

Les Cahiers de droit



The Wife of the Alcoholic

R. St. J. Macdonald

Volume 9, Number 3, September 1968

URI: <https://id.erudit.org/iderudit/1004516ar>

DOI: <https://doi.org/10.7202/1004516ar>

[See table of contents](#)

Publisher(s)

Faculté de droit de l'Université Laval

ISSN

0007-974X (print)

1918-8218 (digital)

[Explore this journal](#)

Cite this article

Macdonald, R. S. J. (1968). The Wife of the Alcoholic. *Les Cahiers de droit*, 9(3), 689–718. <https://doi.org/10.7202/1004516ar>

Tous droits réservés © Université Laval, 1968

This document is protected by copyright law. Use of the services of Érudit (including reproduction) is subject to its terms and conditions, which can be viewed online.

<https://apropos.erudit.org/en/users/policy-on-use/>

érudit

This article is disseminated and preserved by Érudit.

Érudit is a non-profit inter-university consortium of the Université de Montréal, Université Laval, and the Université du Québec à Montréal. Its mission is to promote and disseminate research.

<https://www.erudit.org/en/>

The Wife of the Alcoholic

R. ST. J. MACDONALD,
Dean of the Faculty of Law,
University of Toronto.

The Wife of the Alcoholic

This paper raises a question and makes a suggestion. The question is : What relief is available to the woman who finds herself married to a private alcoholic, that is to say, to a person whose alcoholism does not bring him into serious contact with the criminal law ? The suggestion that will be made is that we might consider the possibility of providing the wife of the private alcoholic with : (a) access to counsellor-information centers where she can receive advice and assistance about her civil and economic rights ; (b) treatment on a voluntary, state-financed basis for herself, her husband and, in appropriate instances, their children as well ; (c) economic and legal support in the event that she wishes to separate from her husband on a trial basis while he is undergoing treatment ; and, (d) some form of civil commitment for involuntary treatment for her husband, organized with the least possible restrictiveness consistent with effective care and treatment, for situations in which he consistently refuses to accept therapy voluntarily.

The premise on which the discussion will proceed is that the need to shield the wife and children from physical cruelty, undue abuse, emotional tension, mental breakdown, lack of opportunity for educational development and basic growth of the personality structure, not to mention the desirability of protecting the husband from himself, and, to the extent possible, effecting his cure and rehabilitation, are sufficient reasons for reviewing the services now available to the wife of the private alcoholic and for considering the need for a more comprehensive programme on her behalf.

It should be emphasized that this discussion is preliminary, exploratory and necessarily incomplete. It is concerned with the non-alcoholic wife of the private alcoholic as a person in her own right, and with her husband and children. It is motivated by a belief that the plight of the wife of the private alcoholic has been obscured and neglected by our concerted efforts to do something for the chronic drinker who becomes enmeshed in the processes of the criminal law. The writer inclines to the view that the wife of the private alcoholic is often desperate. Her affliction, as Simone Weil has said in another connexion, compels us to recognize as real what we do not drink possible. She needs our help.

These few pages are offered affectionately and respectfully to my friend Professor Marie-Louis Beaulieu.

Part a : **General considerations**

1. **The Alcoholic Husband**

Writing in the Manual on Alcoholism prepared under the auspices of the American Medical Association, Dr. J. A. Smith of the Nebraska Psychiatric Institute defines an alcoholic as : "Any individual who relies on alcohol to meet the ordinary demands of living and continues to drink excessively after alcohol has caused him marital or occupational difficulty . . . whether he drinks only in the evening, has never taken a drink when alone, or has not touched anything but beer for five years" ¹. This definition relates alcoholism to excessive drinking, as do almost all definitions, where "excessive" falls to be determined by various socio-cultural factors. Father Ford, an American clergyman who enjoys an international reputation in the field of alcoholism studies, offers a similar definition. In his opinion, alcoholism "can be described as the condition of those whose excessive drinking creates serious problems in the management of their lives, and yet who usually are unable to stop drinking, even if they want to, without outside help" ².

The search for underlying factors leading to alcoholism has been undertaken from various perspectives by many workers in several disciplines. There have been attempts to show that alcoholism develops from inherited or acquired physical disturbances ; that there are important correlations between alcoholism and socio-cultural factors ; that the disease develops from a hereditary basis ; that it can be traced to broken homes and parental deprivation ; and that it is a symptom of some major psychiatric disorder ³. On the latter point, which has been raised repeatedly, Prophan's work at the Brookside clinic in Toronto

¹ Quoted by Raymond J. H. KENNEDY, "The Forms of Drinking", in William C. BLIER (ed.), *Problems in Addiction : Alcoholism and Drug Addiction*. Fordham U.P. 1962, p. 15, at p. 18.

² *Ibid.*, p. 19. The definition that is preferred by the World Health Organization speaks of repeated drinking to an extent that "exceeds customary dietary use or ordinary compliance with the social drinking customs of the community, and that interferes with the drinker's health, inter-personal relations or economic functioning": WORLD HEALTH ORGANIZATION, *Technical Report Series N° 48*, "Expert Committee on Mental Health Alcoholism Sub-committee, Second Report". Geneva, 1952, at p. 16.

³ A recent comprehensive study is Veikko TAHKA, "The Alcoholic Personality. A Clinical Study". *The Finnish Foundation for Alcohol Studies*, volume 13, Helsinki, 1966.

led him to conclude that the social and psychiatric histories of alcoholics are not particularly distinctive⁴. Armstrong, another Toronto worker, believes that there is no proof to date of a specific alcoholic personality, but he suspects that certain constellations of personality characteristics are found more consistently than others in the alcoholic population and that these characteristics, together with excessive drinking, play a significant role in the quality of family life⁵. At the same time, he states clearly that "it is not always reasonable to assume that these characteristics are entirely the result of or are uniquely associated with drinking behaviour"⁶. Tahka, a Finish scholar, cautions that it is "difficult to compare the psychiatric diagnoses of various authors. Often exceedingly controversial diagnostic data in different studies seem to indicate that not only different nosological systems but also different diagnostic criteria have been used"⁷.

Cork, chief psychiatric social worker at the Addiction Research Foundation Clinic in Toronto, believes that no one personality type has yet been revealed among those who become alcoholics. She, like Armstrong, points out that many alcoholics tend to have certain common characteristics, but she qualifies this observation by stating that it has not been established whether or not these characteristics were present to any significant degree before the individual became an alcoholic⁸. To Cork, an understanding of these common characteristics can not be overlooked in any consideration of the treatment of the alcoholic and his family. These characteristics, she says, can disrupt the alcoholic's family as much if not more than the excessive drinking itself.

What then are the characteristics that would seem to have particular significance for our consideration of the alcoholic and his family? Cork's study revealed the following: (i) inability to accept appropriate responsibility; (ii) excessive dependency needs which often cannot be met or accepted by other members of the family; (iii) lack of self-discipline, often seen in impulsivity and indulgence of self towards others; (iv) preoccupation with self; (v) negative attitude towards

⁴ Robert E. POPHAM, "Some Social and Cultural Aspects of Alcoholism", (1959), 4 *Canadian Psychiatric Journal*, 222-230 (slightly revised version of a lecture at the University of Western Ontario in 1957).

⁵ John D. ARMSTRONG, "Alcoholism — A Social Dilemma", (1959), 5 *The Journal of Social Therapy* (no pagination), 10 pp.

⁶ *Id.*, at p. 2.

⁷ TAHKA, note 3, above, at p. 28.

⁸ R. Margaret CORK, *Alcoholism and the Family*. Toronto, 1964, 12 pp. Cork was inclined to think that many of these characteristics were present before alcohol began to be a problem. The present writer has relied heavily on this valuable paper.

authority, with consequent repressed or acted out hostility ; (vi) sense of inadequacy in certain vital areas of family life ; (vii) unrealistic and immature approach to the ordinary business of living ; (viii) limited interests ; (ix) shallow or superficial interpersonal relationships which make it difficult to communicate or share with other members of the family at a mature level. These characteristics can and often will be the source of early and prolonged marital discord, even before drinking becomes what can be termed excessive. They complicate and add to family difficulties when the drinking is at a peak, and they provide a basis for continuing discord when the drinking is controlled.

