

ALBERTA LAW REFORM INSTITUTE

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**TOWARDS REFORM OF THE LAW RELATING TO
COHABITATION OUTSIDE MARRIAGE**

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ALBERTA LAW REFORM INSTITUTE

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The preparation of this final report has been the primary responsibility of Professor Christine Davies of the Faculty of Law at the University of Alberta. Professor Davies wrote a substantial research paper entitled *Cohabitation Outside Marriage* which was published as our Issues Paper No. 2. Since that time, Professor Davies has coordinated the receipt of submissions and the consultative process which has been carried on. We are fortunate to have had Professor Davies' expertise for the whole duration of this project, and the clarity and conciseness of analysis in writing is clearly evident in the final report.

TOWARDS REFORM OF THE LAW RELATING TO COHABITATION OUTSIDE MARRIAGE

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EXECUTIVE SUMMARY

The Need for New Legislation

More Canadians than ever before are living together in relationships outside marriage. Alberta and British Columbia have the highest proportion of cohabitation arrangements in the country, according to the most recent census data available.

Despite the fact that cohabitation carries, at least potentially, many of the same responsibilities as marriage, only a handful of statutes include provisions for non-marital cohabitants.

In light of this, the Board of the Alberta Law Reform Institute felt it was time to review the law as it related to cohabitants.

After commissioning a survey of the prevalence of cohabitation in Alberta and a review of attitudes about some of the legal issues involved, the Institute concluded that, in several areas, present law provides inadequate protection for the interests of cohabitants.

Should the Institute recommend that the law recognize cohabitation as the equivalent of marriage? The argument in favour of such assimilation is that cohabitants are often in the same circumstances as spouses, in terms of financial dependence, child care obligations, or bereavement.

However, the arguments against equating the two are also compelling:

- (a) To do so may undermine the status of marriage, and lead to more transient relationships.

- (b) It seems wrong in principle to impose on people a status they have chosen to avoid.

The Institute concluded that the best approach was to consider separately each statute affecting cohabitants, recommending only those reforms needed to cure inequities and situations of hardship. Cohabitants would not be considered married before the law, but *where necessary*, would be given the rights and obligations of married persons.

Report No. 53, *Towards Reform of the Law Relating to Cohabitation Outside Marriage*, prepared for the Institute by Professor Christine Davies, contains 20 recommendations, including changes to the law affecting support and maintenance, property, domestic contracts, intestate succession, social allowance, insurance, and the Fatal Accidents Act. The recommendations on domestic contracts also affect the use of domestic contracts by married persons.

The Definition of Cohabitation

For most purposes, the cohabitation relationship is defined in these recommendations as one between a man and a woman who are living together on a *bona fide* domestic basis, but who are not married to one another.

For the purposes of the Fatal Accidents Act, the Workers' Compensation Act, and the Employment Pensions Act, the Institute recommends that the definition of a cohabitant be a person of the opposite sex who lived with that other person for the three years immediately preceding the relevant time and was, during that period, held out by that person in the community in which they lived as his consort.

Support and Maintenance

Present Alberta law makes no provision for the payment of maintenance and support between cohabitants. After reviewing several submissions on this topic, the

majority of the Board favoured provision of a court order for maintenance of one cohabitant by another, under certain limited circumstances:

- (a) The applicant has responsibility for the care of the young child or children of the relationship and is unable to support himself or herself for this reason; or
- (b) The earning capacity of the applicant has been adversely affected by the relationship and the applicant requires transitional maintenance to re-adjust his or her life.

In determining whether to make a maintenance order, the court would take into account many of the same factors a court considers in making an order for spousal support under the Divorce Act. An order for support of a cohabitant will automatically terminate if that cohabitant marries or enters a subsequent cohabitation relationship.

Property Rights

As with other provinces, the matrimonial property statutes do not extend to cohabitants, although contributions of money or work may lead to an interest in the property.

The majority of the Board recommends that there be no change in the law relating to allocation of title. Such a change would be at odds with the Board's position that the law should recognize differences between marriage and cohabitation.

The majority does recommend, however, that a partner with responsibility for child care should be able to claim temporary possession of the family home. In this circumstance, the needs of young children who might be traumatized by having to leave familiar surroundings is taken into account.

Domestic Contracts

In Alberta, there is now no legislation allowing domestic contracts between spouses or between cohabitants, although such legislation exists in several other provinces.

Domestic contracts offer some certainty to the parties by allowing previous agreement on how property division and other matters would be handled if the relationship ended. The Institute recommends that new statutory provisions be enacted providing for domestic contracts, similar to the laws in place in several other provinces.

The majority recommends that, to be enforceable, the contracts need only be in writing, while the minority felt they should meet the more stringent provisions of Section 37 of the Matrimonial Property Act.

Intestate Succession

The intestacy rules, which direct how the estate of a person who dies without a will is divided, now have no provisions for cohabitants. The Board felt that to include the cohabitant was in the spirit of the intestacy rules. Persons living in cohabitation relationships often see themselves, and are seen by others, as members of the immediate family of a deceased partner. The failure of people who live together to provide for their partners by making a will is often simply a matter of misunderstanding, ignorance of the law, or procrastination.

The Institute recommends that the Intestate Succession Act of Alberta be amended to include a cohabitant among those entitled to inherit in the absence of a will. Specifically, if there are children of another relationship or a surviving spouse, the cohabitant would have to have been living with the deceased for at least two years before death to be entitled to the spouse's share. Otherwise, the Institute recommends

that a cohabitant should have the same entitlement as a spouse would have, if they were living together at the time of death.

Social Allowance

Regulations passed under the Social Development Act of Alberta require social workers to review the resources, not just of a person receiving social allowance, but also those of another person cohabiting with him or her. If the partner is employed, or has financial resources, the recipient may lose welfare benefits, in the expectation that the partner will provide maintenance.

According to an empirical study commissioned by the Institute, cohabitants have greater financial independence from each other than is the case with married couples, so the fact that an employed person is living with a welfare recipient does not mean the recipient is not in need.

The Board feels that a person's financial needs should determine his or her eligibility for welfare. Accordingly, it recommends that the resources of a cohabitant should be exempt from consideration *unless* that person is making an economic contribution to the recipient (or applicant) or the recipient's child or children.

If someone is living with a welfare recipient and making an economic contribution to the household, his or her resources should be exempt *unless* the relationship is of a social and familial nature. In determining whether a person should be exempt for the purpose of the Act, sexual factors should not be investigated or considered.

The Board also noted that it finds the present investigative guidelines to social workers intrusive and demeaning, and recommended that these guidelines be deleted from the Department of Social Services' policy manual.

Insurance

The Institute recommends changes to the Insurance Act of Alberta affecting the payment of death benefits. Currently, a "common law" spouse can only claim the death benefit if there is no surviving spouse, while a spouse can only claim if he or she was a member of the deceased's household at the time of death. A common law spouse is defined as one who cohabited with the deceased as his spouse and was known as such in the community, for five years immediately preceding the deceased's death or for two years if there is a child of the relationship.

The Institute recommends that where there is no eligible spouse (i.e. no legal spouse living with the deceased at the time of death) then a common law spouse who was a member of the household should receive the death benefit.

Fatal Accidents Act

The Fatal Accidents Act of Alberta permits a defined list of relatives who may sue in respect of a loss incurred by them as a result of the death. Recovery is restricted to the claimant's loss of reasonable expectation of pecuniary benefit. A more limited list of relatives may also sue to recover damages for bereavement. A spouse is included on both lists; a cohabitant is included on ~~either~~ *neither*.

The purpose of the Fatal Accidents Act is to provide compensation to a family that has suffered economic loss as a result of the death of one of its members. The Board took the view that a cohabitant can be as much a part of a family unit as a legal spouse and consequently as much in need of compensation.

The Institute recommends that the cohabitant be included within the list of specified relatives entitled to claim damages for loss of expectation of pecuniary benefit and also within the list of those entitled to damages for bereavement.

Conclusion

In making the 20 recommendations that make up the report, the Institute has sought to rationalize existing statutes and to cure inequities that now exist, rather than to create a special status for non-married couples or to give them the same status as married persons. The final 86-page report is available from the Alberta Law Reform Institute. This report, *Towards Reform of the Law Relating to Cohabitation Outside Marriage*, includes more detail and commentary on the material covered in this summary and also includes draft legislation.

PART I - HISTORY OF THE PROJECT

More than ever before Canadian men and women are living together in cohabitational relationships outside marriage. Census data from 1981 shows Alberta and British Columbia to have the highest proportion of cohabitation arrangements in the country. In light of this the Board of the Alberta Law Reform Institute felt it timely to review the law as it related to cohabitants.

In 1983 the Board commissioned a Research Paper to survey the prevalence of non-married cohabitation among Albertans, and to examine their attitudes toward some of the legal issues related to non-marital cohabitation. The results of this survey were published as Research Paper No. 15, *Survey of Adult Living Arrangements: A Technical Report* in November of 1984.

In October of 1987 the Board published Issues Paper No. 2, *Towards Reform of the Law Relating to Cohabitation Outside Marriage*. This paper was divided into two parts. The first part gave a general overview of the subject area. The second and major part comprised a paper written by Professor Christine Davies of the Faculty of Law, University of Alberta (the Davies Report). The Institute did not endorse the views expressed in the Davies Report. However, the Board felt that publication of the views expressed therein would help focus public and legal attention on the particular issues and would stimulate discussion thereon.

Since publication of Issues Paper No. 2 the Institute has received a number of submissions on the topic of cohabitation outside marriage. Some areas of the law (such as maintenance and property rights) incited considerable comment. Other areas (such as exemptions, pensions, insurance and welfare) have not been commented on at all.

As well as soliciting submissions, the Alberta Law Reform Institute and the Canadian Research Institute of the Law and the Family sponsored a joint workshop on cohabitation in March 1988 in Calgary. To this workshop were invited representatives

of various interest groups. The workshop was led by Professor Davies and two other academics who have written extensively in the family law and cohabitation fields, Professor Nicholas Bala from the Faculty of Law, Queen's University and Professor Winnifred Holland from the Faculty of Law, University of Western Ontario.

It was apparent from the submissions received and the views elicited at the workshop that Albertans hold strong and often divergent opinions on the subject of maintenance and property rights for cohabitants and, to a lesser extent, on the subject of domestic contracts. This divergence was felt in the Board itself. For this reason this report takes the unusual form of reflecting both a majority and a minority position.

It is anticipated that many of the proposals contained in this report will be enacted as part of a new Domestic Relations Act which Act will deal with the rights and obligations *inter se* of both cohabitants and married persons. For this reason, although, as its title would suggest, the report is primarily concerned with cohabitants, we make certain recommendations that relate to married people as well as to cohabitants. (The areas of domestic contracts and agency of necessity are cases in point.)

Other areas of our report involve recommended changes to existing legislation. Some of this legislation currently uses the term "common law spouse" to denote a non-married cohabitant. (For example, the Workers' Compensation Act, the Insurance Act, the Criminal Injuries Compensation Act and the Fatality Enquiries Act.) Our recommendations in these areas generally retain the existing terminology. Thus, the reader will find both the term "cohabitant" and the term "common law spouse" used in this report.

PART II - SUMMARY OF RECOMMENDATIONS

RECOMMENDATION I

Non-marital cohabitation should not confer a marriage-like status but Alberta law should be amended in certain specific areas only in order to cure inequities and situations of hardship.

RECOMMENDATION II (majority recommendation)

(a) An order for the maintenance of one cohabitant by another should be made only where it is reasonable that such an order be made and:

(i) the applicant for maintenance has the care and control of a child of the cohabitational relationship and is unable to support himself or herself adequately by reason of the child care responsibilities; or

(ii) the earning capacity of the applicant has been adversely affected by the cohabitational relationship and some transitional maintenance is required to help the applicant to re-adjust his or her life.

(b) An order made in respect of a cohabitant falling into category (i) above will cease when the child reaches the age of 12 (or, if handicapped, 16). An order made in respect of a cohabitant falling into category (ii) above will cease three years from the date the maintenance order is made or four years from the termination of the cohabitational relationship, whichever period is shorter.

(c) In determining whether to make a maintenance order in favour of a cohabitant a court will take into account factors corresponding to those a court considers in making an order for spousal support under the Divorce Act. Further, the court will bear in mind objectives corresponding to those a court is directed to have in mind in making an order for spousal support under the Divorce Act. An application cannot be made by one who, at the time of the application, has entered into a subsequent cohabitational relationship or who has remarried.

