

119

COMMITTEE ON MATRIMONIAL
AND CHILD SUPPORT

INTERIM REPORT
ON MATRIMONIAL AND
CHILD SUPPORT -
EMPIRICAL STUDY

December 9, 1977

The fact of convergence of matrimonial support laws and social assistance laws in the area of maintenance is the basis of origin of this project.

BY VIJAY BHARDWAJ

TABLE OF CONTENTS

Inception of the Project and the Committee.....	1
Support at the Operational Level.....	6
In the Supreme Court.....	6
In the Family Court.....	8
Tracing the Husband and Service of Summonses.....	9
Lack of Sufficient and Accurate Financial Information.....	14
Lack of Effective Enforcement.....	15
Some Experiments in the Family Court, Edmonton.....	20
Evaluation of Service.....	21
Critique of Experimental Letter Procedure.....	25
Marriage Breakdown and Public Assistance.....	27
Maintenance Recovery.....	30
Enforcement of Support Orders: Edmonton Family Court.....	34
Some Practical Problems.....	35
Social Sciences Research.....	36
Ongoing Work.....	47

* * *

Inception of the Project and the Committee

The Institute has for some years been engaged in a project on Matrimonial Support. Early in 1976, it became apparent to the Institute that a reform of the substantive law as between husband and wife could not of itself solve the financial problems of separated or divorced spouses. Marriage breakdown inevitably results in the creation of two families but their financial resources remain the same. A typical salary in the Canadian society is ordinarily geared to the support of one family. Therefore, when two families are created as a consequence of a marriage breakdown, both families are subjected to financial stresses. It seems that to a large extent this phenomenon contributes to the most tragic problem in the area of matrimonial support, i.e. the uncollectibility of a large proportion of support payments.

Some of the economic stress resulting from marriage breakdown is taken up by the federal-provincial social assistance programmes. A deserted or divorced mother may go to a court and seek a maintenance order against her husband/ex-husband or she may go to the department of Social Services and Community Health for social assistance (unpopularly called "welfare"). Since a public subsidy has the benefit of being paid regularly without risk of default it is not surprising that many mothers with dependent children prefer to go on social assistance rather than pursue their rights against their husbands. In effect it means that the state assumes the legal obligation of the husband to maintain his wife and children.

It is, however, a common practice for the Social Service and Community Health Department to take an assignment from the recipient of social assistance of her rights to maintenance against the spouse or father liable for maintenance. The recipient wife and children are paid social allowance regularly by the department which tries to reimburse itself out of whatever can be recovered from the liable spouse and father. In our

province for example, the amount of money given as social assistance to mothers with dependent children because of marriage breakdown and recovery from liable spouses and fathers was as follows:

ALBERTA

Welfare Assistance to Mothers with Dependent
Children and Recovery from Liable Husbands and Fathers

Year	Assistance Given	Money Recovered
1973-74	\$38,835,860	\$2,063,059
1974-75	\$42,695,577	\$2,748,294
1975-76	\$52,745,822	\$2,634,534

There are, thus, two systems of matrimonial and child support; a private system which functions effectively only for those families who have enough property and steady and relatively high income, and a public support system which comes to the rescue of families with low incomes and assets. However, the efforts of all Law Reform Commissions in the area of matrimonial and child support have hitherto been limited only to the substantive law as between husband and wife. We were therefore not surprised when the Law Reform Commission of Canada, in its Study Paper on Enforcement of Maintenance Obligations said:

"Something is profoundly wrong with a body of law and practice that fails to attain its objects more often than it succeeds. Failure is the universal characteristic of the traditional system for enforcing maintenance orders in Canada with a few notable exceptions in recent years, apathy has been the companion of failure..."

The research in the Institute indicated that no amount of improvement in the mechanisms for enforcement of maintenance would help the needy spouse or family because there often is no money to be collected from the other spouse. The main

problem in this area is not obtaining entitlement to be paid: it is obtaining the payment. The Institute therefore established a Committee to examine the whole area of matrimonial and child support - public and private - and propound viable solution(s) which are likely to be practical. The terms of reference of the Committee are as follows:

"The Board [of Directors of the Institute] would like the Committee to approach the matter [of matrimonial and child support] with an open mind, and consider the initial question whether or not there is a feasible method of funding support payments. They would also like the Committee to identify and consider the range of possible solutions which are likely to be practical, including solutions involving private contribution, public funding, or a mixture of both."

The following persons agreed to sit on the Committee:

Gayle James	Associate Professor, Faculty of Social Work, University of Calgary
Andrew Armitage	Professor and Associate Dean, Faculty of Social Work, University of Calgary
Karol Krotki	Professor, Department of Sociology, University of Alberta, Edmonton
J. M. Shaver	Director of Research and Systems, Alberta Health Care Insurance Commission, Edmonton
Iwan Saunders	Professor, Faculty of Law, University of Calgary
W. H. Hurlburt	Director, The Institute of Law Research and Reform, Edmonton
Gordon Bale	Associate Director, The Institute of Law Research and Reform, Edmonton
Vijay Bhardwaj	Legal Officer, The Institute of Law Research and Reform, Edmonton
Vivien Lai, Director, Social Security Division and Anne Russell, Legislative Planner, both of the Department of Social Services and Community Health, Government of Alberta	assist the Committee.

The first meeting of the Committee was held on September 7, 1976.

The Committee set out to examine the following:

1. The EXISTING law of matrimonial and child support. How it works in practice. Who does what to whom from the time of marriage breakdown for support. How the courts crystallize actual support awards in dollars for spouses. How the support is paid and collected and what happens if there is non-compliance with a court order for support? What is the philosophy underlying support legislation? What are the deficiencies in law and procedure that hinder the smooth and purposeful operation of support laws? If these deficiencies are corrected, will the existing law of support achieve its objectives?

Is the law and practice relating to matrimonial and child support in other provinces any different from and better than in Alberta?

2. The EXISTING laws and practices relating to Social Assistance (unpopularly called "welfare") in Alberta. How the broken family units are given social assistance in Alberta? What is the philosophy underlying social assistance? What is the relationship between social assistance and the private law of matrimonial and child support? How much money is expended on social assistance to broken families and how much is recovered from those who ought to be supporting these units? Are the policies and procedures relating to social assistance compatible and in harmony with the family policy(ies), if any, of the province?
3. Are the delivery systems of laws and social assistance uniform in practice throughout the province? Do the courts in urban and rural Alberta and the officers of Social Services and Community Health follow identical procedures? Are the socio-economic characteristics

of people affected by these laws and policies different in various geographic areas of the province? What are the deficiencies in the delivery systems and if they are rectified, would the system work more efficiently and benefit those affected by it? How many families, individuals, and children are affected by these laws and procedures?

4. What, if any, is the co-relation between marital status and the needs for social assistance? Is there a cause and effect relationship between marriage breakdown and social assistance? What are the potential consequences of changes in support and social assistance legislation and practices? Would an integration of this private and public systems of support on marriage breakdown be more expensive to taxpayers? Would it result in more marriage breakdowns? Would it enure to the benefit of children and, therefore, in the long run, to the benefit of society?

As to substantive law of matrimonial support, the Committee decided to leave it to another committee of the Institute which had already done sufficient work in that field and was contemplating a final report on the subject in the near future.

We are proceeding on the assumption that a husband and wife are mutually responsible for supporting each other and their children during coverture: on marriage breakdown, this duty continues for the children until they attain majority. However, as between spouses the rehabilitative philosophy should be adopted as far as practicable.

Support at the Operational Level

We did look at the actual operation of law in the law courts to find out if the administering of these laws causes any problems which can be remedied. We found the following facts.

In the Supreme Court

In order to make proper orders for support the Court needs information as to the means of each spouse. The Supreme Court can compel witnesses to testify and to produce documents subject to the usual limitations of admissibility. The parties also have available to them the usual pre-trial procedures including the right to examine the other party for discovery, that is to require him to appear before trial to be asked questions under oath as to his assets, liability and income. It is generally assumed that one party can require the other to produce the other's copies of his income tax returns. In practice, however, even in the Supreme Court examinations for discovery and notices to produce documents are less common in matrimonial proceedings than they are in other kinds of lawsuits. Indeed, a sizeable portion of support orders is made in uncontested divorce petitions on the basis of the wife's assertion as to her husband's income and some estimate of his income based on the type of job he had before he left his wife. In these

cases there may be no information about the husband's actual current income or even whether he is or is not employed. An analysis of 90 random samples of Supreme Court awards of support breaks down as follows:

Total Samples	Income of the Husband		
	Known	Unknown	None
90	39	44	7

Orders for support against husband with unknown or no income

Total Samples	For Wife only	For Children only	For Wife and Children	Reserved	No Orders for Wife
51	2	19	7	10	15

(Note: The total comes to 53 because some orders were common or overlapping and for purposes of classification were classified as two orders.)

The court adjudicates upon support in only a small proportion of divorce cases which come before it. In the great majority of cases the parties negotiate and settle the amount in advance, and in most cases their agreement is accepted by the court. The negotiations for settlement of support are guided by the lawyer's forecasts as to what the court would do if the case were to go to the courts. However, the real factors which influence these negotiations are the urgency with which one party wants a divorce, the likelihood of remarriage, the desire of the parties to reach final settlement, and above all, the arrangement of custody of and access to children.

The probability of the support award--whether adjudicated or negotiated--being unrealistic in terms of the needs of the payee and ability of the payor to pay is high. This in turn leads to problems of enforcement of support awards.

It is not uncommon to find that decisions on quantum of support for wife and/or children are made without the benefit of sufficient and accurate financial information about the parties. This is invariably so in uncontested divorce proceedings. It seems that the court orders support in terms of what a man should pay and not what he can pay. One member of our Committee sat through 13 uncontested divorce petitions and this is what he has to say.

Re: Uncontested Divorce Petitions

On one Monday afternoon, I went to the Edmonton Court House to see the way in which uncontested divorce petitions are conducted. There were 13 cases and these were disposed of in less than two hours. In four cases personal service of the husband had not been possible and substitutional service had been permitted. There was no information about the husband's current income or even whether he was or was not employed. The type of job he had before he left his wife was known and it appeared that some estimate was made of his current income. In all four cases, the wife was on social assistance. In two of these cases it was very obvious that the wife had no interest in the amount of maintenance for which she was petitioning because she did not even know the amount sought in the petition. When asked by her lawyer how much maintenance she was requesting she said she did not know and then named a figure different from the amount in her petition. When her lawyer brought to her attention the amount of maintenance asked for in the petition, she readily agreed that this was the appropriate amount. It appeared obvious in these two cases that she was not concerned about the amount of maintenance which was awarded because she was on social assistance and the amount was less than she was currently receiving. Since there was no information about the husband's current income in the four cases or his current obligations, it seems very unlikely that the award reflected his ability to pay, unless it did so accidentally.