That there are patterns of behaviour common to many alcoholics, no matter what the underlying personality structure may be, is a fact that is well accepted in the literature. One important pattern of the alcoholic's behaviour stems from his "inappropriate lack of concern over the chaos he is creating — in his own life as well as in others" ⁹. It is fairly well established, moreover, that it is almost impossible for one family member to be suffering from serious alcoholism and for the other or other members of the family to be completely well. Alcoholism in one member or part of the family system will produce change in the other members or parts. Mullan and Griffing, two American workers, quote Bacon's clinical picture of the alcoholic, emphasizing the patient's pain, immaturity, and extreme ego-centricity, as follows :

"The alcoholic generally lacks interest in anything outside of himself and his problems. Such outside interests as he may manifest are usually temporary and directly and immediately related to a desire to show off or achieve some quick benefit. His continual comparison of all things to himself, easy cynicism about anything not connected to himself, self-pity, intense feelings of guilt, and increasingly solitary existence, all bear witness to his ego-centricity." ¹⁰

Despite the uncertain state of our knowledge of the nature of alcoholism, its etiology, definitive treatment and exact classification, as well as the differences of opinion about the alcoholic's character structure, virtually all workers in the field are agreed that much can be done to prevent and manage the spread of alcoholism as a disease and to treat and rehabilitate those who are suffering from it. Our concern in this paper is with the wife and children of the alcoholic.

⁹ Hugh MULLAN and Ester J. GRIFFING, "Case Work with the Alcoholic Directed Toward His Participation in Group Psychotherapy", in Hugh MULLAN and Iris SANGIULIANO, *Alcoholism : Group Psychotherapy and Rehabilitation*. Springfield, Illinois, 1966, pp. 95-134, at p. 109.

¹⁰ *Ibid.*, pp. 109-110.

2. The Family of the Alcoholic

Cork, a leading Canadian researcher on the topic, finds that there is no one way in which the family will react to an alcoholic member. Each family, and each member thereof, reacts differently and at different stages of the illness, as a consequence of variable socio-cultural factors, such as, for example, the original stability of the marriage, the degree and depth of family unity prior to the advent of excessive drinking, the financial and social position of the family, and so forth. Many families nevertheless do show some similarities in their reactions to the problem. Cork found that in most families, in the earlier stages of the problem, an effort was made to hide or deny the fact of excessive drinking, and that there was a tendency to place the blame for the existence of the problem on external factors. Fears of all kinds may reveal themselves, such as, for example, fear of what one's neighbours will say and think ; fear of financial deprivation ; fear for one's own sanity. Many families, at times, attempt to protect the alcoholic member, both as a result of a genuine effort to help him as well as the need to shield themselves from the consequences of his behaviour, which may include the loss of his job. In Cork's opinion, two major reactions come to prevail. On the one hand, there is inter-acting hostility or resentment between all the members of the family unit, with resulting damage to interpersonal relationships ; and, on the other hand, there is distortion or loss of normal family roles, the wife tending to fulfill her alcoholic husband's role, and other members of the family becoming "unduly hurt, anxious, and in conflict" ¹¹.

It is clear, however, that the husband's excessive or even continued drinking renders the chances of a normal, healthy family life improbable, if not impossible. His alcoholism affects every member of the family, emotionally, socially, and often physically. It contributes to the disruption of family life and it can lead to mental illness not only for children during their formative years but for each adult member of the family ¹². The atmosphere created in a home where there is an

¹¹ CORK, note 8, above, at p. 6.

¹² The father is an important "variable in the family with respect to the emotional health of the children and the integration and strength of the family unit... when the father is the major source of emotional strength or at least not weaker than the mother, the level of emotional health of the family and its members is high. He may have a high level of unresolved dependency needs but this does not seem to affect his children's mental health as long as he is stronger than the mother. These findings (from work in Montreal) seem to highlight the importance in our culture of the maintenance of the traditional Anglo-Saxon family role relationship pattern for

alcoholic husband and father is characterized by unusual tension and insecurity¹³. As many commentators have observed, the family is constantly in a state of flux, in a state of indecision, over the alcoholic member, and the wife is very often in a state of high nerves over the question of whether or not to leave her husband. "For the close, continuing, all purpose intimate association which is the family, (excessive drinking) is catastrophic"¹⁴.

Researchers have found that members of the alcoholic's family are often so bound up emotionally with his problems that they are impaired, if not powerless, to take any constructive action. This seems to be one reason why very few alcoholics are committed to mental institutions at the insistence of their families. It must be emphasized therefore that whether the members of the alcoholic's family are regarded as the primary cause of the drinking problem or, alternatively, as the martyred recipients of the alcoholic's drinking behaviour, the family must be viewed as a unit of inter-acting individuals, each of whom reacts to, and is affected by, the behaviour and personality of the other. The alcoholic cannot be viewed in isolation from his family and, conversely, the family cannot be viewed in isolation from the alcoholic.

This means that at the outset treatment should be provided for the family as a unit of interdependent individuals. Any policy of treatment should, at least initially, include the wife and, where necessary, children over the age of nine or ten. Concurrent therapy for all responsible parties not only enhances the possibilities of successful treatment for the alcoholic himself but conduces (as much as anything can) to the attainment of a more emotionally secure family life. Fox, a practising psychoanalyst in New York City, points out that the alcoholic is influenced "just as much by the attitude of his family toward him and his illness as he influences them. His recovery may even depend

the development of sound emotional health in the family and its members": Nathan B. EPSTEIN and William A. WESTLEY, "Parental Interaction as Related to the Emotional Health of Children", (1960), 8 *Social Problems*, 87-93, at p. 92.

¹³ "As long as the drinking is going on, the parents are intensely involved with each other in an angry way. ... When the alcoholic patient stops drinking, the pattern is disrupted and the family becomes tense and anxious. The alcoholic spouse may now develop other symptoms; the children may become deviant": M. A. MALLY, "A Study in Family Patterns in Alcoholic Marriages", abstracted in (1966), 27 *Quarterly Journal of Studies on Alcohol*, 354.

¹⁴ S. D. BACON, "Excessive Drinking and the Institution of the Family", in *Alcohol, Science and Society: Twenty-Nine Lectures with Discussions as Given at the Yale Summer School of Alcohol Studies*, New Haven, 1945, pp. 223-239, at p. 232. The thesis of Bacon's essay is "that excessive drinking and the marital association are incompatible, more incompatible than excessive drinking and any of the other institutions".

upon their patience and understanding help in guiding him to therapy . . . For the alcoholic whose family's attitude is negative, condemning, punishing and hopeless, the chances of recovery are decidedly not good. It is for this reason that treatment is most effective when not only the alcoholic but the wife and children are included in the treatment program" ¹⁵.

3. The Children of the Alcoholic

Though there are few published works on this subject, there is general agreement that parental alcoholism has a harmful effect on children ¹⁶. There are constant references to behavioural and other disturbances among the children of those alcoholics who reach the courts, mental hospitals, alcoholism clinics, and social agencies. In analyzing emotionally disturbed, non-alcoholic adults, Fox indicates that alcoholism in one of the parents has frequently been a contributing factor to the neurosis, psychosis or psychopathic trends for which the patient seeks treatment. "I have felt that the more severe the alcoholic pathology in the parent, the greater has been the damage to the developing child" ¹⁷. Krimmel and Spears of the Cleveland Center on Alcoholism found that in "alcoholic families there were structural changes that left children confused and without identification. There was wide-spread violence. The ability of the children to form healthy relationships was severely crippled. Goals were abandoned and there was a retreat to defenses that were sometimes as unworkable as they were unhealthy . . . multiple manifestations of conflict, turmoil and distortion seriously impaired the ability of children to form healthy relationships in or out of the family" ¹⁸.

Without discussing the forces that shape personality in general, it can be said that there is agreement that the alcoholic parent does damage the developing child. Joan K. Jackson writes about this as follows :

¹⁵ Ruth Fox, "Children in the Alcoholic Family", in William C. BIER (ed.), *Problems in Addiction: Alcoholism and Drug Addiction*, note 1, above, pp. 71-97, at p. 83 (an important essay).

