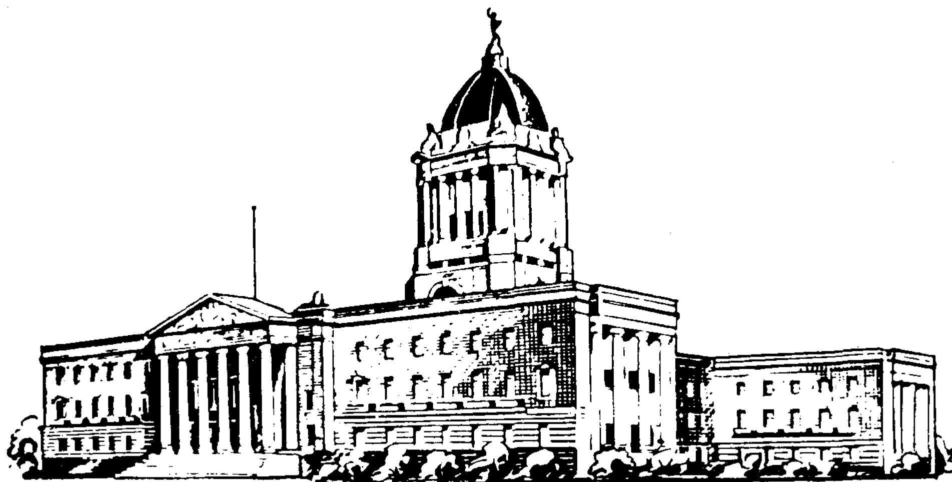
Legislative Assembly of Manitoba

HEARINGS OF THE STANDING COMMITTEE

ON

STATUTORY REGULATIONS AND ORDERS

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



10:25 a.m., Tuesday, February 8, 1977.

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THE LEGISLATIVE ASSEMBLY OF MANITOBA
STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
10:25 a.m. Tuesday, February 8, 1977

CHAIRMAN: Mr. D. J. Walding

MR. CHAIRMAN: Order please. Gentlemen, we have a quorum; the Committee will come to order. When we adjourned last week we had, as I recall, reached Page 121, we were discussing property disposition in the marital home. The Attorney-General had mentioned to us a new principle of the division of assets, some being immediately vested and some with deferred assets. We adjourned at that point for further consideration. Mr. Pawley.

MR. PAWLEY: I just wanted to mention, by way of introduction again, that certainly in sentiment and in principle I like the idea that assets that are used jointly by the family would be of an immediate vesting nature, and that would include the furnishings in the house and possibly the family car and cottage, etc. We are getting some reports from legislative counsel, who have done some further work on this and has consulted with some others in the legal field, that we could invite some practical problems. One is conflict of laws where, for instance, the assets are required in one province and the family moves into Manitoba, then the separation or termination of marriage occurs, we have a conflict of law that relates to personal property but not to real property.

The second problem is the one that the legislative counsel raised the other day and that pertained to a declaration and certainly none of us wish to engage ourselves in a great deal of additional paperwork. I was hoping that there could be some clause or provision by which if a purchaser buys, could say without notice of any defect in the title or I mean any claim by the wife or the husband to that personal property that the purchaser is acquiring, that then the purchaser would obtain those properties and good title to those properties without going through the paperwork that has been foreseen here. Now I think, quite frankly, that we do face a number of very practical problems. It is one thing, of course, to have the desire, the objectives, the aims but it seems that legal counsel is very concerned about numerous problems, practical problems that we might be confronted with and I would like very much to have much more research on this aspect before we do commit ourselves to it. There are too many danger signals at the moment.

Speaking for myself, I like the idea in principle and I don't want to just throw it away without a full exploration of what those problems are. That is about all I can say, I think, on this at the time in view of the report from legislative counsel and I certainly encourage legislative counsel to make a fuller report to Committee, Mr. Chairman.

MR. SHERMAN: Mr. Chairman, there is one other question that we were hung up on at the end of the last sitting and that was the definition for the purposes of implementing this kind of proposal, the definition of a "homestead." I wonder if there has been any resolution of that problem. or will legal counsel be looking further into that.

MR. PAWLEY: Has legal counsel had any opportunity to explore that problem dealing with homestead particularly the part that surprised us insofar as a farm homestead is concerned? It includes the home quarter section plus such other quarter section as may be designated by the spouse which would seem to indicate all sorts of problems with the present definition. I wonder . . . No, I guess legal counsel hasn't explored that further but certainly I agree with Mr. Sherman that we do have to re-examine the definitions thoroughly, present definitions.

MR. SHERMAN: Well it is obvious, Mr. Chairman, there is a considerable amount of examination that has to be done by legal counsel in this whole area and as long as that definition can be added to the area to be examined and assessed, then I think we are in a position suggested by the Attorney-General that further study is needed on this section before we can move very far.

MR. CHAIRMAN: Is there any further discussion on either of those two points? Mr. Adam.

MR. ADAM: Thank you, Mr. Chairman. I am just wondering if it would be possible to have those problems that the legal counsel feels could develop, if we could have those shown to us just what those problems are so that we could have a look at them ourselves.

MR. PAWLEY: Mr. Chairman, I know that we have completed the presentation of oral briefs to the Committee but in all those briefs there was very little reference made to adoption, if any. I can't recall any reference to adoption and illegitimate children and I notice that Parent Finders have distributed a written brief this morning to us. Now I don't know how rigid Committee members wish to be in connection with the hearing of briefs but from my point of view I don't think I would have any reservation, if Committee members would like, to receive some oral representation on this brief.

MR. CHAIRMAN: The Committee has indicated publicly that the time for public representation to the Committee is over and now the Committee is considering its reports. Subject to overrule by the Committee, I would rule such further public representation out of order to the Committee.

MR. PAWLEY: The only thing that I would say and I will leave it at this, Mr. Chairman, it does deal with an aspect that hasn't been touched on at all to the present time. We have been dealing with - and yet I think adoption is very much a part of the concern that we have and yet hasn't come forward, and though we have made that type of announcement, it is an entirely different brief than what we have received to the present time. Now the rules are entirely of the Committee, we established them and I suppose we can relax them if given circumstances occur, but it is whatever the wish of the Committee is, Mr. Chairman. For my part I would have no objection to hearing one brief dealing with this question.

MR. SHERMAN: Well I think we have to be careful, Mr. Chairman, to demonstrate a willingness to hear as many representations within reason as members of the public would like to deliver to us. I don't think that we should put ourselves in the position of going back into areas already covered or the danger of repetition but I think we have to be available to delegations who feel they have something that has to be put on the record, and on the Attorney-General's assurance that this is an important area that has not been examined very thoroughly up to this point, our group would be disposed to hear the delegation.

MR. CHAIRMAN: Is that then the wish of the Committee? Mr. Adam.

MR. ADAM: Mr. Chairman, I would not object to hearing an oral representation on this one brief. The only concern that I have is that the Law Reform Commission has not, as far as I know, done any studies in this area and we do not have very much to go on and it would be just a matter of listening to another brief and I would certainly like to know what the Law Reform Commission would have to say on this particular problem.

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

MR. PAWLEY: I agree that I don't believe the Law Reform Commission dealt with illegitimacy and adoption. I don't know why because really that is part of the whole field of Family Law and I don't know why that has been ignored by the Law Reform Committee because I think they ought to have dealt with that. I don't think we are restricted just because the Law Reform Commission didn't deal with that because we are dealing with the entire subject matter of Family Law, Mr. Chairman, and certainly illegitimacy and adoptions are very much a part of that. So I would urge that we do hear the one brief this morning under the same conditions as the previous briefs were heard.

MR. JENKINS: Mr. Chairman, I would move that the delegation that is here to present this brief that they be invited to make a presentation to the Committee.

MR. CHAIRMAN: Any discussion? Is it agreed? (Agreed) If there is a representative then of Parent Finders of Winnipeg, would you come forward to the table, please. Would you give your name for the record, please, and proceed.

MS. LAURIE JOAN MASON: My name is Laurie Mason, I am the Director of Parent Finders here in Winnipeg. I don't know how to start because I wasn't expecting this, I was expecting perhaps our brief to be read by you and comments made by you but to be the one to do the talking, though I have got a good mouth on me, I guess I should proceed.