Indeed, even in those cases where both parties are represented by lawyers, it is not uncommon for the court to make a maintenance order which is not truly based on the financial situation of the parties. The reason is that the parties want divorce expeditiously and agree on most matters like custody of children and maintenance and division of property not because they think that the agreement is just or fair but because that is the only solution they can agree to. There are trade-offs between the parties and as a result the court may be called upon to make a maintenance order which may not be realistic. The wife and children in such cases very soon go on social assistance.

In the Family Court, there were at least three problems:

1. tracing the husband and service of summonses;
2. Lack of sufficient and accurate financial information about the parties;

3. lack of effective enforcement of support orders.

Tracing the Husband and Service Of Summonses

A needy wife comes to the Family Court either to enforce a Supreme Court maintenance order which she files under s. 28 D.R.A. with the Family Court, or she comes to obtain a maintenance order against her deserting husband under section 27, D.R.A. Once in a while a divorced woman with dependent children also comes to the Family Court to obtain an order for the maintenance of children only. The figures on numbers of hearings for maintenance for original orders and enforcement of Supreme Court orders in the various Family Courts of Alberta are as follows:

Year	Family Court	Hearing for 27 D.R.A.	Hearing for 28 D.R.A.	Total Total
1976	Edmonton	443	868	1,311
1976	Calgary	161	95	256
1976	Red Deer	190	134	324
1976	Lethbridge	76	65	141
1976	Grande Prairie	40	1	41
1976	Medicine Hat	32	8	40
1976	Fort McMurray	6	3	9
		<u>948</u>	<u>1,174</u>	<u>2,022</u>

SOURCE: Senior Administrator, Family and Juvenile Courts;
Attorney General's Department, Edmonton, Alberta.

One cannot but be perplexed by the contrast of figures from Edmonton and Calgary. There seems to be some discrepancy in the collection or interpretation of statistics. We need to verify these figures. [It seems that the Calgary figure should be 161 + 355 (third party) + 358 (REMOS) = 884.] However, the figures do give us a base to project the magnitude of the problem. More than two thousand wives and ex-wives tried in 1976 in Alberta to obtain or enforce maintenance orders against their husbands or ex-husbands and more than half of them did so in Edmonton.

When a proceeding is initiated in the Family Court either for an original order for maintenance or for enforcement of a Supreme Court order, the husband or ex-husband is summonsed to appear before the Family Court judge. Our research shows that in Edmonton less than 30% of summonses are served. We were told by the Clerks of the Courts and Family Court workers (social workers of Maintenance and Recovery Branch and probation officers attached to Family Courts in various Family Courts of Alberta) that the percentage of service of summonses was not very high elsewhere too. The following data illustrates the situation in Edmonton.

SUMMONS & SUBPOENA INFORMATION
1976 Data from Police

Month	Subpoenas Received	Summonses Received	Total Unserved Summonses & Subpoenas	No. of Subpoenas & Summonses Served
January	60	134	137	57
February	17	388	141	64
March	20	220	156	84
April	20	142	83	79
May	11	192	130	73
June	16	164	114	66
July	24	210	136	98
August	33	153	103	83
September	31	184	141	74
October	46	216	184	78
November	20	130	81	69
December	24	146	107	63
Subtotal	322	2079		
TOTALS	--	2401	--	1513
				888

Summonses and Subpoenas above were received from Family and Juvenile Court by the Edmonton City Police.

Clerk of Family Court estimates that 90 percent of Subpoenas are served, therefore calculation indicate (90% of 322 = 290) that only 600 of almost 2,100 Summonses were served - less than 30 percent.

SOURCE: Edmonton City Police.

There are, inter alia, two reasons for non-service of summonses.

1. The police give a very low priority to service of summonses for maintenance or non-payment of maintenance. The police feel that this is a "civil matter" and in the fact of rising crime and not enough manpower, these summonses should get last priority. Even if the number of police force is bolstered, the summonses for maintenance would still get last priority because the police do not consider it as "police work" or "crime-related work".
2. The men for whom the summonses have been issued are not traceable. They have moved. Since they are not wanted for any crime, the police do not try to trace them as effectively as they do in the case of criminals.

At times the Clerk of the Court does not know until only a day before the scheduled hearing that the summons has not been served. It is therefore not uncommon to see that a judge has a very busy docket for the day but in fact all the cases have been disposed of by lunch. Some cases are not heard because of non-service of summonses. This affects the court's scheduling process and over-all operational cost. This is also true about the "show cause" hearings. A show cause hearing occurs where a maintenance order exists but has not been complied with and has resulted in accumulation of arrears. The show cause hearing gets its name from the phrase in the Summons which says, "This is therefore to command you in Her Majesty's name to appear on...and to attend thereafter as required by the Court to Show Cause why this Order should not be enforced as provided

by Part XXIV of The Criminal Code of Canada." The show cause hearing also is started by issuing summons to the husband. The problems of non-service and tracing occur here as well. The fall out (for want of a better expression) of Family Court cases due to non-service of summons is quite high. The following table shows that in the Family Court, Edmonton, during the months of February and March, 1977, show cause hearings comprised 51% of the cases scheduled for hearing during this two month period and 40% of those hearings did not go ahead due to non-service of summons, or non-appearance of the respondent.

EDMONTON
FAMILY COURT CASES OVER TWO MONTH PERIOD
FEBRUARY, MARCH 1977

Case Type	(1) Cases on Docket	% of All Family Court Cases	(2) Cases of Non- Service	Cases Where Warrant Issued	% of Family Cases Fall Out
Original Maintenance	71	25%	11	1	17%
Varying an Order	16	5%	-	1	6%
Show Cause	149	51%	53	8	40%
Custody/Access	45	15%	5	-	11%
Family Criminal Code	12	4.5%	-	1	-
Mental Health	1	.5%	-	-	-
TOTAL CASES	294		216		

(1) cases scheduled to be heard for a particular court day.

(2) cases which did not go ahead: cases where party is not served and cases where Warrant if issued subtracted from cases on Docket.

SOURCE: Data above was obtained from statistics gathered by judicial clerks during court proceedings in the months of February and March, 1977.

It is difficult to accept without further research the unpopularly held view in some circles that soon after separation or divorce men run away for fear of paying maintenance because they cannot be found for service of summonses. We wonder as to

how much the police are responsible for perpetuating this myth because of its policy of giving last preference to service of summonses for maintenance. This problem needs further investigation. Unless reasonable effort has been made to find them, it should not be asserted that men disappear for fear of payment of maintenance.

Early in the year we sent out a chart titled "Stages in the Initiation, Making, Enforcement and Variation of Support Order by the Family Court, Edmonton" (see Appendix I) to all the clerks of the Family Court in Alberta and asked them whether the procedure described therein was followed in their courts also. We discussed it with the other Family Court staff too, i.e. probation officers and social workers attached to various Family Courts in the province. With regard to the problem of "locating the husband" in Step 4 we have mentioned all the possible options which can be and sometimes are used on an "old boy" network basis. However we were told that the attempt to locate the man is limited to the address provided by the wife/ex-wife in the case of an original order for maintenance. In cases of "show cause" the effort is extended to contact the motor vehicles branch and police. The U.I.C., Alberta Health Care Commission, etc. are not contacted because these government agencies follow the policy of "confidentiality" and cannot supply any information on anybody, not even an address. Private tracing agencies are never used.

We have noted that in Ontario and B.C. also the Family Courts follow the same procedure for locating a name in cases of original maintenance and show cause. However, in the Provincial Court (Family Division), Vancouver, we found that private skip tracing services are used on a fee of \$30 per case, pay as you locate basis. (See Appendix II.) This is done only when other resources, namely the motor vehicles branch and the police have failed to come up with the location and address of the man.

Lack of Sufficient and Accurate Financial Information

As we have seen in the case of Supreme Court maintenance orders, the assertion is often made that those orders are unrealistic in terms of the incomes of the supporting spouses. Similarly, in the case of Family Court orders on maintenance, it is asserted by some social workers of the Maintenance and Recovery Branch that the orders are too low and are unrelated to the income of the man. Without meeting these criticisms at this point, we would like to point out that the procedure followed in the Family Courts for ascertaining the financial situation of husbands and wives or ex-husbands and ex-wives leaves much to be desired. It is true that the Family Court judge tries to elicit financial information from both parties under oath. But the judge has no way of verifying what he is told. Thus, valuable time of the court is used in trying to obtain financial information which in most cases is not reliable and still forms the basis of a maintenance award. We did a pilot study of the Family Court orders of maintenance in Calgary, Edmonton, Fort McMurray, Grande Prairie and Lethbridge and found that in 70%, 45%, 40%, 75% and 68.14% respectively, the men had reported no income at all and still orders were made against them. See Appendix III. The study is not conclusive and we do not claim that its findings are one hundred percent correct. We feel, however, that a more detailed and more scientific study of this aspect is needed and we plan to do it in the near future.

We also found that Family Courts in other jurisdictions face a similar problem when it comes to finding out the financial situation of the parties. The only exception is the Family Courts in B.C. There too it is the Unified Family Courts in Delta, Surrey and Richmond that use the Debtor's Assistance (Board) for finding the financial situation of the parties as well as the ability of the man to pay. The courts there ask the Debtor's Assistance not only to tell them as to what is the financial position of the parties but also as to how much can a man pay without getting into financial trouble. See Appendix IV.

We have recommended to the Institute's Committee on Enforcement of Support Orders to consider the use of an agency on the lines of the Debtor's Assistance in B.C. for ascertaining financial information of the parties for the courts. This will save valuable court time and at the same time provide the court with reliable information on the basis of which reasonable and realistic maintenance orders can be made.

Lack of Effective Enforcement

In the Family Courts, we found that the problems of enforcement arise because of two reasons:

1. Lack of policy guidelines for the enforcement staff;
2. Lack of sanctions in the Family Court.

A maintenance order, if not complied with, is enforced by a "show cause" hearing.

Unless the wife/ex-wife wants to be paid direct by the husband/ex-husband the Family Court orders the man to pay to the Clerk of the Family Court. An account card is opened in the name of the spouses/ex-spouses in the Office of the Clerk of the Court. Everytime a payment is received, it is recorded on that card. (See Appendix V). If these cards are checked regularly every month, arrears can be noted promptly and the delinquent payor can be contacted forthwith. However, this is not done. At least in Edmonton, the court staff, for whatever reason, does not note arrears promptly every month. In other locations also we noted that many account cards were not up to date and arrears were accumulating. In sharp contrast to this, we found in the Family Court in Hamilton (Ontario) that under the "automatic enforcement" program, the checking of account cards is prompt. See Appendix VI, and compare it with Appendix II.

