Also on page 2 of this document, you'll notice that the court can order limited term orders. This is something that is presently ordered under provincial statutes in Ontario, British Columbia, and several of the other provinces. Again, the notion behind this is the encouragement of self-sufficiency; that is, the order would have a built-in termination date. For example, the wife would be awarded $300 a month for the next year, and the order would terminate at that time. This is to encourage her to use that year to get herself back on her feet, but afterward she would know she would have to be self-sufficient. The awarding of lump sums and property transfers is of importance because sometimes periodic payments are not exactly what is needed by the wife, if it is appropriate, for example, for the wife's support that she be given a sum of money so that she can set herself up in some sort of a business, take some training course, or perhaps that she have the matrimonial home conveyed to her so that she and the children can live there in some sort of security. The circumstances will change, and with those circumstances, it is felt by the institute, it's better to give the court some latitude in the awarding of support rather than simply restricting them to ordering periodic payments,

which may not be appropriate.

The second topic on this page relates to the variation and recision of support orders. Recision basically means the termination of the support order. At present both the Court of Queen's Bench and the family court can vary or rescind the order on application. This is something I referred to in answer to one of the earlier questions, the notion that if a wife, for example, who is receiving support starts to live with another man, the order doesn't automatically terminate, but the husband who is paying the support can come to the court and say: "She is now being supported by another man. Please terminate this order."

Under the institute proposals, again, an order can be varied or rescinded if an application is made to the court, but the Court of Queen's Bench can also declare certain orders to be nonvariable. That is, if the court feels that the wife needs to be told, "You will have support for a year, but then you are on your own," it can make that sort of order and at the end of that year, she is indeed on her own.

Turning to Automatic Termination of Support Orders at the bottom of the page, because this in fact follows on, an order presently terminates automatically on the death of the payee — in the normal situation that is the wife, the person who is receiving support — but it would carry on even after the death of the husband. The institute feels that this ties up the estate and can be extremely awkward to the executors. So it is felt that the wife in those circumstances should be dealt with under different legislation, family relief legislation, but the support itself should not continue. Under the institute proposals the order would automatically terminate on the death of either party. It would also terminate on remarriage. It would not be necessary for the husband to come to the court and say, "Please terminate this support order, because my wife has remarried." It would automatically terminate on remarriage, and it would also terminate if the parties got back together again for a period of 90 days.

Moving a little further up the page to Separation Agreements, if the parties have entered into a separation agreement which provides for support, at present the court, in proceeding under the Domestic Relations Act — that is, under provincial legislation — has no authority to alter the terms of that separation agreement. The separation agreement is a contract, and the court has no power to alter the terms of that. Under the institute proposals, this would be possible. This is particularly valuable today, where, for example, persons have entered into a separation agreement in days when the husband had a good job and was earning a considerable amount of money. With the job market as it is now, many husbands find their income has gone down enormously, and they simply can't carry out the terms of the separation agreement. Under the provincial statute the court has no power to ameliorate the situation. He gets further and further into debt. Under the institute proposals the court could, in fact, vary the terms of the separation agreement relating to maintenance.

The final topic on this page relates to transfers to third parties. Under the present law the Court of Queen's Bench can restrain and apprehend the disposition of property. Basically we're talking about a situation where a husband sees his marriage breaking up and decides to denude himself of his assets, reduce his income, simply so that his wife won't be able to claim property or money from him.

As I said, the court presently has some power to restrain and apprehend the disposition of property, but it can't do anything in relation to property that has already been transferred. Under the institute proposals the court could restrain him from giving property away and, if property had been given away, would be able to order the person to whom he's given it to return it or to give it to the wife, the person seeking support.

In very brief form, those are the remaining topics on this part of the proposal. Are there any questions, Mr. Chairman?

MR. CHAIRMAN: Thank you. Questions or comments?

MR. ALGER: Mr. Chairman, with regard to the termination of support orders, if there was resumption of cohabitation, I'd think would almost be part of the deal: "If we get back together again, I don't have to support you." It seems to me that 90 days is quite a wallop, isn't it? What do you think? How did you come to that term of time?

MS DAVIES: Ninety days is, in fact, a period of time that's set out in the Divorce Act as a time

during which parties can get back together again without breaking up a period of separation. It's a very accepted period of time. It may appear rather long, but it's generally thought to be an accepted period of time for people to be able to determine whether this is a reconciliation that's going to last. If you make it too short, you might fall into a situation where people have tried to get back together again but it hasn't lasted and the order has terminated. Then she would have to start the procedure all over again. So one has to give a reasonably long period of time if it's to work.

MR. ALGER: Thank you, Professor.

MR. R. MOORE: I agree with all your proposals, but I'd like a little more clarification, if I could, on Transfers to Third Parties. When you said the court could ask that these gifts, or whatever was given away, could be given back, is there any time limit on that, or is it just left to the discretion of the court, in your opinion? A marriage could be breaking down for 10 years, and you could give away different things for 10 years.

MS DAVIES: Mr. Chairman, it's property that's been given away with the intention of depriving the other spouse. That is set out in the institute proposal. So it would have to be with the intention of depriving the other spouse, as opposed to simply giving it away.

MR. R. MOORE: Mr. Chairman, how do you prove that it was with that intention? Maybe he liked the guy and gave him a farm.

MS DAVIES: I'd have to look that up. I can't remember the exact wording, at the moment.

MR. ALGER: There could be some hanky-panky there.

MS DAVIES: I'm sorry; there is a one-year time limit. If property has been given away during that one-year period immediately before the breakdown and it's a substantial gift or has been given for an obviously inadequate sum, there's a presumption that it was given away with an intention to deprive the other spouse.

MR. CHAIRMAN: Any other questions or comments?

MR. WOO: Professor Davies, I'm not quite clear on the court-imposed trust on property. Let me give you a hypothetical situation, and you tell me if I'm correct. Suppose I'm the respondent in this case, and I happen to own a farm. The court goes through a process where an award is made, and that property happens to be part and parcel of the court award. In order to ensure that I fulfill my obligation, the court imposes a trust on that particular property. Does that mean that until such time as my obligations are discharged under the ruling of the court, I cannot dispose of that property even though not being able to dispose of it jeopardizes my future ability to remain self-sufficient?