(MS. MASON cont'd)

We have a brief here of Parent Finders as we feel, and I speak for many many thousands of people, that some laws should be changed on behalf of the adoptees and birth parents. (Please excuse me if I seem a little nervous because I am.) We have such Victorian laws here in our society where adoptees go on - I have a lady 68 years old and all she wants to know is where did she come from and where are her birth parents buried because she doesn't expect them to be alive - and she can't get this information from anyone because the laws are so closed and I speak for myself as a birth parent and I speak for many birth parents. I gave up a daughter 20 years ago and I don't know where she is today, I don't know if she is alive or dead, I don't want to interfere in this young lady's life but it would be some comfort to know if she is alive - and that is all I am asking for in life. And yet we, in this day and age, can't know this because we gave up a child, that's the end of it, but really it is the beginning of a life of hell not knowing whatever happened to our child that we gave up many years ago. So we have come up with a brief which I have here and also our proposals hoping that maybe we can be heard, where perhaps you will consider many thousands of people like us, to give us a chance to have a normal life instead of such an abnormal life; to go on living, to know, to have peace of mind. To go on living in torment and guilt, never knowing, is to me very inhumanitarian. Maybe I am wrong, but I think I am right. And also I am an illegitimate child and I don't know who my father is and there are some records somewhere down at Children's Aid; I can't even get a name of a birth father, so I go through life being deprived and denied of a father, a father's love just because my mother conveniently forgot. She hasn't forgotten, I am sure she knows who fathered her child which is me, and perhaps I am like him, probably I am a very determined brat like him because he ended up getting my mother into trouble and if I was a man I would probably do the same thing. But I am a determined person and I feel that I want to know what is my right to know. I want to know where my daughter is, if she is alive and well, and I want to know who my father is. So I speak on behalf of both sides of the coin.

MR. CHAIRMAN: Would you like to read your brief into the record.

MS. MASON: Our brief from Parent Finders. Should adoptees have access to non-identifying information? At what age and under what circumstances and conditions should such information be made available?

Adoptees must have access to information about themselves from their earliest years. Adopting parents must respond honestly to a child's questions at a level the child can understand. Failure to give answers gives rise to thoughts such as "it must be awful or Mother or Dad would tell me." Unnecessary seeds of doubt and fear can be planted in a child's mind by adopting parents who are unable to accept the reality of the birth parents. Children can reason that their adopting parents did not create them and will have a natural curiosity about the man and woman who are their blood or biological parents. Adoptees need to be able to discuss their feelings openly and thus resolve their feelings of rejection. Under the age of 19 - while it is 18 here, our provincial age of majority - background information must be freely passed on by the adopting parents. On coming of age, the adoptee achieves adult status under the law and must then be treated as an adult client of the agency involved in his or her adoption. An adoptee must then be granted the same rights as any naturally born adult citizen of Canada, as guaranteed in the Canadian Bill of Rights. The adult adoptees request for full disclosure from the agency should be granted without conditions attached. That is 1.

2. Should adoptees have access to identifying information (names and/or address of biological family)? At what age, and under what circumstances and conditions should such information be made available?

Categorically yes. An adult adoptee must have the same right to know the names of his birth parents and the circumstances of his birth, as any other citizen. To deny an adult adoptee is to discriminate against him unjustly and cause him to feel different from other naturally born Canadians. Coming of legal age entitles an adult to freedom of decision about the course of his life, and this is when he must be given identifying information on request. (It should be remembered that the names given are 20 years in the past and the birth Mother has probably married and changed her surname).

Many adoptees will not search for their birth family and those who do search will

(MS. MASON cont'd) . . . . .find it slow going. There is much fear about search and reunion, most of it totally unfounded in fact. We have knowledge of 60 reunions in Canada (and almost double that now) and in not one case has there been any vestige of rancor or emotional blackmail, the two fears most commonly voiced by skeptics of reunion. Reunion is generally sought with the birth Mother; to see her face, to find others "who look like me" and hopefully to hear from her the story of the adoptee's birth. Reunion is a confirmation of self for the adoptee and a release from guilt for the birth Mother. Ask me, I know. Both can get on with the joy of living, having shed doubts, fears and unanswered questions they have been dragging along needlessly through life. It can be a time of rebirth for both.

3. Should biological parents have access to information on the status and whereabouts of their relinquished children? If so, under what circumstances and conditions?

The birth Mother has a Mother's right to know the status of her child's placement - adopted, foster or Crown ward, for her peace of mind. After placement, it would not be in the best interests of the child that the Mother know the child's new name and location. The child must begin to bond to the adopting parents at the earliest possible age and there should be no interference in the adopting home by the birth Mother. Adopting parents must feel secure in their parenting role in order to build a secure family unit. If medical facts vital to the child's welfare need to be passed on, then the agency must contact the adopting parents. The birth Mother must be allowed to place a letter in the child's file stating whether or not she is willing that her name be given to her adult-child and whether or not she is willing to have a reunion. She signed a legal relinquishment, usually at a young age and during a period of emotional turmoil. Nineteen years later, when she has matured and her child reached adulthood, these two adults should have the right to meet if it is their wish. But how is it going to be anyone's wish if we can't bring it to the right people to make our wishes known, to be granted at least that much.

Parent Finders have established a Reunion Registry where birth Mothers and adoptees may make their wishes known, and we have been involved in many reunions within our group. However, we feel that it is the responsibility of the agency who drew up the original adoption order to facilitate these reunions. Agency involvement gives a degree of control to these emotionally-charged experiences and the agency can then provide support to the birth Mother, adult adoptee and the adopting parents if they are aware of the impending reunion. We exercise great caution and discretion in our involvement in other people's lives because this is such a deep psychological area. The agency which places the child must be prepared to meet its responsibility to the adult adoptee in a mature and helpful manner, and serve the client's needs. We recommend that an Adult Adoption Desk be set up to serve the needs of the adult adoptee and the birth Mother, without the involvement of the adopting parents. The peace and the security of the adopting parents would thus not be upset by the wishes of the adult adoptee and the biological birth Mother.

4. If access to records is ever given, how should this be done and by whom? The Adult Adoption Desk should make a copy of the Adoption Order available to the adult adoptee upon written request to the agency. The Department of Vital Statistics should also be instructed to give the adult adoptee a copy of the original birth record upon request in writing. Scotland, Finland, Israel, Alabama, Arkansas, Kansas and Connecticut give out this information upon presentation of identifying documents. Access to original birth records should not be available to the general public but only to the parties legally involved in the adoption order.

5. Are there any other suggestions or comments you have relevant to this Committee's task?

All provinces across Canada must move towards opening up their policies in dealing with the disclosure of identifying and background information to adult adoptees. The formula developed must be based on the present day concepts of morality, the 30-year-old thinking must be updated to meet the needs of today. The feelings of the birth Mother must be considered and the needs of adoptees to know of their roots must be given top priority, for it must be remembered that these two are biologically related.

(MS. MASON cont'd) . . . . .Agencies must not impose their expectations on other people's realities. They must gear their services to the wishes of their clients.

We can state from experience that adopting parents do not suffer a loss of love or identity in a reunion situation. Rather, adoptees find they appreciate their adopting parents all the more when their relationship is not hampered by doubts and fears about their origin. The adopting parents remain the parent figures in heart and mind, the birth parent relationship begins as one of the meeting of a long, lost relative. Depending upon the personalities involved, the meeting may grow into a strong relationship or it may gradually decline. Either way, through the reunion, the biological chain can be rewelded and the birth Mother will have the peace of mind knowing that the child she relinquished did safely attain adulthood.

Human beings are given an unlimited capacity for love and growth. Adult adoptees must have the freedom to grow so that they can attain complete self identity and fulfillment.

With this, Sir, I have made up a proposal for the amendment for legislation and this is my own doing. Now whether or not any one of them will be heard, that is up to your members. We hope at least some of them will be given some consideration for a change in the new laws. Do you want me to read it, Sir?

MR. CHAIRMAN: I think it would be a good thing to do if it is any different from your brief, if you have brought up any new suggestions or approaches to the problem.

MS. MASON: Okay. Well this is what we are asking, not that it is going to be accepted.

1. To have all birth names on all Decrees of Adoption and to be retroactive to when this change came into effect whether it be 1967 or before by Children's Aid Society of Manitoba. By having this retroactive and once again on file our future adult adoptees will at least know their birth names.