To some extent the problem of delayed or delinquent checking of account cards and the resulting accumulation of arrears occurs because of lack of policy guidelines and lack of co-operation among the different components of the "machinery for support." The staff of the Family Courts have a distinct impression of what a Family Court is to be. They all feel that it is not to be a "collection agency." The policy-planning levels of the province do not give any guidance to the court staff vis-a-vis the enforcement process. The Attorney General's department perhaps feels that the Family Courts do not require any policy other than the general policy directives for all the courts in the legal system. The maintenance and recovery staff is under the department of Social Services and Community Health and the enforcement staff is under the Solicitor General's branch. There are no clear cut policy directions as to who does what to whom in the area of enforcement of maintenance orders. It would not be an over statement to say that the convergence of three departments in this area is counter-productive to the process of collection of money for the wife and children or the province.

In the Edmonton Family Court all of whose staff is under the Attorney General, there is lack of co-operation between the counselling branch and the office of the Clerk of the Court. The accounts section is with the Clerk of the Court. There are at least three functionaries who may note non-payment of support - an accounts clerk, a counsellor, a maintenance and recovery worker. The maintenance and recovery workers are from the ASS & CH but they have been provided with working space in the Family Court in Edmonton. If the counsellors and the Clerk of the Court's office co-operate the process of discovering a non-payment and its follow-up can be improved considerably.

Again, in Edmonton only a third party application for an original order of maintenance or for enforcement of a support order can be brought by a social worker even without the consent of a wife if she is a recipient of social assistance. It is

understood that at the time of making the initial application for social assistance, the recipient delegates her rights as to support vis-a-vis her spouse or ex-spouse to the department of Social Services and Community Health. In Calgary and other jurisdictions in the province, a third party application is not entertained by the Family Court judges unless the woman on whose behalf it is being made is present in the court and consents to the application to go ahead. The judges in these courts feel that they are not a collection agency and therefore unless the "entitled woman" wants, they will not enforce a support order. Accordingly, the social workers in Calgary, Red Deer, Lethbridge, Medicine Hat, Grande Prairie and Fort McMurray do not make a third party application without making sure that the wife will appear in the court to support the application.

If the payee spouse is not on social assistance and therefore is depending on the maintenance money, there is less likelihood of arrears building up. If she does not receive her support payment promptly she calls the Family Court accounts. The Clerk's office then tries to contact the payor spouse. If the payee spouse is on social assistance, she has, generally speaking, no interest in support payment by the payor spouse because even if he pays, she does not get any part of it. It goes to the department of Social Services and Community Health. It seems, however, that in both types of cases the frequency of payments by the liable spouse declines with passage of time. Older orders tend to fall into arrears more frequently than the more recent ones. This needs more research for confirmation. There can be two possible reasons for this phenomenon (if it really exists): firstly, the payor spouse is motivated to pay soon after separation or divorce because of his love for the children and guilt feelings for separation and/or divorce and these feelings become faint with the passage of time. If he forms a new relationship with another woman and has children from her, this fact coupled with the fact that he seldom sees his children for whom he has to pay support militate against the

promptness or perhaps even the desire to pay. Researchable questions.) Secondly, it is likely that with the passage of time and his encounters with the Family Court system he finds that the Family Court really has no teeth and that he can get away by delaying, if not not paying altogether, a support order. (Researchable question.)

At present the only sanction that a Family Court judge can use for non-compliance with a support order is to sentence the delinquent person to a maximum of 90 days in jail. The Family Court has the option to make an enforcement order with or without a default clause. Generally, a man who is not complying with a support order is brought before the judge to "show cause" why he is not paying. If the judge finds that the man has no justification for not paying on the support order, he (the judge) will make an order directing the man to pay a specified amount of money by a given date and a certain amount thereafter regularly every month or bi-monthly. The order contemplates that if the specified sum is not paid in the Office of the Clerk of the Family Court by the specified date the man will go to jail for a period fo 30, or 60 or 90 days. This is called a "default order" or enforcement order with a default clause. If money is not received by the specified date by the Clerk of the Court a warrant of arrest goes out for the man and he may be picked up by the police and incarcerated. If at this point, he pays the amount specified in the warrant of arrest, he will not be incarcerated: the warrant will be recalled and cancelled. The lack of policy guidelines appears in this area as well. What should be done if at this atage, i.e. when a warrant of arrest is out, the man is ready, able and willing to pay a part of the amount specified in the warrnat? The practice varies in different courts. We were told that Edmonton Family Court does not accept part payment, so the man will be incarcerated. But Red Deer, Lethbridge and Medicine Hat would accept part-payment and recall the warrant. Thus it is possible for a man in Red Deer to be picked up on a warrant from the Edmonton Family Court and end up in jail even though he is willing and able to pay a

part of the amount specified in the warrant, whereas another man in Red Deer who has a warrant against him from the Red Deer Family Court may not end up in jail because he makes a part payment on that warrant. Thus, the only sanction that is available to the Family Courts is not handled evenly throughout the province.

It has been difficult to gather statistics on number of warrants issued by the Family Courts for enforcement of support orders in the province. It has been still more difficult to ascertain the actual number of persons who go to jail on these warrants and how much time they spend in jail. We have been assured by the Director of Institutions of Alberta that we will get this information in the near future. We contacted the Clerks of Family Courts and got the following information with regard to warrants issued for enforcement of maintenance orders by the Family Courts in the last seven months - i.e. March to September, 1977.

Warrants from March 1977 to September 1977

Family Court	Number of Warrants				
	Issued	Outstanding	Recalled/ Cause shown/ Withdrawn	Executed Paid up	Went to Jail
Calgary	20	8	0	11	1
Edmonton*	121	31	53	23	3
Lethbridge	29	9	17	3	0
Red Deer	2	0	0	2	0

*There is a discrepancy of 11 in the number from Edmonton because warrants for some of the men were issued more than once during this period.

The disparity in the numbers of warrants issued by the Family Courts of Edmonton and Calgary again perhaps reflect the different philosophies that are followed by the judges and the court staff in the two courts. (Researchable question.) It is

true that if warrants are issued and the delinquent payor goes to jail, that does not benefit anyone: the wife or ex-wife does not receive any money, the man's liability is not wiped out by serving a jail term, and his ability to continue in or find a job is compromised. However, the general belief in the Family Court circles is that jailing or threat of jail is an effective remedy and men do come up with payment when they see the prospect of going to jail.

Should the Family Court be given other remedies like garnishment of wages for enforcement of its support orders? This question, could probably be answered in the affirmative because Saskatchewan and Manitoba have given this power to their Family Courts. Indeed, in Saskatchewan the Family Court can order a continuing garnishment order. In order to give a more rational answer than the one based on the practice in other provinces, we should perhaps conduct more empirical research into wage garnishment as a creditor's remedy.

Some Experiments in the Family Court, Edmonton

1. Service of Summons by Sheriff

Until June of 1977 all Summons service in the city of Edmonton was done by the Edmonton City Police. As we have noted earlier, the police set a very low priority on Family Court summonses and the result was that very few of the summonses were actually served. Many summonses were returned to the court by the city police merely with the comment "re-date" which indicated that the police had not had the opportunity to attempt to serve the summons before the scheduled court date drew very near. The low percentage of summonses served and late information on non-service, as mentioned earlier, caused problems for scheduling cases for courtroom procedure. In cases of unserved summonses, five weeks would pass before the next scheduled court date and the case might be adjourned again due to the

non-service of a second summons. The entire enforcement process, it was felt by the entire court staff - the judges, the judicial clerks, the counsellors, and accounting, was undermined by this lack of reliable summons service. It was felt by the court staff that it would be desirable to have a complete in-house summons service. Indeed, some of the counsellors served a number of their own summonses, when immediate service was desirable, as for example, where an applicant wife was in urgent need of money. Thus, in agreement with the Senior Administrator, Family and Juvenile Courts, Alberta, the Edmonton Family Court started an experiment in the service of summonses by the sheriff.

As of June 1, 1977 the Sheriff's office was to serve all Family Court summonses relating to support orders, i.e. original maintenance applications, Supreme Court enforcement, REMOS and show cause hearings. The most important feature of this experiment was to be a "non-service Affidavit". It was agreed with the sheriff that all summonses that could not be served by the Sheriff's bailiffs would be returned to the court with an explanation of non-service - what attempts were made to serve the summons and why it could not be served - in the form of an affidavit. The agreement made between the court and the Sheriff's office stipulated that all summonses sent to the Sheriff's office must have a court date five weeks after the date of issue of the summons.

This experiment seems to be doing very well. It has been evaluated thus far by Ms. Patricia Mallon of Project OMEGA of the Attorney General's department in her Edmonton Report on Family and Juvenile Court and her evaluation is as follows.

Evaluation of Service

Most of the people in the court environment are satisfied with the Sheriff's handling of Summons service. On examining the table below, one notes that so far the actual percentage of Summonses served has not been particularly impressive.

Summons Service for 24 Consecutive Court Dates

Total Summons Sent from Court	Component	Served	Served & Returned at Court Request	Not Served	Served/ Not Served Not Known	Returned by Court Request
90	Sheriff's Office	40	51%	42	2	6
32	RCMP	21	69%	9	1	1
22	Edmonton City Police	4	23%	14	3	1
4	Staff	4	100%			
3	Calgary City Police	3	100%			
1	Camrose				1	

SOURCE: File V2 at Family and Juvenile Court, Edmonton.

While 100 percent Summons service is desirable, anywhere near that is completely unrealistic given the court's situation: counsellors know that their information (as to a man's location) is frequently outdated or wrong, but they do not know in which case it will be wrong, and therefore must pursue every lead. With the Edmonton City Police, the counsellors were no more enlightened after attempted service than they were before; whereas the Non-Service Affidavit definitively indicates what the counsellor's next step should be: re-issue Summons (if man evaded service, or when man returns from holiday, etc.) with same address; re-issue Summons with new address (provided by vailiff); or continue search for better location information. This sort of response is invaluable to the counsellor.

The table also shows that certain Summons were sent to the Edmonton City Police. This occurred in cases where the Summons has been sent prior to the changeover, or when the five week minimum required by the Sheriff's Office was not observed in issuing the Summons. (Frequently the counsellors will serve this type of Summons personally.)

From the table one can also note that the RCMP have the highest Summons service record; this is due to two factors: they are persistent in tracking down leads (often sending the Summons on to the next RCMP detachment if necessary); and, in smaller population centers, anonymity is less likely to occur - the RCMP are likely to know the man to be summonsed. The counsellors have only praise for the RCMP, as they too return the unserved summonses with useful information.

The Sheriff's Office is complying with the agreement made concerning the return of unserved Summonses at least one week prior to scheduled court date in all cases when the issue date to court date time lapse is fully five weeks.

When unserved Summonses are returned, process clerk enters their return date into the Summons Book and cancels the court date.