MS DAVIES: I'm sorry; when I was trying to dilute the proposals and put them into a very small space, perhaps I put them too cryptically. The trust proposal is that the court could order property to be transferred to a trustee. The trustee would hold the legal title to the property, and perhaps the wife would be the beneficiary; it would depend. For example, if you had a piece of property that was easily sellable — and I'll leave your farm out of it, because I don't think that's so easily sellable — the courts could order that property to be transferred to a trustee. The trustee would hold legal title, and you would then be able to take the income from the property and work the property to fulfill your obligation. But it would prevent you from disposing of that property to the disadvantage of your wife. [Inaudible] of many avenues given to the court to deal with numerous situations.

MR. WOO: It seems to me that we're imposing an unfair burden in one respect. I want to get back to the point I raised, putting myself in the respondent's position. If, either because of a transfer to a third party or an imposed trust on it, my inability to benefit from the disposition of that particular piece of land puts me at an unfair disadvantage in terms of my own self-sufficiency, who is the winner?

MS DAVIES: I appreciate that, but I think one has to give a certain amount of credit to the court not to make unreasonable orders. They probably would not make that sort of order in the case of a person who was going to or was likely to fulfill his obligations. I think the trust

obligation is one that would be more likely to be imposed on a husband who has perhaps threatened to sell out and move away so that he won't be able to fulfill his obligations. You have to give credit to the court to make the appropriate order for the appropriate circumstance.

MR. HURLBURT: The courts do have power to order security to be given, but they rarely do it. Is that a fair statement?

MS DAVIES: That's fair.

MR. HURLBURT: The judge isn't going to put the fellow out of business. As you said, that's not to anybody's advantage. They'll be looking for extreme circumstances before they use this power.

MR. WOO: What is the option or remedy available if such a case arises? As I read and interpret your recommendations, they appear to be very specific.

MR. HURLBURT: They give the court a broad number of powers from which it will select for the specific case before it. Normally it will select the monthly payment or something like that. But you may have the case Professor Davies mentioned, the chap who is obviously likely to dispose of all his property and get out. Then you have to stop a piece of it. But I think it's fair to say that no court is going to impede a man's business activities unless there's a real, present risk that he will do something else with the property.

MR. WOO: Perhaps I could put it another way. Once again I'm the respondent. Let us assume that the court has imposed a trust condition on my property, and two years down the road a situation arises where, in order for me to advance myself, I have the opportunity to dispose of that property. Can I go back to the court and say, "Okay, I have this sort of situation, recognizing that you have imposed a trust situation on this property, but there's a requirement for me to dispose of it in order to maintain my self-sufficiency." In that instance, can the court designate a portion of the proceeds to be put in trust to replace the property per se in order to allow me to benefit from that sale?

MS DAVIES: Yes. Under the institute provisions all these orders will be variable on application. So if something arose in two years' time, you could go back to the court and ask for the order to be varied.

MR. CHAIRMAN: Mr. Clegg, you . . .

MR. HURLBURT: Christine can correct me on this if I'm wrong. At the moment, Mr. Chairman, it's possible to take an alimony order to the Land Titles Office and register it against somebody's land and tie it all up, which we think is just too much — too rigid and inflexible.

MR. CLEGG: Mr. Chairman, I was merely going to mention that the court order can be varied if circumstances make it advantageous, maybe for both sides, that the property should be sold. Of course, that has now been clarified.

I'd just like to mention one more example I have seen in matrimonial disputes, which makes it clear that it's not only sale of the property which can cause disadvantage to the wife who is being paid. I've seen a situation where the matrimonial home was in the sole name of the husband. The wife and children had sole possession of the matrimonial home, and the husband was paying the mortgage on it as part of the support. Without their knowledge he placed an enormous second mortgage on the home and took the cash and disappeared. He was able to do that because the property wasn't in trust; it was still in his name. It wasn't necessary for him to sell it. If you're going to sell a property, it's impossible for your wife not to know, but it is possible to put a $50,000 second mortgage on the property and rush off. In many cases the only protection available to the mortgage company is to foreclose the property. At that point, the husband doesn't really care, because he has the cash and doesn't need the house. So it's important to protect the house against that kind of thing as well.

MR. CHAIRMAN: That would be protected if it were in trust?

MR. CLEGG: If it were in trust, yes.

MR. R. SPEAKER: Could I have a little further explanation of the second section, Variation and Recision of Support Orders, where you've added the section: "Court of Queen's Bench can

declare certain orders to be non-variable." Give me just a little more reason for that addition; maybe an example would help.

MS DAVIES: I think it is in line with the proposal that a spouse of the separation has a duty to become self-sufficient. If an order is to terminate at a particular date and is not to be varied after that date, is not to be continued but is to terminate automatically, then encouragement is given to the recipient spouse to, in fact, become self-sufficient. Further, under the institute proposal, when a court denies support, it can say that this denial is final. One cannot come back a year or two down the road and seek support. You have another reason besides the encouragement of self-sufficiency, and that is the notion that one has to be fair to the husband, the payer spouse. Many marriages break down, many divorces are granted, and the corollary to divorce is remarriage. Presumably the corollary to separation is entering into another relationship, and people really have to know where they stand. If they're developing a new relationship, they have to know that "all my obligations to this one are over, and now I can make my life anew."

MR. CHAIRMAN: The side topics on the second page of this . . .

MR. HURLBURT: I do have some more that isn't on the handout, Mr. Chairman, if that's . . .

MR. CHAIRMAN: I was just wondering if we shouldn't just go through these five and see . . .

MR. HURLBURT: Oh, sorry.

MR. CHAIRMAN: . . . if we want to agree to those. The first one concerns the trusts on property so that it can't be resold while the support is being carried on. Is that understood? Agreed?

HON. MEMBERS: Agreed.

MR. CHAIRMAN:

> Court can vary or rescind on application, including relieving against arrears. Court of Queen's Bench can declare certain orders to be non-variable.

