Legislative Assembly of Manitoba

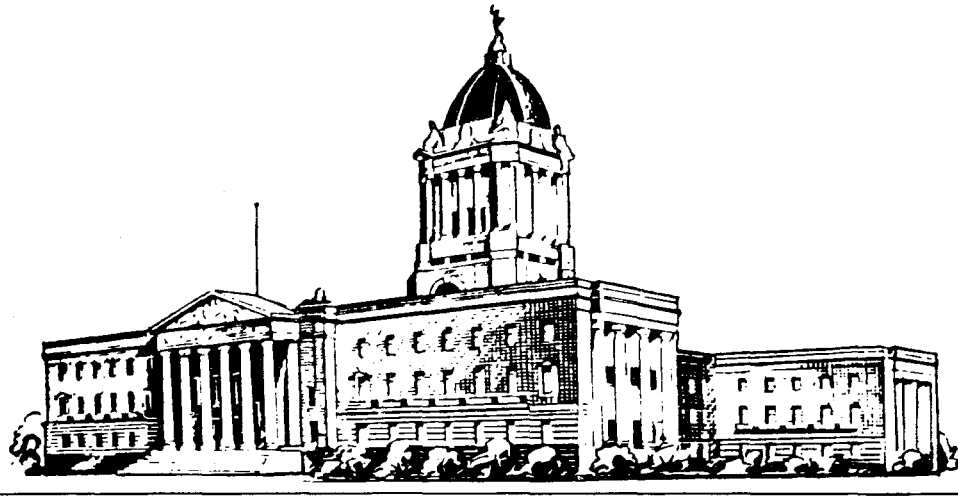
STANDING COMMITTEE

ON

STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. Warren Steen
Constituency of Crescentwood



Tuesday, July 18, 1978 8:00 p.m.

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Hearing Of The Standing Committee
On
Statutory Regulations and Orders

Tuesday, July 18, 1978

Time: 8:00 p.m.

MR. CHAIRMAN, Mr. Warren Steen :: Committee will come to order, and as Mr. Mercier is collecting his thoughts, there were two issues, prior to the supper break, that we have not dealt with. One is on Page 1, which is 1(b), where Mr. Corrin had a motion, and the other one is on Page 3, which is 4(2) a marital home acquired before marriage. Am I correct, Mr. Pawley, in that one?

MR. HOWARD PAWLEY: I wonder if we could carry on? I have to get those amendments from Mr. Corrin.

MR. CHAIRMAN: Maybe Mr. Mercier has a comment or a statement to make, which would help the situation. Mr. Mercier.

MR. GERALD W.J. MERCIER: Mr. Chairman, if I could make a comment on all the amendments that have been proposed to . . . date that we are giving some further consideration to —(Interjection)— In fact, going back to The Dower Act too. Would that be . . . ? Just so that you are aware of our position and then you can . . . —(Interjection)— Well, I will speak about them point-by-point , and on those that we do not agree with, Mr. Tallin will provide Mr. Cherniack or Mr. Pawley with the proposed amendments which they indicated they would like to bring forward at the report stage.

There was a proposed amendment that was prepared by Mr. Tallin and relates to Section 15 of The Dower Act . . . —(Interjection)— This was Bill 4, Section 15, and there was a discussion of value and what date should that be used. Mr. Tallin has drafted an amendment which he felt recorded the feeling of, I think, specifically, Mr. Cherniack, "at the time that the value of the benefit shall be the value of that benefit as of the date the accounting was made."

We are not prepared to bring this amendment forward. Mr. Tallin will provide that.

MR. CHAIRMAN: Mr. Cherniack.

MR. SAUL CHERNIACK: I'm not going to debate this. I think it's closed. Mr. Mercier proposes then to leave it as it is, because, as I recall it, it was not clear as to whether it was at date of division or at date of the agreement — I mean, at date of division or at date of application. I think it wasn't clear. And then I suggested what I thought it ought to be. I just want to make sure that Mr. Mercier recognizes that it was not clear. I am not debating which is right, because I will bring that amendment in and we will debate it and vote on it. But in the end, can I assume Mr. Mercier wants it the other way? We will make that amendment — maybe I have said enough, Mr. Chairman, because Mr. Mercier can look into that and make his own decision. I appreciate his information on that.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: It was another proposed amendment to Bill 41, I believe that Mr. Corrin introduced with respect to Sections . . .

MR. CHERNIACK: The Dower Act.

MR. MERCIER: . . . an estate in fee simple in place of a life interest. We're not prepared to introduce that at this time but are prepared to give that serious review and consideration for next year. It was a proposed amendment . . .

MR. CHERNIACK: So Mr. Tallin will prepare the . . .