In summary, while there is still a high portion of returned unserved Summonses, it is a vast improvement over the City Police. Summonses are unserved for valid case related reasons; most have several attempts at service indicated, and a "lead" for the counsellor as to further action. This is the most that the counsellors can hope for until better search methods are devised, and they are satisfied. The cancelling of cases usually occurs early enough to allow some rescheduling. After several more weeks of the Sheriff's service, an estimate of average fall-out (due to unserved Summonses) can be made, and the Court Calendar can be overbooked accordingly.

2. Initiating "Show Cause" by Letter/Summons by Mail

The Family Court in Edmonton found, as did we, that the Unified Family Courts in B.C. and Hamilton, Ontario were experimenting with initiating show cause proceedings by letter or by mailing summonses to the husbands who had fallen into arrears.

We would like to point out that the court which introduced "letter" as the first document to initiate a show cause is the Provincial Court (Family Division), Vancouver, which is not a Unified Family Court. So the Edmonton Family Court experimented with the procedure of bringing husbands who have fallen into arrears on maintenance payments into court by sending them a letter or a summons in the mail rather than have a summons served by either the police or the Sheriff. The letters or summonses were sent out by the accounting staff of the Clerk of the Court. Names of respondents to receive letters and summonses were randomly chosen.

This procedure could be a desirable alternative to summons service not only from a financial point of view - it being least expensive - but also because the respondent is likely to be less antagonized by a letter than by a summons served on him. A letter could motivate a man to come to court without agonizing that the court is a woman's court. Each successful letter theoretically liberates the time of a process server to concentrate upon the service evader. It also saves money.

This experiment was very short lived but we understand that it would be revived in January, 1978. We were able to collect only a two day sample of responses to letters and summonses sent by mail. The results of the letters and summonses sent through the mail are tabled below. The response on each individual attempt is indicated. While a two-day sample is not enough to be a sound basis for making assumptions, it is interesting to note that on both days, in only two mail-initiated show causes, there were no appearances.

Results of Letters and Summonses
sent through the Mail

EDMONTON FAMILY COURT

May 31, 1977

LETTERS

F17284	Appeared to continue payments.
F17172	No response.
F12432	Contacted us before the court date - banking error.
F16871	No response.
F16059	Returned - does not live here.

SUMMONS

F 7581	Appeared to continue payments.
F12776	Returned - address unknown.
F 5923	Appeared - application dismissed.
F 7621	Cleared up before court date.

June 22, 1977

LETTERS

F 7171	Appeared - new Order made.
F 9517	Paid in full - 16/6/77.
F17779	Show Cause dismissed - paid in full.
F 9417	No appearance.
F 2148	Adjourned for review - arrears to be paid forthwith.

SUMMONS

F 7982	Contacted court consellor before court.
F17609	Arrears must be paid by July 8, 1977.
F 5600	Did not appear.
F 4323	Show Cause dismissed - paid in full.

Ms. Patty Mallon of Project OMEGA wrote a critique of this experiment. We reproduce it below and agree with her.

Critique of Experimental Letter Procedure

While the idea in itself of sending a letter in lieu of having Summonses served is an excellent one, there are certain problems in the current procedure followed. The letter that is sent is poorly done. The letter ought to be far more positive in tone, and certainly should tell the client that if he gets in touch with the court before the court date, the court hearing

might not need to proceed - certainly if he pays before the court date, the hearing will be cancelled. Similarly, it should be noted that the client ought to contact a particular court counsellor. If a letter like this has been fairly effective, a more informative letter will have an even higher likelihood of a successful outcome.

One concern in sending off letters instead of serving Summonses is that the could could not proceed to a Warrant in the event of non-appearance, and secondly, valuable time is lost while arrears are continuing to collect. However, if letters were sent in the early stages of arrears on Orders, then the delay due to non-response to the letter would be far less serious than the time delay currently is before any process is initiated.

The letter that is sent out is a failure not of the individual who created the letter, but of the lack of teamwork in the court itself. Surely, it is the counsellors who should be designing these letters, and not the administrative staff in the court office. However, as in so many instances in this court, the left hand - the counselling unit, does not know what the right hand - the administrative staff, is doing and vice versa. The skills and strengths of one side are not recognized by the other, and frequently the two sides work at cross purposes.

One hopes that this experimental procedure of process service will continue in the court environment, but that the counselling staff becomes involved in this process. They ought to be apprised of which people are being sent letters and/or Summonses to appear in Show Cause hearings; for in some instances the counsellors may be able to give added information to the accounting staff.

Marriage Breakdown and Public Assistance

Public assistance involves the payment of allowances and pensions by the government to people whose incomes are too low to support them at a decent acceptable standard of living. In Alberta public assistance began in 1919 with the introduction of Mother's Allowance. In Appendix VII we describe the present system of Public Assistance in Alberta.

The most significant aspect of the present public assistance provisions is the philosophy underlying these programs.

The philosophy underlying the programs before the sixties can best be described in the words of W. L. Mackenzie King. Speaking at the annual convention of the American Federation of Labour in Toronto on October 9, 1942 he said:

"The era of freedom will be achieved only as social security and human welfare become the main concern of men and nations." They include "useful employment for all who are willing to work, standards of nutrition and housing adequate to ensure the health of the whole population, social insurance against privations resulting from unemployment, accident, death of the breadwinner, ill health, and old age."

[King, Labour and the War. (Canada and the War Series, Ottawa, 1942), emphasis supplied].

In 1960's Alberta revised its social assistance programs and designed them to help three main unemployable groups:

1. the elderly
2. the ill and disabled, and
3. single parents with dependent children.

The program was later expanded to include employable persons who are out of work or who are working but whose earnings are not enough to meet their needs. The use of the expression "single parents with dependent children" indicates the recognition by the state of the fact that men and women enter this category

not only by the death of a spouse but also by separation and/or divorce. A glance at the social assistance statistics shows that since 1970 there has been a steady increase in the number of single parent families on social assistance. In 1970-71 the physically and mentally handicapped were the largest single group needing social assistance and the second highest component was one-parent families. Since then, however, there has been almost a steady increase in the number of one-parent families on social assistance and they form the largest single component on social assistance. The following table based on the annual reports of Alberta Social Services and Community Health illustrates this point. See also Appendix VIII.

Alberta: Social Allowance
Family Units by Reason for Assistance

Year	Old Age	Ill Health	One-parent Families
1970-71	4,782	9,229	8,535
1973-74	6,975	8,153	11,749
1974-75	6,490	8,296	11,443
1975-76	5,876	8,940	12,752

The largest component of the one-parent families on social assistance is one-parent families with female heads. Within the one-parent families with female heads, the largest component of these families is "separated", the second largest is "never married", followed by "divorced" and then "widowed". See Appendix IX. It is therefore apparent that a large number of families join the rolls of social assistance because of marriage breakdown. It seems that they suffer from privations not because of "unemployment", "Accident", "death of the breadwinner", "ill health", or "old age", but from the "severance of their marriage". But for their marriage breakdown, they would have perhaps been supported by their spouses. Even after marriage breakdown, according to law, they should really be supported by

the deserting or divorced spouses. It is not known to what extent marriage breakdown - separation/divorce - creates cases requiring social assistance, i.e. besides those who would be on social assistance regardless of marriage breakdown. (Researchable question.)

To state it differently, would these single-parent families with "separated" or "divorced" female heads lean on social assistance if they were not separated or divorced? Are they members of that stratum of society whose income is only marginally above the poverty line and marriage breakdown pushes them below that line? Is it possible that financial stress is one of the main reasons for their marriage breakdown? Is it possible that instead of marriage breakdown being the cause for pushing them onto social assistance, the easy availability of social assistance prompts or accelerates marriage breakdown? Does easy availability of social assistance militate against reconciliation of spouses? (Aweful question!!)

In the area of divorce legislation there is a movement towards "no fault" divorce. The policy is to make divorce amiable and easy, signifying free individual self-assertion. However, divorce legislation still contemplates that even though physical and emotional ties between spouses are served, financial ties are not. The divorce legislation of 1968 enlarged the grounds for divorce. (Before that adultery was the only ground in Alberta.) This resulted in easy access to law and the divorce rate has gone up very significantly. (See Pike, Divorce and Access to Law.). If divorce laws really are changed again and "no fault" divorce is made available, what would be its impact on the programs of social assistance? Would any change in the social assistance laws affect divorce or separation? Is not the real basis of social assistance to single parents the society's concern for children? These are researchable questions.

Maintenance Recovery

The laws relating to marriage and divorce and the laws relating to social assistance converge in the area of maintenance. Both sets of laws grant or deny benefits or impose burdens on the basis of family-related dependency. It seems, however, that there has been a lack of conscious and co-ordinated concern with policy issues from the standpoint of the family as a social institution. Law reform has been concerned mainly with the lawyer's law of maintenance, i.e. substantive rules of corollary relief for divorce or the Domestic Relations Act without taking into account the unintended adverse effects of legislation on the family as an institution and the existence of social welfare laws. Similarly, reform in the area of social welfare legislation has been concerned with ameliorating the suffering of families without taking into account the unintended adverse effects on the institution of family. (We have not yet thoroughly debated as to what should be the philosophy underlying maintenance. We are going ahead at present on the position taken by the Institute that normally spouses are mutually liable for each others maintenance during coverture and on marriage breakdown the spouse which was financially dependent in marriage is entitled to rehabilitative maintenance. Both spouses jointly are responsible for the maintenance of children until the children attain majority.)

We have noted though that in our province the Maintenance Order Act RS.A. 1970 c. 222 enunciates the philosophy of maintenance of an extended family. See Appendix X. Section 3 of this Act is almost in the nature of a policy statement and says that the husband, wife, father, mother, children of every old, blind, lame, mentally deficient, impotent person, or any other destitute person who is not able to work is liable to support that person. Mother and father include grandmother and grandfather and children include grandchildren. Liability for the maintenance of children under the age of 16 years is absolute. Section 4

lays down that a husband and wife are mutually liable for each other's maintenance. It also lays down the order in which liability is imposed, first it is the father, if he is unable to support, then the mother. Another important policy statement is to be found in sections 3(3) and 5(2) which say that if the dependent has no need or the liable person has no ability to pay, then the judge shall not make an order of maintenance. This Act has been used, if at all, very rarely as we could not find any case law on it. The reason seems to be that this Act was perhaps designed specifically for the purpose of recovering money from the relatives of a "disabled" person who is cared for in an institution run by the government or a municipality. This is clear from section 5 - who may apply for maintenance. We were told that the policy of the government of Alberta is to provide full medical care to disabled persons whether in an institution or in the patient's home and not to ask for reimbursement. We heard that at least in one case a paraplegic child of a millionaire was being cared for in his own house and despite the assertion of the father that he was a millionaire, the government insisted on paying in full for the care of the disabled child.