According to our records and findings, up until the year perhaps 1967 - 1970 on all Decrees of Adoption, the birth name appeared, giving this much information to adult adoptees at the age of majority, to have this knowledge of at least their given name instead of a file number. In other words, as of 1970 on, all new babies being adopted have just a number. Now what is going to happen in the year 1988, 1990? We are going to have thousands of adoptees saying, "Well I don't even know my birth name, I just have a number," and this is very unjust to the adoptees we feel and we would like that changed.

2. Decree of Adoption available upon application by adoptee at age of majority if they wish to receive this document from the County Courts of Manitoba or any other County Court in Canada.

3. Vital Statistics: Original (long form paper) Birth Certificate available to adoptee upon request with proof of identification. That is with their birth name on it. Permission given by the Department of Health and Welfare to lift the present ban of restriction to adoptees releasing this information thus no more obstruction to adoptees wanting their original birth certificates.

4. Birth Parents: The Birth Mother or Father have access to a mediator (at a child's age of majority) between parent and adult child. If necessary we would like to have a mediator set up where we could go to the mediator or go to the courts and say, "Well can we track down this child that I gave up," and just to know if she is alive or dead or he is alive or dead or what.

An intermediator to be appointed by the courts of chief county court judge. Intermediator must be independent and separate from all Children's Aid Societies of Canada. The intermediator to supply information between birth Mother (Father) and nowthe adult child of today.

5. We have a special proposal for birth Mothers: To be able to apply periodically to the mediator for information regarding the growth and development of their relinquished child, saving many anxieties and stresses for the birth Mother in coming years. It would give peace of mind and contentment, thus life would be happier knowing we birth Mothers made what was thought to have been the right decision at that time for our child by giving them a chance for a better life. At least if we know they are growing up in a very happy atmosphere, we know that we did the right thing by them, but not to

(MS. MASON cont'd) . . . . . know anything is a real turmoil that the birth Mother now faces. Another reason for having an exchange of information through a mediator would be because of the possible inter-marriage plus problems and genetic defects which may not show up at the time for either party. Many birth parents want to leave a legacy for their relinquished child. Without any knowledge, how can this be done? With existing laws of today? By the new laws of tomorrow it can be done!

6. Then there are the older adoptees, 50 years and on. We would like complete access to open files with all government agencies pertaining to their adoptions, e.g. Children's Aid Society, Department of Health and Welfare and all religious agencies (orphanages). Access to death certificates of birth parents for older adoptees searching for next of kin.

To save many older adoptees from needless anxieties by being given this information upon application through the mediator appointed by the courts. A lot of the older adoptees are now searching "graves" for their birth parents and still saying, "Who am I?" at the age of 69. Can this be called justice in our society of today? It is a human right to know our heritage.

7. Unwed Mothers: Unwed expectant mothers in the past were pressured into signing papers for the release of their child from their custody, while no one offered an alternate solution at a time of great emotional stress. Unwed expectant mothers should be given a certain period of time to allow for a degree of maturity to set in before having to make a decision that may affect the rest of their and their child's life.

8. Adolescent Adoptees: Adoptees at the age of "teenagers" with maturity and with permission of the adoptive parents should have access to the mediator along with their adoptive parents to know more about their birth parents.

Illegitimate children should have access to files which gives details surrounding birth and reasons for mother not keeping the child.

9. Adoptive Parents: Access to mediator to approach birth mother upon request of adoptive parents of child under the age of majority because of psychological and emotional needs of their child (and I have a letter enclosed to prove it).

Adopting parents realizing that sometimes the needs of their adopted child engulfs their complete life. By giving them this information at an early age (with perhaps even the chance of seeing their "other Mommy" who loves them too) it completely satisfies their needs (this has been proven by me) and they adjust to become normal healthy citizens of tomorrow.

10. We would like counselling services available to all parties concerned by an office set up through the county court or services offered by Parent Finders through Canada. We do not want this service set up by Children's Aid Society as it stands today. A counselling service for birth mothers, fathers, adoptive parents, adoptees and the illegitimate adults. Reasons for this service being a better understanding of the trauma of adoptions. Parent Finders can offer their assistance as experienced counsellors for all parties concerned due to the compassion and understanding we have for others due to our own lives and circumstances. Feel free to contact us for further comment at any time.

Adult adoptees and birth parents must have the freedom to grow and mature so that they can attain complete self identity and fulfillment. Birth parents must be able to continue to make a new life with hopes and dreams that they now have achieved peace of mind as to their decisions of many years ago, knowing in their hearts all files are not completely closed against them. The contentment of knowing they may meet again someday relieves many turbulences in the hearts of birth parents such as I. Thank you.

MR. CHAIRMAN: If that completes your presentation to the Committee, Ms. Mason, there may be some questions. Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I certainly find Ms. Mason's brief interesting and provocative and an important addition, I think, to our considerations on the Committee. Ms. Mason, I would just like to ask you two questions, actually the brief is pretty self-explanatory. There are a number of questions that occurred to me as I was reading it and as you were taking us through it but then in many instances you have anticipated the questions that would arise and have answered them in the elaboration that you have undertaken on the main points. But I would like to ask you whether the Parent Finders Association would consider the term "father" to be interchangeable with the term "mother"

(MR. SHERMAN cont'd) . . . . .wherever it is used in this presentation of yours?

MS. MASON: Well we have birth mothers that are coming to us but we have birth fathers, too, and this is why I put birth father in brackets.

MR. SHERMAN: But throughout the brief, in general, the reference is to the birth mother.

MS. MASON: Yes, this is true because it is the birth mother that has the child and many a father doesn't even know he has fathered a child, like my own father, he doesn't even know I am here and I am.

MR. SHERMAN: Well I recognize that but many do and also there are couples who, married or living common law or just in a relationship, produce children who ultimately are placed for adoption. There would not be as many fathers involved in the kinds of situations you refer to in your brief and that the subject covers as mothers - I am not suggesting that for a moment - but there would be a significant number of fathers who might have the same interest as the birth mother.

MS. MASON: Yes. Well this has been proven by different fathers that have called me. I had a lot of calls from different fathers. . . I had a father phone me and say, "Look, I know a girl I got into trouble many years ago and there was a little girl born and if she is ever looking for her mother because the birth name is on, would you let me know because I am her father and I want her to know that I am here, too." So it is very encouraging when a father comes to us because not too many do come but more are coming now that they are hearing of Parent Finders and they know we are not just going to pounce on them if we do find them. It would be done under discretion, that is for certain.

MR. SHERMAN: In other words, are you assuring me that substantially the term "father" is interchangeable with the term "mother" in your approach to the subject?

MS. MASON: Yes.

MR. SHERMAN: The second question I had and it may not be a very logical question but it just occurs to me at this stage and I would appreciate your explanation of it. Would the exchange of information and the access of information and the reunion that you talk about be possible only through mutual consent of the two parties?

MS. MASON: Yes.

MR. SHERMAN: It would not be possible if just one of the parties wanted it?

MS. MASON: No. I had a reunion last week, a 54-year-old lady and her mother 75, and it was a very easy one, though, it just took me exactly five minutes. I found the mother, I went down to see her, I introduced myself, I discussed it with her and, of course, she was very shocked but very relieved to know her daughter was alive and well and before long she said, "Yes, I would like to meet her, can I meet her tomorrow?" She came over the next day and met her mother and it was just beautiful, I even have it on tape. So it was a very beautiful reunion and we have had many. But if I meet, for example, a birth mother and she says, "No, I don't want to ever see that child, that is in the past, that's it," well, it is very sad but I have to go back to the adoptee and say, well, this is the way it is and this is why we have a mediator set up that if the birth mother does not want to meet that child - they come to us and we explain this all beforehand, that you have to go in this openminded and open heart because if the birth mother says no, that is it. And I don't give any further information out, I won't tell them where the birth mother is, nothing. I may find her just through my devious ways of checking files and books and things like that, but I won't give any information out, and I do this because I must protect both parties. But if it is a beautiful thing between two people, that is a whole new ball game.

MR. SHERMAN: That is what I was getting at. There would be situations because I have had some personal experience with this kind of situation myself and there are situations where the birth mother does not want the whole chapter opened up again.

MS. MASON: That is why we would like a mediator set up by the courts or we have people like us but there again we don't have enough access to files to be able to continue. We can only go on by a birth name and dig and search and hopefully we come up with something and it's been rough.

MR. SHERMAN: That makes it very unfortunate for the adoptee. In those cases then you can't really help the adoptee.