¹⁶ The leading study is still Ingvar NYLANDER, "Children of Alcoholic Fathers" (1960), 49 *Acta Paediatrica*, (supplement 121) p. 49 (Uppsala, Sweden); see too Paul W. HABERMAN, "Childhood Symptoms in Children of Alcoholics and comparison Group Parents", (1966), 28 *Journal of Marriage and the Family*, 152-155.

¹⁷ Fox, note 15, above, at pp. 71-72.

¹⁸ Herman E. KRIMMEL and Helen R. SPEARS, *The Effect of Parental Alcoholism on Adolescents*. Paper presented at the National Conference on Social Welfare, Los Angeles, California, May 26, 1964, 9 pp., at pp. 2 and 5.

"Personalities (of children with alcoholic parents) are formed in a social milieu which is markedly unstable, torn with dissension, culturally deviant and socially disapproved. The children must themselves on adults who play their roles in a distorted fashion. . . . His (the child's) alcoholic parent feels one way about him when he is sober, another when he is drunk, and yet another during the hang-over stage. What the child can expect from his parents depends on the phase of the drinking cycle as well as on where he stands in relation to each parent at any given time."¹⁹

The child thus enters adult life with a definite handicap. Just how crippling this will be depend on many socio-cultural variables, among which Fox mentions inherited temperament and constitutional equipment ; physical health, intelligence, training ; "economic security ; the personality and maturity of his non-drinking parent and siblings ; the degree of the drinking pathology of the parent ; the way the alcoholic has been handled ; and whether or not the drinking parent as brought his addiction under control"²⁰. We know that adolescents sometimes succeed in rising above these obstacles but that is not synonymous with suggesting that the struggle is a healthy one, mentally or physically.

4. The Wife of the Alcoholic

We have seen that the husband's alcoholism contributes profoundly to the disruption of the family. To what extent is the wife responsible for family disunity and for the excessive drinking of her husband ? There are a number of detailed studies on this question, and the truth seems to be that each spouse accentuates the other's problems²¹.

In much of the psychiatric literature, the wife is found to be a

¹⁹ Quoted by Hugh MULLAN, "Aims, Goals and Directions in the Treatment and Rehabilitation of the Alcoholic", in MULLAN and SANGIULIANO, note 9, above, pp. 46-93, at pp. 58-59, from D. J. PITTMAN and C. R. SYNDER, *Society, Culture and Drinking Patterns*. N.Y. 1962.

²⁰ Fox, note 15, above, at p. 72.

²¹ Useful references can be found in D. J. PITTMAN and C. R. SYNDER, *Society, culture and Drinking Patterns*, N.Y., 1962; O. N. EVANS, "The Wife of the Alcoholic—Villain or Victim ?", (1966), 131 *Military Medicine*, 1422-1431, reviewing briefly the theories of FUTTERMAN, PRICE, LEWIS, GLEIDMAN, WHALEN, JACKSON, and suggesting that masochism, low self-concept, and determination to "will that which cannot be willed", namely, change in the husband's behaviour, are some of the reasons that some women choose to remain with their alcoholic husbands; Margaret B. BAILEY, note 27, below (excellent); and R. VALLET, et. al. "Some Wives of Alcoholics : A Relationship Study of Couples", abstracted from 11 *Rev. Alcsme*, 29-44, in (1966), 27 *Quarterly Journal of Studies on Alcohol*, 763, presenting case histories of several types of wives of alcoholics : the resolute, the passive-resigned, the self-sacrificing, and those who are markedly different from their husbands — socially, intellectually and ethically. The Vallet article calls for a thorough study of the personalities of the alcoholic, his wife, and other members of his family group.

disturbed individual despite, in many instances, an appearance of adequacy and capability. Fox concluded that this maladjustment frequently antedated the marriage : the choice of an alcoholic mate was determined by the impulse to satisfy some unconscious need, and this need required the continued drinking of the husband.

Futterman, the main proponent of the theory that the alcoholic's wife is an emotionally disturbed woman seeking a husband who can be manipulated to her own personality requirements, concludes that certain women need to be married to weak, despondent alcoholic men²². Such a woman sees herself as powerful and indispensable, capable of playing the role of both mother and father to her children. Although this is her conscious picture of herself, she unconsciously feels inadequate to live up to her ego ideal as either wife or mother, and she tends to push the drinking husband farther and farther out of the family. It is only by feeling superior to her husband and by keeping him inferior to her that she can deny her own basic inadequacy. Such wives may consciously or unconsciously block their husband's treatment. Their own emotional adjustments depend upon the need to dominate.

Futterman concludes that, frequently, as the alcoholic becomes abstinent, the wife no longer has her foil and may decompensate emotionally, reacting with severe depression or other neurotic disturbance. A recent French study, to some extent corroborating this point of view, indicates that the rigidity of the wife's defense system "makes it very difficult for her to modify her behaviour . . . In most cases, the wife . . . would benefit from individual or group psychotherapy . . ." ²³ Other commentators have suggested that the wife of the alcoholic married in the hope of finding a strong dependable person upon whom to lean ; but that, on discovering her husband's incapability of fulfilling this role, she reacted with hostility and resentment, making more and more demands upon the husband, with the result that the latter comes to feel, and virtually becomes, even less adequate than he may have been before marriage. It is apparent that these two views do not differ much in essence. Both picture the wife as a basically insecure person who married in the expectation of meeting her dependency needs through a strong husband.

²² S. FUTTERMAN, "Personality Trends in Wives of Alcoholics", (1953), 23 *J. Psychiat. Social Work*, 37-41 (the bulk of the material presented here was derived from clients in social agencies and the remainder from patients seen in a mental hygiene clinic and in private practice).

²³ P. DENIKER, D. de SAUGY and M. ROBERT, "The Alcoholic and His Wife", (1964), 5 *Comprehensive Psychiatry*, 374-384, at p. 381, describing research carried out in several hospitals and out-patient clinics in Paris.

In summary, therefore, the first of the two main views of the wife of the alcoholic (found largely in the clinical literature) is that the wife herself has severe personal psychopathology which is largely responsible for the marital conflict. Psychiatrists have attempted to explain the alcoholic marriage largely if not entirely on the basis of personality disorders in both parties, disorders existing prior to the onset of alcoholism, with the wife playing the villain's role, her nagging driving her husband to drink. Cases where the remission of the husband's alcoholism was followed by emotional decompensation on the part of the wife are cited by Futterman and others to support this supposition. It has been argued, however, that "the contribution which the personality of each spouse makes to the onset, persistence, and alleviation of alcoholism will remain in the realm of speculation until we have firmer knowledge of the etiology of alcoholism, its course, and of its remedy" ²⁴.

The second view of the wife of the alcoholic, the view of the sociologists, approaches the conflicted marriage from the perspective of institutional, family behaviour in certain types of social conditions. This orientation emphasizes the processes of the family unit rather than the question of behavioural normality or abnormality. It suggests that women undergoing similar stressful experiences, due mainly to their husband's drinking, will exhibit a common pattern of neurotic response. This view does not overlook the wife's (possibly) neurotic character, but, as Jackson, the chief exponent of the stress theory, points out, the wife's neurotic personality may often be the result of living with an alcoholic husband rather than the result of a primary personal pathology ²⁵. Sociologists are thus generally critical of attempts to explain the alcoholic marriage on the basis of a pre-existing personality disorder. Instead, they conceptualize the wife's behaviour and her personality traits inferred from that behaviour as a reaction to a cumulative crisis in which she experiences progressively more stress. The sociologists are therefore inclined to think that the psychiatric approach underestimates the importance of the role adaptations which are thrust upon the wife, by the very nature of the alcoholic's illness, and they argue, consistently with their orientation, that the wife has less of a vested interest in her husband's drinking, and is more open to education, than the psychiatrists are willing to admit ²⁶.

²⁴ D. J. PITTMAN and C. R. SYNDER, *Society, Culture and Drinking Patterns*. N.Y., 1962, pp. 479-482, at p. 479.