The Social Development Act under which social assistance is given to needy persons lays down in section 22(1) that a recipient of social assistance may be required to repay the total or a part thereof of the social assistance received for himself and his dependents. The mechanism for recovery is contained in the Maintenance and Recovery Act and the Family Court Act. Appendix XI describes the law and practice of maintenance recovery in Alberta. At operational level it seems that the current practice in our province is to give social assistance to the old, ill and disabled without insisting on maintenance recovery even if the liable relatives have the ability to pay: and give social assistance to separated or divorced families but to insist on maintenance recovery from the deserting or divorced liable husbands. The Committee had

occasion to discuss this dichotomy between "disabled" and "divorced or spearated" persons. We have not formed any views on the subject as yet. We were told that in the case of deserted or divorced wives with dependent children, the province insists on maintenance recovery from the liable husband and father because:

1. The law says that a husband is liable for the maintenance of his wife, even if they are separated or divorced:

A man is responsible for the maintenance of his children:

When a court orders him to pay maintenance, the order should be strictly enforced, otherwise the law and the courts fall into disrespect.

2. If the deserted or divorced wife with children is on social assistance, the strict enforcement of support orders will help the government recoup money spent on social assistance. It would therefore be a saving to the taxpayers.

We are not convinced with either of these reasons. These answers represent what we have described above as the pursuit of isolated family policies without taking into account the unthought of unintended adverse effects of their implementation. Whether this kind of enforcement results in further damage to the parent-child relationship with adverse and lasting effects on children is not taken into account. How it affects the "second family" of the man is also not considered. The question as to whether enforcement of support orders should be strict, and more so if the family is on social assistance cannot and should not be answered in a simplistic way. Studies in the U.S. show that strict enforcement produces more dollars for the state coffers but one study has conclusively shown that the harmful effects negate the monetary gain and that in the long run it is more damaging for the institution of

family to have single minded enforcement of support orders only to collect more money. See Appendix XII. We need to do reasearch in this area.

We did a physical account card search in the Edmonton Family Court and found that out of 1240 enforcible orders of support, 840 or 67.7% were on social assistance. These included orders from out of province where money will go out of Alberta. However, assuming that we adopt a policy of strict enforcement and there is a 100% enforcement, the total amount collected would be \$1,110,583.80 per year if the number of orders remains the same. The following table illustrates this point.

Enforcement of Support Orders: Edmonton Family Court

DATA FROM ACCOUNT CARD SEARCH

	<u>Total</u>	<u>Nisi</u>	<u>On S.A.</u>	<u>Total Monthly Amount</u>
A	75	39	21	\$ 1,836.00
B	188	90	70	7,762.15
C	185	92	63	6,676.00
D	110	59	33	3,385.00
E	41	20	13	870.00
F	93	34	32	3,537.00
G	120	52	38	4,114.00
H	179	89	56	6,671.00
I	6	3	3	225.00
J	56	29	22	2,070.00
K	112	59	37	6,976.50
L	128	61	49	4,656.00
.)M	169	86	72	8,083.00
M)Mac	15	3	8	910.00
)MC	62	26	27	2,856.00
N	45	19	19	1,921.00
O	33	16	15	1,235.00
P	127	52	55	4,910.00
Q	2	1	1	100.00
R	59	20	33	3,288.00
S	215	86	75	8,647.00
T, U, V, W,	243	102	86	10,645.00
Y	12	6	3	240.00
Z	15	6	9	935.00
	<hr/>	<hr/>	<hr/>	
	2290	1050	840	

Enforcible orders=2290-1050=1240

Out of 1240, 840 or 67.7% on S.A.

Total collection per annum if all the orders
for those on social assistance are 100%
complied with

= \$1,110,583.80

Thus, even 100% enforcement will not yield any significant amount of money to off-set the expenditure on social assistance. Indeed, the recovery will perhaps be off-set by the expenditure on recovery. The figures from the U.S. show that under the Child Support Enforcement Program of A.F.D.C. (Aid to Families with Dependent Children), one dollar was spent to recover two dollars. This does not take into account the social cost of enforcement.

We agree that a court order should be strictly enforced otherwise the law and courts fall into disrespect. However, in the field of family law, a maintenance order in favour of the custodial parent usually also has a provision for access and visitation rights of the non-custodial paying father. Whether the two are severable, is a debatable question and at this point of time, without more research, we do not want to take a stand on any side.

Some Practical Problems

The overlapping of matrimonial and child support laws and social assistance laws in the area of maintenance coupled with the involvement of three government departments, viz. The Attorney General's, the Solicitor General's and the Social Services and Community Health raises many practical problems. It seems that the delivery systems of the three departments at times conflict with each other.

We conducted a one-day workshop on Enforcement of Support Orders in Alberta to find out what actually happens at the grass roots level. We invited only the front line workers from the three above mentioned departments who deal directly with maintenance and social assistance. The workshop was attended by the clerks of the Family and Juvenile Courts (all of them but one), probation officers (at least one from each family court), family court counsellors from Edmonton Family

Court, social workers of the Maintenance and Recovery Branch of the Social Services and Community Health. We found that the practices of granting social allowance, initiating maintenance recovery proceedings, tracing the liable spouses, service of summonses, presentation of maintenance recovery in family courts, accepting of partial payments from persons against whom warrants have been issued etc. varied from court to court. All the front-line workers participants agreed that what was needed was a unified Family Court, uniform procedures for the granting of social assistance and maintenance recovery, single administration instead of the present three departments. See Appendix III.

Social Sciences Research

In the course of all this work on the law of Financial support as between husband and wife, it has become apparent to us that the reasons why support unless are not paid go beyond the substantive law and therefore reform of substantive law alone will not by itself solve the Financial problems of separated and divorced spouses and their dependent children. There are at least five possible alternatives of reform in this area. They are

1. To improve enforcement procedures by legislative and administrative means.
2. Increase social service staff with a view to increase negotiated agreements between spouses; the assumption being that people tend to abide by what they agree to do.
3. Matrimonial support insurance. This would be private matrimonial support insurance run by private insurance companies. However this won't help the people who need it most.

4. To have income support schemes like the Finer Committees GMA Plan. This would mean that the state should pick up the tab for broken marriages. Politically this is not feasible.
5. To integrate the private and public systems of support

We are looking at all of these very carefully. However, it has become apparent to the Committee that the necessary information for decisions in this area is not available. It is not possible to say with any degree of assurance whether and to what extent failure to make support payments is due to financial problems, mere unwillingness to pay support as any other debt, or reasons arising out of the marital relationship or its breakdown. It is not possible to say as to what would be the effect of introducing more rigorous measures of enforcement of maintenance orders. How far are more rigorous measures of enforcement possible or desirable? Will the increased cost of a more rigorous collection policy generate sufficiently more income from previously defaulting spouses to reduce the net cost to the taxpayer? It is not possible to establish cause and effect relationship with any degree of certainty between the increasing incidence of divorce and separation on the one hand and the increase in numbers of single parent families on social assistance on the other. It is not possible to predict as to what would be the social and economic consequences of integrating the existing public and private laws of maintenance or of substituting the present system with an insurance scheme on the lines of a social security plan.

The Committee has therefore concluded, with the support and approval of the Institute that research is needed as a foundation for the making of decisions in this area.

The Committee has developed a proposal for research into the questions set forth below. These fall into the following categories:

- A. Reasons for the shortcomings (or failure) of the existing system of matrimonial and child support with reference to the variable characteristics of the parties involved in it.
- B. Research into external variables such as the nature and extent of available legal advice, and the exercise of discretion by the courts.
- C. Relationship between marriage breakdown and applications for social assistance, including the effects of variable characteristics of persons involved.
- D. Research, if feasible, to predict the numbers of potential consumers of insurance plans or plans involving public funding.
- E. Research in terms of cost-benefit analysis including, if possible, the social costs.
- F. General and statistical research with a view to standardise record keeping and for future decisions.

The specific questions are as follows:

A. RESEARCH INTO REASONS FOR THE FAILURE OF THE EXISTING SYSTEM OF SUPPORT WITH REFERENCE TO THE VARIABLE CHARACTERISTICS OF PARTIES INVOLVED

In this category we hope to examine the male attitudes toward matrimonial and child support orders - Why do they comply/not comply with these orders? Is it (compliance/non-compliance):

- duration of marriage specific?
- age specific?
- dependent children specific? (Is there greater compliance when payments are made for children than for the single spouse, or for spouse and children?)
- age of dependent children specific?
- income/assets specific?
- skills/education specific?
- marital status (his re-marriage/common-law union) specific?
- access to children specific?
- geography specific? (rural vs urban)
- enforcement procedures (threat of court, jail) specific?
- property division specific? ("who gets what" - once this is settled do maintenance payments cease?)
- alternate income specific?
- duration of payments specific?
- his view of her economic needs specific?
- his view of "fairness" of payments specific?
- other intervening circumstances specific? - e.g. wife's marital status, conduct, work, or receiving social allowance?

With reference to the men who pay and the men who do not pay agreement and maintenance orders, what is their:

- perceived/subjective reason for payment or failure to make payment?
- perceived/subjective reason for divorce?
- perceived/subjective reason for separation?
- perceived/subjective access to legal services?
- perceived/subjective access to counselling services (including access to D.A.B.)
- perceived/subjective outcome/appraisal of "counselling"
- perceived/subjective need for "counselling" services such as those supported by U.F.C. Committee.
- perceived/subjective view of the legal process that they have gone through
- perceived/subjective view of support agreements vs. court orders (voluntarily agreed sum and court ordered sum).

We feel that the legal process has neglected to take into account the economic and emotional effects of separation and divorce on men in the process of crystallizing support awards. With the above information we hope to have some factual data regarding the effect of divorce or separation on attitudes of men that in turn are reflected in the payment/non-payment of support to wives and children.

[NOTE: We have already found out that part of the reason for failure of the existing system is the procedure in the Family Courts and the way the administrative machinery functions with three departments trying to deal with one situation. The Institute is pointing out the deficiencies in its forthcoming report on Enforcement of Support Orders.]

B. RESEARCH INTO EXTERNAL VARIABLES IN SUPPORT ORDERS

A man who is obligated to pay a support order apparently is affected - as is the support order itself - by the attitudes of the persons he comes in contact with during the process of crystallization of the support orders. These persons may be social workers (in the form of family counsellors, court workers, welfare workers) lawyers and judges. It would therefore be instructive to find out whether there is a uniformity/conformity in the kind of advice that a man gets from these professionals. With this in mind -

1. Could we poll the bar involved in family matters with illustrative case vignettes, requesting what "legal advice" they would give in each instance, to make some judgment for our project, as to the uniformity/conformity of legal advice?
2. Could we also poll Family and Supreme Court Judges in the same manner, to estimate uniformity/conformity of judicial decisions/discretion. Are Family Court Judges' views different from Supreme Court Judges considering the different types and philosophy of the courts they sit in?
3. Could we poll social workers/family counsellors/ social assistance workers (social welfare workers?) in the same manner to estimate uniformity/conformity in advice they give to the clients?