MS. MASON: No, but at least we could tell them or give them peace of mind, "Well your mother is alive and well." It is unfortunate, but she will think about it maybe, it is food for thought and maybe she will think about it a little bit longer and if she ever comes back to us," we will then contact you, we will only be too happy to do so." But no way will I give out this information. When I met this mother last week, I didn't tell the daughter that I had found her, it was the easiest thing in the world. I didn't tell her anything, I just said, "I am going out for half an hour, look after my kids and I will be back," and I went down to see her mother. Then when I came back, I said, "I went to see your mother," and she was shocked. But I didn't give her any information. She said, "Will you tell me her name and her phone number," and I said, "No, not until she comes into my house and gives it to me herself." So this is how it goes. And it was the same with that letter that was enclosed and the adoptive parents came to me looking for the biological parents because they were having a real problem emotionally with their adopted son, and I found the biological parent but I wouldn't give either any information until they both wanted this and they both met at my house, so then if they exchange information they are doing it on their own and it has nothing to do with me. That was one of the happiest reunions I have ever had. And this little guy calls his biological parents Mommy so-and-so and Daddy so-and-so, but that is my real Mommy and Daddy, you know, and he is just a completely new child. He is now accelerated in school, he has just done marvellously well because his needs have been satisfied and it was a very unfortunate case, but the adoptive parents realized this and they realized it at a very early age because if they had not of realized it, I am sure that that child would have grown up to be a real mental problem. So at least we have accomplished one thing, we are going to have one good adult in the future, one good Canadian.

MR. SHERMAN: Thank you very much, Ms. Mason. Those are the only questions I had, Mr. Chairman.

MR. PAWLEY: I wonder, Ms. Mason, I would just like to, if we could, update since your last brief insofar as when you had met with me personally two or three months ago, we had discussed the possibility of an application to the court because there is a general provision which provides authority to the court to release the type of information requested if adequate grounds can be shown to the court. I believe you did make some inquiries and I know I was advised and I believe you were advised that there were presently some cases which recently had gone on the road to court - I know at the time I was speaking to you there had been no such application to the County Court. Do you know what the outcome has been, have you heard anything further since our discussion?

MS. MASON: I haven't heard anything, Mr. Pawley, in that regard but I do know that mine is going to be heard very soon because my affidavit is being prepared this week and I am prepared to go to court now and it is going to be presented to Reverend Green by next week, and then there is a two week waiting period where he gets the files out and whatever and then I am going to be heard by Judge Philp. I don't know if I am the first one or the second one but my lawyer also wrote and asked if there has been any presentations to him to date and as far as he know there hasn't been.

MR. PAWLEY: Did you have an opportunity to read in the paper the night before last about the court findings in the United States, the guidelines that they have established?

MS. MASON: Yes, I did. I just kind of put it out of my mind when I saw it.

MR. PAWLEY: I see. You weren't too impressed with the court ruling there?

MS. MASON: No, I am not.

MR. BROWN: In your proposed amendment, item No. 7, I had a little difficulty understanding just exactly what you meant. It reads that unwed expectant mothers in the past were pressured into signing papers for the release of their child from their custody, and you then go on to say that unwed expectant mothers should be given a certain period of time to allow for a degree of maturity to set in before having to make a decision. Now are you suggesting that these children should be placed in foster homes until such a time as to what decision has been made or just exactly what are you suggesting?

MS. MASON: Well what I am suggesting, Sir, is, I know my own case of 20 years ago, that I was not mentally capable of signing any document such as the document that I signed on which I lost my daughter because it was a tragedy how I became pregnant -

(MS. MASON cont'd) . . . . .that's beside the point - and I never could accept the fact that I was carrying a child and when I had this child I was completely in another world. Then, you know, you have a social worker who is very much for you, and it's understandable - and they guide you as to what is best for that child. Okay, I agree that probably 80 percent of unwed mothers should give up their children to good adoptive homes but not all adoptive homes are so wonderful and secure either which I have heard other cases. But regardless here is a girl very young, has a baby, a couple of days later she is sitting in the Children's Aid office signing papers and the papers are -- "Here you are, sign your name right here," and you don't have time to think about it, you don't have time to reconstruct your life. You have been through a hell of an emotional shock, never mind the pregnancy itself, but to give birth to a baby all alone in the world, no one to turn to but Children's Aid, how would you feel if you were that birth mother and all of a sudden, there you were, you gave birth to a child and you were forced to sign papers, I would say it is like being forced. Maybe in a kind way because the papers are put in front of you and, "Oh, you are doing a real good job for the child and you are doing real great," and you sign papers and you are not really with it because I wasn't with it when I signed those papers many years ago. If I had had a chance to reconstruct my life, to get out of that environment that I was in and perhaps put the child in a foster home for maybe a couple of months, just to give me a chance to get my bearings and sort out my life and decide what is best for the child, can I keep her or not keep her. But I didn't have the chance, six days after her birth I am signing papers and she is gone, and it wasn't until I was out of the environment that I realized what I had been through. So therefore I am saying if we had just a little bit of time but I believe now it is a little different. In this day and age, from what I understand, Children's Aid do understand this problem and they are not so forceful on having a birth mother sign papers. They are giving the birth mothers a little more time to consider the next step. But we are going back 20 years ago and this is how it was then. Perhaps today it is quite a bit different. I would like, and I hope it does continue to get better for the birth mother, that some consideration is given. It is a helluva life to go through never knowing.

MR. BARROW: Thank you, Mr. Chairman. I don't know whether it is a question or maybe I am asking for a little advice. I have a friend and his daughter became pregnant at a very early age - she's 14 - they were in a dilemma, she was a well brought up child and they think an awful lot of her, so they couldn't decide whether to have an abortion performed, put up the child for adoption or keep the child. Finally they decided that they would keep the child, that the child would be brought up in their home with her mother and father as the parents, the mother as the sister. What is the best future for the child and the young mother in your opinion?

MS. MASON: I know a family like that.

MR. BARROW: There are many of those cases.

MS. MASON: Yes. I have a young lady that I found her birth father and she was brought up with her grandparents as mother and father, and the sister or auntie was her real mother, but the mother was very young, she was about 15 at the time this child was born, and the same sort of thing happened. And it wasn't until the mother matured, and maturity set in, oh, say, when she was 30 years or so and she had married and had a good husband and she told her husband about this young girl who was then maybe, 10, 12 years old or whatever and the husband was very happy to take that child because they never had any children and never have yet. So the daughter is now 28 years old, she knows of her parents but the mother had to come to her and, you know, say, "Look, I am your real mother," but it didn't happen when she was very young; it happened when she matured into a young lady of 25, 30 years old. So I would say that I give her a lot of power for keeping the child and keeping it in the home, in the family.

MR. BARROW: Until the child becomes mature, the child becomes a certain age?

MS. MASON: No, I am talking about the birth mother has matured.

MR. BARROW: Oh, yes.

MS. MASON: When the birth mother matures enough to accept the fact that this is her daughter. She may never mature but let's hope she does, but even if she doesn't at least she is with her biological family and I think it is great that the grandparents are behind the daughter.

MR. BARROW: One more question, Mr. Chairman, in this case the parents and the girl have the anxiety, of course, the expense, the whole bit, meanwhile the father who is a 15 or 16-year-old is home free. How would you reconcile that part of the. . .?

MS. MASON: What do you mean by "home free"?

MR. BARROW: Well he has no responsibility.

MS. MASON: Why should he?

MR. BARROW: Why should he have some? It is his child.

MS. MASON: It is his child but until he matures as well, what can you do with a 15 or 16-year-old boy? So he made love to some little chick and got her pregnant, it is unfortunate but you can't hold that against a young boy. But when he matures into an adult, then he will perhaps think differently and will want to see that young girl or boy, whatever he brought into the world. But you can't expect him to hold responsibility at that age, it wasn't his fault that the grandparents decided to keep the child. No responsibility, no.

MR. BARROW: There should be nothing done in that direction?

MS. MASON: No. I think that when that boy becomes an adult of maybe 25 or 30 years old and knows he has got a child in the world and wants to see that child, that is a different story, but to pinpoint a kid of 15 or 16. . .

MR. BARROW: Yes, but my point is this. The parents of this girl, she is the youngest, their family has grown up, they are practically on the point of retiring and now they have the burden of supporting this child where the boy and his parents are scot-free. To me it doesn't seem quite fair.