(d) Variation or rescission of a support order in favour of a cohabitant may be granted on proof of a change of circumstances in a similar way and on a similar basis to an order for spousal support under the Divorce Act. However, an order for the support of a cohabitant will automatically terminate on that cohabitant marrying.

RECOMMENDATION II (minority position)

That no maintenance obligation attach to cohabitants *inter se*.

RECOMMENDATION III (majority recommendation)

That there be no statutory change in the law relating to allocation of title to property as between cohabitants.

RECOMMENDATION III (minority position)

That a new remedy be enacted that would replace the existing trust remedy. Essentially, this remedy would mirror the existing trust remedy but would provide that a contribution to family and household might give an interest in property.

RECOMMENDATION IV (majority recommendation)

That Part II of the Matrimonial Property Act dealing with matrimonial home possession be extended to cohabitants where the applicant for a possession order has care and control of a child aged 12 years or less, who is a child of the relationship (whether natural born or adopted), a child of the other or a child to whom the respondent stands *in loco parentis*.

RECOMMENDATION IV (minority position)

That the majority recommendation set out above be extended so that an applicant for a possession order, who does not have care of such a child but who is asserting a proprietary claim to the premises of which possession is sought, might also be granted an order under Part II of the Matrimonial Property Act.

RECOMMENDATION V (majority recommendation)

(a) That new statutory provisions be enacted providing for domestic contracts. These provisions should be similar to those in place in several other common law provinces.

(b) In order for such contracts to be enforceable they must be in writing, signed by the parties and witnessed.

(c) Subsequent intermarriage of parties to a cohabitation agreement should be one factor that the court be directed to consider in exercising its discretionary power to disregard any provision of a domestic contract.

RECOMMENDATION V (minority position)

That the recommendation of the majority (above) be adopted save for part (b). In order for a domestic contract to be enforceable it must comply with formalities corresponding with those set out in s. 38 of the Matrimonial Property Act of Alberta.

RECOMMENDATION VI

That new statutory provisions be enacted providing for domestic contracts between married people and people entering marriage. These provisions would be similar to those in other provinces and would correlate with those referred to in Recommendation V above.

RECOMMENDATION VII

That the Intestate Succession Act of Alberta be amended in the following manner:

(a) Where a person dies intestate and is survived by both a spouse and a de facto partner, the de facto partner should be entitled to the spouse's share on intestacy to the exclusion of the spouse if the de facto partner lived with the deceased for a continuous period of at least two years immediately before his or her death. However, even where this condition is fulfilled, the de facto partner should not be entitled to take the spouse's share if the court is satisfied that the deceased lived with his or her spouse during any part of that two year period.

(b) Where the deceased is survived by a de facto partner and children of another relationship, the de facto partner should be entitled to the spouse's share on intestacy if he or she had lived with the deceased for a continuous period of at least two years immediately before death.

(c) Where a person dies intestate leaving a de facto partner but neither a spouse or children of another relationship, the de facto partner of the deceased, if living with the deceased at the time of his death, should be entitled to take the spouse's share on intestacy.

RECOMMENDATION VIII

That Alberta law not be amended to include cohabitants in the list of dependants entitled to claim relief under the Family Relief Act.

RECOMMENDATION IX

That the status of legitimacy and that of illegitimacy be abolished by the enactment of legislation similar to that enacted in a majority of the other Canadian provinces and to that recommended by the Alberta Law Reform Institute in 1976.

RECOMMENDATION X

That Alberta law be amended so that the separated wife's agency of necessity is abolished.

RECOMMENDATION XI

That a cohabitant be included within the list of specified relatives entitled to claim damages for loss of expectation of pecuniary benefit and also within the list of those entitled to claim damages for bereavement under the Fatal Accidents Act of Alberta.

RECOMMENDATION XII

That the Workers' Compensation Act of Alberta be amended in the following respects:

(a) Section 44 be repealed and Workers' Compensation payments become attachable under the Maintenance Enforcement Act.

(b) Where a worker dies leaving a legal and a common law spouse a pension payable under the Workers' Compensation Act should be apportioned between them according to what is reasonable and proportionate to the degree of dependency.

RECOMMENDATION XIII

That the Insurance Act of Alberta *not* be amended so as to provide that a person have an insurable interest in the person with whom he or she cohabits.

RECOMMENDATION XIV

(a) That the Insurance Act of Alberta s. 313 be amended so as to provide that where there is no eligible legal spouse (i.e., if the legal spouse was *not* a member of the deceased's household at the relevant time) then a common law spouse who *was* a member of the household should receive the death benefit under that section.

(b) The definition of common law spouse and the period of cohabitation that a common law spouse must satisfy in order to be eligible to receive the death benefit under s. 313 be amended. A person not married to the deceased should be eligible to receive the death benefit, where no legal spouse qualifies, if that person is of the opposite sex to the deceased and, at the time of the accident causing death, was living with him or her on a *bona fide* domestic basis.

RECOMMENDATION XV

(a) That the Exemptions Act, the Insurance Act, and Rule 483 of the Alberta Rules of Court *not* be amended so as to create new exemptions in respect of cohabitants.

(b) That Rule 483(1)(c) of the Alberta Rules of Court be amended by substituting the word 'parent' for the word 'mother' within that paragraph.

RECOMMENDATION XVI

(a) That the definition of spouse adopted in the Employment Pension Plans Act be adopted for the purposes of pensions falling under the following statutes:

- (i) the Alberta Government Telephone Act;
- (ii) the Teachers Retirement Fund Act;
- (iii) the Public Service Management Pension Plan Act;
- (iv) the Public Service Pension Plan Act;
- (v) the Universities Academic Pension Plan Act;
- (vi) the Special Forces Pension Plan Act;
- (vii) the Members of the Legislative Assembly Pension Plan Act; and
- (viii) the Local Authorities Pension Plan Act.

(b) That the eligibility to spousal protection benefits of a common law spouse under the Members of the Legislative Assembly Pension Plan Act, the Special Forces Pension Plan Act and the Public Service Management Pension Plan Act be the same as under those other statutes falling under the Pension Fund Act.

RECOMMENDATION XVII

That the status of spouse *not* be extended to cohabitants for purposes of the rules relating to competence, compellability and privileged communications.

RECOMMENDATION XVIII

(a) That the Criminal Injuries Compensation Act be amended so that the word 'spouse' is defined so as to include a person of the opposite sex of the victim who, at the time of the victim's application for compensation or, in the event of the victim's death, was living with the victim on a *bona fide* domestic basis.

(b) That the ancillary recommendations relating to the Criminal Injuries Compensation Act recommended by the Davies Report in Issues Paper No. 2 at pages 208-210 be adopted.

RECOMMENDATION XIX

That the Fatality Enquiries Act be amended so that the definition of common law spouse be redefined as meaning a person of the opposite sex to the deceased who, at the time of the deceased's death, was living with the deceased on a *bona fide* domestic basis.

RECOMMENDATION XX

(a) That the regulation passed under s. 12(2) of the Social Development Act of Alberta be repealed and a new regulation promulgated in its place. This new regulation would provide that the resources of any person living in the same residence as an applicant for, or recipient of, social allowance would be exempt unless that person was providing an economic contribution to the applicant or recipient *and* if the relationship between the two was of a social or familial nature.

(b) That the provisions of the policy manual of the Department of Social Services and Community Health relating to common law relationships be deleted.

RECOMMENDATION XXI

(a) That [subject to paragraphs (b) and (c) below] for the purposes of the recommendations contained in this report a cohabitational relationship be defined as a relationship between a man and a woman who are living together on a *bona fide* domestic basis but who are not married to each other.

(b) That for the purposes of the Pension Plan Acts, the Workers' Compensation Act and the Fatal Accidents Act, a spouse be defined so as to include a person of the opposite sex who lived with that other person for the three year period immediately preceding the relevant time and was, during that period, held out by that other person in the community in which they lived as his consort.

(c) That for the purposes of the Intestate Succession Act of Alberta the definition of cohabitant set out in (a) above be adopted. The circumstances in which a person who falls within that definition can succeed on intestacy are set out in Recommendation VII above.

PART III - REPORT

A. Present Law and Basic Philosophy

At present only a handful of Alberta statutes grant rights and impose restraints upon non-marital cohabitants. The principal examples of such legislation are the Criminal Injuries Compensation Act,¹ the Fatality Enquiries Act,² the Insurance Act,³ various Pension Plan Acts,⁴ and the Workers' Compensation Act.⁵ In our Issues Paper published earlier⁶ we raised the question of the proper philosophy that should be adopted towards any reform of the law relating to cohabitants. We posed three alternatives:

- (a) Should there, for the purposes of the law, be an assimilation of marriage and cohabitation of a defined nature?
- (b) Should there be a partial assimilation of marriage and cohabitation for the purposes of the law?
- (c) Should there simply be an examination on a case-by-case basis of some of the incidents of cohabitation and reform be effected as and where needed?

¹ R.S.A. 1980 c. C-33.

² R.S.A. 1980 c. S-6.

³ R.S.A. 1980 c. I-5.

⁴ The Alberta Government Telephone Act R.S.A. 1980 c. A-23, The Employment Pension Plan Act S.A. 1986 c. E-10.05 and the six statutes that fall under the Pension Fund Act R.S.A. 1980 c. P-3.1.

⁵ R.S.A. 1980 c. W-16.

⁶ *Towards Reform of the Law Relating to Cohabitation Outside Marriage*, Issues Paper No. 2 (October 1987).

The factors that recommend the first approach (total assimilation with marriage) and, to some extent, the second approach (partial assimilation with marriage) are that:

- (a) cohabitation is on the increase and has won in large part social acceptance;
- (b) excluding ephemeral relationships, cohabitation outside marriage involves many of the same incidents as cohabitation within marriage;
- (c) further, when a cohabitational relationship breaks down, is terminated by death or death or financial misfortune strike, many of the same problems confront the cohabitant as the spouse.

Should the two not then be assimilated for purposes of the law?

South Australia is an example of a state the laws of which partially assimilate cohabitation with marriage.⁷ There a person who has cohabited with another as husband or wife for a defined period of time or with whom he or she has had a child may apply to the court for a declaration that he or she possesses the status of "putative spouse". Once that status is declared by the court to exist then the putative spouse has the same entitlement as the married person in a number of specified areas.

The factors that militate *against* the assimilation or partial assimilation of marriage and cohabitation and weigh *in favour* of case-by-case reform where need demands are as follows:

- (a) Assimilation of marriage and cohabitation might tend to undermine the status of marriage and act as a disincentive for parties to marry. This in turn might lead to more transient relationships for divorce acts as a brake

⁷ Family Relations Act 1975 (S.A.).

on hasty breakups in the context of marriage but could not be applied to cohabitants.

- (b) Most people who cohabit have chosen to do so rather than intermarry. It seems wrong in principle to impose upon people a status that they have chosen to avoid.
- (c) A partial assimilation of marriage and cohabitation similar to that given by the South Australia legislation would involve giving to cohabitational relationships to which the quasi marital status is accorded the same definition for all purposes. Thus, the definition of putative spouse in South Australia does not differ whether rights under the Fatal Accidents Act or the government's superannuation scheme are in question. Is it not better to look at each area of law and, if rights are there to be given to parties to a cohabitational relationship, define the cohabitational relationship in a manner relevant and appropriate to that area of law?

We found the arguments in favour of case-by-case reform more compelling than those in favour of assimilation or partial assimilation of marriage and cohabitation. No submissions received by the Institute advocated a contrary approach. Accordingly, we unanimously recommend that non-marital cohabitation should not confer a marriage-like status but that the law should be amended in certain specific areas only in order to cure inequities and situations of hardship.

RECOMMENDATION I

Non-marital cohabitation should not confer a marriage-like status but Alberta law should be amended in certain specific areas only in order to cure inequities and situations of hardship.

B. Areas of Law That Might be the Subject of Amendment

(1) Those areas of law which involve relations between cohabitants *inter se*

(a) Maintenance

Present Alberta law makes no provision for the payment of maintenance by one cohabitant to the other in respect of that other's maintenance and support.⁸ In this Alberta is at odds with the majority of the other common law provinces of Canada.

We received several submissions on this topic. No one view stood out clearly as the one most acceptable to a preponderance of those writing. Instead, three views emerged as viable alternatives. These three alternatives are as follows:

- (a) No maintenance obligation attach to cohabitants.
- (b) A maintenance obligation exist only in cases of defined hardship. The two instances of defined hardship in which the maintenance obligation would attach are:
 - (i) where one person has the care and control of a child of a cohabitational relationship and is unable to support him or herself by reason of the child care responsibilities;
 - (ii) where a person's earning capacity has been adversely affected by the cohabitational relationship and some transitional maintenance is required.