C. RELATIONSHIP BETWEEN MARRIAGE BREAKDOWN AND SOCIAL ASSISTANCE: EFFECTS OF VARIABLE CHARACTERISTICS OF PERSONS INVOLVED

Some of the economic stress of marriage breakdown and two family support system is relieved by social assistance. To this end we have done a good deal of research into social assistance practice and policies in Alberta. However, we need to know if those on social assistance are there because of poverty, irrespective of marriage breakdown, or primarily because of their marriage breakdown. We would like to find out if there is a significant correlation between marriage breakdown and social assistance and whether this correlation is one of cause and effect. We therefore need to know:

1. How many people, upon divorce, apply for social allowance for the first time?
2. How many people, upon divorce, apply for and receive social allowance for the first time?
3. How many people, upon separation, apply for social allowance for the first time?
4. How many people, upon separation apply for and receive social allowance for the first time?

N.B. Define "legal" separation

"de facto" separation

What does "separation" mean in terms of Statistics Canada?

What does "separation" mean in terms of Revenue Canada?

What does "separation" mean in terms of 1976 Census?

5. For each category (i.e. the divorced and separated), is the length of stay on social allowance:
 - age specific?
 - skill/education specific?

- geography specific (rural vs. urban)?
 - dependent(s) specific?
 - marital status specific? (common-law union etc.)
 - extended family specific?
 - alternate income specific?
 - collectability of order/maintenance specific?
 - awaiting of matrimonial property specific? (i.e. do they come off social allowance once property settlements are decided?)
6. How many women, upon divorce, do not apply for Social Assistance? Why not?
7. How many, upon separation, do not apply for Social Allowance? And why not?
8. How many divorced people are awarded both maintenance and Social Allowance?
10. For the separated and divorced:
- how many (support) agreements annually?
 - how many (support) agreements are in default annually?
 - how many (support) agreements are in arrears annually?
 - how many maintenance orders (Sup. Court) annually?
 - how many maintenance orders are in default annually? (not paid at all)
 - how many maintenance orders are in arrears annually?

[NOTE: The department responsible for social assistance (Alberta Social Services and Community Health) has a good deal of the above information and the possibility has been discussed to fund the department itself to do this part of the research (this allows for the confidentiality of files to be kept within the department, as well as providing them with valuable information).

Can we use as a baseline 1966-67 data (census) for all of the above (to judge/measure increases and rates of increase), ie. prior to changing the Divorce Act in 1968? (We cannot use figures for "separation" then as they were not recorded by census takers till '76--as we understand it, but this needs to be verified.

D. RESEARCH TO PREDICT THE NUMBERS OF POTENTIAL CONSUMERS OF INSURANCE PLANS OR PLANS INVOLVING PUBLIC FUNDING

If we were to propose a very specific Matrimonial and Child Support Insurance plan on the lines of the contributory unemployment insurance scheme or the Alberta Health Care Insurance plan, is there any research means by which we can estimate/"guesstimate"/predict the numbers of potential consumers of such plan(s) beyond predictions arrived at by an examination of the rate of increase in divorce and separation?

Is there any research method to predict the social impact of such a plan on the institutions of marriage and family?

E. RESEARCH IN TERMS OF COST-BENEFIT ANALYSIS INCLUDING, IF POSSIBLE, SOCIAL COSTS

- (1) What is the total financial cost of the present system to the taxpayer? Can we compute the cost in terms of:
1. Supreme Court time?
 2. Family Court time?
 3. Social workers, family counsellors/probation officers/ police?
 4. Social allowance paid out because of marriage breakdown?
 5. Maintenance recovery?
 6. How many men go to jail for non-payment?
 7. Cost of keeping them in jail?
 8. Number of man hours lost?

9. Can we obtain from Revenue Canada the number (not names) of males in Alberta claiming alimony and child support payments? And total amount claimed as exemption? Can we separate out matrimonial and child support vis-a-vis a court order from voluntary support (eg. of an adolescent in university)?

(2) What is the effect of the present system of enforcement of support orders on -

- the relationship of the liable man and
 - his children (for whom he is paying support)
 - his children of his second family, if he has one
 - His second wife, if he has remarried
 - his common law spouse, if he is living with one
 - his employer
 - his peers?

Our research shows that even a more vigorous enforcement of maintenance orders would achieve very little by way of ameliorating the need for social assistance for many of the single parent families. However, we need to establish this empirically to demonstrate that the high cost of vigorous enforcement will not be offset by corresponding increase in the amount of collection of maintenance payments. The community is already contributing in large measure towards the cost of marriage breakdown. More vigorous enforcement within the existing frame work of support law will perhaps increase that contribution with little resulting benefit to anyone. Or maybe it will not. Only a cost benefit study can prove or disprove our assumptions and give us a correct picture of the problem and a basis for relevant decisions.

F. GENERAL AND STATISTICAL RESEARCH WITH A VIEW TO
STANDARDISE RECORD KEEPING AND FOR FUTURE DECISIONS
FOR LAW REFORM

It seems that statistical information on the numbers of married, separated, divorced, and common-law spouses is scattered in various records of family courts, supreme courts, Alberta Bureau of Statistics, Statistics Canada, Alberta Health Care Insurance Commission, etc. It is also probable that a significant number of men and women are not properly classified and appear in wrong categories. For example, a man and a woman may be living together but would be shown as 'single' in the statistics. They could be 'separated' from their respective spouses or one of them could be 'divorced' and the other separated, and yet on the statistical data they may appear as singles. We would like to be more certain about the numbers and characteristics of spouses and families we are dealing with as this would affect our recommendations in the long run. The certainty about numbers is also very relevant in other areas of law and policy that touch the family, viz public housing, day care, legal aid, etc.

Some of the questions we would like to be answered are:

In a specified time frame in Alberta:

1. How many divorce petitions were files for in the Alberta Supreme Court?
2. How many separation actions for judicial separation were filed in the Alberta Supreme Court?
3. How many of the divorce actions were granted?
4. How many of the separation actions were granted?
5. How many were privately retained client/solicitor transactions?
6. How many were Legal Aid transactions?
7. How many on social assistance are 'separated' but have not gone through the legal formalities?

8. How many uncontested divorces were granted?
9. How many Supreme Court orders were filed in the Family Courts for enforcement?
10. How many support orders were made by the Family Courts under the provincial legislation?
11. How many of them are in default/arrears?
12. How many children were involved in
 - separations (judicial/de-facto)
 - contested divorces
 - uncontested divorces?
13. What is the average income of families involved in
 - contested divorce actions in the Supreme Court
 - uncontested divorce actions in the Supreme Court
 - support adjudication in Family Courts?
14. What is the average time lag between the filing of a petition for divorce and the granting of a decree nisi in
 - contested divorces
 - uncontested divorces?
15. What is the average cost of getting a divorce for a
 - man
 - womanin
 - contested divorce
 - uncontested divorce?
16. How many of the divorced/separated couples have been residents of Alberta for
 - more than 2 years
 - more than 5 years
 - more than 10 years
 - less than 2 years?

At this point of time, we are working in active cooperation with the Departments of Social Services and Community Health and The Attorney General's department of Government of Alberta and the Health and Welfare Department of the Federal Government for devising ways and means of doing this social science research. We think this is an essential step to obtain insights on which to base an understanding of the individual and societal forces with regard to which we have to make recommendations.

Ongoing Work

We are examining some existing models of matrimonial and child support from other parts of the world. There are two models that have been proposed recently in Canada, one is by Professor Iain F. G. Baxter of the University of Toronto. It will appear in the 1978 issue of the Canadian Bar Review. See Appendix XIV. The other is by Mr. Vijay Bhardwaj, a member of our Committee. It will appear in Volume 28 No. 3 of the Reports on Family Law. See Appendix XV.

AN OUTLINE OF THE
MATRIMONIAL AND CHILD SUPPORT INSURANCE PLAN [MSIP]:
A NEW LAW OF MAINTENANCE*

(Vijay K. Bhardwaj)**

1. The present law of support

On separation or divorce, a family splits into two establishments. The money input of the once one-economic unit remains the same but the needs multiply. The current matrimonial and child support law expects the husband (or the spouse who was maintaining the family before marriage breakdown) to continue to support the other spouse and children even after the marriage breakdown. The function of a support order is precisely to provide a regular flow of money to the spouse who was dependent in marriage for his or her (almost invariably her) living expenses as also of the children. In a vast majority of cases this goal is not achieved because the spouse who is obligated to pay cannot afford to do so. One of the greatest complaints, and possibly the greatest complaint of separated and divorced wives, is the difficulty which they have in collecting the payments awarded to them.¹

The Law Reform Commission of Canada, after studying the law relating to support obligations and the various methods of enforcement of maintenance obligations had this to say:

Something is profoundly wrong with a body of law and practice that fails to attain its objects more often than it succeeds. Failure is the universal characteristic of the traditional system for enforcing maintenance orders in Canada. With a few notable exceptions in recent years, apathy has been the companion of failure...

Reform involves two courses of action. First there must be an effort by governments in Canada

to improve individual laws and practices that deal directly with maintenance enforcement. Second, the whole body of marriage breakdown law must be thoroughly reshaped. It is as much the traditional fault-and-adversary foundation of this law as it is the particular deficiencies in enforcement techniques that accounts for the appalling record of non-payment of maintenance obligations in Canada.²

The Law Reform Commission of Canada and the various provincial law reform bodies have recommended various changes in the individual laws and practices pertaining to maintenance. We believe that a reformed law of support as between a husband and wife would not be fully effective, and indeed would have rather limited effect as the main problem appears to be obtaining payment rather than obtaining entitlement to be paid. In Alberta, in 1973, the incomes of Families were as follows:³

Alberta					
Yearly Family Income	Less than \$10,000	\$10,000 to 14,999	\$15,000 to 19,999	\$20,000 to 24,999	\$25,000 & over
Per cent of total families	42.7	26.7	17.5	7.1	6.1

We feel that no amount of improvement in the mechanisms for enforcement of maintenance would help the needy spouse or family because there often is no money to be collected from the other spouse. One of the most disturbing problems in the enforcement of support orders arises in cases where the husband remarries⁴ or starts living in "common law" with a woman who also has children.