MS. MASON: Well first of all, the grandparents didn't have to take this burden, as you want to put, they wanted to do it or they wouldn't have done it. They wanted this child, they wanted to keep the child with the daughter because hopefully when their daughter reaches maturity, they hope she will take on the responsibility of her own child which is usually the case.

MR. BARROW: To a certain point it is true, they are not doing this so much for the baby as they are for their daughter.

MS. MASON: That's right, they are doing this for the daughter naturally but they want to keep the family together.

MR. BARROW: Thank you.

MS. MASON: I don't see anything wrong with that.

MR. BARROW: Okay.

MR. CHAIRMAN: Are there any further questions?

MR. SHERMAN: Yes, one more that occurred to me in the course of our exchange, Mr. Chairman, and I go back to the situation where you don't have the mutual consent. If the law is reformed in the manner in which you propose, there would be hopes raised in the hearts of many adopted children and many birth parents, too, to conclude the search, as you so eloquently point out must trouble them all their lives. But if then they get into a situation where their hopes have been raised, that this kind of basic information is going to be available to them and the situation is one where there isn't the mutual consent and therefore the access to that information is shut off to them, have you had any experience that would allow you to pass judgment, for the sake of the Committee, on the traumatic blow that would occur then to the adopted child.

MS. MASON: Yes, I have a young lady that came to me before Christmas, she had a birth name and she was born out-of-town and to make a long story short, we found the birth mother in another part of Manitoba and I wrote her a letter and I made a contact with her and she agreed that this was her child that we had but at this present time she didn't want to see her, she wasn't feeling well, she had other problems in the family with her other children and she would like to leave well enough alone. "If I should ever change my mind, I will contact you," she said. So then the daughter came into town on one of her visits and she came over and I told her exactly what the mother said, and she said, "Okay, I knew this when I first came to you that there was a chance I would be refused so I must accept this like a lady," and she has. It is a blow but they have come this far and it has to be this way. I mean it just has to be. I may find my daughter, she may not want to have anything to do with me and I will have to accept

(MS. MASON cont'd) . . . . .it when the time comes but at least that daughter knows the mother's name, she knows that, she knows her birth name, she knows roughly where she is but she would never do anything about it until that mother came to her. And it is the same with me. That daughter has got to come to me. It has to be a two sided thing.

MR. SHERMAN: You don't foresee a double rejection, the trauma of a double rejection as a serious hindrance to proceeding in this area?

MS. MASON: I don't think so because we are talking about matured adults. Most of these adoptees are very mature young people and they love their adoptive parents, that to them is their parents and they would just like to know their biological parents, who brought them into the world kind of thing, but there isn't that great love for them. It is just one of those things that is hard to understand unless your feet are in those shoes.

MR. SHERMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: If there are no further questions, thank you for appearing before the Committee.

MS. MASON: Thank you.

MR. CHAIRMAN: Does the Committee wish to have any further discussion of this issue or go back to the report? I believe that we had reached some sort of approval in principle of partial immediate vesting and partial deferred vesting and legal counsel was to look into that further. Is there any further discussion on Part II A, Marital Home, Page 121?

MR. GRAHAM: Mr. Chairman, I believe when we left off the other day we had reached the point of getting a legal opinion on what would occur with respect to a homestead and the fact that there are two parcels of land involved in a homestead and how we would arrive at the vesting on an immediate basis in that respect. Perhaps we can have the benefit of the Attorney-General's legal advice. I understand he was going to seek legal advice on this matter.

MR. PAWLEY: Mr. Chairman, as indicated earlier, Mr. Silver doesn't have an opinion yet on this for us. I believe he is going to consult with Mr. Tallin before he does return to us with a legal opinion in connection with "homestead."

MR. GRAHAM: Well perhaps, Mr. Chairman, we can hold that section for review then.

MR. CHAIRMAN: Is there anything further under Part A of Part II?

MR. GRAHAM: Mr. Chairman, at the present time dealing with condominiums, I understand that the Act on condominiums requires -- what is it? -- 50 percent plus 1 or something before an apartment can switch to a condominium. Now in that counting under the present law, does that include husband and wife?

MR. SILVER: Could I have your question again please?

MR. GRAHAM: At the present time, if an apartment block is being or an attempt is being made to change it from an apartment block to a condominium, I understand that it takes a majority of the tenants to make that conversion. Now does that include husband and wife, do they get two votes or one vote in that particular case because it could be a single occupancy as compared to a double occupancy and if you are in joint tenancy would that count as two votes or one?

MR. SILVER: I would say that each lease counts as one vote. If husband and wife are both signatories to the lease, they count as one vote. On the other hand if there is only one occupant of the suite or one signatory to the lease, then again that one signatory has one vote. I think it goes on the basis of the tenancies, the occupants of one apartment being one tenant so to speak.

MR. CHAIRMAN: Anything further under this section?

MR. SHERMAN: I think, Mr. Chairman, we are deferring consideration of all of Section A of Part II pending the further advice of legal counsel and the Attorney-General. Is that correct?

MR. CHAIRMAN: Yes, insofar as the vesting is concerned and also the definition of the homestead. If there is nothing further under that, maybe we can go to Page 124 and it is headed: B. Equal Disposition of Post Nuptial Assets. It seems to go for quite a few pages, shall we take this a section at a time unless the Attorney-General has any overview. . . ?

MR. PAWLEY: Yes, I think a section at a time.

MR. CHAIRMAN: Section 1. Section 2. Mr. Sherman.

MR. SHERMAN: On Section 1, Mr. Chairman, I didn't know if the Attorney-General was going to make a point or not, he was consulting some material in front of him, this is really involved in the information and advice that legal counsel is seeking for us in part with respect to Section A because the Attorney-General has proposed, at least informally, that he would favour a mixture of the deferred sharing and the instantaneous community of property concepts. This section we are looking at of course just specifies deferred sharing and I wonder if the Attorney-General wanted to comment on that.

MR. PAWLEY: I think that it wouldn't necessarily affect this provision. If we did proceed to immediate vesting then there would have to be, I understand, some adding to this provision but there would be no affecting of this provision per se from any move in the other direction as I have indicated.

MR. SHERMAN: Part of the same thing.

MR. PAWLEY: The balance of the assets. --(Interjection) -- So we wouldn't have any difficulty with it.

MR. GRAHAM: Mr. Chairman, when we talk about no-fault sharing, I am not too sure if I understand the status of gifting in post-nuptial assets. If one party is presented with a gift, is that gift considered an automatic sharing or does that remain as an individual asset of that particular member of the marriage?

MR. PAWLEY: It would be my understanding that a standard marital contract would exclude gifts and inheritance to the individual parties, that would remain separate property as well as the assets brought into the marriage at the commencement. All that would remain separate.

MR. CHAIRMAN: I believe that comes on Page 127 under "allowable deductions." If there is nothing on Section 1 then, Section 2.

MR. GRAHAM: Mr. Chairman, under the marriage contract, if there is an opting out, where would that agreement to opt out, where would it be registered? Would that be at the local municipal office or where would you register that?

MR. PAWLEY: I would think, Mr. Chairman, subject to what legal opinion would suggest, that it ought to be registered in the Land Titles Office. --(Interjection) -- Surrogate Court? Would you like to comment, Mr. Silver.

MR. CHAIRMAN: I believe that's the next section, Mr. Pawley.

MR. PAWLEY: Yes, although I don't believe it specifies, does it?

MR. GRAHAM: No, it leaves it wide open. It says, "a public registry like that provided under section. . ."

MR. CHAIRMAN: Can we deal with that when we get to 3? We are still on 2 at the moment. Section 2, is there any further discussion? If not, then Section 3(a). 3(b) brings you to the point of Mr. Graham's.

MR. PAWLEY: Mr. Silver, would you like to comment on that?