⁸ The issue of child support is a quite different question.

The De Facto Relationships Act of New South Wales⁹ adopts this approach.

Under this, the second option, the maintenance obligation could be "open-ended" or could be "time-limited". An open-ended obligation would mean that if an applicant fell within one of the hardship categories a court could make an order that was effective until varied, or it could make an order of a specific duration. If the obligation to pay maintenance was "open-ended" the *court* would have the discretion to limit the duration of the order and, if so limited, to define the nature of the limitation.

A time-limited obligation, on the other hand, would mean that the *legislation itself* imposes a time limit. Thus, the New South Wales legislation provides that where an applicant falls into the first hardship category (having care of a young child) then the obligation shall cease when the child reaches the age of 12 (or if handicapped, 16). If a person falls within the second hardship category (earning capacity adversely affected by relationship) duration of the order is limited to a maximum period of three years from the date of the order or four years from the termination of the de facto relationship, whichever period is shorter.

- (c) A maintenance obligation attach to the cohabitational relationship. A court could make a maintenance order in respect of one cohabitant against the other; whether such an order should be made and the nature of the order would either be at the total discretion of the trial judge or, alternatively, guidelines could be set out in the legislation.

The arguments that commend option (a) (that no maintenance obligation attach to cohabitants), are as follows:

⁹ 1984 No. 147 (N.S.W.) ss. 26, 27.

- i. Spousal support is on the wane, it would therefore seem incongruous to extend the maintenance obligation to cohabitants.
- ii. The personal and public commitment of persons living in a cohabitational relationship is less than in a marital relationship. Thus, the same rights and obligations do not and should not attach.
- iii. Persons who live in a cohabitational relationship have chosen to do so rather than marry. Having chosen to avoid the rights and obligations usually attached to the married state, the law should respect their freedom of choice and not impose upon them obligations they have decided to avoid.

The arguments that commend option (b) (maintenance only in cases of defined hardship), are as follows:

- i. Where one parent cares for a child of the relationship he or she not only impedes his or her earning capacity but also relieves the other of an impediment to earning. In such circumstances it appears only fit and just that the non-custodial parent should compensate the custodial parent.
- ii. Where a person's earning capacity has been adversely affected by a cohabitational relationship, maintenance should be payable to enable the applicant to obtain gainful employment or otherwise re-adapt to single life. If a person has jeopardized his or her earning capacity in order to devote him or herself to the cohabitational household then the respondent should bear some financial responsibility for the cost of restoring financial independence to the applicant or at least helping the applicant to re-adjust his or her life.

The arguments that commend option (c), (a broad maintenance obligation), are as follows:

- i. *In fact*, the obligation to pay spousal maintenance is only imposed by judges acting in divorce proceedings in the two hardship situations referred to above. It is therefore unnecessary to arbitrarily curtail judicial discretion as would be the case under option (b) above. Guidelines similar to those set out in the Divorce Act¹⁰ would be sufficient to ensure that maintenance only be awarded in cases of hardship.
- ii. This solution would bring Alberta into line with the legislation of many other provinces.

A majority of the Board favoured option (b). That is, a majority of the Board recommended that a maintenance obligation exist as between cohabitants in two situations only, namely (1) where one person has the care and control of a child of a cohabitational relationship and is unable to support him or herself by reason of the child care responsibilities; (2) where a person's earning capacity has been adversely affected by the cohabitational relationship and some transitional maintenance is required to help the applicant to adjust his or her life.

A majority of the Board favoured a time-limited obligation and approved the time limits set out in the New South Wales legislation. Thus, the majority recommended that where an applicant fell into the first hardship category (having care of a young child) then the obligation should cease when the child reached the age of 12 (or if handicapped, 16). If a person fell within the second hardship category (earning capacity adversely affected by the relationship) duration of the maintenance order should be limited to a maximum period of three years from the date of the order or

¹⁰ S.C. 1986 c. 4.

four years from the termination of the cohabitational relationship, whichever period is shorter.

The New South Wales legislation limits the second hardship category to situations where the applicant's earning capacity has been adversely affected by the cohabitational relationship *and some training or re-training is required to increase his or her earning capacity* (emphasis added). The majority of our Board did not think it appropriate to limit the category in this way. The majority felt that a person whose earning capacity had been adversely affected by the relationship should receive maintenance in appropriate cases regardless of whether training or re-training was possible or advisable. In this category maintenance should perform the function of transitional support to enable the applicant to re-adjust his or her life, whether within the work force or otherwise.

In the majority's view an applicant would need to do more than merely show that he or she fell into one or other of the defined hardship categories. The applicant would have to go further and show that in all the circumstances of the case it is reasonable that a maintenance order be made. In assessing what is or is not reasonable a court should take into account factors corresponding to those a court considers in making an order for spousal support under the Divorce Act.¹¹ Further, the court should be directed to have in mind objectives corresponding to those a court has in mind in making an order for spousal support under the Divorce Act.¹² An application could not be made by one who, at the time of the application, has entered into a subsequent cohabitational relationship or who has remarried. Variation or rescission of a support order in favour of a cohabitant could be granted on a change of circumstances in a similar way and on a similar basis to an order for spousal support under the Divorce Act.¹³ However, the majority of our Board recommended that an order for the support

¹¹ See Divorce Act s. 15(5).

¹² See Divorce Act s. 15(7).

¹³ Divorce Act s. 17.

of a cohabitant should automatically cease to have effect upon the marriage of the recipient.

The question of definition of the term "cohabitant" will be addressed later.

A minority of our Board favoured option (a). That is the minority recommended that no maintenance obligation attach to cohabitants.

RECOMMENDATION II (majority recommendation)

(a) An order for the maintenance of one cohabitant by another should be made only where it is reasonable that such an order be made and:

(i) the applicant for maintenance has the care and control of a child of the cohabitational relationship and is unable to support himself or herself adequately by reason of the child care responsibilities; or

(ii) the earning capacity of the applicant has been adversely affected by the cohabitational relationship and some transitional maintenance is required to help the applicant to re-adjust his or her life.

(b) An order made in respect of a cohabitant falling into category (i) above will cease when the child reaches the age of 12 (or, if handicapped, 16). An order made in respect of a cohabitant falling into category (ii) above will cease three years from the date the maintenance order is made or four years from the termination of the cohabitational relationship, whichever period is shorter.

(c) In determining whether to make a maintenance order in favour of a cohabitant a court will take into account factors corresponding to those a court considers in making an order for spousal support under the Divorce Act. Further, the court will bear in mind objectives corresponding to those a court is directed to have in mind in making an order for spousal support under the Divorce Act. An application cannot be made by one who, at the time of the application, has entered into a subsequent cohabitational relationship or who has remarried.

(d) Variation or rescission of a support order in favour of a cohabitant may be granted on proof of a change of circumstances in a similar way and on a similar basis to an order for spousal support under the Divorce Act. However, an order for the support of a cohabitant will automatically terminate on that cohabitant marrying.

RECOMMENDATION II (minority position)

That no maintenance obligation attach to cohabitants *inter se*.

(b) Property

(i) The allocation of title between cohabitants

Present Alberta law makes no statutory provision for the allocation of property between cohabitants. Property division under the Matrimonial Property Act¹⁴ is restricted to spouses, ex-spouses and parties to void or voidable marriages. Similarly, the matrimonial property statutes of the other provinces do not extend to cohabitants. Equity, however, provides a remedy to those who have contributed by way of money or work to the property of another by means of the trust principle.

We received several submissions on this topic. The majority of those writing favoured no change in the law. However, some submitters advocated a new statutory remedy providing for allocation of property between cohabitants.

It would seem that there are three viable options open to us:

- (a) recommend that there should be no change in the law;
- (b) recommend that the provisions of the Matrimonial Property Act relating to division of matrimonial property be extended to cohabitants;
- (c) recommend the enactment of a new remedy that would replace the existing trust remedy. Essentially, this remedy would mirror the existing trust remedy but would provide that a contribution to family and household might give an interest in property.

¹⁴ R.S.A. 1980 c. M-9.

A majority of the Institute Board adopted option (a). That is, the majority recommended that there be no change of the law in this area. A minority of the Board favoured option (c). Thus, a minority favoured enactment of a new remedy replacing the existing trust remedy.

The reasons for the majority position are as follows:

- i. Extension of the sharing provisions of the Matrimonial Property Act to cohabitants would involve adoption of the view that a cohabitational relationship is essentially the same as marriage. This view is at odds with the basic philosophy implicit in Recommendation I.
- ii. The constructive trust remedy has evolved over many years and recent decisions have made this tool particularly helpful in the area of cohabitational relationships. It would be dangerous and unnecessary to displace a workable and helpful principle that has evolved and continues to evolve.

A minority of the Board felt, however, that the existing trust remedy is insufficient in that it requires a contribution by the applicant to the disputed property, whether that contribution takes the form of money or labour. The minority felt that a contribution to family and household should be enough to give an interest in property.

RECOMMENDATION III (majority recommendation)

That there be no statutory change in the law relating to allocation of title to property as between cohabitants.

RECOMMENDATION III (minority position)

That a new remedy be enacted that would replace the existing trust remedy. Essentially, this remedy would mirror the existing trust remedy but would provide that a contribution to family and household might give an interest in property.

(ii) Possessory and occupational rights

Part II of the Matrimonial Property Act of Alberta¹⁵ provides that in certain circumstances the courts may grant exclusive possession of a matrimonial home to one spouse vis a vis the other. Part II applies to spouses, ex-spouses and parties to a void or voidable marriage. It does not extend to cohabitants generally. Several other provinces of Canada have legislation providing that one cohabitant can obtain an order for exclusive possession of a dwelling owned by the other cohabitant.

The Davies Report recommended that Part II of the Matrimonial Property Act be extended to cohabitants where the applicant for a possession order has care and control of a child aged 12 years or less, who is a child of the relationship (whether natural born or adopted), a child of the other or a child to whom the respondent stands *in loco parentis*. The reason for this recommendation was as follows: whereas cohabitational relationships and marriage relationships are essentially different both in regard to commitment (both public and private) and expectation, a limited right to occupation of the family home should be given to one cohabitant vis a vis the other where young children are involved. Where a relationship abruptly terminates children might be traumatized if suddenly ousted from their home. A limited right in the custodial parent to remain in occupation of the family home and possession of household goods may be necessary for the well-being of children.

No submission received by the Institute took issue with the proposal that cohabitants be given some rights to family home possession under the Matrimonial Property Act. The only question raised was whether such rights should be restricted to those having custody of children.

¹⁵ R.S.A. 1980 c. M-9.

A majority of the Institute Board approved the recommendation of the Davies Report. A minority of the Board would accept this recommendation but extend protection to an applicant asserting a proprietary right to the family home.

RECOMMENDATION IV (majority recommendation)

That Part II of the Matrimonial Property Act dealing with matrimonial home possession be extended to cohabitants where the applicant for a possession order has care and control of a child aged 12 years or less, who is a child of the relationship (whether natural born or adopted), a child of the other or a child to whom the respondent stands *in loco parentis*.

RECOMMENDATION IV (minority position)

That the majority recommendation set out above be extended so that an applicant for a possession order, who does not have care of such a child but who is asserting a proprietary claim to the premises of which possession is sought, might also be granted an order under Part II of the Matrimonial Property Act.

(c) Domestic contracts

Alberta law currently has no legislation pertaining generally to domestic contracts as between spouses or between cohabitants. Several other provinces, however, do have such legislation.

The Davies Report recommended the enactment of new statutory provisions relating to domestic contracts. It recommended that these provisions be similar to those in place in several common law provinces. The arguments that weigh in favour of such legislation are as follows:

- i. It is preferable that disputes between parties, whether they be married or unmarried, be resolved according to their agreement and not by litigation.
- ii. Agreement between the parties involves certainty, certainty in the sense that during cohabitation the parties know their respective positions,

certainty in the sense that on separation the parties know how property, etc. is to be allocated and will not need to resort to litigation.

- iii. Parties who live together outside marriage have generally chosen to do so and chosen not to marry. Having chosen to avoid the incidents of marriage they should be free to choose their own methods of arranging matters between themselves.
- iv. The technical report commissioned by the Institute in 1984¹⁶ demonstrated that a considerable percentage of cohabitants feel that agreements concerning child care, property division and arrangements to be made on breakup, as well as other matters, should be legally binding.
- v. There has been some doubt as to the validity of cohabitation agreements. Are they void on the grounds of public policy? Recent cases have begun to resolve these doubts, holding such agreements to be valid and enforceable. Legislation specifically permitting such contracts would provide a final resolution.