MR. MERCIER: Yes. He'll prepare the necessary amendment.

MR. CHERNIACK: Yes, the point is, Mr. Chairman, Mr. Corrin is likely not to be back so it wil have to be in somebody else's name.

MR. PAWLEY: Do you want to handle it?

MR. CHERNIACK: Well, we'll see, when the time comes, we'll deal with it.

MR. CHAIRMAN: That's why I offered you part of the pad if you wanted to keep a running score sheet.

MR. CHERNIACK: Thank you.

MR. MERCIER: There was a proposed amendment to Section 2(2) to add at the end "except fo the dependent spouse's custody to a child of the marriage." We're not prepared to proceed wit that.

There was a proposed amendment to Section 8 to . . .

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Excuse me, I understand then on my 2(2) as well, is it . . .

MR. CHAIRMAN: At report stage?

MR. PAWLEY: . . . here that an amendment will be prepared?

MR. MERCIER: They have been prepared and he'll probably be able to give them to yo tonight.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I have a note referring to changes in 5(1) which I know Mr. Mercie was not prepared to deal with. I will have to prepare my own amendment on that then will I?

MR. CHAIRN: Okay. Mr. Mercier.

MR. MERCIER: There was a proposed amendment to Section 8 to say "the court shall make a order that the spouses be no longer bound to cohabit." We're not prepared to proceed with tha one. That was where there is an application for separation making it mandatory that an order fo separation be issued.

There is a proposed amendment to Section 17, The Family Maintenance Act. I think it was Mr Cherniack reintroducing a section that was in the previous Act about the respondent appearing a the hearing although having failed to file an answer, etc. We're not prepared to proceed wit that.

With respect to Section 25 which was in the enforcement area, there were two amendment proposed to Section 25, one to substitute "shall" for "may". That one we're not prepared to proce with.

There's also a proposed amendment to add paragraph (c) which we are prepared to agree t and Mr. Tallin is . . . That would add (c) to provide some other security for the payment of an amount required to be paid under the Order.

MR. CHAIRMAN: Mr. Parasiuk, on this particular item?

MR. PARASIUK: No, I would like to speak when he finishes.

MR. CHAIRMAN: Oh, I see, I thought you wanted some clarification as he was going along. M Parasiuk.

MR. PARASIUK: Can I get clarification on 25(1). Did you agree to the change "may" to "shall there?

MR. MERCIER: No.

MR. PARASIUK: Oh, you haven't.

MR. CHERNIACK: No, we have to do that.

MR. PARASIUK: Okay, thank you.

MR. CHAIRMAN: All right. Mr. Mercier.

MR. MERCIER: With respect to the preamble, Mr. Tallin has drafted a preamble to The Family Maintenance Act which we would be prepared to accept and perhaps he can distribute it when he gets here.

With respect to The Marital Property Act, we are prepared to, in Clause 1(b) . . .

MR. CHAIRMAN: To Mr. Pawley, this is the one that Mr. Corrin has . . .

MR. MERCIER: Perhaps I can just read it. Unfortunately Mr. Tallin had to go to the Private Bill's Committee.

The effect of this amendment would be at the end of paragraph 1(b), to add the words "but not including savings bonds, or deposit receipts intended to be used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes." And or that clause 1(d) be amended by adding at the end of subclause (ii) the words "and savings bonds and deposit receipts intended to be used for those purposes."

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, just a technical aspect then. Then Mr. Mercier will be moving, or in any event putting it into the amendments at this stage, not at the third reading.

MR. CHAIRMAN: Well, on 1(b) he could but on 1(d)(ii) we have passed it. I would have to seek some advice from the committee as to whether . . .

MR. CHERNIACK: We can reopen that.

MR. CHAIRMAN: . . . reopen that and do it.

MR. CHERNIACK: We have a right to reopen.

MR. CHAIRMAN: Okay, unanimous consent. Yes, all right. Okay.

MR. MERCIER: I wonder, Mr. Chairman, if I could ask leave then to introduce this motion plus the motion to amend Section 25 of The Family Maintenance Act, to add that paragraph (c).

MR. CHAIRMAN: On Bill 39, you mean?

MR. MERCIER: On Bill 39, yes.

MR. CHAIRMAN: I am of mixed opinion. I don't know why Mr. Mercier can't do that at report tage as other ones are done rather than reopen. The bill has been reported as the Clerk has told ne and it's sort of like undoing a fair amount.

MR. MERCIER: It seems to me, Mr. Chairman, it would be easier if it were done here.

MR. CHAIRMAN: All right. If we have leave of the total committee. (Leave)

MR. SHERMAN: As long as it doesn't establish a precedent, Mr. Chairman.