Agreed?

HON. MEMBERS: Agreed.

MR. CHAIRMAN:

> Court of Queen's Bench can vary or discharge provisions relating to support.

Agreed?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: The fourth one,

> Court of Queen's Bench can restrain gifts and transfers for insufficient consideration if made to prevent the obtaining or enforcing of a support order. Court can also order the donee to transfer property or pay the person requiring support.

Agreed?

HON. MEMBERS: Agreed.

MR. CHAIRMAN:

> Resumption of cohabitation for 90 days, remarriage of recipient, death of either party, further Court Order.

Agreed?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Okay, Mr. Hurlburt.

MR. HURLBURT: Thanks, Mr. Chairman. There are some sort of procedural things and the problem of collection that was mentioned earlier. I don't have these in the form of a handout. I could easily prepare a statement for you, but in this case, I thought I could talk about them just about as easily as you could look at them.

One of the problems we've noticed in connection with making and enforcing support orders is that so many of them are made without proper information before the court. Very often only one side is there. Very often that one side has no real way of getting information about the other side; that is, finding out how much money each is making and what kind of property each has and so on. Many times there's also the problem of simply finding the other side, and a good many proceedings are not carried through simply because they can't find the respondent, usually the husband.

The institute report suggests some ways of getting more and better information. First, we

make a number of suggestions to find the respondent. One is — and this might rouse some controversy — that under court order the health care people would deliver the address of the respondent and the name and address of the respondent's employer. You'll notice that those are very public characteristics. It isn't private information about the respondent. It's where he is, who he's working for. We went one step further. If the respondent has left the province and other attempts to find him have failed, the health care people then might be required to produce the social insurance number, which is getting farther along the road but only under those circumstances where the respondent really has left the jurisdiction and you've got very little help in finding him. That's one classification of information, and that would involve legislation, because the present legislation says that the health care people don't give out any information — that may be too broad, but any information for this purpose, anyway. That would require legislation.

Secondly, we've also recommend that as a matter of administration with the police, if the police have a record of the address of the respondent, they would produce that. Again, they would not be obliged to go and look for the respondent, but if they have a paper record that shows where he is, they would produce it. As a small point we suggested that when the motor vehicles branch issues a driver's licence for somebody from outside the province, they be asked, by administrative arrangement, to keep a record of the province from which that person's earlier driver's licence came. This would simply be a location tool.

Finally, we suggest that there are two sources of information which are beyond provincial competence but which the province might ask the federal government to institute. Again, this is for location only; finding the respondent. If the court finds that it's not possible to find the respondent by ordinary means, the federal government would be requested to provide that the unemployment insurance and Canada Pension Plan records might be searchable or that the information might be got from them. I should say that elsewhere — I'm quite sure this is true in Ontario — the legislation goes so far as to provide that any government agency can be required to produce, in a blanket way, any information it has about the location of the respondent. All this has to do only with finding him. That's one broad aspect.

MR. CHAIRMAN: Maybe we should ask if there are any questions or comments about that.

What you are suggesting about the motor vehicles branch is that you just check where this person is licensed to drive a vehicle, and his location would be on that?

MR. HURLBURT: Actually, you can get that information now if it's there.

MR. CHAIRMAN: That's what I was thinking.

MR. HURLBURT: We are just suggesting that one further step be taken; that is, when somebody comes in and is turning in his licence, taking out a new one, they keep a record of the province that person came from. On looking back at it, I'm not sure how important that is, but that's what we thought at the time.

MR. CHAIRMAN: If the police stop a vehicle on the road, nowadays they can get on a phone and have a computer statement of everything on that person's licence. Is that available to other agencies?

MR. HURLBURT: I think anybody can get information from the motor vehicles branch; it's a public registry. But I don't imagine outsiders are going to have much luck with the police and their computers unless there is some special arrangement with them. I don't think your average somebody trying to trace a respondent would be able to get that much from the police at the moment.

Of course, there are problems about suggesting introduction of the police into this process. Support is a civil matter. You can move ever closer to complaints about civil rights and privacy, and all that sort of thing. We've tried to remain conscious of that and not get carried away. No doubt there are many people out there who would say we hadn't let ourselves get carried anywhere, that we hadn't really done more than take a very cautious step into the area. Again, this report is six years old. Other provinces — and I mentioned Ontario — have gone past; they have said it is important to find these people. For one thing, our welfare systems suffer when support isn't paid; for another, it's a matter of seeing that people do

carry out what really is a primary responsibility, looking after your family: that you should be prepared to go further than you would for ordinary judgment debts, ordinary civil matters.

MR. CHAIRMAN: Mr. Clegg, you had a comment?

MR. CLEGG: Mr. Chairman, I just want to ask a question for clarification. Is it your suggestion that this search capability relate only to chasing respondents who have failed to pay the support that's ordered, or will it also be available to trace somebody so that they could be served with process?

MR. HURLBURT: I'm sorry; served with process as well.

MR. R. SPEAKER: Mr. Chairman, I think most of my questions have been answered by Mr. Hurlburt.

The comment I was going to make is that it's the right to your own privacy. I agree with and certainly support your intent. I am thinking back to a few years ago in the Legislature, when the war amps wanted the names and addresses of people in Alberta so that they could mail out key tags. The policy decision made at that time was that we couldn't give out the names and addresses because of this confidentiality.

In terms of the Alberta health care program, that's the request we would be making to them, but for a specific group of people who have not been responsible in society. From what you said earlier, you've thought that through. We know in our minds that those people have not supported their families, that they've not made payments, and that the public is making payments on their behalf, so there's negligence there. Can we judge them as criminal, or whatever, and say, "Look, we're going to take away that right of privacy from you"? Is that a philosophical or a political question?

MR. HURLBURT: It's everything wrapped up in one, Mr. Chairman. It's a very profound value judgment: philosophy, politics, and everything else you care to mention. On one side, you have this particular kind of claim. Our view is that that is more important and requires greater attention than if you're suing me for the $200 you lent me. Our position is that there is something that's much more important.