No submission received by the Institute differed from the basic recommendation in the Davies Report that legislation similar to that enacted in other provinces be implemented in Alberta and provide for domestic contracts both between spouses and between cohabitants. The only controversial matter appeared to relate to the formalities that would be required in respect to such contracts and the effect of a subsequent marriage on a cohabitation contract.

In respect of this first concern, the necessary formalities, there appeared to be three viable alternative approaches, namely:

¹⁶ *Survey of Adult Living Arrangements*, Research Paper No. 15 at pp. 86-87.

- (a) No formalities be required.
- (b) A domestic contract must be in writing, signed by the parties and witnessed.
- (c) A domestic contract must comply with formalities corresponding to those set out in s. 38 of the Matrimonial Property Act of Alberta.¹⁷

A majority of the Institute Board recommended the adoption of alternative (b), that is that a domestic contract must be in writing, signed by the parties and witnessed if it is to be enforceable. Its reasons for this recommendation are as follows:

- (a) the requirement of writing is necessary in the interests of clarity and certainty, to enable the parties to clarify their expectations and be certain of that which they have agreed upon. Further, where the disposition of land is involved, the Statute of Frauds imposes a requirement of writing. An oral domestic contract which deals with land may fall afoul of this provision if there is no part performance.

¹⁷ Section 37 of the Matrimonial Property Act provides that a matrimonial property order under the Act cannot be made in respect of property with regard to which there is a subsisting written agreement between the spouses if that agreement complies with section 38. Section 38 of the Act sets out the following formal requirements for such an agreement. Each spouse must acknowledge in writing apart from the other:

- (a) that he is aware of the nature and effect of the agreement;
- (b) that he is aware of the possible future claims to property he may have under the Act and that he intends to give up those claims to the extent necessary to give effect to the agreement;
- (c) that he is executing the agreement freely and voluntarily without any compulsion on the part of the other spouse.

This acknowledgement must be made before a lawyer other than the one acting for the other spouse.

- (b) We have recommended that no statutory right to reallocation of property be given to cohabitants (Recommendation III). In light of this the majority of the Board believe that imposition of formalities akin to those set out in s. 38 of the Matrimonial Property Act would be unnecessarily onerous and expensive. Moreover, contracts that did not comply with the provision would be invalidated albeit valid under present law. Adoption of alternative (c) might well cause hardship.

A minority of the Board, however, felt that the protection offered by option (c) was both necessary and desirable. Accordingly the minority recommended that, in order to be enforceable, a domestic contract must comply with formalities corresponding to those set out in s. 38 of the Matrimonial Property Act of Alberta.

A second concern expressed with regard to the recommendations of the Davies Report on domestic contracts was with respect to the effect on the agreement of a subsequent marriage of the cohabitants. The available alternatives here appear to be:

- (a) the agreement continues in force and effect as a marriage contract;
- (b) the cohabitation agreement is terminated by intermarriage of the cohabitants unless made in contemplation thereof;
- (c) subsequent intermarriage of the cohabitants is one factor that the court is directed to consider in exercising its discretionary power to disregard any provision of a domestic contract.

The Institute recommended adoption of the third alternative. We felt that marriage was certainly a relevant factor in a determination of whether the terms of a domestic contract should be enforced. However, we did not feel that intermarriage should have the very serious effect of terminating a cohabitation agreement in all cases

regardless of circumstances save where the agreement was made in contemplation of marriage.

RECOMMENDATION V (majority recommendation)

(a) That new statutory provisions be enacted providing for domestic contracts. These provisions should be similar to those in place in several other common law provinces.

(b) In order for such contracts to be enforceable they must be in writing, signed by the parties and witnessed.

(c) Subsequent intermarriage of parties to a cohabitation agreement should be one factor that the court be directed to consider in exercising its discretionary power to disregard any provision of a domestic contract.

RECOMMENDATION V (minority position)

That the recommendation of the majority (above) be adopted save for part (b). In order for a domestic contract to be enforceable it must comply with formalities corresponding with those set out in s. 38 of the Matrimonial Property Act of Alberta.

RECOMMENDATION VI

That new statutory provisions be enacted providing for domestic contracts between married people and people entering marriage. These provisions would be similar to those in other provinces and would correlate with those referred to in Recommendation V above.

(d) Distribution on death

(i) Intestate succession

Neither Alberta nor any other province in Canada currently makes provision for succession on intestacy of one cohabitant vis a vis the other.

The Davies Report recommended that cohabitants be included within the list of those entitled on intestacy. This recommendation was made in light of the fourfold purposes of the intestacy rules.¹⁸ Namely:

- i. The rules have the virtue of certainty and thereby avoid disputes and delays in distribution.
- ii. The rules ensure that immediate relatives benefit from the estate in preference to more distant relatives.
- iii. The rules are intended to reflect community views on the way in which a spouse's estate should be distributed.
- iv. The rules are designed to reflect the deceased's assumed wishes.

It was felt that inclusion of cohabitants within the list of those entitled to succeed on intestacy was within the spirit of the purposes of the intestacy rules outlined above. Persons living in cohabitational relationships often see themselves, and are seen by others, as members of a family unit, as members of the immediate family of a deceased partner. Inclusion will often reflect the deceased cohabitant's wishes in that people who live together are often unaware of the precise legal consequences of their relationship and may fail to provide for their partner by will, not by design, but simply as a result of misunderstanding, ignorance of the law or procrastination.

Accordingly, it was recommended that Alberta enact legislation similar to that adopted in the state of New South Wales, Australia.¹⁹ The Institute was unanimous in

¹⁸ These purposes are listed by the New South Wales Law Reform Commission in its, *Report on De Facto Relationships*. (L.R.C. 36 (1983) pp. 225-228)

¹⁹ See Wills, Probate and Administration (De Facto Relationships) Amendment Act 1984 No. 159.

endorsing this recommendation. No submission received by us was at odds with this proposal.

RECOMMENDATION VII

That the Intestate Succession Act of Alberta²⁰ be amended in the following manner:

- (a) Where a person dies intestate and is survived by both a spouse and a de facto partner, the de facto partner should be entitled to the spouse's share on intestacy to the exclusion of the spouse if the de facto partner lived with the deceased for a continuing period of at least two years immediately before his or her death. However, even where this condition is fulfilled, the de facto partner should not be entitled to take the spouse's share if the court is satisfied that the deceased lived with his or her spouse during any part of that two year period.
- (b) Where the deceased is survived by a de facto partner and children of another relationship, the de facto partner should be entitled to the spouse's share on intestacy if he or she had lived with the deceased for a continuous period of at least two years immediately before death.
- (c) Where a person dies intestate leaving a de facto partner but neither a spouse or children of another relationship, the de facto partner of the deceased, if living with the deceased at the time of his or her death, should be entitled to take the spouse's share on intestacy.

(ii) Family relief

Alberta law makes no provision for a cohabitant to claim against the estate of his or her partner if inadequate provision is made for that cohabitant in the other's will. Some Canadian provinces, however, allow for a cohabitant to claim against the other's estate if not properly provided for by will or on intestacy.

We recommend no change of the law in this area. An earlier report of the Institute²¹ concluded that the purpose of the Family Relief Act was to transfer a legal

²⁰ R.S.A. 1980 c. I-9.

²¹ Report No. 29, *Family Relief* (June 1978).

support obligation owed by a deceased during his lifetime over to his estate. The majority of the Board has concluded that there should be no general right of support as between cohabitants. It is only in cases of defined hardship that a limited support obligation should be owed. In light of our earlier recommendation respecting maintenance²² we felt that there should be *no* right on the part of a cohabitant to claim relief from the estate of the other under the Family Relief Act of Alberta.

RECOMMENDATION VIII

That Alberta law not be amended to include cohabitants in the list of dependants entitled to claim relief under the Family Relief Act.

(2) Those Areas of Law Involving Rights and Obligations as Between Cohabitants and Third Parties

(a) The children of cohabiting couples

Most of the provinces of Canada have now adopted legislation abolishing the status of legitimacy and that of illegitimacy. In an earlier report the Alberta Law Reform Institute recommended likewise.²³ The Institute re-endorses its earlier proposal.

RECOMMENDATION IX

That the status of legitimacy and that of illegitimacy be abolished by the enactment of legislation similar to that enacted in a majority of the other Canadian provinces and to that recommended by the Alberta Law Reform Institute in 1976.

²² See above Recommendation II.

²³ Report No. 20, *Status of Children* (1976) reissued in updated form November 1985 (Report No. 45).

(b) Agency of necessity

The common law rule whereby a separated wife may pledge her husband's credit for necessities has been repealed and replaced by new rules in several provinces. In Ontario these rules permit cohabitants as well as spouses to pledge their partners' credit for necessities.

In an earlier report of the Institute²⁴ it was recommended that the separated wife's agency of necessity be abolished. We endorse the recommendations in that report for the reasons there given. We would not extend the separated wife's agency to pledge her husband's credit for necessities to cohabitants.

RECOMMENDATION X

That Alberta law be amended so that the separated wife's agency of necessity is abolished.

(c) Fatal accidents

The Fatal Accidents Act of Alberta²⁵ permits a defined list of relatives to sue in respect of a loss incurred by them as a result of the death. Recovery is restricted to the claimant's loss of reasonable expectation of pecuniary benefit. A more limited class of relative may also sue to recover damages for bereavement. A spouse is included within both the wide and the narrow class of relatives. A cohabitant is included in neither.

In Canada only Ontario and Prince Edward Island include cohabitants within the list of relatives entitled to sue under provincial Fatal Accidents Act legislation. Damages for bereavement are not recoverable in either province but relatives (including cohabitants) can sue for loss of reasonable expectation of pecuniary benefit.

²⁴ Report No. 27, *Matrimonial Support* (March 1978).

²⁵ R.S.A. 1980 c. F-5.

We recommend that cohabitants be included in the list of relatives entitled to sue for loss of expectation of pecuniary benefit and also in the list entitled to claim damages for bereavement. In this we adopt the recommendations of the Davies Report for the reasons therein given. These reasons are briefly as follows:

- i. The factors that persuaded us that it would be wrong to extend to cohabitants a right to property division under the Matrimonial Property Act and all but limited maintenance rights as against each other are not applicable in this context. Whether persons have made a commitment one to the other, whether they have chosen to reject, as between themselves, the normal incidents of marriage is only relevant when one is dealing with areas of law involving relations between the cohabitants *inter se*. Such factors are *not* relevant when one is talking of the legal liability of a third person to a cohabitant.
- ii. The basic purpose of the Fatal Accidents Act is to provide compensation to a family unit that has suffered economic loss as a result of the death of one of its members. The Workers' Compensation Act²⁶ is largely similar and in that context a cohabitant can receive compensation under Alberta law. A cohabitant can be as much a part of a family unit as a legal spouse and consequently as needing of compensation.
- iii. Insofar as damages for bereavement are concerned, we see little reason to distinguish between cohabitants and spouses. Both are likely to suffer stress and grief after the death of a partner and therefore should be able to recover the relatively small sum specified in the statute for bereavement.

²⁶ R.S.A. 1980 c. W-16.

RECOMMENDATION XI

That a cohabitant be included within the list of specified relatives entitled to claim damages for loss of expectation of pecuniary benefit and also within the list of those entitled to claim damages for bereavement under the Fatal Accidents Act of Alberta.

(d) Workers' Compensation Act

The Davies Report made three principal recommendations relating to workers' compensation:

- (a) That workers' compensation payments be attachable under the Maintenance Enforcement Act²⁷ and s. 44 of the Workers' Compensation Act²⁸ be repealed (s. 44 presently gives the Workers' Compensation Board discretionary power to redirect all or part of a worker's payments to a spouse or child if that spouse or child is likely to become a public charge or a maintenance order has been made in his or her favour and is not being complied with).
- (b) That the definition of 'spouse', for the purposes of the Workers' Compensation Act, be amended. (At present a 'spouse' is defined as including a common law spouse who has lived with the worker for at least five years immediately preceding the worker's death or at least two years preceding the worker's death if there is a child of the common law relationship.)
- (c) Where a worker dies leaving a legal spouse and a common law spouse a pension payable under the Workers' Compensation Act should be

²⁷ S.A. 1985 c. M-0.5.

²⁸ Workers' Compensation Act 1981 R.S.A. c. W-16.

apportioned between them according to what is reasonable and proportionate to the degree of dependency. (At present no apportionment is possible. If the legal spouse is dependant he or she takes precedence over the common law spouse.)

We endorse the first and third of these recommendations. The second will be discussed later under the subheading "Definition".