MR. CHERNIACK: Mr. Chairman, I'm sorry, unanimous concern always sets a precedent, either way, either never or always does.

MR. CHAIRMAN: The Clerk has asked me if he can consult with the senior Clerk as to opening up a bill that has already been reported and making an amendment prior to it going on to report

stage.

MR. CHERNIACK: Was this reported?

MR. CHAIRMAN: Yes. So in the meantime, the Deputy Clerk will check with the Clerk as to hi position regarding that, but there's no problem on Bill 38 (1)(b), we haven't made a decision o it. We have both Mr. Mercier's amendment and Mr. Corrin's amendment to deal with.

MR. MERCIER: Well, I think, Mr. Chairman, essentially what Mr. Corrin moved was with respec to savings bonds and deposit receipts.

MR. CHAIRMAN: Mr. Parasiuk, then Mr. Cherniack. This is on (1)(b)?

MR. PARASIUK: No, Mr. Mercier was reporting on all of those items that he took unde consideration. He also took under consideration 4(2).

MR. CHAIRMAN: On bill?

MR. PARASIUK: On bill Bill 38. I thought we were going to go through them all . . .

MR. CHAIRMAN: Well, he hasn't got that far yet, I guess.

MR. CHERNIACK: We didn't get there. . . .

MR. PARASIUK: Yes, we did.

MR. CHAIRMAN: That was the very final item prior to the supper break.

MR. PAWLEY: On (1)(b), Mr. Corrin had proposed savings bonds, deposit receipts, pension scheme or plans. Do I understand that pension schemes or plans would not be included in the amendmer (1)(b)?

MR. CHAIRMAN: Right.

MR. PAWLEY: They would not be included.

MR. CHAIRMAN: Do you want me to read it, Mr. Pawley? Do you want me to read it again?

MR. PAWLEY: No, that is understood.

MR. MERCIER: 5(1)? 4(2) — This Act applies to any asset acquired by a spouse prior to but specific contemplation of the marriage — if that's agreeable.

MR. CHERNIACK: Instead of "a marital home" — "any asset."

MR. MERCIER: Assets acquired before marriage.

MR. CHERNIACK: All right, then you would insert it right on the blue in ink. This is passe then?

MR. CHAIRMAN: Okay. With the permission of the committee, let's again work in my normal fashio and that's backwards, let's do 4(2) and then we'll go back to (1)(b) and (1)(d), as 4(2) is fresh our minds. I will give the original to legal counsel here to write in, and maybe Mr. Mercier can aga repeat exactly the wording.

MR. MERCIER: 4(2) — You would substitute the words "any asset" for the words "a marital home and change the heading to "assets acquired before marriage."

MR. CHAIRMAN: Is that understood by all members present? (Agreed) Can we deal with that matte can we have agreement to pass 4(2)—pass.

Okay, let's revert back to the previous page and Mr. Mercier's amendment to 1(b).

MR. MERCIER: Would you like me to read that again, Mr. Chairman?

MR. CHAIRMAN: Well, Mr. Pawley was sort of left with the responsibility of handling Mr. Corrin's interests here, so I don't want . . .

MR. PAWLEY: Yes, and I understand that in 1(b), it is savings bonds, deposits, but not premium schemes or plans.

MR. CHAIRMAN: That is my understanding. Any discussion to Mr. Mercier's proposed amendment? Mr. Parasiuk.

MR. PARASIUK: Mr. Chairman, I would like to commend the Attorney-General for taking the items under consideration that he did, and going back to his caucus and trying to get some reading as to what the caucus position is on these various amendments. —(Interjection)— That's right, I just wanted to comment that I hope he is not bleeding too badly. He appears to have the flesh wounds that I used to see Fearless Fosdick having, you know, those huge bullet holes in his head and his body.

Having survived that ordeal with very little changes, I am wondering if the Minister, however, is in a position to indicate what the difficulty with including pension plans is, in that before we adjourned I think there was some indication that this is an issue and I think it is important for the Attorney-General to indicate why pension plans can't be included. We have had savings bonds and deposit receipts included and I would hope that the Minister would give reasons as to why pension plans or schemes can't be included because I can think of so many reasons why they should be included and I think those have been presented this afternoon.

So could the Minister tell us why the caucus has determined that pension plans can't be included?

MR. CHAIRMAN: Mr. Mercier, a comment? I'm not sure I want to have him tell why the caucus makes a decision or not, but maybe he can give you an explanation.

MR. PARASIUK: I'm not asking why they make a decision; I'm asking for reasons for it being turned out. I assume that the Conservative caucus makes decisions in a rational manner and therefore will have reasons for its not accepting this particular proposal.