Now, over here you also have fundamental, important, private considerations: the ability of people to live their own lives; government should not take information, collect it, then use it for all sorts of other purposes. You have that whole bundle of considerations. We thought — and anybody can form his own judgment — that there is a case for going a short distance, bearing in mind that we're dealing not with private lives, or at least the real private things that I don't want interfered with, but just with where I'm living and, in some cases, who I'm working for. That is where we came out.

MR. R. SPEAKER: Have you examined this position in terms of constitutional amendments and new federal legislation that has been brought in? You said that some of these recommendations were made five or six years ago.

MR. HURLBURT: I haven't thought about the Charter, if that's what you're thinking of. I really shouldn't make off-the-cuff pronouncements on the Charter when courts all through the land are making pronouncements on it every day after thinking about it. I suppose we should review this to see if there is anything there, but I don't think there's anything here that's unconstitutional. We have suggested reference to unemployment insurance, which is a very useful thing. When somebody goes to work, his name shows up there, wherever he is in the country. Obviously, the province of Alberta cannot legislate with respect to that; it can only speak to the federal government.

MR. LYSONS: Mr. Chairman, that wasn't exactly what I meant when I asked the question. Many years ago, when they first came out with the social insurance number, I remember it was just to be used for something over here and that's all. Now, by God, you can't buy a can of peas without having your social insurance number. If we were to dip into health care and all these other things, what I'm afraid of is: where do we stop? Admittedly I feel for these people. I get calls — not every day but almost every day, and certainly hear about it every day — about people who have a legal agreement and skip across the line, and there's no way in the world you can contact these

people. But I'm not sure this is the way to go.

When I asked the initial question about how we have these people continue with the support, I meant in a way that the responsibility is put back on the individual. Let's say I am supposed to pay someone support or a payment of some sort. The way our legal system seems to work now — maybe that's not quite the correct term. The way the system works is that I can ignore it. I might get a slap on the wrist, but it's nothing substantive. In my initial question I meant more: why can't we put these guys or women in the slammer? If they owe me $50 a month and bloody well run into Saskatchewan or British Columbia and don't pay it, why can't we lock them up rather than . . .

MR. CHAIRMAN: I think that's another part of the question, though. Right now we're dealing only with a way to find these guys so we can take some action.

MR. LYSONS: Where I'm having the problem is the way we're going. Inasmuch as I can see great merit in using every facility at our command, the next thing would be that the very things we don't want to happen would be happening. So I'd be very, very leery of agreeing to something such as using the health care or social insurance systems. Even though in my heart I can agree with it on the surface if we could just stop it there, unfortunately you don't stop things there. Once the ice is broken, then it goes on and on. I think it should be that if somebody skips, they should get a much more severe penalty than they're getting now.

MR. HURLBURT: If you can't find them, Mr. Chairman, you can't even put them in the slammer. It's a value question. There will be all sorts of people who will say to you, "He isn't paying. I don't know where he is; the government knows where he is. Why should I be either starving or on welfare because the government won't tell me?" That's that side of it. Then on the other hand, you do have all the things you're worried about.

MR. CLEGG: Mr. Chairman, the tracing and the enforcement are very closely linked. It's difficult to keep the two subjects separate. I can understand that some members are concerned about the breach of privacy which results from a tracing operation. However, I believe there has been a system instituted in some provinces whereby the maintenance orders are enforced by the province and the payments are made to the province and disbursed to the wife by the province. The moment the person goes in default, the province takes the initiative to find the person and force the payment.

Although it is significant state intervention in a civil matter, this has two advantages. The first advantage is that they have the means to do this. The biggest problem a wife who is not being paid has is that she can't afford to keep running to her lawyer to ask for the person to be found. The second thing is that if fairly strong measures are found to trace the person, the degree of privacy loss is different: his whereabouts become known to the state but not to his wife. In most cases it's quite possible that he doesn't want his wife to know where he has gone. He might not mind so much if some collection officer in Williams Lake, B.C., finds out he's there and gets the money from him. That is a different level of loss of privacy. Even if the state knows where you are, you have privacy with respect to your family and your contacts in society.

The state knows where you are anyway. Because of your Canada Pension, your social insurance, and everything you do, the state knows where you are. If the collection were done through the state, then the people you probably don't want to know where you are wouldn't have to find out. As I said, this brings us into the other area, but there is a bridge there.

MR. HURLBURT: Mr. Chairman, among our recommendations was that there be a collection service which would take support orders, record them, receive the payments under them, note when the payment wasn't made, start writing letters, and then take active steps to locate the respondent if he had to be located or take active steps to see that one of the collection remedies is used.

As Mr. Clegg mentioned — and I think he's probably thinking about Manitoba. They have in fact established a system — not in the courts, but that isn't fundamental — which is really pretty well what I've described; that is, there is an agency where a support order is filed. The agency is then responsible for receiving and turning over payments to the wife if she's on her own or to the government if she's on

welfare. The Manitobans claim — and they've been claiming it for a couple of years now, so they might be right — that this system collects 85 percent of the money that's awarded under court orders, as opposed to something like 35 percent anywhere else. It's sort of knowing that there is somebody who is looking at this order and will do something and not just sit back, because most wives can't afford to take the time and energy to try to chase their husbands. That does seem to be a very substantially improved collection system, and we would still advocate that very strongly.

I didn't cut it out at the time, but I think I noticed that the Attorney General is indicating an interest in the Manitoba collection system which, with the addition of a computer, which we didn't talk about, would do just about the same things this report advocates.

The thing is that the normal, legal collection systems simply aren't effective in collecting small periodic payments that keep recurring, particularly when the one who is interested in enforcing them has little means and usually little time to talk to lawyers. There's no point in hiring a lawyer to collect $200 a month, anyway; the collection costs are just too high. You might hire one of these collection agencies we were talking about last time, but even there what doesn't come into the payee's hands is too much. So we really think it's almost unanswerable, that there should be some sort of system that will take an order and follow it through.