RECOMMENDATION XII

That the Workers' Compensation Act of Alberta be amended in the following respects:

(a) Section 44 be repealed and Workers' Compensation payments become attachable under the Maintenance Enforcement Act.

(b) Where a worker dies leaving a legal and a common law spouse a pension payable under the Workers' Compensation Act should be apportioned between them according to what is reasonable and proportionate to the degree of dependency.

(e) Insurance

(i) Insurable interest

The Davies Report recommended that the Insurance Act²⁹ *not* be amended so as to provide that a person have an insurable interest in the person with whom he cohabits.

We received no submissions on this topic. Accordingly, we recommend that this recommendation be adopted.

²⁹ R.S.A. 1980 c. I-5.

RECOMMENDATION XIII

That the Insurance Act of Alberta *not* be amended so as to provide that a person have an insurable interest in the person with whom he or she cohabits.

(ii) Death benefits in automobile insurance

Under existing Alberta law³⁰ death benefits are payable on the death of the insured, by the insurer, to a spouse living as a member of the deceased's household at the time of death. If the deceased leaves no spouse surviving then a common law spouse is eligible for the benefit. A common law spouse is defined as one who cohabited with the deceased as his spouse and was known as such in the community, cohabitation must have endured for five years immediately preceding the deceased's death or for two years if there is a child of the relationship.

The Davies Report criticized the existing law on two bases:

- (a) Currently, a common law spouse can only claim the death benefit if there is no surviving spouse. A spouse can only claim the death benefit if he or she was a member of the deceased's household at the time of death. Thus, if the deceased leaves a spouse surviving who is *not*, at the time of death, living as a member of the deceased's household *neither* the spouse *nor* the common law spouse can claim the benefit.
- (b) The definition of "common law spouse" in the legislation should be amended so that (i) there be no requirement that the parties be known in the community as spouses and (ii) the periods of cohabitation be abbreviated.

³⁰ Insurance Act R.S.A. 1980 c. I-5 s. 313(2).

No submission was received by the Institute on this topic. We endorse the recommendations of the Davies Report.

RECOMMENDATION XIV

(a) That the Insurance Act of Alberta s. 313 be amended so as to provide that where there is no eligible legal spouse (i.e., if the legal spouse was *not* a member of the deceased's household at the relevant time) then a common law spouse who was a member of the household should receive the death benefit under that section.

(b) The definition of common law spouse and the period of cohabitation that a common law spouse must satisfy in order to be eligible to receive the death benefit under s. 313 be amended. A person not married to the deceased should be eligible to receive the death benefit, where no legal spouse qualifies, if that person is of the opposite sex to the deceased and, at the time of the accident causing death, was living with him or her on a *bona fide* domestic basis.

(f) Exemptions

In this context we examined three areas.

- (i) Exemption from seizure of goods used or needed by the debtor's family. Under the Exemptions Act³¹ certain real and personal property of an execution debtor is exempt from seizure under a writ of execution. If the execution debtor dies his property that was exempt from seizure remains so, so long as the property is in the use and enjoyment of his surviving spouse and/or minor children and it is a necessity for their support and maintenance. Should the exemption in favour of the surviving spouse and minor children be extended to include a cohabitant?
- (ii) Exemption from attachment by a garnishee where the creditor seeks to garnishee wages or salary of the debtor. Under Rule 483 of the Alberta Rules of Court a certain sum of money is exempt from seizure where the

³¹ R.S.A. 1980 c. E-15 s. 15. See also s. 6.

creditor attempts to garnishee wages or salary. The sum varies upon whether the debtor is married or unmarried and whether or not he has children to support. Should the married person exemption be extended to cohabitants?

- (iii) Exemption from execution or seizure of the proceeds of certain insurance policies. Under the Insurance Act³² insurance money under certain policies of insurance and the rights and interests of the insured therein and the contract are exempt from execution or seizure while a designation in favour of a spouse, child, grandchild or parent of the insured is in effect. Should this exemption be extended to include a designation in favour of a cohabitant?

Our answer to the three above questions was, "no" for the following reasons:

- (a) A creditor has a right to be repaid his debt. This right, in limited circumstances, must give way to the public interest that debtors not be deprived of the means of making a livelihood nor that their families be deprived of the basic necessities of life. This extraordinary encroachment into the creditor's right should not be extended lightly.
- (b) There is presently no legal obligation on one cohabitant to support the other and we have recommended that there be only a limited exception to this general rule in cases of specified hardship. To extend the married exemption to cohabitants would, in effect, compel a creditor to support the debtor's cohabitant.

We would, however, recommend one amendment to the present law in this area. Rule 483 of the Alberta Rules of Court provide that the monthly exemption for an

³² R.S.A. 1980 c. I-5 ss. 265 and 374.

unmarried debtor is \$525. If, however, the debtor is a widow, widower, unmarried mother or divorced person with dependent children in his or her custody or control or in respect of whom he or she is paying maintenance then the monthly exemption is \$525 plus \$140 for each child. We recommend that the word 'mother' in the paragraph referred to above be substituted by the word 'parent'. We feel that the present terminology discriminates against a man who has custody or control of his child or who is supporting that child. It is inexcusably sexist and should be amended accordingly.

RECOMMENDATION XV

(a) That the Exemptions Act,³³ the Insurance Act,³⁴ and Rule 483 of the Alberta Rules of Court *not* be amended so as to create new exemptions in respect of cohabitants.

(b) That Rule 483(1)(c) of the Alberta Rules of Court be amended by substituting the word 'parent' for the word 'mother' within that paragraph.

(g) Pensions

Most pension plans subject to Alberta legislation fall under one of the following statutes or groups of statutes:

(1) The Employment Pension Plans Act³⁵;

³³ R.S.A. 1980 c. E-15.

³⁴ R.S.A. 1980 c. I-5.

³⁵ S.A. 1986 c. E-10.05.

- (2) Those pension statutes falling under the Pension Fund Act³⁶;
- (3) The Alberta Government Telephone Act³⁷; and
- (4) The Teachers Retirement Fund Act³⁸.

Each of these statutes, save for the Teachers Retirement Fund Act, define a spouse to include one who is not married to the pensioner but has lived with him or her for a designated period of time.

The Employment Pension Plans Act is relatively new legislation. Those statutes falling under the Pension Fund Act were all substantially revised in 1985. The Employment Pension Plans Act and the pension statutes falling under the Pension Fund Act all contain provisions for "spousal protection". These provisions mean that on retirement an employee with a spouse cannot select a form of pension that would endure for his life alone. If he does not select a pension that will endure for the joint lives of himself and his spouse then his selection is invalid. Only where the spouse agrees to waive this protection or where there is a matrimonial property order in place can this protection be lost. Further, under the legislation, if an employee should die before retirement then certain death benefits are payable to his surviving spouse. The employee cannot displace the rights of his spouse to those death benefits by designating another beneficiary in his or her place.

³⁶ These statutes comprise (a) the Local Authorities Pension Plan Act, S.A. 1985 c. L-28; (b) the Universities Academic Pension Plan Act, S.A. 1985 c. U-6.1; (c) the Public Service Pension Plan Act, S.A. 1984 c. P-35.1; (d) the Public Service Management Pension Plan Act, R.S.A. 1980 c. P-34, R & S 1984 c. P-34.1; (e) the Special Forces Pension Plan Act, S.A. 1985 c. S-21.1; and (f) the Members of the Legislative Assembly Pension Plan Act, S.A. 1985 c. M-12.5.

³⁷ R.S.A. 1980 c. A-23.

³⁸ R.S.A. 1980 c. T-2.

In this report we express no opinion on the policy of "spousal protection" generally. We do, however, recommend that the policy be applied evenly under the various pension schemes that are governed by Alberta legislation. The Davies Report recommended that the definition of spouse adopted in the Employment Pension Plans Act be adopted for the purposes of pensions following under the other Alberta pension statutes.³⁹ It also recommended that the Members of the Legislative Assembly Pension Plan Act, the Special Forces Pension Plan Act and the Public Service Management Pension Plan Act be amended so that eligibility of a common law spouse under these statutes accords with eligibility of a common law spouse under the other statutes falling under the Pension Fund Act.

The reason for these recommendations was that uniformity in the area of pension law is desirable as uniformity facilitates portability which is so important in today's society. The Employment Pension Plans Act governs most private pension schemes that are subject to Alberta jurisdiction. It was passed in the spirit of uniformity and it is anticipated that most of the other provinces of Canada will enact the same or similar legislation. In light of this it seems logical and right that the definition of 'spouse' in this legislation should be used as the model for other Alberta pension legislation.

³⁹ The Employment Pension Plans Act defines "spouse" as follows:

"1(1)(hh) spouse means in relation to another person,

(i) a person who, at the relevant time, was married to that other person and was not living separate and apart from him, or

(ii) if there is no person to whom subclause (i) applies, a person of the opposite sex who lived with that other person for the three year period immediately preceding the relevant time and was during that period held out by that other person in the community in which they lived as his consort".

No submissions were received by the Institute on this topic. We recommend adoption of the changes advocated in the Davies Report.

RECOMMENDATION XVI

(a) That the definition of spouse adopted in the Employment Pension Plans Act be adopted for the purposes of pensions falling under the following statutes:

- (i) the Alberta Government Telephone Act;
- (ii) the Teachers Retirement Fund Act;
- (iii) the Public Service Management Pension Plan Act;
- (iv) the Public Service Pension Plan Act;
- (v) the Universities Academic Pension Plan Act;
- (vi) the Special Forces Pension Plan Act;
- (vii) the Members of the Legislative Assembly Pension Plan Act; and
- (viii) the Local Authorities Pension Plan Act.

(b) That the eligibility to spousal protection benefits of a common law spouse under the Members of the Legislative Assembly Pension Plan Act, the Special Forces Pension Plan Act and the Public Service Management Pension Plan Act be the same as under those other statutes falling under the Pension Fund Act.

(3) Those areas of law which involve relations between cohabitants and the state

(a) Spousal competence, compellability and privileged communications

The Federal/Provincial Task Force on Uniform Rules of Evidence reported in 1982.⁴⁰ Its recommendations were, in large part accepted by the Uniform Law Conference of Canada. These recommendations, as amended by the Uniform Law Conference, formed the basis of a Uniform Evidence Act which was introduced in the Senate in 1982.⁴¹ As well, the recommendations, as amended by the Uniform Law

⁴⁰ *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence prepared for the Uniform Law Conference of Canada, 1982.*

⁴¹ Bill S-33.

Conference, formed the basis for the new Provincial Evidence Act proposed by the Alberta Law Reform Institute in 1982.⁴²

The Task Force and the Uniform Law Conference explored whether, for the purposes of the rules relating to competence, compellability and privileged communications, the status of spouse be accorded to cohabitants. These bodies concluded that such status *not* be accorded to cohabitants for the following reasons:

- (1) extension to *de facto* marriage would create difficult problems of statutory definitions and proof;
- (2) society does not have the same interest in protecting the harmony of non-legal marriages when this protection is weighed against loss of admissible evidence and the danger that the parties will live together to suppress evidence.

We have no reason to disagree with the opinions of the Task Force and the Uniform Law Conference on this matter. Further, we feel that it would be inherently wrong to tamper with a uniform bill of such recent origin. We received no submission advocating that the status of spouse be extended to cohabitants for the purposes of the rules relating to competence, compellability and privileged communications. Accordingly, we recommend no change in these areas of law.

RECOMMENDATION XVII

That the status of spouse *not* be extended to cohabitants for purposes of the rules relating to competence, compellability and privileged communications.

⁴² Report No. 37A.

(b) Criminal injuries compensation

The Criminal Injuries Compensation Act⁴³ provides for compensation to the victims, and the dependants of victims, of certain crimes. A spouse is included within the list of dependants. 'Spouse' is defined in the Act so as to include a common law spouse who cohabited with the victim for at least the five years immediately preceding the victim's application or at least for two years immediately preceding the victim's application for compensation if there is a child of the common law relationship.

The Davies Report recommended two changes to this definition. Firstly, it was recommended that the five and two year qualifying periods be eliminated and replaced by a simple requirement that the common law spouse be a person of the opposite sex to the victim who was living with him or her on a *bona fide* domestic basis at the relevant time. The reason for this recommendation was as follows: the Crimes Compensation Board has a wide discretion under the Act in determining to award compensation and the amount thereof; the Board, in making its decision, is to consider and take into account all the circumstances it considers relevant to the making of an order;⁴⁴ thus, it was felt rigid time limits are unnecessary since the Board can well determine if a claimant's relationship with the deceased was too ephemeral to warrant his or her compensation. Additionally, given the wide discretion reposed in the Board, it can weigh the merits of claims made by a legal, as well as a common law spouse (there being no practical reason for saying that both might not be compensated if both have suffered economic loss as a result of the death).