Every province has programmes whereby dependent wives and children who are not being supported by husbands may look

to some form of public assistance for their survival. A deserted or divorced mother may go to a court and seek a maintenance order against her husband or she may go to the department of social services and community health for social assistance. Since a public subsidy has the benefit of being paid regularly without risk of default, it is not surprising that many mothers with dependent children prefer to go on social assistance rather than pursue their rights against their husbands. In effect this means that the state assumes the legal obligation of the husband to maintain his wife and children.⁵

It is, however, a common practice for the social services and community health department to take an assignment from the deserted or divorced mother of her benefits under the Family Court Act. She is paid regularly by the social assistance authority which tries to reimburse itself out of whatever can be recovered from the deserting or divorced husband. Thus, in Alberta, the amount of social assistance given to mothers with dependent children and maintenance recovery from liable husbands over the last three years is as follows:

Alberta

Welfare Assistance to Mothers with Dependent
Children and Recovery from Liable Husbands and Fathers

Year	Assistance Given	Money Recovered
1973-74	\$38,835,860	\$2,063,059
1974-75	42,695,577	2,748,294
1975-76	52,745,822	2,634,534

If we compute the actual cost of maintenance recovery by the province, the collection would perhaps become negligible

in the context of social assistance given. The taxpayers pay two ways for the marriage breakdown of their fellow Albertans: first towards the social assistance costs and again toward the cost of maintenance recovery. Many husbands and fathers who do not pay on support orders generally are unable to do so. Many of them are chased away by fear of going to jail for non-payment on support orders and their children are deprived of paternal affection because of the poverty of their fathers.

There are, thus, two systems of matrimonial and child support; a private system which functions effectively only for those families who have enough property and steady and relatively high income, and a public support system which technically only complements the private support but actually supplements it in all those cases where the income of the family concerned is insufficient to support that family. The two systems run almost parallel to each other.

We believe that the present matrimonial support law is archaic. We also believe that the system of public support while it provides sustenance to mother and children, it carries a social stigma that has lasting effects on the mother and especially the children.

2. The new proposal

We believe that by integrating the present private and public law of support we can create a new support law which would allay fears of supporting another man's children, relieve the welfare stigma, provide support to the less affluent with dignity, enable husbands to maintain visitation with children, and give satisfaction to the husbands and fathers that they are doing what they can to compensate for the broken marriage. We should institute a 'Matrimonial Support Insurance Plan [MSIP]'.

The reference frame for the new proposal is provided by the following social facts:

A. Incomes

1. In Alberta, in 1973, the family income of 42.7% of all families was less than \$10,000 a year.
2. 13.2% of all families income was about \$20,000 a year.⁶
3. The average family income in Canada in 1974 was \$14,833.
4. Only 9.8% of all families family income was over \$25,000 and over in 1974 in Canada.⁷

B. Support orders and courts

1. The average income of families involved in the enforcement of matrimonial support orders in the family courts is \$8,000 a year.
2. More than 80% of support orders filed in the family courts for enforcement are always in arrears.

C. Marriage breakdown and social assistance

1. Almost 50% of the divorced women seek public assistance soon after divorce. In 1973 there were 4,435 divorces in Alberta and 2,000 divorced women sought public assistance.
2. The number of separated women with children on social assistance is almost three and a half

times more than the number of divorced women.⁸

3. Many more divorced and separated women do not want to go on social assistance because it hurts their sense of human dignity and pride. There is no doubt that social assistance (or unpopularly called 'welfare') carries a social stigma with it which comes home to women on public assistance whenever they visit a store for credit or whenever their children get involved in any row in school or in the neighborhood. Therefore many women prefer to suffer in silence rather than accept social assistance.

D. Matrimonial Property

The law relating to division of matrimonial property on divorce is, hopefully, going to be reformed in Alberta.⁹ For those families who own property, either a half of that property or some part of it would be available to the wife on divorce.

Besides these social facts, there are three assumptions:

(1) Mutuality of Support Obligation

We do believe in the equality of sexes, both inside and outside of marriage. It is therefore, the financially dependent spouse who should be entitled to support. However, in practice, it is the wives who are generally financially dependent on their husbands. Hence our proposed plan deals with support for divorced and separated wives.

(2) Special Cases

In all those cases where the wife has put her husband through school (Ph.T.), (especially in cases of professional

education like doctors, lawyers or engineers, etc.) the court ought to have discretion to award support in a lump sum besides the benefits of the proposed plan. This would also be in addition to whatever the woman gets as her share in the matrimonial property.

(3) Cost of the services of a wife

In the area of matrimonial support we are concerned exclusively with the economic aspects of marriage. Marriage in economic terms, resembles a business venture or a partnership or an industry in which there is a distribution of the economic roles of husband and wife. Generally the husband is the wage earner and the wife stays home to do household work. However, by staying at home she in fact increases the wage-earning potential of her husband. He is assured of a well kept home, the care of his children, his food and his biological need, emotional and sexual, which economists do not mention while evaluating the cost of all these services provided by the wife. In a recent case¹⁰ in Ontario the court accepted the expert evidence of an economist who quantified the financial contribution of a wife to her husband and children. The court observed:

I accept the evidence of Professor Hawrylyshyn respecting the value of the services of a housewife with two teen-age children. On the basis of the gross national product, it is \$4,000 to \$4,538 per year. On the basis of finding the type of substitute labour for the services she renders, it is \$4,940 to \$5,118 per year. On the basis of the well accepted Walker-Gauger studies, the average Canadian figure would be \$5,160. Endeavoring to strike an average figure for today, it is my conclusion that the value of services rendered by a wife to a husband and two teen-age children is between \$4,500 and \$5,000 per year. I also find that after the children leave and the wife is employed, that the value of her services to the husband is between \$3,750 and \$4,000 per year. I make no estimate of the future value of these

services in our changing economy. Professor Hawrylyshyn is of the opinion that for the next five years inflation will continue at the rate of not less than 5% or 6%, conceivably higher.

On the basis of the foregoing, we can safely project the following figures:

The value of a wife's services to her husband

- (a) with no children is \$4,000 per year;
- (b) with 2 young children is \$6,000 per year;
- (c) with 2 teen-age children is \$5,000 per year.

It can be safely said that the contribution of a housewife in economic terms is equivalent to at least \$4,000 a year. Obviously, if she is working, that contribution is substantially increased.

3. Mechanics of the MSIP

Funding of the plan

We propose that all the married persons should contribute from the time of their marriage a fixed amount of money as premium on a continuing basis until the age of 60. The underlying idea is that the cost should be borne partly by the main body of the married population who are also the beneficiaries, since they are protected against the risk of marriage breakdown. The other component of the MSIP fund should come from the government. In 1975-76 the government of Alberta spent \$52.7 million for social assistance to mothers with dependent children and more than 75% of these mothers were divorced or separated. The state can therefore easily start with a contribution of say \$50 million as its component of the fund. It will not mean an increase in government spending because this amount would be offset by a corresponding

decline in social assistance to mothers with dependent children.

The contribution from married persons can be collected by at least three alternate procedures, viz. the Unemployment Insurance Commission (UIC) type, the Alberta Health Care Insurance Commission (AHCIC) type procedure, or through income tax.

A. UIC type funding

We can use the analogy of an industrial unit. In marriage, one spouse is the employer (generally the husband) and the other spouse is the employee (generally the wife). On marriage breakdown the employee spouse (a wife) 'loses her job' or becomes 'unemployed'. To use the expression of the Unemployment Insurance Commission she is 'separated from the employer'.

We suggest that within the framework of the UIC, the MSIP be instituted. We suggest that the premiums of married persons be increased slightly¹¹ and this increased premium be channelled into a separate MSIP fund. The financial need of the wife and children arising out of marriage breakdown would then be met from out of this fund.

The merit of this scheme is that we would not require another administrative set-up to implement the MSIP. The agency for the collection of premiums and distribution of benefits would be the UIC. The savings in administrative cost can be utilized to reduce the premium. The procedure for claiming matrimonial support could also be similar to the procedure for claiming unemployment benefits.

The demerit of this scheme is that the UIC is a federal agency and one province alone will have problems--constitutional and administrative--in the handling of MSIP by the UIC.

B. AHCIC type funding

The province can, as an alternative, float a MSI plan within the structure of the Alberta Health Care Insurance Commission. The AHCIC has the names and marital status of all the residents of the province. It is practically feasible to collect extra premiums from all married persons along with their health care premiums. The extra premium--which is the MSIP premium--would then be channelled into a separate fund, the MSIP fund. Premium for marriage breakdown could also be divided into three or four categories depending on the income of the couples.¹²

The merits of this plan are:

- (1) It is a completely provincial plan and can be instituted here without any constitutional tangles.
- (2) We would not require a new administrative set-up for the collection of premiums and disbursement of benefits.

C. Funding through Income Tax

It is also possible to collect the premium from married persons through their income tax on a yearly basis. The allowance deductible for wife could be reduced or adjusted in such a way as to yield that couple's premium toward the MSIP fund. The internal revenue department could then transfer this money to the province.

However, for administering the plan, we may need a new administrative set-up. It could be designed as a separate and distinct service within the family court.¹³

4. Benefits under the plan

On separation¹⁴ or divorce, besides getting maintenance by separation agreement or through courts, a wife and dependent children would be entitled to a 'guaranteed income' for a period of three years.¹⁵ The guaranteed income, i.e. the MSIP benefit, would be available as soon as the fact of separation or divorce is established. If the wife wants maintenance ordered by the court, the amount awarded by the court would be reduced by the amount of the benefit being received and this reduced amount would be the liability of the husband. To put it mathematically,

$$\begin{array}{rcl} \text{Liability of the} & & \text{Maintenance} & & \text{Matrimonial Support} \\ \text{husband to pay} & = & \text{awarded by} & - & \text{Insurance benefit} \\ \text{maintenance} & & \text{the court} & & \end{array}$$

Appendix D is a graphic description of the MSIP.

The social, psychological and economic benefits of this plan will be invaluable to the society. Only those claimants will go to court for maintenance whose entitlement is higher than the assured MSIP benefit. The time and money that is expended in the family court for adjudication and enforcement of support orders will be saved. This saving would be quite significant because it seems that almost one third of the family court time is spent on adjudication and enforcement of maintenance orders. It will improve the public image of the family court which is sometimes called a 'collection agency' by the paying spouses and 'moot-court' by the spouses who are trying to enforce a maintenance order there. The bitterness and hostility that arises now because of financial problems resulting from marriage breakdown or from non-payment of support by liable spouses will be minimized. Custodial spouses will have no excuse or justification for denying access or visitation to children by the non-custodial non-paying liable

spouse in order to extract payments. Marriage breakdown will not necessarily result in a breakdown of parent-child relationship as well.