The Manitobans point out that out of what they have turned over to the government, in paying back welfare — the government has made a profit, and the people who are not on welfare are getting a lot more of their money too. That's one of the things we suggest in this report, and it has turned out to be profit-making in Manitoba.

MR. R. MOORE: Mr. Chairman, I agree with Mr. Lysons' approach. I think we're just opening the door here. Our laws are based on precedents. Once you set it in this, it will be in another area, and so on. With our technology today, it's only a matter of time till big government and the bureaucracy has every piece of information on every individual in Canada in one little package, so they can press a button and see exactly what we own, what we do, where we go, and where we've been. I think the government has far too much information on us as individuals today. They don't need any more. In fact, I'd oppose such a thing as this. The trade-off isn't worth it, when we're giving government total control over our lives for the sake of collecting a few bills. I think the precedent we're setting by giving one organization the right to tap into the information of all these other sources is only a stepping stone to a master situation, where they have it all at one point and any government agency can plug into it.

MR. SHRAKE: As I understand it, though, this would basically be just the location of an individual. They aren't going beyond saying that these records or these types of things are available to find out where the guy is. Do they go beyond just assisting in finding his location?

MR. CHAIRMAN: As I understand it, Gordon, we have two topics together now: one is the location of the person who is supposed to be paying, and the other is that now we're also discussing the possibility of an agency that will locate the person and make the payments to the spouse.

MR. HURLBURT: They are really separate topics. You don't have to have special advantages in order to have the collection agency, and you can have the special advantages in finding things without the collection agency. So they are different subjects, Mr. Chairman, and maybe I've raised them together.

MR. R. SPEAKER: I think Mr. Hurlburt said, too, that it is a court request to find this person, so you seek the information by a court request. A lot of protection is built into that as well. We're not talking about flagrant abuse of the right to find people. I as an average citizen wouldn't come in and do it. Someone else — a lawyer, say — would make the request and could get the information. We're saying that because certain payments have not been made, certain things have happened: the court, in the legal process, makes a request. Is that correct?

MR. HURLBURT: That is correct.

MR. R. SPEAKER: As I see it, there would certainly be built-in protection.

MR. CHAIRMAN: Any other questions or comments?

MR. WOO: Just to say to Mr. Ron Moore, we're there already.

I do have a question. I'm not sure whether or not my present thinking is correct. I'd like to have you clarify it, Mr. Hurlburt. Recognizing that we are dealing with cases of a civil nature and recognizing the system we work within, would not the sort of framework that you suggest and that other members have raised require consensus in terms of reciprocal interprovincial agreements in order to ensure that the location and subsequent enforcement has a legal basis to be exercised from one jurisdiction to another?

MR. HURLBURT: It would help a great deal. We're looking at what Alberta can do inside Alberta, and that's the sort of thing I've been talking about. There are movements afoot to try to get a sort of national information network going, in the sense that material will go from one province to the other. Certainly, anything that will help find somebody in Ontario is very useful. As I understand it, everybody who lived in Alberta is now going back to Ontario, so mutual assistance would be of great value. I don't know if that answers your question.

MR. WOO: I'm looking at a couple of comments you made and a couple of examples some of the members raised. You specifically mentioned the Manitoba experience. If there is no reciprocal agreement amongst provinces, then location of the defaulter from Alberta who happens to be found in Saskatchewan — I wonder at the legalities in terms of the ability for the judgment here to be exercised in another jurisdiction if there is no agreement, and whether it is indeed possible. If collection agencies undertake, on behalf of a provincial jurisdiction, to effect collection in a province other than their own jurisdiction, would that not also imply a certain type of reciprocal agreement, where certain qualifications have been met by that particular agency in terms of activities in, say, B.C.?

MR. HURLBURT: There is legislation which allows an order to go from one province to another for enforcement, and the receiving province should provide some assistance. I expect that if there were agencies of this kind, they would exchange information in everybody's interest.

MR. WOO: I recognize that it may be desirable in terms of the amounts — and I don't know the amounts that are in question — in that the general taxpayer has to pay for support. Whether or not there is justification for such a system where additional information of a personal nature is disbursed — and I think this reflects on the concerns raised by Mr. Moore and Mr. Lysons. My major concern is whether, when we weigh it on balance, a type of framework that offers opportunity to breach provisions of the Charter is the price you pay, and whether that would be acceptable to the public at large.

MR. HURLBURT: At the moment all we're looking at is the things I've outlined. Now, you may think they're too much, for the reasons you're talking about. That's certainly a matter everybody has to apply his judgment to and come out with his own answer, because you're in a balancing situation. We thought the balance would take us so far. But again, that's something for the Legislature to think about.

MR. CHAIRMAN: I am wondering about CPP or UIC. Those would be Canadian; they wouldn't be provincial.

MR. HURLBURT: The province could not legislate with respect to them, nor would it have any ability to approach them directly. The only thing they could do is make representations to the federal government.

MR. CHAIRMAN: But that is now used to locate somebody anywhere in Canada if there's a UIC or CPP problem. It's a matter of only a few seconds on a computer to locate anybody. It would be against our principles, then, to approach the federal government to locate these for us?

MR. HURLBURT: If you accepted these recommendations, it wouldn't be against the Legislature's principles. The Legislature has to decide what its principles are.

MR. CHAIRMAN: The other question is: where

an agency collects this money and pays it out, is the money paid out regardless of whether it's collected?

MR. HURLBURT: Not in any place we're thinking about. I've certainly seen suggestions from time to time — and it may have come about in some place or other — that the government simply pay out the amount of the orders and then try to collect it from the people responsible. But that isn't what we're talking about, and it isn't true in Canada anywhere.

MR. CLEGG: I believe that method of payment is used in some of the Scandinavian countries.

MR. HURLBURT: The collection agency we're talking about is not a Big Brother operation or anything else. It's a systematic debt-collection organization — and that's all — established by the government. It would not of itself have any of the connotations we're talking about, any more than does a debt collection agency.

MR. CHAIRMAN: You had some more to add?