Secondly, it was recommended that the term "spouse" should not be defined solely in reference to the victim's application for compensation but should be defined also in terms of the victim's death. This change would make it clear that a cohabitant

⁴³ R.S.A. 1980 c. 33.

⁴⁴ Criminal Injuries Compensation Act, s. 8(1).

can claim compensation in respect of financial loss occasioned as a result of the victim's death.

The Davies Report recommended certain ancilliary changes in the Criminal Injuries Compensation Act. These changes were generally of a "house-keeping" nature and seemingly non-controversial.

No submissions were received by the Institute in relation to this aspect of the report. We therefore recommend adoption of the report's proposals.

RECOMMENDATION XVIII

(a) That the Criminal Injuries Compensation Act be amended so that the word 'spouse' is defined so as to include a person of the opposite sex of the victim who, at the time of the victim's application for compensation or, in the event of the victim's death, was living with the victim on a *bona fide* domestic basis.

(b) That the ancilliary recommendations relating to the Criminal Injuries Compensation Act recommended by the Davies Report in Issues Paper No. 2 at pages 208-210 be adopted.

(c) Fatality Enquiries

The Fatality Enquiries Act of Alberta⁴⁵ gives certain limited rights to the next of kin of a deceased in respect of matters such as the receipt of notice of a disinterment and representation at a public enquiry. The term "next of kin" is defined so as include a common law spouse. A common law spouse is defined as meaning a man or woman who, although not legally married to the deceased, lived and cohabited with the deceased immediately prior to the deceased's death as the deceased's spouse and was known as such in the community in which they lived.

⁴⁵ R.S.A. 1980 c. F-6.

The Davies Report recommends a change in the definition of common law spouse. It recommends that the definition be altered to correspond with the definition of common law spouse adopted elsewhere in the report. Thus, it recommends that a common law spouse, for the purposes of the Fatality Enquiries Act, be redefined to mean a person of the opposite sex of the deceased who, at the time of the deceased's death, was living with the deceased on a *bona fide* domestic basis.

The Institute received no submissions on this topic. We recommend adoption of the proposals set out in the Davies Report. The subject of definition of cohabitational relationships is discussed more fully in a later section of this report.⁴⁶

RECOMMENDATION XIX

That the Fatality Enquiries Act be amended so that the definition of common law spouse be redefined as meaning a person of the opposite sex to the deceased who, at the time of the deceased's death, was living with the deceased on a *bona fide* domestic basis.

(d) Welfare

The Social Development Act of Alberta⁴⁷ provides that in determining the amount of social allowance that a person requires, the Director shall have regard to the full resources of that person and, subject to any exception provided by the regulations, of any other person living in the same residence.

Regulations passed under this section provide that the resources of any person living in the same residence as an applicant for, or recipient of, social allowance are exempt if that person (a) is not cohabiting in a common law relationship with the

⁴⁶ *Infra* Recommendation XX.

⁴⁷ R.S.A. 1980 c. S-16 s. 12(2).

applicant or recipient, and (b) is contributing a reasonable monthly payment for room and board or rental to the applicant or recipient.⁴⁸

The policy manual of the Department of Social Services and Community Health⁴⁹ defines a common law relationship as one where a man and woman are not legally married to each other and live together as man and wife by mutual arrangement, understanding or agreement. The policy manual sets out a series of investigative steps a social worker shall take if he or she suspects that a client is living in a common law relationship.

The Davies Report recommended that the regulation referred to above be amended and that the provisions of the policy manual relating to common law relationships be deleted. It was recommended that the regulation be replaced by a provision similar to that recently introduced in Ontario. This new regulation would provide that the resources of any person living in the same residence as the applicant for, or recipient of, social allowance will be exempt unless that person was providing an economic contribution to the applicant or recipient *and* if the relationship between the two was of a social or familial nature. In determining whether a person's resources are exempt sexual factors should not be investigated or considered.

The reasons for this recommendation are as follows:

- (a) A person's financial need should determine his or her eligibility or welfare. The fact that someone of the opposite sex lives with the claimant does not mean he is supporting her financially. The empirical study conducted by

⁴⁸ Alberta Regulation 129/78 as amended by Regulation 345/83.

⁴⁹ See *Social Services: Income Security Programs*, Government of Alberta, Department of Social Services and Community Health, p. 53. See also pp. 140-41.

the Institute⁵⁰ demonstrates that cohabitants have a greater financial independence from one another than is the case with married couples. Further we have recommended that there be only a limited obligation of support between cohabitants to alleviate cases of defined hardship. It therefore appears to be inappropriate to assume financial support by virtue simply of cohabitation.

- (b) The investigative guidelines to social workers provided by the Department of Social Services and Community Health are intrusive and demeaning.

No submissions were received by the Institute on this topic. We recommend adoption of the proposal set out in the Davies Report.

RECOMMENDATION XX

(a) That the regulation passed under s. 12(2) of the Social Development Act of Alberta be repealed and a new regulation promulgated in its place. This new regulation would provide that the resources of any person living in the same residence as an applicant for, or recipient of, social allowance would be exempt unless that person was providing an economic contribution to the applicant or recipient *and* if the relationship between the two was of a social or familial nature.

(b) That the provisions of the policy manual of the Department of Social Services and Community Health relating to common law relationships be deleted.

C. Definition of the Term "Cohabitation Relationship"

In this report we have recommended that, for the purposes of some areas of the law, certain rights and obligations extend to cohabitants. How should the terms "cohabitant" and "cohabitation relationship" be defined for these purposes?

⁵⁰ *Survey of Adult Living Arrangements*, Institute of Law Research and Reform of Alberta, Research Paper No. 15 (1984).

In the area of intestate succession we have made specific recommendations with respect to which cohabitants would fall under the Intestate Succession Act. We feel that that recommendation balances the respective rights of spouse, cohabitant and children.⁵¹ In the area of pensions we have recommended that the definition of 'cohabitant' or 'common law spouse' be consistent throughout the various pension statutes and we have recommended adoption of the definition set out in the Employment Pension Plans Act.⁵²

We now address the question, apart from the specific areas of intestate succession and pensions, of how should we define that cohabitational relationship in respect of which we have recommended rights and obligations flow?

The Davies Report defined the relationship as one between a man and a woman who are living together on a *bona fide* domestic basis, but who are not married to one another. This definition is the one adopted in the New South Wales legislation.⁵³

In the majority of Alberta statutes to which rights and obligations are extended to cohabitants that relationship is defined in terms of five and two year periods. Thus, under the Workers' Compensation Act a common law spouse is defined as one who cohabited with the worker for five years immediately preceding the relevant time or at least two years if there is a child born of the common law relationship.⁵⁴ In the other provinces the definition of "common law spouse" or "cohabitant" varies widely. In some,

⁵¹ *Supra* Recommendation VI.

⁵² *Supra* Recommendation XV.

⁵³ See in particular, The De Facto Relationships Act 1984 (N.S.W.).

⁵⁴ Workers' Compensation Act, 1981 R.S.A. c. W-16 s. 1(3).

a lengthy period of cohabitation is required.⁵⁵ In others, a shorter period or no period at all is specified.⁵⁶ In Issues Paper No. 2 we detail the definitions of the other provinces.⁵⁷

The Institute received a submission on the topic of definitions from the administrators of the Workers' Compensation Act. The administrators expressed the opinion that the definition proposed in the Davies Report would be administratively unworkable in the context of workers' compensation legislation. They felt that a term of years was an administratively necessary part of the definition, although they conceded that a lesser number of years than at present prescribed was, perhaps, desirable.

We defer to the experience of the administrators of the Workers' Compensation Act in this area. We accordingly recommend that a term of years be retained to form part of the definition of common law spouse for the purposes of the Workers' Compensation Act. For reasons expressed in our Issues Paper No. 2,⁵⁸ we feel it essential that the definition of common law spouse under the Fatal Accidents Act be consistent with that under the Workers' Compensation Act and we so recommend. In the further interests of consistency, we recommend that the definition of common law spouse for the purposes of both the Fatal Accidents Act and the Workers' Compensation

⁵⁵ E.g., in Manitoba under the Family Maintenance Act, R.S.M. 1987 c. F-20 s. 4(3) and s. 14, the obligation of support extends to those who have lived together continuously for a five year term in a relationship in which the applicant has been substantially dependent upon the other for support. If there is a child of the union, the required period of cohabitation is one year.

⁵⁶ In the Yukon Territory it is only necessary that the parties have cohabited in a relationship of some permanence for the maintenance obligation to attach. See Matrimonial Property and Family Support Ordinance, R.S.Y. 1986 c. 63 s. 35.

⁵⁷ *Towards Reform of the Law Relating to Cohabitation Outside Marriage* (October 1987). The definitions of the other provinces in respect to maintenance are set out as pp. 59-62 of the report.

⁵⁸ See Issues Paper No. 2, pp. 163, 164.

Act correspond with that adopted in the Employment Pension Plans Act⁵⁹ wherein a spouse is defined so as to include a person of the opposite sex who lived with that other person for the three year period immediately preceding the relevant time and was, during that period, held out by that other person in the community in which they lived as his consort.

For all purposes other than intestate succession, pensions, workers' compensation and fatal accidents, we recommend adoption of the definition of cohabitant recommended in the Davies Report.

RECOMMENDATION XXI

(a) That [subject to paragraphs (b) and (c) below] for the purposes of the recommendations contained in this report a cohabitational relationship be defined as a relationship between a man and a woman who are living together on a *bona fide* domestic basis but who are not married to each other.

(b) That for the purposes of the Pension Plan Acts,⁶⁰ the Workers' Compensation Act and the Fatal Accidents Act, a spouse be defined so as to include a person of the opposite sex who lived with that other person for the three year period immediately preceding the relevant time and was, during that period, held out by that other person in the community in which they lived as his consort.

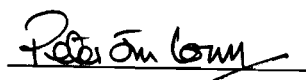
(c) That for the purposes of the Intestate Succession Act of Alberta the definition of cohabitant set out in (a) above be adopted. The circumstances in which a person who falls within that definition can succeed on intestacy are set out in Recommendation VII above.

⁵⁹ S.A. 1986 c. E-10.05 s. 1(1)(hh).

⁶⁰ See *supra* n. 39.

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PART IV - DRAFT LEGISLATION

SECTION 1: Amendments to the Domestic Relations Act of Alberta R.S.A. 1980 c. D-37

A. Introduction

It is anticipated that the draft legislation set out in this section will form part of a new Domestic Relations Act.

The current Domestic Relations Act of Alberta is in need of reform. In 1978 the Alberta Law Reform Institute recommended enactment of a new 'Matrimonial Support Act'.⁶¹ Updating of this report is now timely.

It is proposed that our present recommendations relating to the support of cohabitants and domestic contracts form part of this new legislation. It should be noted that the draft legislation set out following does not cover four specific areas, in particular:

- (a) the types of support order that a court should be empowered to make (lump sum, secured orders, periodic orders, etc.);
- (b) child support;
- (c) spousal support;
- (d) custody of children.

⁶¹ *Matrimonial Support*, Report No. 27 (March 1978).

These areas will all be dealt with in a new Family Support or Domestic Relations statute of which our present recommendations form but two sections.

B. Proposed Legislation

**PART I
COHABITANT SUPPORT**

Definitions

- 1(1) For the purposes of this Part "cohabitant" means -
 - (a) in relation to a man, a woman who is living or has lived with the man on a *bona fide* domestic basis although not married to him; and
 - (b) in relation to a woman, a man who is living or has lived with the woman on a *bona fide* domestic basis although not married to her.
- (2) For the purposes of this Part "cohabitational relationship" means the relationship between a male and a female cohabitant, being the relationship of living or having lived together on a *bona fide* domestic basis although not married to each other.

No general right of cohabitants to maintenance

- 2 Except as otherwise provided in this Part a cohabitant is not liable to maintain the other cohabitant and a cohabitant is not entitled to claim maintenance from the other cohabitant.