MR. CHAIRMAN: You are 100 percent correct in that statement. Mr. Mercier.

MR. MERCIER: Mr. Chairman, I indicated earlier today that I think taking these assets by themselves, considering the nature of the assets, that I'm satisfied that on their own I don't see many reasons why they would not be split 50-50, under either section, even considering the discretion, either under Section 13(1) or Section 13(2). The kinds of assets that the Member for Transcona has referred to are in some cases sort of deferred investments or locked-in pension benefits and the main reason for specifically referring to them and avoiding the confusion that there was in the past legislation we have categorized $ them in the manner that we have. Even though we have agreed to this amendment with respect to savings bonds and deposit receipts, more because they are short-term savings plans, obvious immediate family assets, I still don't really accept the proposition that they would be shared any differently whether they were family assets or commercial assets.

MR. PARASIUK: I think the question in part just isn't one of sharing after the unfortunate dissolution of a marriage. I think that the other aspect is surely how they are viewed during a marriage. I find it amazing to say a pension plan isn't viewed as a family asset during the course of that marriage. Most marriages don't break up . . .

MR. MERCIER: Mr. Chairman, I wonder if I can just make a comment on a point of order. We agreed as we progressed through these bills that there were certain matters that we would take under consideration and prior to the Report Stage in the House I would indicate which ones we are prepared to incorporate into our legislation or if we were not prepared, Mr. Tallin would prepare amendments for opposition members to introduce at the Report Stage in the Legislature. What I have done is indicated that perhaps a bit early and I am wondering, really, as a matter of procedure, whether we should now go back again and debate again every one of those items. I would think that it was understood that we would not do that, that that would all be done at the Report Stage in the Legislature and that we wouldn't go back now and redebate each item.

MR. CHAIAN: I would agree with Mr. Mercier, that we spent quite a bit of time on pension schemes

and so on earlier today when this aspect of the bill was being debated. He agreed to caucus i with his group and has come back with some modifications. He hasn't satisfied everybody but fo us to reopen the whole case just because he hasn't come back with amendments that pleas everyone, I don't feel it warrants us rethrashing the particular aspect of the clause. As Mr. Mercie has said, if it is not satisfactory to certain members of the committee, Mr. Tallin is more tha agreeable to drafting amendments that are satisfactory to those particular members and they wi be dealt with at that time. I think Mr. Mercier has done his best to be accommodating and I don' think he can be expected to go any further.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Mr. Chairman, to that point of order, I'm just trying to understand what th reasoning behind the position of the Conservative caucus is, and I think that is fairly important I would hate to accuse them of something that isn't so and when the Minister gave his explanatio as to pension plans not being included, he talked about them as assets after the breakup of th marriage and I was trying to get an understanding of what the position of the Conservative caucu is with respect to assets during the course of an ongoing healthy marriage, and our pension schem is considered to be part of a family asset. I think that's very important. I think the distinction betwee commercial and family assets isn't just important during the breakup —(Interjection)— I think I sti have the floor, Mr. Chairman.

MR. MERCIER: Well, on a point of order, Mr. Chairman.

MR. PARASIUK: I'm speaking on a point of order. I'm speaking to his point of order.

MR. CHAIRMAN: All right. Mr. Parasiuk.

MR. PARASIUK: And therefore I think it is proper to ask for an explanation of what the attitud is regarding assets during the course of a marriage itself. All we're asking for is an explanatio — I don't think I'm debating it.

MR. CHAIRMAN: Mr. Cherniack, did you wish to comment on Mr. Mercier's point of order, or ca we drop the point of order and carry on?

MR. CHERNIACK: Well, I don't know, Mr. Chairman. Mr. Parasiuk may not agree with me, bu I thought I'd like to get Mr. Mercier's amendments into the bill so we have it, because it's his bil and we have it, and then we can debate the other issue, and I would think that maybe we ough to decide whether or not to just bring it in Report Stage just to add pension schemes or plan into the — you know, add on the Report Stage. I'm not caucusing with him, but I'm sort of consultin with him.

MR. CHAIRMAN: I think that Mr. Cherniack's suggestion is an ideal one. I would hope that w wouldn't have to rethrash conversations in the debate that we've had, and there is anothe opportunity for members to make amendments. Does everyone understand the amendment M Mercier has made in 1(b)? I'll put the question on 1(b). Pass? (Pass) Then we will, with conse of the Committee. . . Mr. Mercier has an amendment — am I correct? — I(d)(2). Have I the suppo of the Committee to reopen that one, and allow Mr. Mercier? (Agreed) All right, it's been agree that we reopen 1(d)(2), and Mr. Mercier's amendment is?