²⁵ J. K. JACKSON, "The Adjustment of the Family to the Crisis of Alcoholism", (1954), 15 *Quarterly Journal of Studies on Alcohol*, 562-586.

²⁶ Margaret B. BAILEY, Paul HABERMAN and Harold ALKSNE, "Outcomes of

Kogan and Jackson, referring to Bailey's excellent review of the literature in 1961²⁷, suggest that the views of both the psychiatrists and the sociologists are oversimplifications, and that "instead of being reciprocally exclusive it might be more profitable to consider both theories as having important contributions to make"²⁸. Summarising studies conducted at the University of Washington between 1958 and 1964, where "one of our goals was to assess the ways in which personality factors interacted with environmental stresses to produce the behaviour we observed . . .", these two workers found "that lumping wives together as a unitary class obscured meaningful data, that generalization about personality disturbance was unwarranted and that the relationships between stress-producing situations and adjustments are likely to be the same for wives of alcoholics and non-alcoholics"²⁹.

Cork thinks that the popular view of the wife as a brave, tragic, long-suffering victim of circumstances, in no important way responsible for the excessive drinking or disruption of family life, is false³⁰. Though she concludes that the wife of the alcoholic represents no more of a single personality type than her alcoholic husband, she finds that wives in Al-Anon, or those who have been in more structured treatment, have been able to admit that they were, to some degree, disturbed individuals at the time of their marriages or that they become so as drinking and marital strife continued over a number of years. These wives were generally in agreement that they played a vital part in the continuance of their husband's drinking and in the disturbance of the family's equilibrium and stability.

Referring to studies at Brookside Clinic, Cork says that counselling in a group setting proved helpful to the wives of alcoholics but that,

Alcoholic Marriages: Endurance, Termination or Recovery", (1962), 23 *Quarterly Journal of Studies on Alcohol*, 610-624, based on comparisons among three sub-groups of wives: those who terminated their marriages, those living with sober husbands, and those living with actively drinking husbands. The data "lend support to stress theories about the alcoholic marriage and do not confirm the hypothesis that wives of alcoholics decompensate when their husbands achieve sobriety".

²⁷ Margaret B. BAILEY, "Alcoholism and Marriage: A Review of Research and Professional Literature", (1961), 22 *Quarterly Journal of Studies on Alcohol*, 81-98.

²⁸ K. L. KOGAN and J. K. JACKSON, "Alcoholism: The Fable of the Noxious Wife", (1965), 49 *Mental Hygiene*, 428-438, at p. 429.

²⁹ *Ibid.*, p. 437. Much the same view is expressed by John B. RAE and Alan R. FORBES, "Clinical and Psychometric Characteristics of the Wives of Alcoholics", (1966), 112 *British Journal of Psychiatry*, 117-200, indicating that a unitary concept of the personality of the alcoholic's wife is untenable and that very different dynamics operate in different marriages.

³⁰ CORK, note 8, above, at p. 5.

generally, individual counselling did not meet the needs of a number of wives. She concludes that quick identification with other wives provides the necessary atmosphere for the immediate release of tensions and a sense of belonging. The Clinic's past experience led it to recognize the fact that many alcoholic husbands can be treated more effectively if their wives receive concurrent therapy. Going a step further, Cork states that the stability of the home can often be affected significantly if the wife is helped, regardless of whether or not her husband is still drinking excessively ³¹.

Whether one prefers the psychiatric or sociological point of view, or a combination of both of them, it is apparent that alcoholism affects an inter-personal network and that it punishes the alcoholic, his wife and family. Treatment, and therefore rehabilitation, of the alcoholic very often depends upon the effective mobilization of all useful resources within the total marital relationship. Even those studies of the wife which find that her disturbances do not antedate her husband's alcoholism conclude that she may nevertheless represent one of the reasons for his continued drinking, despite the treatment which he may be taking. Since her personality disturbances may be serious by the time she reaches out for help, it would appear that she too is in need of counselling or psychotherapy. Family group therapy — the substitution of a social psychological orientation for a clinical psychological orientation — would seem to have important possibilities in this regard ³².

³¹ For a similar, earlier view, see Walter W. IGERSHLIMER, "Group Psychotherapy for Non-Alcoholic Wives of Alcoholics", (1959), 20 *Quarterly Journal of Studies on Alcohol*, 77-86. Accepting the view that the wife of the alcoholic has a neurotic personality structure which has led to the choice of the alcoholic partner, Igersheimer concludes that group therapy enables these wives "to attain greater depth of self-understanding than they might have reached in individual psychotherapy". For general references see Bernard LUBIN and Alice W. LUBIN, *Group Psychotherapy: A Bibliography of the Literature from 1956 through 1964*. Michigan State U.P. 1966, 186 pp. (includes items from international sources); and see note 32, below.

³² John Ekderkin BELL, "A Theoretical Position for Family Group Therapy", (1963), 2 *Family Process*, 1-15, states at p. 5 that "Family group therapy is an independent therapy, distinct from both the individual and group therapies we knew formerly. It differs because of the relationships among those who come for treatment, it differs in the definition of the problem they bring, it differs in the therapeutic techniques, and finally in the goals towards which it moves". See too J. A. EWING, Virginia LONG and G. G. WENZEL, "Concurrent Group Psychotherapy of Alcoholic Patients and their Wives", (1961), 11 *Int. Jo. of Group Psychotherapy*, 329-339. Bibliographies can be found in J. E. BELL, "Recent Advances in Family Group Therapy", (1962), *Journal Child Psychology and Psychiatry*, 1-15; G. BURTON and D. R. YOUNG, "Family Crisis in Group Therapy", (1962), 1 *Family Process*, 214-224, at pp. 222-224; and in B. SCHLESINGER, *The Multi-Problem Family: A Review and Annotated Bibliography*, 2nd ed., Toronto U.P., 1965, pp. 168-169.

Part b : Legal considerations

Before discussing a few — by no means all — of the legal aspects of the position of the wife of the alcoholic, it is worth recalling that the premise of this paper is that the marriage is to be preserved, at least during its early period, and that, in looking to any legal remedy which the alcoholic's wife might possess, no consideration has been given here to those remedies which, in effect, serve only to sever the marital relationship. This is not to imply that separation or divorce may not be necessary. One or the other or indeed both may be the only realistic solutions, especially as regards the best interests of the children. However, what this paper is looking to, in regard to the wife's legal status, is the existence of provisions that will help her to help herself, her husband and her children before it becomes necessary to take the last step of terminating the marriage.

1. Financial Assistance to the Wife of the Alcoholic

The law of Ontario, unlike the law of England and of many other Canadian provinces, does not permit the wife of an alcoholic to apply for a judicial separation on grounds of cruelty or desertion. However, it does allow her to seek alimony (financial relief) for either of these two reasons. The meaning of cruelty and desertion in the law of alimony in Ontario is much the same as it is in those Commonwealth jurisdictions which permit judicial separations and, indeed, in those jurisdictions which permit divorce rather than merely judicial separation.

(a) Alimony Based on Cruelty

In *Russell v. Russell*, the first of the modern authorities and still the basis of the law of cruelty, Lord Davey said that the general idea underlying the decisions of the Ecclesiastical Courts was "the principle of giving protection to the complaining spouse against actual or apprehended violence, physical ill-treatment, or injury to health"³³. In the Court of Appeal much the same thing had been said in rather different words : the conduct must have caused danger to life, limb, or health, or given reasonable apprehension of such danger. The courts however have not been definite as to whether the test should be objective or subjective, that is to say, whether the conduct must be such that it can be called cruel irrespective of the recipient or whether it must be judged

³³ [1897] A.C. 395, at p. 468.

entirely by the reactions of the party against whom it is directed. It would appear that "the subjective test must be applied, but only so far as it seems reasonable to do so : in other words, the test is, 'Did this particular man's conduct cause injury (or fear of injury) to this particular woman?', but if the woman's sensitivity reaches beyond the bounds of reason, then it need not be taken into account" ³⁴.

The law has long recognized that there can be cruelty without violence and it is of course mental cruelty that gives rise to most of the difficulties.