Order for maintenance

- 3(1) On an application by a cohabitant for an order under this Part for maintenance, a court may make an order for maintenance where the court is satisfied as to either or both of the following:

- (a) that the applicant is unable to support himself or herself adequately by reason of having the care and control of a child of the cohabitants or a child of the respondent, being, in either case, a child who is, on the day on which the application is made -
 - (i) except in the case of a child referred to in subparagraph (ii), under the age of 12 years; or
 - (ii) in the case of a physically handicapped child or a mentally handicapped child - under the age of 16 years;
- (b) that the applicant is unable to support himself or herself adequately because the applicant's earning capacity has been adversely affected by the circumstances of the relationship and, in the opinion of the court -
 - (i) an order for maintenance is necessary for the applicant to re-adjust his or her life; and
 - (ii) it is, having regard to all the circumstances of the case, reasonable to make the order.
- (2) In determining whether to make an order under this Part for maintenance and in fixing any amount to be paid pursuant to such an order, the court shall take into consideration the condition, means, needs and other circumstances of each cohabitant, including
 - (a) the length of the cohabitational relationship;
 - (b) the functions performed by the cohabitants during cohabitation;
 - (c) any order agreement or arrangement relating to support of the cohabitant.
- (3) In making an order under this Part the court shall not take into consideration any misconduct of a cohabitant in relation to the cohabitational relationship.
- (4) An order made under this Part that provides for the support of a cohabitant should
 - (a) recognize any economic advantages or disadvantages to the cohabitant arising from the cohabitational relationship or its breakdown;

- (b) apportion between the cohabitants any financial consequences arising from the care of any child of the cohabitational relationship, or of a child of either party that is in the care and control of the other, over and above the obligation to pay child support;
 - (c) relieve any economic hardship of the cohabitants arising from the breakdown of the cohabitational relationship; and
 - (d) insofar as is practicable, promote the economic self-sufficiency of each cohabitant within a reasonable period of time.
- (5) Subject to sections 6, 7, 8 and 9 of this Act a court may make an order under this Part for a period less than that specified in section 6 or make an order that terminates on the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

Interim maintenance

- 4 Where on an application by a cohabitant for an order under this Part for maintenance, it appears to a court that the applicant is in immediate need of financial assistance, but it is not practical in the circumstances to determine immediately what order, if any, should be made, the court may order the payment by the respondent, pending the disposal of the application, of such sum or sums as the court considers reasonable.

Effect of subsequent relationship or marriage

- 5 Where cohabitants have ceased to live together on a *bona fide* domestic basis, an application to a court for an order under this Part for maintenance may not be made by a cohabitant who at the time on which the application is made has entered into a subsequent cohabitational relationship with another person or who, at that time, has married or remarried.

Duration of orders for periodic maintenance

- 6(1) An order under this Part for periodic maintenance, being an order made where a court is satisfied solely as to the matters specified in section 3(1)(a), may continue for such period as may be determined by the court, not exceeding the period expiring when the child to

whom section 3(1)(a) applies, or the younger or youngest such child, as the case may require -

- (a) except in the case of a child referred to in paragraph (b)--attains the age of 12 years; or
 - (b) in the case of a physically handicapped child or mentally handicapped child--attains the age of 16 years.
- (2) An order under this Part for periodic maintenance, being an order made where a court is satisfied solely as to the matters specified in section 3(1)(b), may continue for such period as may be determined by the court, not exceeding -
- (a) 3 years after the day on which the order is made; or
 - (b) 4 years after the day on which the cohabitants ceased, or last ceased, as the case may require, to live together,
- whichever is the shorter.
- (3) An order under this Part for periodic maintenance, being an order made where a court is satisfied as to the matters specified in section 3(1)(a) and (b), may continue for such period as may be determined by the court, not exceeding the period permissible under subsection (1) or (2), whichever is the longer.
- (4) Nothing in this section or an order under this Part for periodic maintenance prevents such an order from ceasing to have effect pursuant to section 8 or 9.

Effect of death of parties on application

- 7 Where, before an application under section 3 is determined, either party to the application dies, the application shall abate.

Cessation of order--generally

- 8(1) An order under this Part for maintenance shall cease to have effect -
- (a) on the death of the cohabitant in whose favour the order was made;
 - (b) on the death of the cohabitant against whom the order was made; or

- (c) on the marriage or remarriage of the cohabitant in whose favour the order was made.
- (2) Where, in relation to a cohabitant in whose favour an order under this Part for maintenance is made, a marriage or remarriage referred to in subsection (1)(c) takes place, the partner shall, without delay, notify the cohabitant against whom the order was made of the date of the marriage or remarriage.
- (3) Any money paid pursuant to an order under this Part for periodic maintenance, being money paid in respect of a period occurring after a marriage or remarriage referred to in subsection (1)(c) takes place, may be recovered as a debt in a court of competent jurisdiction by the cohabitant who made the payment.

Cessation of order—child care responsibilities

- 9 Where a court makes an order under this Part for periodic maintenance, being an order made where the court is satisfied solely as to the matters specified in section 3(1)(a), the order shall cease to have effect on the day on which the cohabitant in whose favour the order was made ceases to have the care and control of the child of the relationship, or the children of the relationship, as the case may require, in respect of whom the order was made.

Recovery of arrears

- 10 Nothing in section 8 or 9 affects the recovery of arrears due pursuant to an order under this Part for maintenance at the time when the order ceased to have effect.

Order for variation, rescission or suspension

- 11(1) A court may make an order varying, rescinding or suspending, prospectively or retroactively a support order or any provision thereof on application by either or both cohabitants or former cohabitants.
- (2) The court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought.

- (3) Before the court makes a variation order in respect of a support order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of either former cohabitant since the making of the support order or the last variation order made in respect to that order, as the case may be, and, in making the variation order, the court shall take into consideration that change.
- (4) In making a variation order the court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.
- (5) A variation order varying a support order that provides for the support of a former cohabitant should
 - (a) recognize any economic advantages or disadvantages to the former cohabitants arising from the cohabitational relationship or its breakdown;
 - (b) apportion between the former cohabitants any financial consequences arising from the care of any child of the cohabitational relationship, or of a child of either party that is in the care and control of the other, over and above the obligation to pay child support;
 - (c) relieve any economic hardship of the former cohabitants arising from the breakdown of the cohabitational relationship;
 - (d) insofar as practicable, promote the economic self-sufficiency of each former cohabitant within a reasonable period of time.
- (6) Subject to sections 6 through 9 inclusive and notwithstanding section 11(1), where a support order provides for a definite period or until the happening of a specified event, a court may not, on an application instituted after the expiration of that period or the happening of that event, make a variation order for the purpose of resuming that support unless the court is satisfied that
 - (a) a variation order is necessary to relieve economic hardship arising from a change described in subsection (3) that is related to the cohabitational relationship; and

- (b) the changed circumstances, had they existed at the time of the making of the support order or the last variation order made in respect of that order, as the case may be, would likely have resulted in a different order.

PART II

DOMESTIC CONTRACTS

Interpretation

12 In this Part,

- (a) "cohabitation agreement" means an agreement entered into under section 14;
- (b) "domestic contract" means a marriage contract, separation agreement or cohabitation agreement;
- (c) "marriage contract" means an agreement entered into under section 13;
- (d) "separation agreement" means an agreement entered into under section 15.

Marriage contracts

13(1) Two persons may enter into an agreement, before their marriage or during their marriage while cohabiting, in which they agree on their respective rights and obligations under the marriage or upon separation or the annulment or dissolution of the marriage, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

Rights re matrimonial home excepted

- (2) Any provision in a marriage contract purporting to limit the rights of a spouse under Part II of the Matrimonial Property Act in respect of a matrimonial home or household goods is void.

Cohabitation agreements

- 14(1) A man and a woman who are cohabiting and not married to one another may enter into an agreement before their cohabitation commences or during their cohabitation in which they agree on their respective rights and obligations during cohabitation, or upon ceasing to cohabit including,
- (a) ownership in or division of property;
 - (b) support obligations;
 - (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
 - (d) any other matter in the settlement of their affairs.
- (2) Any provision in a cohabitation agreement purporting to limit the rights of a cohabitant under Part II of the Matrimonial Property Act in respect of matrimonial home or household goods is void.
- (3) A cohabitation agreement may adopt the provision of Parts I and III of the Matrimonial Property Act and upon such adoption that Act applies to the man and woman.

Separation agreements

- 15 A man and woman who cohabited and are living separate and apart or who are cohabiting and agree to live separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including,
- (a) ownership in or division of property;
 - (b) support obligations;
 - (c) the right to direct the education and moral training of their children;
 - (d) the right to custody of and access to their children; and
 - (e) any other matter in the settlement of their affairs.

Form of contract

- 16(1) A domestic contract and any agreement to amend or rescind a domestic contract are void unless made in writing and signed by the persons to be bound and witnessed.
- (2) Nothing in this Act shall be construed so as to effect the requirements of section 37 and section 38 of the Matrimonial Property Act and this Part shall be read subject to those provisions.

Capacity of minor

- (3) A minor who has capacity to contract marriage has capacity to enter into a marriage contract or separation agreement that is approved by the court, whether the approval is given before or after the contract is entered into.

Agreement on behalf of mentally incompetent

- (4) The committee of a person who is mentally incompetent or, if the committee is the spouse or cohabitant of such person or, if there is no committee, the Public Trustee may, subject to the approval of the court, enter into a domestic contract or give any waiver or consent under this Act on behalf of the mentally incompetent person.

Contracts subject to best interests of child

- 17(1) In the determination of any matter respecting the support, education, moral training or custody of or access to a child, the court may disregard any provision of a domestic contract pertaining thereto where, in the opinion of the court, to do so is in the best interests of the child.

Dum casta clauses

- (2) A provision in a separation agreement or a provision in a marriage contract to take effect on separation whereby any right of a spouse is dependent upon remaining chaste is void, but this subsection shall not be construed to affect a contingency upon remarriage or cohabitation with another.

Idem

- (3) A provision in a separation agreement made before this section comes into force whereby any right of a spouse is dependent upon remaining chaste shall be given effect as a contingency upon remarriage or cohabitation with another.

Rights of donors of gifts

- 18 Where a domestic contract provides that specific gifts made to one or both parties are not disposable or encumberable without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of the enforcement or any amendment of the provision.

Contracts made outside Alberta

- 19 The manner and formalities of making a domestic contract and its essential validity and effect are governed by the proper law of the contract, except that,
- (a) a contract for which the proper law is that of a jurisdiction other than Alberta is also valid and enforceable in Alberta if entered into in accordance with the internal law of Alberta;
 - (b) section 17 and section 22 apply in Alberta to contracts for which the proper law is that of a jurisdiction other than Alberta; and
 - (c) a provision in a marriage contract or cohabitation agreement respecting the right to custody of or access to children is not valid or enforceable in Alberta.

Application of Act to existing contracts

- 20(1) A domestic contract validly made before the day this Act comes into force shall be deemed to be a domestic contract for the purposes of this Act.

Contracts entered into before coming into force of Act

- (2) If a domestic contract was entered into before the day this Act comes into force and the contract or any part would have been valid if entered into on or after that day, the contract or part is not invalid for the reason only that it was entered into before that day.

Idem

- (3) Where pursuant to an understanding or agreement entered into before this Act comes into force by spouses or cohabitants who are living separate and apart, property is transferred between them, the transfer is effective as if made pursuant to a domestic contract.

Terms of domestic contract prevail

- 21 Subject to section 17 and section 22 where there is a conflict between a provision of this Act and a domestic contract the domestic contract prevails.

Discretionary powers of court

- 22(1) A court may disregard any provision of a domestic contract,

- (a) if the domestic contract was made before the coming into force of this Act and was not made in contemplation of the coming into force of this Act; or
- (b) if the spouse or cohabitant who challenges the provision entered into the domestic contract without receiving legal advice from a person independent of any legal advisor of the other spouse or cohabitant; or
- (c) if the court is satisfied that the removal by one party of barriers that would prevent the other party's remarriage within that party's faith was a consideration in the making of all or part of the agreement or settlement; or
- (d) if cohabitants who have entered into a cohabitation agreement subsequently intermarry;

where the court is of the opinion that to apply the provision would be inequitable in all the circumstances of the case.

- (2) The court may disregard any provision in a marriage contract or a cohabitation agreement (but not a separation agreement) where, in the opinion of the court, the circumstances the parties have so changed since the time at which the agreement was entered into that it would lead to serious injustice if the provisions of the agreement, or any one or more of them, were to be enforced.

**SECTION 2: Amendments to the Matrimonial Property Act of Alberta
R.S.A. 1980 c. M-9**

A. Introduction

In order to implement Recommendations IV and XX of our report Part II of the Matrimonial Property Act would require substantial rewording. Our specific recommendation is encompassed in the following draft legislation.

B. Proposed Legislation

Part II of the Matrimonial Property Act of Alberta should be amended in the following manner:

Section 18.1 should precede section 19 and provide as follows:

18.1(1) An application under this Part may be made by a spouse as defined in section 1 of this Act or a cohabitant.