MR. MERCIER: That Clause 1(d) be amended by adding thereto at the end of subclause (2) there the words "and savings bonds and deposit receipts intended to be used for those purposes."

MR. CHAIRMAN: Is that clear to all? We put the question. 1(d)(2)— pass.

BILL NO. 39 — THE FAMILY MAINTENANCE ACT

All right. On Bill 39. That's the one that has been reported. I think the Clerk has communicate to both Mr. Sherman and Mr. Cherniack as to what the Senior Clerk's feeling is on it, and he sa that if we were to reopen the bill, he would hope that somewhere, I would make the comment th it was done as a special privilege or special case because he wouldn't want people to, next ye and the year after, to say, "Well, we've passed that bill, but it was done last year, and so on. W can reopen up bills and make changes." He wouldn't want it to be a precedent that would be followe on a continual basis. Is it agreed with the membership of the Committee that we reopen 39?

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I don't want to get that technical about it, but I support the idea on the basis that Mr. Mercier undertook to review this very Section 25 and a few others to see whether or not he was prepared to accede to suggestions that we made, and now that he has made the decision that he would accede to one of the suggestions, I think that it is a special case in that he, as the mover of the bill itself, should be enabled to, with unanimous consent, to finish his job, which is to make that amendment so that we will have the package as he wishes it to be, and then we in the opposition will still have the opportunity to deal with it in Report Stage, so . . .

MR. CHAIRMAN: That's sufficient justification to do it.

MR. CHERNIACK: Okay.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I am not happy about reopening a bill that has been reported, and I would like to just state my objections for the record. I don't intend to frustrate the will or intent of the Committee in doing same, but I would like to observe, for the record, that I think it is not a healthy legislative practice. The bill has been reported; it's unfortunate that there are some improvements or refinements that now the Attorney-General would like to make, but the fact of the matter is, the bill has been reported. In agreeing to reopen it, I think we lay ourselves open to situations in the future that members of this Committee and subsequent members of this Committee may regret.

MR. CHAIRMAN: Mr. Sherman, if I may interrupt, the bill has only been reported by this Committee to go on to the House. It hasn't gone that far.

MR. SHERMAN: Well, that's true, but . . .

MR. CHAIRMAN: I just wanted you to be aware of that.

MR. SHERMAN: But it's been reported to go back to the House, and Mr. Cherniack mentioned earlier that any amendment — when I said that that's establishing a — as long as it doesn't establish precedent, Mr. Cherniack commented that any amendment is a precedent, but it's a different precedent we're talking about here than of a simple amendment. It's the principle of re-opening the bill at this stage. As I say, I don't intend to frustrate the Committee in doing same, but I'd like to have it noted for the record that in this case, the request is being made by the mover of the bill, and is receiving — I assume — the unanimous consent of the Committee, and that I certainly wouldn't be agreeable to doing it under any weaker circumstances than that.

MR. CHAIRMAN: Mr. Parasiuk on that same subject.

MR. PARASIUK: Yes. I think if there's been any mistake, it's that we, I think, decided to report the bill on to the House while we still had these points to be clarified over the dinner hour, and think there was some expectation that they might be clarified over the dinner hour. And if anything, that's the thing that I'll be looking for very carefully in the future, so that if we will have these type of positionns being put on the record by Mr. Sherman, I'll make sure that in those types of instances we don't decide to report the bill on to the House while something is still being considered, as this was. And it was with that full understanding that we in fact made the decision to report on to the House. Obviously, we won't do that in the future.

MR. CHAIRMAN: Do I have consent of the Committee? (Agreed) I will give it to Legislative Counsel.

MR. MERCIER: Mr. Chairman, I'll move then that subsection 25(1) of Bill 39 be amended by adding thereto at the end of Clause (b) thereof, the word "or," and by adding thereto at the end thereof, the following Clause (c) "to provide some other security for the payment of any amount required to be paid under the order."

MR. CHAIRMAN: Just check it against your writing.

MR. CHERNIACK: All right. I'll give it back to you.

MR. CHAIRMAN: Can I put the question on the motion?

QUESTION put on the amendment, MOTION carried.

MR. CHAIRMAN: That deals with Bill 39. Now we can revert back to 38, and we left off completin 4(2). Now we are on 4(3). Is there an amendment?

MR. MERCIER: I move the amendment, as distributed, Mr. Chairman.

MR. CHAIRMAN: Mr. Parasiuk, on a point of order.

MR. PARASIUK: Mr. Chairman, on a point of order, is the preamble to Bill 39 going to be looke at now or is it going to be brought forward at report stage?

MR. CHAIRMAN: At report stage. Mr. Mercier, I believe, said that he was not prepared to acce the amendment on the preamble.