MR. SILVER: Well presently there is provision under the Marriage Settlement Act which Act provides that a couple can, before or during a marriage, enter into - generally before marriage - into a marriage settlement agreement whereby one might settle upon the other certain property in consideration of the marriage and things like that. Well that Act specifically provides for the registration of agreements of that kind in the County Court and it provides six months from the date of the execution of an agreement of that kind for registration. If an agreement of that kind is not registered in the County Court, then it is not binding on creditors of the parties but if it's registered then it is binding on creditors and we will have to have some provision in our new legislation for something like that. But as far as where this new opting out agreement should be registered, that is something that we will have to work out. Perhaps it should be registered in the County Court, perhaps a system should be set up in the County Court in the same way as the registration of the marriage contract. Perhaps it should be something connected with the new personal property registry system and indeed I had a preliminary conversation with Mr. Sinnott who is in charge of that project. It is something that will have to be discussed as to the best place for the registration of this document and there will be other documents and agreements between spouses that will

(MR. SILVER cont'd) . . . . .be involved under the new legislation and they will also have to be registered or at least it may be advisable to require registration of those or at least to have available a place where they can be registered if a spouse wants to register. So the registration of all of these documents including the document being considered now, the opting out agreement, will have to be worked out in some practical way. But I think, however, for the purpose of protecting third parties for either creditors of the spouses or purchasers of goods that the spouses are selling or mortgagees of goods that the parties own, I think for their protection it will probably be necessary to have a system of registration of these documents where third parties can go to find out exactly what is the relationship of the spouses in terms of the property that they own, as to whether they need the signatures of both spouses on a sale or mortgage of the chattels or only one and, if so, which one and so forth.

MR. GRAHAM: At the present time under the Marriage Settlement Act, are there very many agreements that are registered? Would you know . . . ?

MR. SILVER: I don't have any statistics at hand. My guess would be that there are very very few being registered. From my recollection, from the days when I was in practice, only once did I come across a couple who executed a marriage settlement agreement. I think it is pretty rare in this province and perhaps in Canada for couples to have that kind of agreement, but that is purely on the basis of my own experience.

MR. PAWLEY: I never had one.

MR. GRAHAM: The reason I asked the question, Mr. Chairman, I think if we are trying to provide legislation that will be fair and equitable to all, I think we have to be concerned about what I think is a natural apprehension on the part of people to voluntarily go to court to do something. And I am just wondering whether if we had these registration of marriage contracts, if they had to go to County Court, how many people would just say, "Well, look, if I have to go to court to do this maybe I had better scrap the whole thing."

MR. SILVER: Well it doesn't really amount to going to court in terms of appearing in court. The court is merely used, the facilities of the court are merely used as a receptacle for holding these documents like chattel mortgages and bills of sale that are, you know, registered every day.

MR. GRAHAM: That may be fine for people who are well versed in the law but there are a lot of people who have a basic apprehension about becoming involved in things of this nature and I think that we have an obligation to make it as easy as possible. If a person wants to opt out and wants to have a marriage contract, I think we have to ensure that we make it as easy as possible that they be able to register those.

MR. PAWLEY: Why does it have to be registered, Mr. Silver?

MR. SILVER: That is one of the things that would have to be worked out, at least that is one of the things that will have to be decided as to whether we want to give a third party the benefit of being able to look at the actual agreements or whether we want him to be able to rely simply on the document of transfer or document of mortgage. The way I envision it, we are going to have to, hand in hand with this new legislation, we are going to have to amend the present transfer forms, the present bills of sale forms and chattel mortgage forms so that in their affidavits they will refer to the marital regime provisions to indicate to the recipient, to the purchaser of the documents or the mortgagee what the position of the parties is with respect to the standard marital regime, whether they have opted out or not and so on. Now to back that up, it might be a good idea for this party, for the purchaser to be able to go to the registry and search these documents. For example, just at present we have provision for registration in the Land Titles Office of dower releases so that a purchaser of property can go to the Land Titles Office and make a search and find out whether a wife has released her dower but at the same time even though a document is filed showing the dower release, there is still an affidavit in the transfer of land indicating that the wife has released her dower and in fact containing her - well no, it wouldn't have to contain her signature. Okay, it would be a protection for the husband or the wife as the case may be, say if they have concluded an opting out agreement and have separated or the wife is no longer living so the husband or wife can no longer get the other party's consent on the document to the transfer or the sale or the mortgage. So there is always the agreement, completed by both

(MR. SILVER cont'd) . . . . .spouses while she was still alive or while they were living together and at the time they agreed upon it, so that will always be available as evidence of the fact that the wife has agreed to whatever she has supposed to have agreed to.

MR. PAWLEY: Mr. Silver, I have been wondering if the SMR would only concern a third party if that third party was involved in some sort of financial dealings with one of the spouses in which the spouse's financial liability, the spouse's potential security was important to the transaction. Surely at that time that third party could demand evidence or submission of material which would clearly indicate proof of that which was important to the third party. I am just wondering whether really outside of that why there is any reason why the whole world needed access to this document. It is certainly a personal document, it is a family document and my inclination because I understand the purpose of Mr. Graham's question because the average person would have some reluctance to tabling such a document in court which on top of it might be available to the entire world. If we are only dealing with interested third parties, ought there not to be some responsibility on that third party prior to completion of a transaction to satisfy his or herself that this aspect that is so important to that transaction is in fact there without having to require the registration of every single agreement ?

MR. SILVER: Well that is true and indeed I can see that there is perhaps adequate reason for deciding that all the trouble involved in registering all these things is really not worth it, although one aspect of the thing is that people tend to lose their documents and misplace them, forget that they have ever signed any kind of document. So that if registry is available or is mandatory, it will ensure that any document of that kind that exists is available. But I am not suggesting that this is enough of a benefit to justify the whole system of registration.

MR. GRAHAM: Can you tell me, at the present time in say a marital home, even though it is registered in the name of one of the spouses, if a substantial mortgage is requested on that, do they not at the present time ask for the signatures of both spouses ? Even if the title rests in the name of one only?

MR. SILVER: You are talking about a residence?

MR. GRAHAM: Yes.

MR. SILVER: Yes, well if even for the purposes of the Dower Act, it would be essential to have the signature of the other spouse otherwise the mortgage would simply not be valid, but they can have other reasons for requiring the name of the other spouse as a guarantor perhaps, but that is really irrelevant because the Dower Act would apply and they would have to have the other spouse's consent even if her name or his name is not on the title.

MR. GRAHAM: Well another question then. If two consenting spouses sign a marriage contract, would that circumvent the Dower Act ?

MR. SILVER: No, the Dower Act would still remain intact subject to the amendment that the Law Reform Commission is recommending to change the one-third to one-half but otherwise it would remain intact and it would affect property in the same way as it does today. Indeed our . . .

MR. GRAHAM: So a marriage contract would still not negate any legislation that is presently in effect?

MR. SILVER: No. It would be in addition to existing legislation not in substitution or in derogation of it except to this extent. It would restrict a party's right to deal with his own property. I mean his own property will no longer be his own, he will suddenly find himself holding only half of it.

MR. GRAHAM: No, but if he signs a marriage contract, if he opts out, then the terms of that contract will be spelled out then.

MR. SILVER: That's right.

MR. CHAIRMAN: Is 3(b) agreed to? Mr. Adam.

MR. ADAM: Mr. Chairman, I have the same concerns that were expressed by Mr. Pawley in that if there is a public registry for opting out agreements, I am concerned that this information will be available to every one in the province, and that gives me some concern. First of all I am concerned with that aspect of it, I am also concerned with the bureaucracy that we would be setting up in such a registry. I am concerned about the costs involved in setting up this type of bureaucracy and also the cost involved

(MR. ADAM cont'd) . . . .to undertake a search if anyone wants to have access. That if we agree to this type of a bureaucracy which I'm not sure I would want to agree to as a member of this Committee, it seems to me that if I want to obtain credit from a third party, I am prepared to expose and give him all the information of my financial situation but I am very reluctant to give this type of information to a credit rating institution like Dun and Bradstreet or any place of that nature, I never give them any information. I will be completely open if I have ever credit dealings with the Bay or with Eatons or with the bank or wherever it is. I very much dislike having my affairs available to every Tom, Dick or Harry in the province. This is one of the concerns that I have in this respect, but if we are going to go for this type of legislation, it seems to me that for a creditor to have access to that information, he should first of all have permission from the person who wants to deal with him, that he has access to that information.

MR. PAWLEY: I think that the explanation the Law Reform Commission provided for this is their concern that if there was not registration then the original document might not be preserved, might be lost, defaced or meddled with to the prejudice of one or the other parties. In the same way, Mr. Silver, I suppose as there is a provision for the filing of registration of Wills in Surrogate Court, but that provision is not a mandatory one but is a permissive one and in fact a wise individual will ensure that an original of one's Will is kept somewhere in order to prevent destruction, loss or what not. I am wondering in the same way if we could make this a permissive provision rather than a mandatory provision.

MR. SILVER: Well it is of course a matter of policy but certainly that could be done.

MR. PAWLEY: What would be your reaction to that?