MR. HURLBURT: Mr. Chairman, it is getting quite late. I did have one other aspect of information-gathering; namely, a recommendation that procedures be established in the courts administering family law and dealing with this sort of topic, under which the parties, the husband and the wife, would be required to put up financial information for the purpose of the determination, something along the lines as is now done under the Matrimonial Property Act — it's necessary to file financial information and things of that nature — which we thought would do something to do away with making orders which are often unrealistic. That fact makes them even more uncollectible. If somebody sees an order made that has no relation to his circumstances, he is much less likely to pay it simply because it's the law. So that was another recommendation we had.

We also dealt at some length with remedies. I don't think there's really much I need to say about that. The remedies are the way you now collect support payments. First, there are the traditional methods — sending out the sheriff, garnisheeing a bank account, garnisheeing wages on a one-shot basis — which you can use for any civil debt. In addition, as a result of work we did jointly with the government, the Act was amended a few years ago, as Professor Davies mentioned earlier, to provide for a continuing attachment of wages. In the ordinary garnishee summons, if you're garnisheeing wages, you get out your document, take it out and serve it, and it will trap any wages that have accrued up to that point. But it's a one-shot thing, and you'd have to do the same next month. It's very expensive and very inefficient. The order for continuing attachment of wages allows the court to direct the employer to pay so much a month toward the maintenance payments. That hasn't been used very much. There may be a number of reasons, but one of them is the lack of a consistent enforcement authority such as the one we are suggesting. Even the government hasn't found itself able to get out and collect the money it should be getting back because it's been paying it out in welfare. Again, some sort of consistent enforcement authority would be profitable and would provide some means of improving that situation.

It is also ultimately possible to have the respondent put in jail if he has not been paying and could have, so that recourse is there. It's a very debatable question whether putting somebody in jail is the best way to get him to pay. There are a good many people who, as the immediate prospect is there, will raise the money. On the other hand, if they don't happen to have the money, putting them in jail will simply mean they can't earn it. It's also a pretty severe thing to do to somebody for failure to perform a civil obligation.

There are really a number of different approaches to this. One is to crank up the system, be tough, and throw everybody in jail. That does produce some more money. I think Michigan has a system that does that, more or less. Again, it's run by a central agency. It puts up the collections to maybe 65 percent, but they tend to find that the people who are actually put in jail are those who are poor and don't have the money and can't really do anything about it. The doctors and the dentists and the lawyers presumably pay up before they're actually put in, which may tend to support the use of jail for a threat. But the fact is that those who are actually jailed are usually those who can't pay. The courts are usually very reluctant to commit somebody to jail. They look at it as being harsh and often counterproductive.

We haven't really suggested too much along the line of changes in remedies. We have suggested some tidying up that we think would be useful. If this were to go ahead, it's the sort of thing we would discuss with the department and the people involved. I don't really have too much to say there.

On the aspect I've been dealing with, we have about four topics. One is obtaining the locational information, which we've been talking about and which has caused the debate. The second is better means for requiring parties to an actual action — that is, when support is being sought — to produce financial information. At the present time this is usually done in family court. The judge usually has to sort of roll up his sleeves, get down and take out his pickaxe, and see what he can find. This isn't the way you want courts to run, so that's an important thing. Thirdly — and I think this is probably the most important of the lot in this area — is an agency or organism or something which will hold the order and, when a payment is missed, write the respondent a letter, and then write him another letter. There will be a sequence of actions leading up to bringing the respondent to court ultimately. That is the kind of continued attention that will actually do something. The other things we've been talking about may be important, but they don't have the same very great practical effect as constant attention. Finally, as I said, there are some details of the remedies that we would be interested in dealing with.

MR. LYSONS: Mr. Chairman, I would like to ask if it is possible that in a civil action such as maintenance — and I sometimes have trouble understanding what is civil and what is criminal law; I take it this is strictly civil law — the judge could order that the husband must report where he's working and where he's living; do it that way rather than the other way, where the system comes into play. I could certainly live very comfortably with a judge ordering that. I don't know whether it's possible in civil law. I'm sure it could be in criminal law, but I'm not sure about civil law. If it were a specific order from a judge and if he had to do that in every individual situation in every case, or it had to be a request — if it could be brought into legislation that the judge could order the husband to account for his whereabouts, I could go along with that.

MR. HURLBURT: Mr. Chairman, you have to catch your rabbit in the first place. Ordering him to do something when he isn't there and you haven't served him is not very effective. Secondly, the whole problem we're trying to solve is that the respondent is not in fact obeying a court order of one kind; namely, that he pay money. And if he's resisting the court order that much, he's probably also going to resist the court order that says he will report his whereabouts. I don't know how you'll enforce it. Anytime you can catch him, you can enforce it. But the problem is when you can't find him. So I don't think the judge telling the respondent to do something else when the respondent isn't doing what he's already told the respondent to do is likely to be very effective.

MR. LYSONS: Maybe in reality it isn't. On Sunday afternoon, when I was working in my office at home, and I had two calls from ladies whose former husbands were not keeping up child support. You just have to feel for these people. In both these cases, they were doing their best to maintain a family under some very, very hard conditions. Both of them said it didn't seem as though anyone really cared. It's certainly not true that people don't care, but it's perceived to be that way.

I cannot believe we can have a society and a system where a judge can say that you must do certain things and you can ignore the law. I fail to understand that. I don't know where you would go to rectify it, but I think that's the situation we want to get at. Maybe the Manitoba situation works well. But if the Manitoba situation were to continue, it won't be long until if you didn't pay a garage bill, somebody could plug into that computer and it would be there.

MR. HURLBURT: Mr. Chairman, the Manitoba agency would have no powers or information that the Edmonton Credit Bureau couldn't get. I don't think you should worry about that agency as a threat; it's not. It's simply to collect. If there are extra powers thrown in, fine, but they don't have to be.

Reverting to your first point, I think very few things are more difficult than the position of a woman who is separated from her husband, has three kids, and has an earning power of maybe $1,500 a month if she's on the job full-time — but then what happens to the kids? —

particularly if she has a husband who can work out, as some of them do, to a science, how taut they can keep the string when they absolutely have to pay something in order to avoid going somewhere, but not enough to be of any real help. In that case, you need the money on the 1st of the month, and there are people who have worked it out to a fine art to see that you don't get it.