MR. MERCIER: We weren't prepared to accept the proposed preamble of Mr. Pawley. One is beir drafted that we are prepared to accept, and as soon as Mr. Pawley gets here . . .

A MEMBER: Or Mr. Tallin.

MR. MERCIER: Or Mr. Tallin gets here . . .

MR. PARASIUK: Yes, that's why I was asking. That doesn't mean that we have closed 39, the We will look at 39 when Mr. Tallin gets here. That was my understanding.

MR. CHAIRMAN: All right.

MR. PARASIUK: 39 is still left open until Mr. Tallin brings that amended preamble. That was n understanding of what was taking place.

MR. CHAIRMAN: Legislative Counsel and I will have to get some direction from Mr. Parasiuk Mr. Cherniack. We have accepted a motion for an amendment to 1(b) by Mr. Mercier. The Legislati Counsel says, what happens now to Mr. Corrin's? Are you, Mr. Parasiuk or Mr. Cherniack, wanti to proceed with his amendment or do you want to wait until report stage? —(Interjection)— N he hadn't moved it. It was only discussion hands and he was not a member of the committee th afternoon. It had to be moved by one of their other members. Mr. Cherniack.

MR. CHERNIACK: It's very clear; it's going to be . . .

MR. CHAIRMAN: Done at report stage?

MR. CHERNIACK: I don't know if Mr. Parasiuk wants to debate it any further. I think we shou bring it in at report stage and deal with it then.

MR. CHAIRMAN: Okay, at report stage.

MR. CHERNIACK: Mr. Chairman, now we are hopping around again — 39, we are still awaiti the preamble.

MR. CHAIRMAN: The Clerk is asking for some guidance. Mr. Parasiuk, a question, should we hc the preamble on 39 until Mr. Tallin is here?

MR. PARASIUK: Yes, I thought we could do that. Keep it open, proceed on 38, and then back.

MR. CHAIRMAN: All right. Is that agreed? (Agreed) We have an amendment under 4(3). It has be distributed and moved by Mr. Mercier. Any debate?

BILL NO. 38

MR. CHERNIACK: Mr. Chairman, I admit to you I read it. I don't see any difference except maybe making greater clarity. I'd appreciate Mr. Mercier telling us what this change is, so that we will be aware of it.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, it was pointed out to us that under the existing provision — we are talking about assets to which the Act does not apply but the appreciation and the value of the asset will be taken into consideration in an accounting between spouses. Under the previous section, there was a suggestion or an interpretation that the income from the asset had to be accumulated and the total income from the asset would have to be added to the inventory of the assets at the time of the accounting.

The amendment clarifies it just to say that . . . First, here, I think it's clear with respect to appreciation and depreciation. And in (c), any income from the asset earned while the spouse was married to him, what happened with the other spouse, we treat it in the same way as income from an asset to which they have to apply.

MR. PARASIUK: Question, Mr. Chairman.

MR. CHAIRMAN: All right. It has been moved by Mr. Mercier, 4(3)(a)—pass; 4(3)(b)—pass; 4(3)(c)—pass; 4(3) as fully amended—pass. 4(4) — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I see here what I believe is Mr. Pawley's amendment. Oh, it says from the fourth line. I see. It means the third and fourth line. Oh, I'm sorry. That's exactly what was$$going to move, only he worded it differently. I move Mr. Pawley's amendment, THAT Section 4(4) of The Marital Property Act be amended to delete in the fourth line thereof all the words following the word "deducted".

And the sense of that, Mr. Chairman, is that there should not be provision for a negative value, that is, that depreciation can be taken into account in reducing an asset, but it should not be taken into account to netting out a loss. That's the purpose of that. So that it won't be a cost to the receiving spouse to discover that there have been appreciation and depreciation, and if the depreciation offsets the appreciation then it means that suddenly the spouse, who has had no management, no control, no ownership, nothing to do with these assets until a division takes place, is suddenly called upon to pay the other spouse a share of the loss which the other spouse suffered by depreciation. And I don't see how that's justifiable at all.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Well, Mr. Chairman, what we have done here is really given the court discretion to deal with this particular matter, and I would think that that's an appropriate way of dealing with it. I think it was rather arbitrary to deal with this matter as suggested by the amendment. There may very well be circumstances occur where it should not be deducted. But we're satisfied that the most appropriate way of dealing with it is to leave it to the discretion of the court who can consider the circumstances.