MR. SILVER: Well I think it is a sensible compromise between having no system of registration available and between requiring all documents of this nature to be filed, so that it would satisfy those who feel that it is convenient and business-like and so on for them to file their documents to file them and thereby give notice to the world that they have concluded that kind of an agreement between the spouses. And those who do not wish to disclose their personal affairs, will not have to register but even in the case where the documents are not registered, they can still be preserved by the parties themselves and the documents can still be available to serve the same purpose as the registered documents when the occasion arises.

MR. PAWLEY: Mr. Silver, could I just ask you a question which Mr. Graham has presented to me here. Insofar as independent legal opinion is concerned, does that necessarily mean that each spouse would have to have advice from two separate lawyers or would it be sufficient in your view if the same lawyer interviewed and discussed the contracts with each spouse separate and apart from the other?

MR. SILVER: No. In order to have independent legal advice, each spouse would have to execute the document in the presence of a different lawyer. That is the way, as I am sure you know, independent legal advice is evidenced at present in connection with dower consents and I suggest that the same thing would be required in the case of the documents under the new legislation if the provision as to independent legal advice is part of it.

MR. PAWLEY: Well let me just pursue that for a moment. Presently if land is sold and transfer of land is drawn up and executed the same lawyer generally takes the signature of the dower release as prepares the transfer for the husband in the sale of the property, uses the same lawyer yet he is also taking the dower consent on the transfer of land. It is an everyday practice, so that you don't have, in fact, what you would term independent legal opinion there.

MR. SILVER: Mr. Pawley, I believe that in the kind of transaction you describe that while one lawyer may prepare the document and handle the whole transaction and witness the signature of the party whose name is on the title, when the time comes for the wife - if it is the wife who is not on the title - when the time comes for her to execute her consent to the transfer, there is a special form on the transfer of land and there is also a special form for an acknowledgment by her that she has executed this separate and apart from her husband and without any compulsion on the part of her husband.

(MR. SILVER cont'd) . . . . . And I believe, if I recall correctly, that that form and that acknowledgment must be explained to her by a different lawyer and she must execute it in the presence of a different lawyer.

MR. PAWLEY: Mr. Chairman, I think that the practice is that the same lawyer, maybe it is not right, but I know it happens many times each day that the same lawyer is taking the dower consent as is taking the transfer and I doubt whether there is any statutory requirement. I think you are right that it is a better practice but, in practice, it is not happening that way.

MR. SILVER: Now that I think about it, I think that's true, that it's done by the same lawyer but it's merely done with the wife alone present, the husband being asked to leave the office while it's being done. There are other cases, say in the case of separation agreements and things of that kind where the practices that I described is generally considered essential. But you're right. . .

MR. PAWLEY: It seems to me, if I could just extend this, that there had been individual mortgage companies in isolated instances that they had in fact insisted upon an independent legal opinion certificate, that they weren't content unless they have that certificate to show in fact that it was an independent legal opinion but in 98 percent of the cases it is the same lawyer. So the question really develops here whether or not we should insist that it be an independent legal counsel. Now I know what Mr. Graham's concern is that in rural points you often have to travel 25, 30 miles to get to one lawyer and if you have to find two lawyers, then you just go double that distance - and the costs and what not. I don't know how much of a problem that is.

MR. ADAM: I think this paragraph primarily deals with the ramifications of transfer of property and what protection there would be for creditors. I think I am correct in that assumption and I believe there is legislation now whereby if any creditor wishes to investigate the responsibility, financial responsibility of any person that they are dealing with that they have to have permission to make a financial search of this party's financial responsibility. And it seems to me that if someone wishes to advance credit to any individual that he should try and ascertain the financial responsibility but at the same time it seems to me that he still have access to the courts for redress if he hasn't been given the proper information by that person who is seeking credit of whatever nature and I am very concerned about this particular clause here.

MR. GRAHAM: Mr. Chairman, I was looking more at Section 4 here but if we want to get approval of some kind of disapproval on Section 3 I am prepared to wait. You were still dealing with Section 3, weren't you?

MR. ADAM: Yes, I am still hung up on information to a creditor. If a guy wants to sell anything on time, well he should damn well take the responsibility, and he has access to the courts if he has been injured.

MR. GRAHAM: There is a secondary aspect to that though I think. If the information is not available or not easily available to a creditor, would he not then, just to protect himself, register against both?

MR. PAWLEY: I would think that, yes, there is that in which he would have a commitment or guarantee by the other party and, of course, also insisting if certain items are so important to him in the granting of his credit, insisting that that type of evidence be presented. So that I think there is a responsibility on the part of the third party to take reasonable steps to secure his loan, and that is why my inclination would be that we leave this on a permissive basis rather than a mandatory basis just as we do with Wills. You may file your Will in the Surrogate Court but there is no mandatory provision requiring it.

MR. SILVER: Except that, if I may be permitted to remark here, that a Will does not affect assets of anyone while they are alive and in this case it does, so there might be some who feel that they want to have all this information available without having to actually ask the party. I guess it isn't essential though.

MR. PAWLEY: I think we have to give more thought to this.

MR. GRAHAM: Can we just leave this section then and mark it for re-examination?

MR. CHAIRMAN: Is that agreed?

MR. SHERMAN: Are there any plans for sittings of this Committee next summer?

MR. CHAIRMAN: Not so far.

MR. GRAHAM: If I may, Mr. Chairman, I would like to deal with the independent legal advice provision of Section 4 and it seems rather strange that we are bringing in a unified family court where people who are having a strained relationship, in fact they may be on the verge of separation, where they go before common legal counsel to try and iron out their differences, but here we have a case where people are in perfect unanimity, they are quite agreeable, there is no strain or anything, they want to enter a contract and here they have to find independent legal advice. There is no differences of opinion between them. I think what we are trying to do here is just fatten the accounts of the legal people. There will be an extra lawyer involved that is, in my opinion, completely unnecessary. Those are my views on it at the present time and I think they are very valid views, I think we should, and if you want I would like to make a motion that we strike out the word "independent".

MR. PAWLEY: Mr. Chairman, I am not disagreeing with Mr. Graham except that I caution him on his motion. I think it is important that the word "independent" be retained. I don't feel, and I would want to be assured, that this doesn't necessarily mean that it requires separate lawyers in each case, I think it is up to a court to determine whether or not it is independent legal opinion and I can see the same lawyer advising the spouses and that opinion being independent if there are, in fact, no conflict situations that lawyers place themselves in. For instance, is he obtaining the bulk or a great deal of legal work from say the husband or the wife and therefore would be burdened with change presenting him from giving fair and objective opinion to the other spouse from whence he received very little fees for other legal services. So I think the lawyer would have to satisfy, if there was any question, that he was in a position that his legal opinion was not tainted or not tarnished by his relationship with either of the parties, that he was able to provide that opinion in an independent and a separate way. Now if legal counsel tells me that "independent legal opinion" means that they must have, in all circumstances, two separate lawyers then I would have to say that I would want to find some change in this wording because I think we would be creating an unnecessary complication that doesn't necessarily exist now with dower releases - dower releases which are provided by one spouse usually in the office of his or her lawyer, separate and apart from the other spouse without compulsion even though the same lawyer may be involved in the transactions. I think the onus is therefore on the party that is challenging the consent to show that the opinion was less than independent without it necessarily meaning two separate individuals as lawyers. Now I would like legal counsel's opinion because if that is not the case, then I would want to examine some alternative wording. --(Interjection) -- I'm sorry. I am sure that Committee doesn't want me to start from scratch again. Does independent legal council mean necessarily that there would be two separate lawyers providing that legal opinion? Can that independent legal opinion be provided by the same lawyer if that lawyer is not tainted or tarnished by any obvious conflict of interest that he might have, one party to the other.

MR. SILVER: I would say that it can be provided but I would think that if anyone ever questioned the degree of independence in the advice, I think a court would at least expect that the one spouse executed the documents at a time when the other spouse was not present, in other words that the one spouse did not execute the documents under the fear or under the influence, under the fear of some kind of retribution or under the influence of the husband sitting beside her, towering over her so to speak. I think to satisfy the element of independence I think the court would require at least that there be something like that, that the execution of the document took place separately, albeit before the same lawyer but of course if you want to be on the safe side, you know, we would follow the practice as it is followed in some cases where there is more danger - separate lawyers.