The following considerations must probably be taken into account in determining whether, in the absence of physical violence, conduct can be held to be cruel : injury to health or danger of such injury ; the cumulative effect of the conduct looked at as a whole ; and, the defendant's motive. Though it may now be unnecessary to prove intent, judicial opinion has been divided on the point. Lord Denning, for example, has taken the view that intention must be clearly shown by the manner in which the injury is inflicted : the conduct must in some sense be "aimed at" the injured spouse, and not merely be a defect of temperament. In *Kaslefsky* he said that "The presumption that a person intends the natural consequences of his act, is one that may — not must — be drawn" ³⁵. Other judges however have taken a broader view. They have said that a man must be taken to intend the natural and probable consequences of his acts, and that if those acts did cause injury to health, then they would amount to cruelty, whatever he intended the result to be.

In 1963, the House of Lords decided by a majority of one, in *Gollins v. Gollins*, that it was unnecessary to show any malevolent intention in order to prove cruelty ³⁶. Lord Pearce observed that though it is impossible to give a comprehensive definition of cruelty, "when reprehensible conduct or departure from the normal standards of conjugal kindness causes injury to health or an apprehension of it, it is, I think, cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would consider that the conduct complained of is such that this spouse should not be called on to endure it . . ." ³⁷. *Gollins* thus went a long way to establish that almost any conduct, however brought about, which causes injury to health or apprehension of injury, is cruelty. In other words, the nature

³⁴ Margaret Puxon, *The Family and the Law*. London, 1967, p. 114.

³⁵ *Kaslefsky v. Kaslefsky*, [1950] 2 All E.R., 398, at p. 403 (C.A.).

³⁶ *Gollins v. Gollins*, [1963] 2 All E.R., 966 (H.L.).

³⁷ *Id.*, at p. 992.

of the act does not matter, only its result. Later cases, however, show that there are still two schools of thought. In *Le Brocq*, for example, Lord Justice Harman said that some of the things attributed to *Gollins* "set the ball rolling down that slippery slope which may end in the last resort in absurdity"³⁸.

What all this probably comes to is that there must be some misconduct of a grave and weighty nature which an ordinary man would describe as cruel in the ordinary and natural meaning of that word, but that conduct which does not reach this standard will, in some courts, be accepted as cruelty, provided injury to health is proved³⁹.

Drunkenness can be cruelty, especially if long continued and accompanied by particularly revolting features, always provided that it has caused injury to the other spouse's health. In *Baker*, for example, where the wife, being in a very nervous state approaching a breakdown, brought action for divorce, Davies J. observed that: "... persistent drunkenness after warnings that such a course of conduct is inflicting pain on the other spouse, certainly if it is known to be injuring the other spouse's health, may well of itself amount to cruelty. In any case, such drunkenness, if it is combined with other acts of ill-treatment, may obviously be of the greatest importance"⁴⁰.

It may be suggested therefore that once it is recognized that physical violence is not necessary in order to justify a finding of cruelty, it becomes increasingly difficult to maintain (as did the earlier cases) that drunkenness per se does not constitute cruelty, especially when the drunkenness involves highly objectionable conduct. Whether or not we have yet reached this stage is the evolution of the law, one central fact remains, namely, the necessity of a finding of injury or suffering on the part of the wife. The result is that "the sturdy spouse" is penalized for her fortitude despite the fact that she may feel as disturbed at her husband's alcoholism as the wife who exhibits more concrete manifestation of physical or psychological damage.

(b) Alimony and Desertion

The elements of the offence of desertion were discussed and applied in *Hall*, where the wife had left her husband because of his drinking habits and applied to the court for maintenance on grounds of persistent cruelty, constructive desertion, and wilful neglect to maintain⁴¹. There

³⁸ *Le Brocq v. Le Brocq*, [1964] 1 W.L.R., 1085, at p. 1092 (C.A.).

³⁹ Puxon, note 34, above, at pp. 120-121.

⁴⁰ *Baker v. Baker*, [1955] 3 All E.R., 193, at pp. 194-195.

⁴¹ *Hall v. Hall*, [1962] 3 All E.R., 518 (C.A.), reversing [1962] 2 All E.R., 129.

was no evidence of violent conduct on the part of the husband or any injury to the wife's health. There was no evidence of revolting conduct by the husband. The wife had not left him before nor warned him that she would do so prior to, in fact, doing so. After reviewing the cases, Sir Jocelyn Simon stated in the High Court that :

"...the only reported cases where drunkenness has entitled a spouse to matrimonial relief have been either where it amounted to cruelty owing to its persistence in the knowledge that it was injuring the health of the other spouse or where it was of so extreme a nature, being accompanied by physical violence or involving possible danger to members of the household, that the continuance of matrimonial cohabitation was virtually impossible." ⁴²

He then examined the law of constructive desertion. "There must be a separation of the spouses ; there must be an intention on the part of the guilty spouse to bring cohabitation permanently to an end ; and its termination must be without cause or the consent of the other spouse" ⁴³.

In the Court of Appeal, Omerod, L. J., in an important judgment, said that :

"To say that the petitioner must establish conduct by the respondent which made it 'practically impossible for the parties to live properly together', or which 'drove the petitioner out', is to propound a criterion too vague to be very helpful. It is, I think, possible to say of certain courses of conduct that they could not amount to constructive desertion, and of certain other courses that they could not fail to do so. This would appear to be a question of law, involving, as it does, the issue whether there was any or no evidence to support the Judge's conclusion. But between the extremes indicated there is obviously a no-man's-land where the issue is one of fact... The question in this case is whether the facts are such that the conduct complained of should or should not be said to amount to constructive desertion. The Divisional Court has founded its judgment on the view that the question is one of law. In my judgment, this case involves a question of fact. The question is not whether drunkenness of itself is sufficient to amount to expulsive conduct. The question is whether the conduct of his husband (caused, no doubt initially, by the drunkenness) was sufficient to justify his wife in leaving him and saying that she found it impossible to live with him... It may be that this conduct was not committed by the husband with the intention that it should drive the wife from their home; but, in my judgment, it was the sort of conduct which might well do this, and the husband, if he did not know, should have known what the result of his conduct might be." ⁴⁴

His Lordship then concluded that the present case was within the 'no-man's-land' and supported the decision of the court of first instance as

⁴² [1962] 2 All E.R., 129, at p. 134.

⁴³ *Id.*, p. 132.

⁴⁴ [1962] 3 All E.R., 518, at pp. 522-523.

being one of fact with which an appellate court ought not to interfere. The judgment of Danckwerts, L. J. is also of assistance :

"...the issue... was whether the conduct of the husband was of the nature which has been described in other cases as 'expulsive', or 'grave and convincing', or in other similar phrases, so that the spouse who left the other was not guilty of desertion, and instead the offender in conduct has been held to be constructively the deserter... the question is whether *this* man's conduct to *this* wife has been of such a nature that she could not reasonably be expected to endure it further, and so was justified in leaving him. This is a matter of human relations and should not be covered by cold judicial principles. I would respectfully suggest that there is too much talk in matrimonial cases about a party accepting the other 'for better or for worse' or about the behaviour which a party 'bargains to endure'. It must be exceptional for parties who marry to bargain, even in a figurative sense, to endure drunkenness or disgusting conduct... I am unable to see how persistent drunkenness can be considered to be within the phrase 'the reasonable wear and tear of married life' used by Asquith, L. J., in *Buchler v. Buchler*..."⁴⁵

Summing up the effect of the *Hall* case, it would appear that constructive desertion with respect to many situations involving alcoholism is primarily a question of fact rather than law and that primary attention must be given to the conduct resulting from drunkenness rather than to the alcoholic addiction itself, although it would appear that the total conduct pattern of an alcoholic spouse will likely be sufficient to justify a determination of "constructive desertion". In this connection, the relatively moderate pattern of conduct evidenced by the facts in the *Hall* case indicates a judicial attitude which is willing to consider realistically current social problems and attitudes.