MR. CHERNIACK: Mr. Chairman, I just can't conceive of a kind of circumstance that could arise which would invite the court to charge to the spouse who never had anything whatsoever to do with the management of these assets, a net loss. You know, I understand balancing out to have depreciation balance against an appreciation but I don't understand that it should be charged to the spouse who had nothing to do with the asset, had no rights under it, to charge that spouse with the need to pay maybe out of an inheritance or some other earnings or accumulation previously received independent of the spouse. You know, I understand you're saying, "Okay, we don't know what to do about it so we'll leave it to the court's discretion," but I can't conceive and I would like to have some idea of how this could come into play, under what circumstance could a court do it? If the answer is out of none, then I have to say why bother to say it at all?

MR. CHAIRMAN: Are you ready for the question8?

MR. CHERNIACK: Well, Mr. Chairman, then I'm right. I'm not being given any conjecture, any idea of what might arise in the minds of a court that could influence their making a negative finding.

MR. CHAIRMAN: All right, Mr. Cherniack's motion . . .

MR. CHERNIACK: Well, Mr. Chairman, i's just that it's a pretty important concept that a spous should be charged with a loss suffered by the other spouse when this spouse had nothing whatsoeve to do with the decisions which influenced that loss. Again, I asked if I can be given an example.

MR. CHAIRMAN: To Mr. Cherniack, I believe the Minister would like to leave that Section of th bill as is.

MR. CHERNIACK: Well, what you're saying, Mr. Chairman, I know what you're saying, but wha you must mean is that the Minister is not prepared to give us an example, nor is anyone else o this committee. I mean, that's how you have to interpret silence.

MR. MERCIER: Mr. Chairman, I'll attempt to do that at the report stage of the bill.

MR. CHAIRMAN: But for the time being, the Minister, Mr. Cherniack, . . .

MR. CHERNIACK: All right then, I will attempt to bring this . . .

MR. CHAIRMAN: . . . does not want to accept your amendment. I don't see a Clerk here, ca I as Chairman count them?

QUESTION put on the amendment, MOTION lost. (Yeas 3; Nays 6)

MR. CHAIRMAN: Mr. Cherniack, I'm neutral, I'm neutral, I didn't even vote.

MR. CHERNIACK: Mr. Chairman, you're trying to influence the vote by giving a name to it. Yo know, like Mr. Cherniack amended . . . You should tell Mr. Pawley that his amendment ju failed.

MR. CHAIRMAN: 6 to 3, the amendment has failed.

4(4)—pass; 5(1)—pass; 5(2)—pass; 5(3)—pass; 6(1) — there's an amendment on 6(1). Mr. Mercie has an amendment and Mr. Cherniack has the floor after Mr. Mercier. .

MR. MERCIER: I move the amendment as distributed, Mr. Chairman. That Bill 41 be amended b adding thereto, immediately after Section 6 thereof, the following section:

Form C of Schedule am.

6.1 Form C of the Schedule to The Dower Act is amended by striking out the words "life estate where they appear in the 2nd line of the body thereof and again in the 5th line of the body there and substituting therefor, in each case, the words "estate in fee simple."

MR. CHAIRMAN: Mr. Cherniack then.

MR. CHERNIACK: No, I think you shall pass the amendment and I want to go over over th Section.

QUESTION put on the amendment, MOTION carried.

MR. CHERNIACK: Mr. Chairman, 6(1), I'm not going to make the speech that I think this deserv which is an extensive speech, because 6(1), as I consider it, is completely contrary to the princip that we have fought for all along and that is joint ownership and joint management. We've hea it discussed; we've had many presentations and briefs; if we had 50 this last time, I suppose we' had maybe a total of 150 to 200 all together and this has always been a very, very important poir So I just mention that I'm voting against 6(1) on the basis that, to me, it is the rejection of th principle of joint ownership during the marriage, joint management during the marriage, consultati between spouses during the marriage. In other words, what makes a marriage work properly rejected by 6(1) and having said that, I intend to vote against it and I hope others will agree wi me.

MR. CHAIRMAN: Mr. Cherniack, do you want a vote conducted on it.?

MR. CHERNIACK: Yes, please.

QUESTION put on the amendment, MOTION carried. (Yeas 6; Nays 4)

MR. CHAIRMAN: 6(1)—passed as amended, 6(2) — there's an amendment. They have been distributed.

Mr. Mercier.

MR. MERCIER: Yes, Mr. Chairman, I'll move it as distributed.

MOTION:

That subsection 6(2) of Bill 38 be struck out and the following subsection substituted therefor:

Use of Marital Home.

6(2) Notwithstanding subsection (1), spouses each have an equal right to the use and enjoyment of their marital home, but the right is subject to any order of a court

(a) made under The Family Maintenance Act; or

(b) made in or as incidental or ancillary to a proceeding in a matrimonial cause as defined in The Queen's Bench Act; whereby one spouse is given possession of the marital home to the exclusion of the other.