- (2) A cohabitant for the purposes of this Part is defined as either of a man and a woman who, not being married to each other, have cohabited for a reasonable period of time in a *bona fide* domestic relationship and the man or woman has care and control of a child 12 years or less who is either:
- (a) the natural child born of the relationship between the man and woman; or
 - (b) a child adopted by the man and woman; or
 - (c) a child of either the man or woman who is in the care and control of the other; or
 - (d) a child of either the man or woman to whom the other stands *in loco parentis*.

- (3) Where an application for an order under section 19 or section 25 is made by a cohabitant then the court may only make such an order if it deems it to be in the best interests of a child of the parties that such an order be made.
- (4) A child of the parties for the purposes of section 18.1(3) is a child 12 years or less who is either:
 - (a) the natural child born of the relationship between the parties; or
 - (b) a child adopted by the parties; or
 - (c) a child of one of the partners who is in the care and control of the other; or
 - (d) a child of one of the parties to whom the other stands *in loco parentis*.

Section 19(4) should be amended to provide as follows:

- 19(4) An order under this section may be varied by the court on application by a spouse, *a cohabitant as defined in section 18.1 or a spouse of a cohabitant*.

Section 20 should be extended and the following paragraph added:

- 20 (e) the position of any spouse of either of the parties.

Section 29(1) and (2) of the Act should be amended to read as follows:

- 29(1) The person against whose property an order is registered under section 22 *or the spouse of that person* may apply to the court for an order directing the Registrar of Titles to cancel the registration.
- (2) The person against whose property an order is registered under section 23 or section 26 *or the spouse of that person* may apply to the court for an order cancelling the registration.

**SECTION 3: Amendments to the Intestate Succession Act of Alberta
R.S.A. 1980 c. I-9 and to the Surrogate Rules**

A. Introduction

In order to implement Recommendation VI and XX of our report the Intestate Succession Act would require substantial rewording. Rule 2 of the Surrogate Rules (which sets out the priority of right to a grant of administration) would also require amendment. Our recommendations would be implemented by the following draft legislation.

B. Proposed Legislation

Section 1 of the Intestate Succession Act should be amended by adding immediately after paragraph (c) thereof the following:

- 1 (d) ‘cohabitant’ means,
- (i) in relation to a man, a woman who is living or has lived with the man on a *bona fide* domestic basis although not married to him; and
 - (ii) in relation to a woman, a man who is living or has lived with the woman on a *bona fide* domestic basis although not married to her.
- (e) ‘cohabitational relationship’ means the relationship between a male and a female cohabitant being the relationship of living or having lived together on a *bona fide* domestic basis although not married to each other.

Immediately following section 4 of the Intestate Succession Act should be added the following section:

4A Notwithstanding sections 2, 3, 4, 5, 6, 7 and 8 of this Act:

- (1) If the intestate dies leaving a spouse and a cohabitant the whole of the estate, or, as the case may be, such part of the estate of the intestate as would otherwise go to the spouse under section 2 or 3 of this Act shall be distributed in the following manner:**
 - (a) where the cohabitant lived in a cohabitational relationship with the deceased for a continuous period of not less than 2 years immediately prior to the death of the intestate and the intestate did not, during the whole or any part of that period, live with the person to whom he or she was married - to the cohabitant;**
 - (b) in any other case - to the surviving spouse.**
- (2) Notwithstanding subsection (1) above:**
 - (a) where an intestate female person dies leaving a cohabitant and also leaves issue but no spouse surviving, the whole or, as the case may be, such part of the estate of the female intestate as would, if the intestate had left a surviving spouse, go to the surviving spouse under section 3 of this Act, shall be distributed in the following manner:**
 - (i) where the cohabitant lived in a cohabitational relationship with the deceased for a continuous period of not less than 2 years immediately prior to the death of the intestate - to the cohabitant;**
 - (ii) in any other case -**
 - (A) except as provided by subparagraph (B) - the issue as if the intestate left no husband;**
 - (B) where the only issue surviving the intestate are issue also of the cohabitant - the cohabitant.**
 - (b) where an intestate male person dies leaving a cohabitant and also leaves issue but no spouse surviving the whole or, as the case may be, such part of the estate of the male intestate as would, if the intestate had left a surviving spouse, go to the surviving spouse under section 3 of this Act, shall be distributed in the following manner:**

- (i) where the cohabitant lived in a cohabitational relationship with the deceased for a continuous period of not less than 2 years immediately prior to the death of the intestate - to the cohabitant;
 - (ii) in any other case - the issue as if the intestate left no wife.
- (3) Notwithstanding section 14 of this Act, where the intestate dies leaving a cohabitant and no surviving spouse nor surviving issue his estate goes to the cohabitant.

Section 15 of the Intestate Succession Act is repealed and replaced by the following:

- 15 Where the deceased died leaving a surviving spouse and that surviving spouse had left the intestate and was living in adultery at the time of the intestate's death, then the estate of the intestate shall be distributed as if the deceased died leaving no spouse surviving.

Rule 2 of the Surrogate Rules should be amended to include the words, "cohabitant as defined in the Intestate Succession Act" immediately after "husband or wife" and immediately before "children".

**SECTION 4: Amendments to the Fatal Accidents Act of Alberta
R.S.A. 1980 c. F-5**

A. Introduction

In order to implement our Recommendations X and XX we propose that the Fatal Accidents Act be amended in the following respects.

B. Proposed Legislation

Section 1 of the Fatal Accidents Act should be amended to add the following after subparagraph (b):

- 1 (c) "cohabitant" means a person of the opposite sex to the deceased who lived with the deceased for the 3 year period immediately preceding the death of the deceased and was during that period held out by the deceased in the community in which they lived as his consort.

Section 3(1)(a) should be amended so as to include the word "cohabitant" after the word "husband" and before the word "parent".

Section 4.1 should follow section 4 and precede section 5. Section 4.1 should read:

- 4.1(1) Where a deceased person is survived by a spouse and a cohabitant, the action shall, subject to this section, be brought for the benefit of both.
- (2) Where the court considers it appropriate that any person for whose benefit an action lies under this section should present an independent claim for the benefit of an action under this section, it may permit or require that person to appear or be represented in the proceedings in all respects as if he were a separate party to the proceedings.

- (3) No action lies against the executor or administrator for failing to bring an action for the benefit of a cohabitant if he brings the action without notice of the claim of the cohabitant but the interest of any such cohabitant in the action shall be recognized by the court if application for recognition is made to the court before the proceedings are finally terminated.

Section 8(2) should be amended so that paragraph (a) is repealed and replaced by the following:

- (a) \$3,000 to the spouse or cohabitant of the deceased person.

Section 8(2.1) should immediately follow paragraph 8(2). Paragraph 8(2.1) should read as follows:

- 8(2.1) Where the deceased person is survived by a spouse and a cohabitant, they may both claim damages for bereavement under this section, but the total amount awarded by way of damages for bereavement in any such case shall not exceed the amount that could have been awarded if the deceased had been survived by a single spouse or single cohabitant.

Paragraph 8(2.2) should immediately follow paragraph 8(2.1).

Paragraph 8(2.2) should read as follows:

- 8(2.2) Where in any proceedings under this section a spouse and a cohabitant both claim damages for bereavement, such damages awarded by the court shall be apportioned between the claimants in such manner as the court thinks fit and just.

Paragraph 8(2.3) should immediately follow paragraph 8(2.2).

Paragraph 8(2.3) should read as follows:

8(2.3) In any proceedings by a spouse for damages for bereavement it is not necessary for the court to inquire if the deceased was also survived by a cohabitant, but any such cohabitant may, at any time before the proceedings are finally determined, apply to the court to be joined as a party to the proceedings.

**SECTION 5: Amendments to the Workers' Compensation Act of Alberta 1981
R.S.A. c. W-16 and to the
Regulations under the Maintenance Enforcement Act of Alberta
S.A. 1986 c. M-05**

A. Introduction

In order to implement our Recommendations XI and XX we propose that the Workers' Compensation Act and the Regulations under the Maintenance Enforcement Act be amended in the following respects.

B. Proposed Legislation

Section 1(3) of the Workers' Compensation Act should be repealed and the following enacted in its place:

- 1(3) (a) for the purposes of this Act "spouse" includes a common law spouse. A common law spouse is a person of the opposite sex to the worker who lived with the worker for the 3 year period immediately preceding the worker's death and was, during that period, held out by the worker in the community in which they lived as his consort;
- (b) If, at the time of the worker's death there is a dependent common law spouse of the worker and, as well, a dependent legal spouse of the worker, then, for the purposes of a pension under section 64, the Board shall apportion the payments between the dependent legal spouse and the dependent common law spouse according to what is reasonable and proportionate to the degree of dependency;
- (c) Nothing in this subsection affects the rights under this Act of dependent children of either relationship.

Section 44 of the Workers' Compensation Act should be repealed and section 135 of that Act should be amended to read:

- 135 Except as otherwise provided in this Act or in the *Maintenance Enforcement Act of Alberta*, or regulations made pursuant thereto, no sum payable as compensation or by way of commutation of any periodical payment in respect of it, is capable of being assigned, charged or attached, unless the Board gives its approval.

Alberta Regulation 2/86 (Maintenance Enforcement Regulations) should be amended so that Regulation 1(d) reads:

- 1 (d) "wages or salary" includes
- (i) a commission or other similar amount fixed by reference to a volume of sales and payable to the debtor as an employee, and
 - (ii) a benefit payable to the debtor as an insured person under the Unemployment Insurance Act, 1971 (Canada), and
 - (iii) *compensation payable to the debtor under the Workers' Compensation Act.*

**SECTION 6: Amendments to the Insurance Act of Alberta
R.S.A. 1980 c. I-5**

A. Introduction

In order to implement our Recommendations XIII and XX we propose that the Insurance Act be amended in the following respects.

B. Proposed Legislation

Section 313 of the Insurance Act should be amended by deleting subsections (10) and (11) thereof and substituting therefor the following:

313(10) In this section "survivor" means spouse or dependent relative.

- (11) If a deceased insured does not have a legal spouse at the time of his death who has an enforceable claim for benefits under this section the benefits to which a spouse would have been entitled under this section shall be paid to a person of the opposite sex to the insured who, at the time of the accident causing death, was living with him on a *bona fide* domestic basis.

**SECTION 7: Amendments to the Criminal Injuries Compensation Act of Alberta
R.S.A. 1980 c. C-33**

A. Introduction

In order to implement our Recommendations XVII and XX we propose that the Criminal Injuries Compensation Act be amended in the following respects.

B. Proposed Legislation

Section 1(1)(c) of the Criminal Injuries Compensation Act should be repealed and replaced by the following:

- 1(1) (c) "dependant" means,
- (i) a spouse of the victim,
 - (ii) a child of the victim born after his death,
 - (iii) a child of the victim who was, in whole or in part, dependent on the income of the victim at the time of his death,
 - (iv) any other relative of the victim who was, in whole or in part, dependent on the income of the victim at the time of his death.

Section 1(2) should be repealed and replaced by the following:

- 1(2) For the purposes of this Act "spouse" includes a person of the opposite sex to the victim who, at the time of the victim's application for compensation or, in the event of the victim's death, his death, was living with the victim on a *bona fide* domestic basis.

Section 9(4) should be amended by adding to the end thereof the following words:

- 9(4) Compensation may be awarded by the Board under this subsection in accordance with the principles set out in subsections (1) and (3) of this section except where clearly inapplicable.

**SECTION 8: Amendments to the Regulations passed under Section 12(2)
of the Social Development Act of Alberta
R.S.A. 1980 c. S-16**

A. Introduction

In order to implement our Recommendation XIX we propose that the Regulations passed under the Social Development Act be amended in the following respect.

B. Proposed Legislation

Regulation 2.1⁶² should be repealed and replaced by the following:

- 2.1 (a) For the purposes of section 12(2) of the Act, the resources of any person living in the same residence as an applicant for social allowance or a recipient of social allowance are exempt if that person is not providing an economic contribution to the applicant or recipient or a dependant child or children of the applicant or recipient.
- (b) If a person living in the same residence as an applicant for social allowance or a recipient of social allowance is providing an economic contribution to the applicant or recipient or a dependent child or children of the applicant or recipient his resources are exempt for the purposes of section 12(2) of the Act if his relationship with the applicant or recipient is not of a social or familial nature.
- (c) In determining whether a person's resources are exempt for the purposes of section 12(2) of the Act sexual factors shall not be investigated or considered.

⁶²

Alberta Regulation 129/78 as amended by Regulation 345/83.