(c) *Alimony for Cruelty and Desertion : Resume*

Although earlier English and Commonwealth cases indicate that cruelty cannot be established by the fact of drunkenness alone but must be associated with a pattern of physical violence in order to justify legal relief (*Marsh*⁴⁶, *Rodman*⁴⁷, *Fulton*⁴⁸), recent cases (*Baker*⁴⁹, *Thomson*⁵⁰ and *Smart*⁵¹) suggest that whenever revolting conduct (profanity, vomiting) is the concomitant or accompaniment of alcoholism can be justified in the absence of physical abuse. In the light of the factual situation in the *Gollins Case*, where admittedly there was

⁴⁵ *Id.*, at p. 524.

⁴⁶ *Marsh v. Marsh*, (1858), 164 E.R. 744; 1 Sm. & Pr. 313.

⁴⁷ *Rodman v. Rodman*, (1874), 20 Gr. Ch. 428.

⁴⁸ *Fulton v. Fulton*, (1850), D. 12 S.C., 1104 (Scotland).

⁴⁹ *Baker v. Baker*, [1955] 3 All E.R., 193 (H.L.).

⁵⁰ *Thomson or Hutchison v. Hutchison*, [1945] S.C., 427 (Scotland).

⁵¹ *Smart v. Smart*, [1963] N.Z.L.R.

no alcoholism but simply a lazy and unhelpful husband, it may be that even verbal abuse or other unpleasantness often associated with alcoholism is not necessary in order to justify legal relief; the fact remains however that the wife would have had to experience injury to her mental health in order to have status to complain. It is thus possible to envisage situations in which she could not obtain financial relief from her alcoholic husband. If, for example, the husband, on returning home, simply retired to the privacy of a room where he drank himself into silent but hopeless stupors, and if the wife, though distressed, failed to experience serious interference with her equanimity or mental health, it would appear that she would be without relief where to depend on the common law remedy of alimony for cruelty.

On the other hand, by relying on the law of constructive desertion, it would appear that the wife might be able to obtain relief even if she had not suffered serious detriment to her mental health, the latter aspect not being a requirement of the law of desertion. Nevertheless, it is probable that the same degree of unpleasantness or abusiveness is required here, under the law of desertion, as under the law of cruelty.

It is clear, therefore, that if, as a matter of policy, it is thought that the wife of an alcoholic should have financial relief by reason of the fact of her husband being an alcoholic, without reference to his specific conduct pattern, legislation will be required to extend the common law.

(d) *Summary Financial Relief*

In Ontario, as in other jurisdictions, a spouse has long been able to seek financial relief under a procedure which is parallel to the procedure followed in a High Court action based on cruelty or desertion, as discussed above. Since a High Court action tends to be expensive and complex, summary procedures exist in order to resolve matrimonial difficulties quickly and economically.

The applicable Ontario legislation is *The Deserted Wives' and Children's Maintenance Act*⁵². This statute provides in section 1(1) for a hearing before a magistrate or a judge of a juvenile court when it appears that the husband has deserted the wife without having made adequate provision for her maintenance and the maintenance of the children. Under sub-section 2, the wife is deemed to have been deserted "when she is living apart from her husband because of his acts of cruelty". Under subsection (3), which does not restrict in any way

⁵² R.S.O., 1960, c. 105.

the generality of subsection 2, "conduct causing reasonable apprehension of bodily injury, or of injury to health, without proof of actual personal violence, that renders the home an unfit place, either for a wife or a child, may be held to constitute acts of cruelty . . ." In 1951, the Ontario Court of Appeal held that the cruelty requirement is met by the same degree of cruelty as is necessary to justify a High Court action for alimony, and, further, that in an action under the Act the wife must prove that the cruelty "rendered the home an unfit place"⁵³. The latter requirement may (perhaps) be of dubious validity in the light of the opening clause of subsection (3).

Thus, as far as the law of Ontario is concerned, the only essential differences between an action in the High Court and an action in a magistrate's or juvenile court under the statute are of a procedural nature. The substantive law, which is judge-made, is the same. This is not true in England, where legislation allows the wife to apply for a non-cohabitation order and financial relief when the husband "is for the time being an habitual drunkard or a drug addict". "Habitual drunkard" tends to be defined as a person who is "by reason of habitual intemperate drinking of intoxicating liquors, at times dangerous to himself or others, or incapable of managing himself or his affairs". Comparable provisions can be found in the statutes of British Columbia, Newfoundland and Manitoba.

In British Columbia, the wife is deemed to be deserted if she leaves her husband or he leaves her "because of his being a person who, by reason of frequent drinking of intoxicating liquor is incapable of managing himself and his affairs . . ."⁵⁴. The Newfoundland legislation is similar, though it refers to incapacity to manage "himself or his affairs", rather than "and his affairs", and for this reason its reach may be somewhat wider⁵⁵. Section 2 of the Manitoba statute defines "habitual drunkard" in exactly the same terms as those used in the British Columbia Act. Section 4 provides that a wife may apply for an order . . . "when a married man is a habitual drunkard". Section 13 goes on to provide that an order may provide for "such weekly or monthly sum as the Judge or Magistrate may, having regard to the means of both the husband and the wife, consider reasonable"⁵⁶. The Manitoba legislation, unlike the English scheme, allows the wife to obtain financial relief from her alcoholic husband.

⁵³ *Yewchyn v. Yewchyn*, [1951] O.W.N., 101 (C.A.).

⁵⁴ *Wives' and Childrens' Maintenance Act*, R.S.B.C., 1960, c. 499, sec. 2.

⁵⁵ *Maintenance Act*, R.S.N., 1952, c. 65.

⁵⁶ R.S.M., 1954, c. 294.

It can be seen therefore that while Ontario leaves to the courts the question of whether alcoholic conduct by the husband can fall within the common law meaning of cruelty, other jurisdictions have provided express statutory relief for the wife in the context of matrimonial problems stemming from her husband's alcoholism. The three Canadian statutes referred to above have not, however, been construed by the courts.

2. Interdiction and other Methods of Control of the Supply of Alcohol

Under the Ontario Liquor Control Act, a judge of the county or district court may cancel the liquor permit of, and prohibit the sale of liquor to, any person who, by excessive drinking, misspends, wastes or lessens his estate or injures his health or interrupts the peace and happiness of his family⁵⁷. When this order is filed by the judge with the Liquor Control Board, the Board will cancel the permit held by the interdicted person and notify that person, as well as all vendors and other persons legally permitted to supply liquor, of the cancellation of the permit and the order of interdiction. "The whole scheme", as described by a Canadian court, "is to enable a family to prevent a man who is abusing the use of liquor from doing so to the detriment of his family . . . It is for the protection of the family and for families solely, and cannot be used by the police or any other person for any other purpose"⁵⁸.

As an administrative adjunct to the judicial procedure just described, section 84 of the Liquor Control Act authorizes the Liquor Control Board to issue an order prohibiting any person from purchasing liquor and providing that any person contravening such an order is guilty of an offence. The Board may also by order prohibit any vendor or statutorily authorized supplier of liquor from supplying alcohol to the person subjected to the prohibitory order. Instead of prohibiting the supply to a person, the Board may, alternatively, prescribe the kinds and quantities of liquor that may be sold to him.

These provisions are fine in theory but they are ineffective in practice, largely because of the wide-spread availability of liquor to the alcoholic. The main result of the procedure is to provide a way of punishing the alcoholic when he disobeys the orders. This is little better than a conviction for public drunkenness, though no doubt it

⁵⁷ R.S.C., 1960, c. 217.

⁵⁸ *R. v. Davis*, (1922), 31 B.C.R., 453.

does permit criminal sanctions to be imposed on the interdicted person who drinks in other than public places. If contravention of the prohibitory order would permit the court to subject the alcoholic to compulsory medical treatment in lieu of conventional criminal penalties, the system of interdiction might perhaps achieve some significant results. However, if this is the objective, it would be more sensible to attack the problem directly by providing for civil commitment rather than using criminal procedure as a circuitous device for achieving the same result.

Legislation aimed at controlling the places, times, prices, advertising and circumstances in which alcohol may be purchased has had little effect, if any, on problems of alcoholism or for that matter upon alcoholic consumption generally. These programmes rest on the premise that the key to the control of the use of alcohol is the control of its availability and that availability can be controlled by regulating production and sale of alcohol. An American commentator has recently described these assumptions as "quite fallacious or quite inadequate, if not, indeed, irrelevant"⁵⁹.

