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Presented by:

TRAIL STATUS OF WOMEN COUNCIL
and
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INTRODUCTION

We believe that both property and responsibility should be shared, including the responsibility to be prepared to support a family should it become necessary and/or desirable. The latter has implications which go beyond divorce and separation. It is quite possible for the wage earning spouse to become unemployed or on strike, injured, etc., so it would be desirable for a couple to be prepared to reverse roles or share roles. If this were the case then upon separation the property assets would be divided and child support shared. Recognizing the traditional sex roles, and the considerable effort invested by educators, parents, employers and related agencies in maintaining these roles, it is obvious that many women are handicapped in their ability to earn money. Therefore, above and beyond the division of assets, there should be alimony based on one partner's need and the other partner's ability to pay. This should be temporary to allow the dependant spouse to become independent.

We believe that there should be recognition of the duties performed by the homemaker as being valuable. The division of marital property should be of concern during a marriage to provide security to the spouse working in the home and for the dependant deserted spouse as well as after separation and divorce. Therefore, we agree with fixed property rights based on the assumption of equal but different contributions made by each member. Couples should be able to write their own contracts.

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1. UNIFIED FAMILY COURT

- (a) There should be public access to and participation in the policies of the family court system, but the court itself should be closed to the public. Sessions should be held in camera, subject to the discretion of the court regarding admitting persons with bona fide public or private interest. Press should be admitted but their reports should not include particulars that could lead to the identification of the parties.
- (b) Court and legal fee structures should be based on ability to pay and/or income. A government subsidy should be devised similar to the fee structure drawn up for child care.
- (c) There should be a pre-trial process to provide a dignified means for parties to reconcile their differences or reach amicable settlements without need for trial.
- (d) Issues should be determined without prejudicial delay; especially important in areas involving children. The placement of children should be treated as urgent.
- (e) Innovative developments are required to assure a high quality of service to rural as well as urban centres.
- (f) Adequate staff and time should be available to reduce waiting lists and treat all cases with proper consideration and dignity.

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2. JUDGES

- (a) Judges should be specialists in family court law.
- (b) There should be adequate training programs for judges at the time of their appointment and these programs should be mandatory.
- (c) Judges should be recruited from experienced family court lawyers and should have at least ten years experience standing at the bar.
- (d) A continuing education program should be developed for these judges and they should be required to participate at regular intervals.
- (e) Family courts should attract well-qualified personnel by offering excellent salaries and working conditions.

3. AUXILIARY SUPPORT SERVICES

- (a) Divorce Centres should be developed and should offer information about lawyers, court proceedings, private investigators, and psychiatric support and divorce and marriage counselling.
- (b) Enforcement personnel.

4. EVALUATIVE RESEARCH

There should be continuing research to collect and evaluate all relevant statistical and social data:

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- (a) Regarding the activities of support staff and regarding the dispositions:
 - (i) to keep the public informed, and
 - (ii) to point out weaknesses in the system.
- (b) To promote a more effective administration.
- (c) To assess the effectiveness of services and dispositions made by the courts.
- (d) To help promote the development of more effective prevention and treatment of family problems.

5. MARRIAGE

- (a) The statutory age for marriage should be eighteen, with no exceptions. (Recommendation of the Royal Commission on the Status of Women, page 230)
- (b) Pre-marital counselling should be mandatory and should include the writing of a marriage contract; contract to be subject to legal approval. Couples must be made aware of the rights and obligations that marriage will involve so that they can take an active part in choosing the matrimonial style that suits them. These contracts should be recognized by law as legal documents and should be binding on the parties.

6. DIVORCE

- (a) There should be no-fault divorce. The adversary approach often leads to unrealistic responses to family problems and

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- (b) Community property - Any gifts or inheritance should be the sole property of the receiving party. Other assets accumulated during the life of a marriage should be divided equally.
- (c) Pressure should be applied to the federal government to change the period of separation to qualify for a divorce to one year in all circumstances. This change should be made at the soonest possible moment without waiting for a law commission. (1976?)

7. DOMICILE

We recommend that the province amend its legislation so that a woman may retain her own domicile or subsequently acquire a new domicile independent of that of her husband.

8. MAINTENANCE

- (a) Child support should be based on the income and/or earning power of each parent.
- (b) Considering the past poor success of maintenance and alimony collection, it should be incumbent on the provincial government to pay support and then recover the same amount, plus a fine, from a deserting spouse.

9. CUSTODY

Children involved should be represented by a counsel/advocate separate from their parents'. Under this circumstance, children's needs and desires would be recorded and considered and there would be a more fair consideration of the rights of both parents.

10. LEGITIMACY

All children should be considered legitimate.

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