I'm sorry; I think I just ran off the track. I think it was just to reiterate again that continued attention is really what's needed. Oh yes, it was as to enforcement and the system. The survey we did a few years ago found out that more or less half the women who weren't being paid didn't do anything about it; half of the remainder would start something, but it never got served; half of the remainder would go for one order and wouldn't get paid, and so on: the number who were actually getting something out of the pipeline was very small.

The problem is that it's easy to see that the system isn't working, but bearing in mind the great mass of people we're talking about, and human affairs generally, it's very difficult to work out something that does work. Manitoba seems to have come closer. I think I can say that they are no threat to civil liberties or anything else. They're just out to get the money, like a debt collector.

MS DAVIES: I want to make a point related to the last speaker's example of the people who had telephoned him on a Sunday afternoon. With regard to this question of location, we've said before that we've got to strike a compromise between protecting the civil rights of the nonpaying husbands and protecting the people that phone you on a Sunday afternoon because they just don't have the money to maintain the family.

If you're making a compromise, it seems to me that the institute proposal is not particularly extreme. If you look at the legislation in other provinces — for example, Ontario has gone a great deal further with regard to the limitation of a respondent in requiring that any person with any information must provide that information. The institute proposal would limit the agencies that must provide that information. Further, as Mr. Speaker said before he left, it's not extreme, in the sense that not anyone can get this information. The court has to order that that information must be given up. So I think if you're making that compromise, the institute proposal is not too extreme, and I don't think it falls too far on the one side.

MR. CHAIRMAN: Maybe the way to handle these three questions is in the reverse. It seems as though the better way of getting the means to collect and also locating the information without infringing on somebody's confidentiality would be through the agency. Is that what you . . .

MR. HURLBURT: I think that is correct, Mr. Chairman. It's the consistent, sustained attention which the great bulk of women simply cannot provide. It can be done profitably and in an ordinary business way. It does require the government to do something to establish it. But even then the government should make money out of it, so that's all right.

MR. CHAIRMAN: So the recommendation is that there be an agency to collect payments for spouses and disburse them. Any other comments on that?

MR. ALGER: Mr. Chairman, the agency would be a new agency that we don't have already — that type of thing?

MR. HURLBURT: Mr. Chairman, our recommendation was simply that there be staff in the office of the clerk of the family court. I still think it's basically best. It's associated with the court, people know they're dealing with the court, and so on. But I think the movement may be away from that. The Manitoba one is a sort of downtown government agency that's freestanding and isn't connected with anybody. I don't think we're looking at a large bureaucracy type of problem.

MR. ALGER: I am wondering if we need another one of those. If we can work it in with what we presently have, I'd sure be in agreement.

MR. SHRAKE: I wonder if Mr. Dalton or anybody here can give us any idea if that would save the taxpayers of the province some money from the ones who, for one reason or another, are presently not able to collect money from their spouses and go on welfare or social

assistance. Would that provide any saving to the province of Alberta?

MR. HURLBURT: The experience in Manitoba has been that the government has made money, simply because it has recovered more ... Where it's supporting a woman and family on social assistance and there is an order of the court that the husband pay child support or support for the woman as well, then the agency collects that and pays it back to the government. The amount paid has exceeded the cost of the agency from the beginning.

MR. SHRAKE: Do we have any idea of how much money we're talking about?

MR. HURLBURT: At this point I would have to say no, but somewhere I have the annual cost of the Manitoba agency. They have a situation where they basically have a one-city area, and maybe those figures wouldn't be readily transportable. But the Attorney General's department has been talking to Manitoba. It's had people down there, I think. I think they've concluded that the numbers are probably fairly legitimate. I would say that the expense wasn't extraordinarily great and the return was several times the expense.

MR. SHRAKE: Do we have some rough figures on what type of money they collected this way?

MR. HURLBURT: I'm sorry; I should have looked this up. I could tell you tomorrow morning. My recollection is that the numbers I have seen were that they collected $8 million, of which I've forgotten how much went to the government, and the operating costs were a quarter of a million or something like that. But I think I could check that and tell you something in the morning.

MR. SHRAKE: On that note, Mr. Chairman, at times I get very cheesed off knowing that in Calgary there are some people who can afford to support their families and yet have wandered off or left, or whatever. They do not support the families which, of course, they created. It falls back on social services, and we are limited in the amount of money we have. I get these phone calls to assist. I'm afraid I'm one who will vote in favour of that.

MR. ALGER: Mr. Chairman, a lot of women make more money than their husbands. Are there men who actually demand support from their spouses when separation takes place?

MS DAVIES: There are, but not many.

MR. ALGER: I thought we were reaching a new low in society someplace.

MR. HURLBURT: I think one thing we should bear in mind is that ... I haven't talked to great numbers of women, but in the course of this we've come into contact with some of their organizations. My general impression is that they aren't really worried about support for themselves; it's the kids. Their earning power is (a) limited by the kids to some extent, and (b) limited because women just generally don't earn as much money as men. It's the kids that they're most concerned about.

MR. CHAIRMAN: We have three questions here to settle. Maybe the committee would like to leave it and make a decision on these three topics tomorrow morning. They are what kind of information to use to locate these people who are not paying their allowance, a better means to actually collect it, and whether or not there should be an agency that takes the information, does the collection, and pays it out.

Those three questions are still pending at the present time. Would you like to leave that till tomorrow, or would you like to make the decision today?

MR. ALGER: Mr. Chairman, if you went with the agency idea, I would agree that they should have every instrument available to collect and, consequently, we could agree on all three without batting an eye.

MR. WOO: My question is of a procedural nature and has to do with the collection agency concept. I'm wondering if it is proper at this time to include it in the decision we are about to make, because I don't see it being a specific item on the paper. I'm just wondering if, technically, we are doing something we shouldn't do and don't know what the implications are.