3. Civil Damages Against the Supplier of Alcohol

In the absence of statute, there could be no action by the wife of an alcoholic against those who supply her husband with the means of perpetuating his addiction. A number of jurisdictions have, however, created legislative remedies, one of the long-standing and more frequently interpreted statutes being that of the State of Iowa, which provides in essence that a wife who is injured in person or property or means of support by an intoxicated husband or resulting from his intoxication has a right of action against the licensee or permittee who sells or gives liquor to him while he is intoxicated or serves him to a point where he becomes intoxicated⁶⁰. Ontario has an analogous statutory provision but in *Cooper and Cooper v. Temos*, the High Court indicated that recovery is unlikely except in the most flagrant of cases⁶¹. In Iowa it is no defence for the defendant to show that he had no knowledge of the habits of the intoxicated person ; but in Ontario it is essential to show that "the customer conveyed to the mind of the server . . . the appearance of a person likely to become intoxicated . . . or that the

⁵⁹ S. D. BACON, "American Experiences in Legislation and Control Dealing with the Use of Beverage Alcohol", in *National Conference on Legal Issues in Alcoholism and Alcohol Usage*, 1965, at p. 132.

⁶⁰ This scheme is discussed at length in (1953), 2 *Drake Law Review*, 54 and (1964), 13 *Drake Law Review*, 168.

⁶¹ [1955] O.W.N., 900.

serving would increase the intoxication ; and in addition to either, it must be apparent to the server that the person served is likely to cause harm to himself or others as a consequence of that intoxication" ⁶².

4. Alcoholism and the Custody of Children

In custody cases, the relevant considerations are the welfare of the infant, the conduct of the parents, and the wishes of the parents. The welfare and happiness of the infant is however the paramount consideration. The question thus becomes one of determining the effect on the welfare of the child of the alcoholic behaviour of one of the parents who is contesting custody. There are very few decided cases in Canada in which this precise point has been considered. In the United States, where the issue has been raised more frequently than in Canada, evidence of drinking, especially drinking before the children, is given considerable weight in comparing the relative merits of the mother's and father's homes. An Oregon court, for example, has recently stated that "as long as the defendant refuses to give up the use of intoxicating liquors the welfare of her children would be jeopardized should they remain in her custody" ⁶³. Shortly and sensibly, the situation seems to be that courts everywhere in the English-speaking world attempted to prevent an alcoholic parent from obtaining or retaining the custody of a child.

5. Civil Commitment

While financial relief and the custody of children are often important steps along the road to marital dissolution, the object of civil commitment is the rehabilitation of an alcoholic so that both these interim measures and the ultimate solution of divorce become unnecessary. Although the shock of a court order forcing one to pay alimony or denying one the custody of one's child might have the effect of providing an adequate stimulus or incentive to rehabilitation, it is just as likely that such actions might increase disillusionment and despair ; on the other hand, while application for compulsory civil commitment might well create initial friction and even animosity between the alcoholic spouse and the spouse responsible for attempting to initiate a compulsory treatment procedure, it is arguable that, from a long range point of view, civil commitment offers the best promise of eventual rehabilitation and consequent normalization of family relations.

⁶² *Ibid.*, p. 901.

⁶³ *Usery v. Usery*, 367 P. 2d 449 at p. 451 (S.C.); see too E. V. Rosrow, "Drinking as an Element in Custody Cases", (1943), 3 *Quarterly Journal of Studies on Alcohol*, 675-676.

The Law of Ontario

It is perhaps somewhat remarkable that, at a time when compulsory treatment of individuals afflicted with a variety of disorders is becoming increasingly prevalent, and when the magnitude of the problem of alcoholism has been recognized by increased public concern and formal inquiries throughout North America, the relatively long-entrenched Ontario provisions for dealing with this endemic problem have been weakened if not, to the extent that the problem had achieved express statutory recognition as a distinct problem, entirely removed. The Mental Hospitals Act⁶⁴, contained, basically in sections 49-54, a statutory code for the commitment of alcoholics which was derived from and never substantially changed from the provisions set out in An Act to Amend the Hospitals for the Insane Act⁶⁵. Sections 50-54 of this statutory code were repealed by the Mental Hospitals Amendment Act⁶⁶, which was to come into force on a day to be named by proclamation of the Lieutenant-Governor. The result was to leave the Mental Hospitals Act as a statute governing the financial and other operational aspects of mental hospitals, as well as the procedure for governmental approval of mental hospitals. As of August 18th, 1967, neither the Mental Hospitals Amendment Act nor the Mental Health Act, 1967 had been proclaimed.

Part V of the Mental Hospitals Act, containing sections 49-54, provided three basic statutory mechanisms through which an alcoholic could receive institutional care. The first, embodied in section 49, permits the alcoholic to make a voluntary written application which, provided he is deemed capable of appreciating the nature of the action he is taking, may result in his detention for a period of up to one year. Initially it was provided that the alcoholic had to agree to a term of up to one year's commitment as a condition of his admission to treatment; subsequently this was altered by permitting him to obtain his release within five days of giving a written notice of his intention in this respect.

Section 50 contemplated compulsory commitment for a period not exceeding two years upon warrant of the Deputy Minister acting upon a report of the findings of a County Court Judge upon a formal judicial inquiry with *viva voce* evidence and the right of the alleged alcoholic to act by counsel entitled to examine witnesses. The basis of a

⁶⁴ R.S.O., 1960, c. 236.

⁶⁵ S.O., 1916, c. 64.

⁶⁶ S.O., 1967, c. 52, s. 29.

report by a Judge would be a finding that the alleged alcoholic is a "habitué" within the meaning of the statute and (under section 50(7)) "so given over to the use of alcohol or drugs as to render him unable to control himself or incapable of managing his affairs, or that on that account he squanders or mismanages his property, or places his family in danger of distress, or transacts his business prejudicially to the interests of his family or his creditors, or that he uses intoxicating liquors or drugs to such an extent as to render him dangerous to himself and others . . ."

The judicial hearing was to be directed by the Judge upon a petition verified by oath to the effect that the alleged habitué was a *bona fide* resident of Ontario and subject to one of the above-specified conditions which might be made the basis of a report by the Judge. The persons entitled to launch a petition of this sort were "any relative, whether by blood or affinity, or, if he has no relative in Ontario, by any friend of the alleged habitué or by the family medical attendant".

The third committal method provided for detention for a period not to exceed thirty days upon the certificate of two medical practitioners each stating that in the opinion of the practitioner he alleged habitué "is suffering from the effects of alcohol or drugs to such a degree as to require hospital care".

The conditions of discharge as set out in section 53 included an opinion of the institution's superintendent that the habitué was sufficiently recovered or that it was in the interest of the patient or the hospital that the habitué be discharged or that there was default by the habitué in payment of his maintenance. Section 27 as incorporated into Part V of the Act by section 54 provided that a voluntary patient might be continued as a certified patient upon the certificates of two medical practitioners. Section 39 provided for probation of the habitué to the custody of his family or friends if the superintendent of the institution considered this to be conducive to the recovery of the habitué and provided that one or more of his family or friends undertook to take charge of the habitué, provision being made for further institutional treatment if the habitué again satisfied the requirements set out above for a judicial report under Section 50. Section 48 provided for the apprehension and further institutionalization of escaped habitué.

The Mental Health Act, 1967⁶⁷, has (for most purposes) the virtue of encompassing all mental disorders under one statutory scheme, with a definition of "mental disorder" sufficiently broad to allow scope

⁶⁷ S.O., 1967, c. 51.

for changing medical views in the realm of psychiatry. The definition of "mental disorder" is "any disease or disability of the mind". For present purposes, the outstanding feature of this statute is its generality and hence its failure to make specific provision for patients whose sole or primary difficulty is alcoholism. While it is true that enlightened opinion now classifies alcoholism as a disease, and that medical associations have urged the medical profession to take a greater interest than it has traditionally exhibited in problems of alcoholism, the long-standing tendency to relegate problems of alcoholism to the medical "backwater" can only lead to apprehension at the failure to provide specifically a statutory scheme for the alleviation of alcoholism. In particular, section 6 of the new Act provides that "admission to a psychiatric facility may be refused where the immediate needs in the case of the proposed patient are such that hospitalization is not urgent or necessary". This provision is perhaps ominous in the light of traditional difficulties in obtaining proper treatment for alcoholics in medical institutions already over-burdened with patients suffering from more conventional disorders.