MR. PAWLEY: So you are of the opinion then that "independent" doesn't necessarily mean separate lawyers although it would be more advisable to have separate lawyers of course.

MR. SILVER: Yes.

MR. GRAHAM: Mr. Chairman, I think that in the field of medicine for instance, a family will have a family doctor, they also have a family lawyer which is used by that

(MR. GRAHAM cont'd) . . . . .family most of their life. I know many families that second and third generations of that family go to this legal firm because it was a good legal firm; my father and my grandfather went there and they're quite happy. So I think that a lawyer can quite successfully represent both aspects of the family. You must remember that here we are not dealing with an area of conflict, this is an area of consent. You are just signing a marriage consent which they both consent to, it is not a question of conflict such as separation or divorce. It is mutual consent that is involved.

MR. CHAIRMAN: Is there any further discussion? Mr. Pawley.

MR. PAWLEY: Mr. Graham, would you be satisfied then that your suggested motion would not be necessary in view of the legal opinion that Mr. Silver has provided us.

MR. GRAHAM: Well I think that leaving it the way it is would tend to infer something that isn't there or shouldn't be there.

MR. JENKINS: Perhaps I could suggest a little change of wording here that maybe Mr. Graham would go along with. If we just look at the last two lines, "Marriage should be so designated in certificates of legal advice independently obtained." Now it doesn't say that it has to be independent legal advice, but independently obtained which would make it possible for the use of the same lawyer.

MR. GRAHAM: I will go with that.

MR. CHAIRMAN: Does Mr. Silver just wish to comment on that proposed change?

MR. SILVER: I just want to say that I am afraid I don't see any real changes in the new wording suggested. I think the present wording does not make it essential to have two lawyers, it only makes it essential that there be an element of independence in the advice. In practice, it is considered adequate in most cases to merely have each party sign not in the presence of the other so that the lawyer then has an opportunity of not embarrassing each party in front of the other by asking embarrassing questions, and by satisfying himself that the party that is signing at that particular moment want to really sign of his or her own accord.

MR. ADAM: Well probably my question has been answered but I just wanted to ask Mr. Silver his opinion on an example situation. For instance, supposing that under the standard marital regime the property is jointly owned 50 percent and my wife and I decide well we want to change that, I want my wife to own 75 percent of the property and I want 20 percent or any other variation. And we go to a lawyer and he says, "Oh, no, don't do that, you are going to have problems and all this kind of thing, don't do that," that's legal advice. What happens if he advises against it and we still insist that that's what we want?

MR. SILVER: I am afraid I don't know really what Mr. Adam is asking.

MR. ADAM: I am saying if I go to a lawyer for advice and he advises me against my proposal or our proposition, will he necessarily go ahead with whatever arrangements . . .

MR. GOODMAN: If I could just make one comment, it seems to me "independent legal advice" means that when the parties come to a lawyer, the lawyer speaks to them and advises them what rights they are giving away, what their rights are, what the law is and so they are fully aware as to what they are signing and if some rights are being taken away from them, they know exactly what it is and he advises them that they don't have to do this, they don't have to sign this, they don't have to enter the agreement and that's what's meant by independent legal advice, that they know exactly what they're contracting out of or into.

MR. SILVER: I would merely add this qualification that "independent legal advice" I think must be understood in the context as between husband and wife. In other words, the advice to each one has to be independent of the advice given to the other one so that each one can judge for himself so that later on one cannot come and say, "I signed it but I was afraid of my husband," or "he threatened me before we came in here that if I didn't sign the following would happen." But I am not suggesting that each party signing separately is any guarantee that the kind of influence that I described is not happening. That is about all we can do.

MR. SHERMAN: Mr. Chairman, I have difficulty with a number of sections of the Law Reform Commission's recommendations but I don't have difficulty with this

(MR. SHERMAN cont'd) . . . . .terminology. It seems to me that no one has to take legal advice, there is nothing mandatory about it. If you don't like the legal advice you are getting, you can go against it or you can go to another lawyer or you can simply refuse to sign until you're satisfied. It seems to me that the anticipated problems would be taken care of by the parties to the separation agreement, that if one party felt that he or she had not got what they classified in their minds as "independent legal advice" they simply wouldn't sign until they had got it.

MR. CHAIRMAN: Does that satisfy the members of the Committee on 4? If it does perhaps we can accept that and move on to No. 5. You will note there is a dissenting recommendation attached upon it.

MR. GRAHAM: . . . examining 3 and 5 is definitely linked into Section 3 there.

MR. CHAIRMAN: Do you have any further discussion on 4? Now perhaps we can move to 5.

MR. ADAM: Could we have some specification of the dissenting recommendation of Mr. Gibson's, I wonder, from the legal people here.

MR. PAWLEY: I suspect that what Mr. Gibson is concerned about here is that a couple entering into a marriage in the first days and weeks and months when there is only misty hearts and cupids and what not floating about might be influenced to sign a marriage contract. Some way or other Mr. Gibson envisions that after a year's period of time that there will be a greater degree of reality and stability and better able to contend with those misty clouds encircling around the couple's heads. Am I fair in my . . .?

MR. GRAHAM: Mr. Chairman, we have to respect a person's right to know what the heck he is getting into and if he wants to sign a contract and the marriage is dependent on the signature on that contract, I think he should have the right to . . .

MR. PAWLEY: The other point I wanted to raise, Mr. Chairman, is that where this would be most in demand, this contract, is in the second marriages where each spouse might have accumulated from prior marriages prior bequests. Oh, I'm sorry, that would not become part of the standard marital contract anyway because it was separate property brought into the marriage.

MR. GRAHAM: Having once got stung, he may not want to . . .

MR. PAWLEY: We were just a few moments talking about the misty clouds and now we are talking about being stung.

MR. GRAHAM: The stark reality.

MR. CHAIRMAN: What is your feeling then on the one year? Mr. Silver.

MR. SILVER: I think perhaps we ought to bear in mind considering this point that I believe it will be open to parties, although the report doesn't say just specifically, if they want to after a time to amend an agreement that they entered into under the influence of romance or cancel out altogether, I mean I think that once entering into an agreement it does not mean that it will remain for all time to govern those parties if they wish to change it. So that perhaps mitigates the problem a little bit. If they realize six months or a year later that, well what did they do, they didn't know what they were doing, they can execute a new agreement.

MR. PAWLEY: Well a good question is what you would do with a golddigger with the minority report.

MR. F. JOHNSTON: Mr. Chairman, it is a very hazy area. I agree that anybody should be able to amend a contract but I think at one point there was some discussion in our hearings that possibly young people before they get married would be required to have made some commitment that they have understood the laws that they are getting married under, etc. and they have to sign an agreement. In the deferred amendment I can just visualize one of the spouses saying, "Well I shouldn't have given that away a year ago, I want it back now," and I can visualize the other one getting fairly annoyed about the whole thing. We might be entering into an area where we could create conflict. I am not trying to give an answer here but the agreement that is entered into should be entered into as soon as possible, hopefully, with as much advice as possible. When the Attorney-General is talking about the misty feelings when you are getting married and what have you, I would say that we would want to have. . . we are admitting that maybe that isn't the best way to do a contract unless we say that there should be some

(MR. F. JOHNSTON cont'd) . . . . .commitment that they have studied and know what they are getting into, not from a marital point of view, but from a legal point of view in the province. So you have to get the contract as soon as possible, I think any one can be amended but I think you have to do it fairly soon. The commitment as to studying what the laws of the province are, having some understanding of what you are getting into legally, is another question again, but I think they really should get the agreement as soon as possible.

MR. SHERMAN: Mr. Chairman, I think there is a greater threat to the marriage or there could be in some instances if we put in the one year waiting period. I think that in most cases people enter into a marriage or relationship in good faith and in mutual trust and that's the time to make the contract. I could foresee imposed difficulties on a marriage by delaying that contractual agreement to a later point in the marriage. I don't really entertain much justification for the dissenting opinion offered.

MR. CHAIRMAN: There seems no enthusiasm then for the dissenting recommendation. Mr. Adam.

MR. ADAM: We are dealing with No. 5 and there was some objection here on the matter of public record and I presume we will be re-examining that under 3.

MR. CHAIRMAN: Yes. It ties in with 3(b). If we can then perhaps move on to 6. . . oh, I see by the time it is practically 12:30. Would this be a convenient time to adjourn for lunch? Can we reconvene then at 2 o'clock? The Committee will recess until 2 o'clock.