5. Objections to the plan

Objections that are likely to be made to the outline model described above are: (1) why should the plan be compulsory for all married couples? and (2) that the nature of the premium seems to be regressive. However, the position taken in presenting the MSIP is that it is a new "social security" plan. By subscribing to this plan, the husband and wife would cover the contingency of their own separation or divorce. They would also help build up a fund which will provide for separated or divorced persons who will not have to lean on "welfare". This will save tax dollars and save many a young child from growing up in the shadows of social stigma. If a working husband and wife or a "happily married" husband and wife do not subscribe to this plan, it would not get off the ground. They would then pay more by way of taxes to boost the revenues which would be required to meet "welfare" costs of separated or divorced spouses with children. Thus from the standpoint of "happily married" or working couples all that the MSIP does is that it tells them where their tax dollars (premium) are going to be used and at the same time provides them with coverage too.

This plan is a contributory one. People do not regard as a tax the premiums they pay to private insurance companies or the contribution they make to group sickness benefit and retirement schemes organized at the place of their work. Similarly the contributions made to the state for unemployment insurance or old age pension are essentially a subsidized price paid to cover a risk or to buy a benefit. For this reason it is unsound to argue that the special contribution towards the MSIP would be a form of taxation which is

inequitable because it is regressive. Even if it be accepted that the contributions would in effect be regressive taxes, they have to be considered not by themselves but as part of the whole structure of tax system in which inequities in some taxes are off-set by high rates of progression in others to make the system as a whole equitable. But if, as seems reasonable, the contributions are more akin to a price than a tax, the question of inequity does not arise.

6. Conclusion

On separation or divorce and in those situations where a separated or divorced wife is at present entitled to support, a woman should become entitled to a guaranteed income for at least three years or until her remarriage, whichever is earlier. This guaranteed income is not a dole out and it does not come from social assistance (welfare). It is in recognition of her role as a housewife and to preserve her sense of human dignity. It will give her a fair opportunity to rehabilitate herself without going through the throes of economic suffering.

FOOTNOTES

- *. This paper was written for the Institute of Law Research and Reform, The University of Alberta. Even though the proposal is framed in the socio-economic context of Alberta, it is submitted that it is equally valid for all the provinces. The Institute's Committee on Matrimonial and Child Support is presently examining this proposal along with some others. The views expressed herein are, however, those of the author.
- **.
- Legal Research Officer, Institute of Law Research and Reform, The University of Alberta, Edmonton.
1. See Institute of Law Research and Reform, Working Paper on Matrimonial Support, 62 (1974).
 2. Law Reform Commission of Canada, Family Law: Enforcement of Maintenance Obligations (Study Paper), 47 (1976).
 3. See Appendix A.
 4. Edward Pokorny, Practical Problems in The Enforcement of Alimony Decrees, 6 Law & Cont. Probs. 274 (1939).
 5. Supra. n. 2, 7.
 6. See Appendix A.
 7. See Appendix B.
 8. See Appendix C.
 9. See, Institute of Law Research and Reform, University of Alberta, Report no. 18, Matrimonial Property (August 1975).
 10. Franco v. Woolfe (1974) 6 O.R. (2d) 227; on appeal, the Court of Appeal held the evidence of Professor Hawrylyshyn to be inadmissible. But there was no difference in the result. Franco v. Woolfe (1976) 12 O.R. (2d) 549-551.
 11. The exact amount would have to be calculated by an actuary. Indeed the Committee on Matrimonial and Child Support appointed by the Institute of Law Research and Reform is working on these details.
 12. There are matters of detail and are being taken care of. See supra. n. 11.
 13. Details are being worked out. Supra. n. 11.
 14. As to what constitutes separation for the purpose of claiming benefits is to be worked out. At present the

department of social services and community health has regulations defining separation or desertion. The task of defining conditions is relatively easy.

15. The duration of the insurance benefit can also be increased or decreased while casting the plan in detail.

APPENDIX A

ALBERTA'S INDIVIDUAL AND FAMILY INCOME--1973

Income	Individual %	Family %
Under \$2000	22	2.9
2000-2999	10	3.3
3000-3999	7.2	4.6
4000-4999	8.3	5.5
5000-5999	6.7	4.5
6000-6999	6.3	4.6
7000-7999	5.2	4.6
8000-8999	5.6	6.4
9000-9999	4.2	6.3
10000-10999	6.5	6.3
11000-11999	6.5	5.6
12000-12999	6.6	6.4
13000-13999	6.6	4.1
14000-14999	6.6	4.3
15000-16999	7.2	9.3
17000-19999	7.2	8.2
20000-24000	7.2	7.1
25000 and over	7.2	6.1

42.7% of all families income was less than \$10,000 a year

26.7% of all families income was between 10 & 15 thousand a year

17.5% of all families income was between 15 & 20 thousand a year

7.1% of all families income was between 20 & 25 thousand a year

only 6.1% of all families income was over 25 thousand dollars

APPENDIX B

ANNUAL FAMILY INCOME (GROSS) - CANADA - 1974
(Statistics Canada Sample Survey)

Average Income	\$14,833
Under \$5000	- 10.6%
\$5000 - \$9999	- 20.7%
\$10000 - \$14999	- 27.0%
\$15000 - \$19999	- 21.0%
\$20000 - \$24999	- 10.8%
\$25000 and over	- 9.8%

APPENDIX C

DIVORCE - SEPARATION AND PUBLIC ASSISTANCE IN ALBERTA

Year	Total No. of Divorces	No. of Woman on <u>Public Assistance</u>		Ratio of women Divorced:Separated
		Divorced	Separated	
1971	3656	1502	4792	1:3.19
1972	3773	1600	5354	1:3.3
1973	4435	1634	5811	1:3.5
1974	4947	1668	6137	1:3.6

APPENDIX C (continued)

AVERAGE SOCIAL ALLOWANCE CASES BY MARTIAL AND SEX-FAMILY STATUS, 1975*

	FAMILY HEADS		ONE PERSON UNITS		TOTAL ALL UNITS		
	Male	Female	Male	Female	Male	Female	Both Sexes
Married	4851	17	8	*	4859	21	4880
Common-Law	1168	5	8	*	1176	6	1182
Widow	-	988	-	2776	-	3764	3764
Widower	61	-	282	-	343	-	343
Never Married	13	2036	3334	2614	3347	4650	7997
Separated	140	7092	836	1950	976	0942	10018
Divorced	39	1907	471	726	510	2633	3143
Total	6272	12045	4939	8071	11211	20116	31327

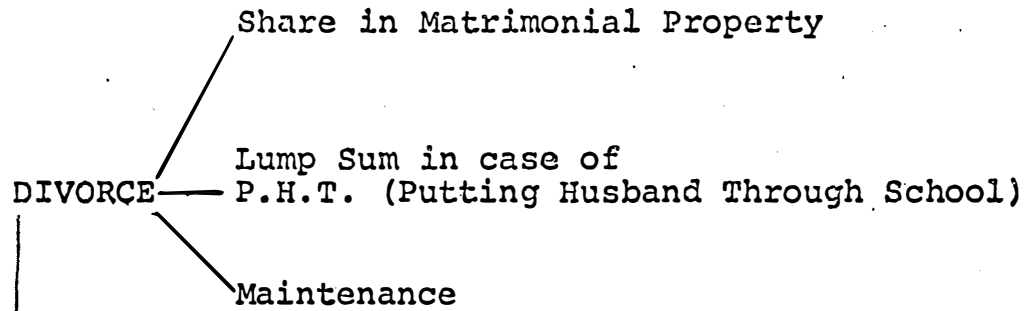
* 12 months average (January - December 1975)

TABLE 8 AVERAGE SOCIAL ALLOWANCE CASES BY MARITAL AND SEX-FAMILY STATUS, ALBERTA, 1975/76

Marital Status	Family Heads				One-Person Units				Total				Bo #
	Male		Female		Male		Female		Male		Female		
	#	%	#	%	#	%	#	%	#	%	#	%	
Married	4,892	76.8	17	0.1	9	0.2	*	0.1	4,901	42.8	21	0.1	4,
Common-Law	1,214	19.1	6	0.0	10	0.2	*	--	1,224	10.7	7	--	1,
Widow	--	--	974	7.9	--	--	2,758	33.7	--	--	3,732	18.2	3,
Widower	63	0.9	--	--	282	5.5	--	--	345	3.0	--	--	
Never Married	13	0.2	2,167	17.5	3,436	67.5	2,681	32.8	3,449	30.1	4,848	23.6	8,
Separated	145	2.3	7,254	58.6	853	16.8	1,988	24.3	998	8.7	9,242	44.9	10,
Divorced	43	0.7	1,967	15.9	496	9.8	749	9.1	539	4.7	2,716	13.2	3,
Total	6,370	100.0	12,385	100.0	5,086	100.0	8,181	100.0	11,456	100.0	20,566	100.0	32,
Missing Data	15		19		19		16		34		35		
Total Caseload	6,385		12,404		5,105		8,197		11,490		20,601		32,

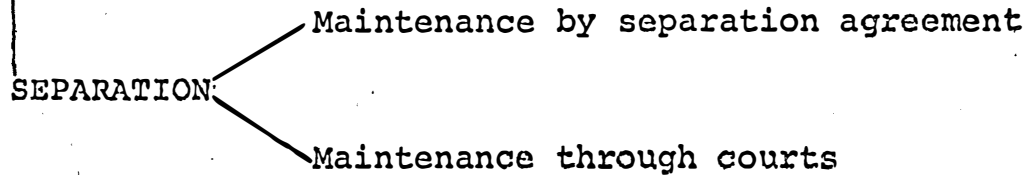
APPENDIX D

MATRIMONIAL SUPPORT INSURANCE PLAN



[M]

[H=W]



[M]

+ Matrimonial Support Insurance

[MSI]

[M] Maintenance awarded by the court

[MSI] Matrimonial Support Insurance

TABLE OF CONTENTS

- Appendix I - Stages in the Initiation, Making, Enforcement and Variation of Support Orders by the Family Court, Edmonton.
- Appendix II - Provincial Court (Family Division), Vancouver
- Appendix III - Pilot Study:
City of Calgary
Fort McMurray
Lethbridge
City of Edmonton
- Appendix IV - The DAB (Debtor's Assistance Board) and The Family Courts in B.C.
- Appendix V - Account Law - Case Ledger Card
- Appendix VI - Automatic Enforcement in Ontario (Provincial Court (Family Division) Hamilton-Wentworth
- Appendix VII - Public Assistance in Alberta
- Appendix VIII - Alberta Social Units - Reason for Assistance
- Appendix IX - Social Assistance Statistics Relative to Marital Status in Alberta
- Appendix X - Maintenance Order Act
- Appendix XI - Maintenance Recovery & Enforcement in Alberta
- Appendix XII - Precis of Child Support Collections in Michigan - A Study of the Effects of Tenacity and Terror
- Appendix XIII - Enforcement of Support Orders Workshop
- Appendix XIV - Commentary on The Enforcement of Support Orders Workshop
- Appendix XV - Family Welfare and the Courts