MR. HURLBURT: I'm sorry that I didn't

produce a paper with all the questions on it. Again, I can do that tomorrow morning — no problem. I think you will find it in the green book. I should go back and look at it, but I think these things are all summarized there. In any event, these papers are not official; they're here for help and assistance.

One thing the standing committee could do, if it wanted, would be to say: "We haven't enough to say whether this agency is really a practical idea. We're with it in principle, provided that you can sift it out with whatever department is involved and make it work." I don't know.

MR. WOO: The only reason I raise it is that the agency concept does not appear to be consistent with the way I perceive the role of our committee in dealing with legislation and matters of principle pertaining to the law. The agency is a physical thing which may or may not fit in. I'm just raising it because I have some difficulty in trying to relate the two.

MR. CLEGG: Mr. Chairman, I don't think there are any procedural limitations on the committee making whatever suggestion it wishes with respect to these reports or any additions to or subtractions from the report. If the committee had some ideas which fell outside the recommendations but within the subject matter, I see nothing in the resolution which prevents us from reporting that recommendation.

MR. CHAIRMAN: Are you prepared to make a recommendation on these three items tonight? The first one we have to look at is whether or not there should be an agency of some type that will look after these types of collections.

MR. ALGER: It would be a provincial agency.

MR. CHAIRMAN: Yes, an agency of the court.

MR. FISCHER: Tom, I don't think we've even got a quorum here, have we? Maybe we could hold it off and wait until at least the ones who were here earlier are back tomorrow to make those decisions. It's just a suggestion.

MR. CHAIRMAN: Maybe we could vote on whether or not we want to leave it until tomorrow or have the question tonight. Those in favour of leaving it over until tomorrow? Those in favour of having it tonight? Too many people voted.

MR. CLEGG: Mr. Chairman, according to Standing Orders, all those present should vote. I suggest that the correct procedure is for the chairman to put the question again.

MR. CHAIRMAN: Those in favour of leaving the decision until tomorrow morning, please indicate please by raising their right hands. That's six. So we leave the question on these three items until tomorrow morning. Now do you want to have those itemized so that there can be handouts in the morning?

MR. HURLBURT: I'll bring them in that form, Mr. Chairman.

MR. CHAIRMAN: What about the questions there hasn't been any decision on: Debt Collection Practices and Defences to Provincial Charges. Would you like to deal with those tonight or tomorrow?

MR. SHRAKE: I think they were discussed at length. If we do have a quorum — we may not have a quorum tomorrow — I think we should go ahead and try to deal with those tonight.

MR. CHAIRMAN: Do you have a motion to put forward?

MR. SHRAKE: I move that we have a vote on the items regarding debt collection tonight.

MR. CHAIRMAN: Are you moving that we approve the recommendations of the Institute of Law Research and Reform?

MR. CLEGG: Do them one by one.

MR. CHAIRMAN: Yes, right. Which one, Debt Collection Practices?

MR. SHRAKE: Mr. Chairman, I wanted some changes on Debt Collection Practices, which we were dealing with in our previous meeting. I was hoping the Solicitor General's office or Consumer and Corporate Affairs, whoever handles that stuff, was going to come in with some kind of recommendation to us with a little change, or I'd be glad to move the motion. That

was regarding not wishing to review these collection letters annually. I don't know if we need Law and Regulations to vote on that. But if we do, I would like to say that they do review all new letters but that all other letters which have been approved don't have to be reviewed on an annual basis. If you can take that and make a motion out of it, I'd be glad to move it. I think Mr. Clegg could assist a little on that one.

MR. CLEGG: Mr. Chairman, I think the motion Mr. Shrake should make is that the recommendations be adopted, with the amendment that form letters sent out by collection agencies should be approved but that the approval should be permanent, and that it wouldn't be necessary to review them annually but that when new letters are adopted, they should be approved. Is that Mr. Shrake's intention?

MR. SHRAKE: Yes, I would like to move that.

MR. CHAIRMAN: Any discussion on that? All in favour? That's carried.

Defences to Provincial Charges: what's your pleasure on that this evening? Would you like to have a motion?

MR. CLEGG: Mr. Chairman, it is the recommendation of the institute that where the province creates a provincial offence, it should specify in the legislation what types of defence should be available, if any, to a charge under that, whether the offence is to be absolute, to be strict, or whether a wrongful intent has to be shown. Mr. Hurlburt may want to restate that.

MR. HURLBURT: A little, Mr. Chairman. I think we said that not necessarily every statute should declare which kind it was. But in default of such a statement, it would fall into the middle category, the category with the defence of due diligence. This would leave it open to the Legislature to address its mind every time or not, as it saw fit.

Mr. Chairman, it might help if I restated these propositions for you, and I do wonder whether you might be fresher in the morning. This one is probably one that's started to go out of the minds of the members a little. I could give you a five-minute brushup, and then you'd be able to go. I could do that either tonight or tomorrow morning. Again, I could bring a piece of paper. We didn't supply you with anything on that first occasion. We're trying to learn as we go along, and I hadn't learned that at that time. So tomorrow morning I could bring a piece of paper with the questions on it, and you would then have it in front of you so that you could see it.

MR. LYSONS: Mr. Chairman, I'd like to move that we adjourn now and continue this meeting tomorrow morning. I saw everyone else with their green books, and I didn't recognize mine. It's right here handy, but I didn't know what was in it.

MR. FISCHER: Mr. Chairman, I'd like to make a motion that someone see if we can get some more heat in this building. This is about the third time we've been in here. I'm sure the ladies are freezing, and we're cold as well.

MR. CHAIRMAN: We have a motion to adjourn. Defences to Provincial Charges will be the first item of business on the agenda tomorrow morning. We'll then deal with the last part of today's discussion and move on to the next topic.

MR. ALGER: Should we take Mr. Hurlburt's offer to present us with a five-minute dissertation in the morning?

MR. CHAIRMAN: Yes.

MR. HURLBURT: I would be prepared anyway, if that's what you want tomorrow morning.

MR. ALGER: Thank you; that would be great.

MR. HURLBURT: It will be less than five minutes, not more.

[The committee adjourned at 3:54 p.m.]