The new statute has carefully omitted any reference to persons who may initiate an application for the committal of a person subject to a mental disorder. Section 9 provides for informations upon oath before a Justice of the Peace while section 8 provides for an application signed by a physician, both sections failing to limit in any way the class of persons entitled to commence proceedings. In a sense, this failure probably stems from the fact that under the former statutory scheme the family members of an alcoholic were loath to institute proceedings lest familial strains be additionally exacerbated.

The thirty-day, one-year, and two-year periods in force under the former statute have yielded to a more flexible system involving an initial committal "for a period of not more than one month" which can be extended by successive periods of not more than two months, three months, six months, and twelve months, no limit being placed on the number of renewals for twelve-month periods. It would appear that the former flexible provision with respect to probation has been replaced by a provision with respect to probation has been replaced by a provision in section 20 permitting a "leave of absence from the psychiatric facility for a designated period of not more than three months".

The discharge provision in section 26(1) reads as follows: "A patient shall be discharged from a psychiatric facility when he is no longer in need of the observation, care and treatment provided therein".

Section 28 permits the patient to have an inquiry launched into the necessity of this continued confinement whenever it becomes necessary to obtain a certificate of renewal for his continued detention. At such a hearing before a Board of Review the patient or his representative is entitled to call witnesses, cross-examine witnesses, and make submissions.

Part III of the Act is highlighted by section 32, which involves an examination by a physician to determine whether the patient "is competent to manage his estate", the public trustee assuming management of the patient's estate if a "certificate of incompetence" is issued by the physician.

As if section 6, which deals with *ad hoc* decisions on the eligibility of particular patients for treatment, were not a sufficient potential threat to the right to treatment of alcoholics, section 61 (1) (f) permits the Lieutenant-Governor in Council to make regulations "classifying patients, and limiting the classes of patients that may be admitted to any psychiatric facility or class thereof".

On the whole, the advantages of having a unified and streamlined statute with adequate procedural safeguards for the liberty of the individual seem to be outweighed, insofar as a programme of compulsory commitment for alcoholics may be deemed desirable, by the exclusion of a discrete statutory code for problems of alcoholism.

English Law

The English statutory scheme for the treatment of alcoholics does not contain any provision for compulsory treatment of individuals who have not been convicted of an offence against the public order. The scheme does provide for the commitment of persons guilty of certain offences in the nature of breaches of the public peace and for the voluntary commitment of alcoholics upon their own applications. The English scheme is well introduced by Halsbury⁶⁸ in a passage that is too long to quote for present purposes.

American Law

A superb treatment of American law has been rendered in concise form by William J. Curran in a recent article entitled "Civil Commitment of Alcoholics : A Legal Survey"⁶⁹. He points out that "all fifty

⁶⁸ 3rd ed., vol. 22, pp. 722-731.

⁶⁹ *The Legal Issues in Alcoholism and Alcohol Usage*. Boston University Law and Medicine Institute, 1965, pp. 36-70.

states have some method of committing alcoholics, at least to the state mental hospitals. However, thirty-six states (or 72%) have special procedures for the civil commitment of persons who are defined as alcoholics, or chronic inebriates, or inebriates, or dipsomaniacs. The distinction here is that these procedures cover alcoholism as such and not merely as a form of mental illness"⁷⁰.

After commenting on the great variety of procedures across the United States, especially as regards the period of commitment and the initiating body for involuntary treatment, Professor Curran deals with *Ex Parte Hinkle*⁷¹, a leading case on the justification of commitment. He writes as follows: "Under the police power, the state can enact laws for the protection of the public safety, health and morals . . . The other power of the state is that of *parens patriae*, or *in loco parentis*, action in place of the parents . . . on behalf of people who cannot act for themselves, who have lost the capacity to make reasonable judgments for themselves. It is here we see guardianships and conservatorships for minors, or for the very old, or for spendthrifts, or for the insane. Here it is not danger that is stressed, but lack of judgment, reason. Someone must act in the person's best interests".

It is obviously not possible to examine American law in an exploratory essay of the present kind. However, the subject should not be put over without referring to *Pollon v. State*⁷² where Rosenberg, C. J., dealing with the right of the state to deal with the private alcoholic under statute, observed that there was no reason "why the state may not protect other members of the family from the consequences of the defendant's acts as well as other members of the general public. In most cases the interests of the members of the family are more important than the right of the public not to be disturbed".

Part c : Conclusions

The idea of civil commitment for involuntary treatment of the private alcoholic is controversial, to say the least. Many workers point out that the majority of private alcoholics are law abiding and that their anti-social conduct, such as it is, is no justification for deprivation of liberty. Some feel that commitment is merely a disguise for unlimited incarceration. Others feel that the requisite treatment facilities are simply non-existent in Canada. Still others think that there is no real

⁷⁰ *Ibid.*, p. 40. In Canada, the Nova Scotia statute appears to be extremely wide : *Inebriates' Guardianship Act*, R.S.N.S., 1967, c. 144.

⁷¹ 196 P., 1035 (1921).

⁷² 291 N.W., 224 (1935).

assurance that those committed can or will be cured and rehabilitated within a reasonable period of time. The moral aspect is said to be a central issue in alcoholism, and many who underline the importance of this aspect suggest that the advocates of commitment are cleverly using a socially approved formula ("you are ill — you must accept treatment") in order to give effect to their own social policies. Recommendation No. 4 of the United States National Conference on Legal Issues on Alcoholism and Alcohol Usage was that "the machinery of civil commitment be brought to bear only when an individual constitutes a danger to the public at large".

The suggestion in this paper is not that civil commitment must be used. The suggestion merely is that, sooner or later, the imposition of controls from the outside, in Professor Curran's phrase, by the society, by the law, on the person who has lost control and who is damaging his wife and family must be considered as a realistic way of protecting the wife and family. In other words, we need to consider the possibility that a primary justification for compulsory medical treatment for alcoholism is the need to reduce familial unhappiness and prevent the mutilation of personalities, in addition to the usual arguments about cutting down industrial inefficiency and highway carriage.

If the idea of civil commitment is controversial, the same cannot be said of the suggestion to provide the wife of the private alcoholic with access to counsellor-information centers where she can get advice about her civil and other rights as well as assistance from professionally trained counsellors. It is a notorious fact that the wife of the private alcoholic is usually confused and often desperate by the time she reaches out for help. She needs advice — badly — and it is precisely at this point that members of the legal profession can and must cooperate with other resource personnel in coming to the assistance of the wife of the private alcoholic. Perhaps the time has come for us to consider the possibility of establishing a new unit, probably, though not necessarily, outside the present family court framework, in which lawyers, counsellors, social workers, and members of other helping professions will be available at stated times.

It goes without saying that there is a tremendous need for more research into and clarification of the relevant laws, regulations and practices pertaining to the wife and children of the private alcoholic. There is no point setting up centers of the type referred to if those who are to man them are themselves without easy access to the pertinent information. One very obvious conclusion of the present paper is that

the wife of the private alcoholic occupies an extremely ambiguous position. She is something of a forgotten woman. There are many in the community who agree that she needs help but there are few who know what to do, or indeed, what can be done. More research, on a multidisciplinary basis, and the clearest possible statement of her position in law, is a first necessary step in any programme to help her.

Finally, we might give some thought to the idea of providing the wife of the private alcoholic with financial aid (not welfare) in order to permit her to separate on something of a trial basis while her husband undergoes treatment. The trouble is that, in the majority of cases, she is simply unable to leave him financially, however unfit the home may have become for herself and for her children. New legal procedures would have to be devised in order to get the husband out of the premises (he may have to go, not his wife) and, as mentioned above, concurrent therapy may be necessary for both of them. The point remains that the wife and children need to be protected. Existing laws and practices should be reexamined with a view to providing protection, consistently with the maintenance of the civil liberties of others.