QUESTION put on amendment, MOTION carried.

MR. CHAIRN: 6(2) as amended—pass; 6(3)—pass; 6(4).

MR. MERCIER: I move the amendment as distributed, Mr. Chairman. There's a grammatical error.

I move that subsection 6(4) of Bill 38 be amended by adding thereto, immediately after the word ''court'' in the 1st line thereof, the word ''made''.

MR. CHAIRMAN: 6(4) — Mr. Mercier's moved the amendments. Mr. Cherniack.

MR. CHERNIACK: I have to ask for your indulgence. I'm trying to keep abreast of what is happening and it's taking me a little while, for which I don't apologize really because we haven't had the amendments that long.

MR. CHAIRMAN: We will do our best to be accommodating.

MR. CHERNIACK: Well, so you should.

MR. CHAIRMAN: Is there any discussion to Mr. Mercier's amendment on 6(4)?

MR. CHERNIACK: 6(4) — The word ''court'' in the last line.

MR. MERCIER: To any order of a court, being under Part III. It is a grammatical error.

MR. CHERNIACK: 6(4) — Thank you, Mr. Chairman, even at this early stage I read that as the last line, not the first line. Sorry. QUESTION put on the amendment, MOTION carried.

MR. CHAIRMAN: 6(4) as amended—pass; 6(5) — under 6(5) there's an amendment with a new subsection.

6(5)(a)—pass; 6(5)(b)—pass; 6(5.1), which is the amendment — moved as distributed by Mr. Mercier.

Subsection 6(5.1). That Bill 38 be amended by adding thereto, immediately after subsection 6(5) hereof, the following subsection:

Proceeds of sale.

6(5.1) Where this Act applies to an asset, it applies as well to the proceeds of sale of the asset and to any other asset acquired in exchange for or purchased with the proceeds of sale of the asset.

MR. MERCIER: It arises out of the Manitoba Bar Association's presentation.

MR. CHAIRMAN: 6(5.1) as amended—pass; 6(5.1)—pass; (Clauses 6(6) to 6(9) were read and passed.)

Now I'm told that there is a 6(10). Mr. Mercier.

MR. MERCIER: I move the amendment as distributed, Mr. Chairman.

Subsection 6(10) That section 6 of Bill 38 be amended by adding thereto, immediately after subsection (9) thereof, the following subsection:

Application of subsection (9).

6(10). In the circumstances described in subsection (8), subsection (9) does not apply if the court is satisfied that the transferee acted bona fide and without knowledge that the transfer was effected with the intention described in Clause (8)(b).

MR. CHERNIACK: Mr. Chairman, just in case Mr. Corrin reads the transcript, I want to tell you that he had left with us a request that we bring this kind of an amendment in.

MR. CHAIRMAN: At 6(10)?

MR. CHERNIACK: Yes, the proposed 6(10). I want to read it once more, but I think that was his intent. I wonder if Mr. Pawley would confirm that?

MR. PAWLEY: Yes, it was, Mr. Chairman.

MR. CHAIRMAN: Mr. Pawley, can I deal with Mr. Mercier's amendment first, and then you'll present Mr. Corrin's?

MR. CHERNIACK: No, you misunderstood me.

MR. CHAIRMAN: Oh, sorry.

MR. CHERNIACK: I said that, for the record, I am pleased to note that Mr. Corrin wanted us to bring in a similar amendment on his behalf, and it's not necessary any more.

MR. CHAIRMAN: I see. My misunderstanding — my apology.

MR. CHERNIACK: He was concerned.

MR. CHAIRMAN: 6(10) as moved by Mr. Mercier—pass; 7(1)—pass; 7(2) —pass; 7(3)—pass; 7(4)—pass; 7(5)—pass; 8(1), there is an amendment at 8(1). Mr. Mercier.

MR. MERCIER: I move it as distributed, Mr. Chairman.

Subsection 8(1). That subsection 8(1) of Bill 38 be amended by adding thereto, immediately after the word "injury" in the 2nd line thereof, the words "or disability".

MR. CHAIRMAN: Moved by Mr. Mercier as distributed. 8(1) as amended and distributed—pass; 8(2)—pass; 9—pass; 10(1)—pass; 10(2) — Mr. Pawley.

MR. PAWLEY: Mr. Chairman, we have an amendment to 10(2).

Moved that 10(2) of The Marital Property Act be amended to delete all words in the second line thereof following "value".

This is consistent, Mr. Chairman, with the amendment which we proposed, and which was defeated, in 4(4). We see no reason at all that the matters pertaining to possible findings of a negative value would be referred to the court for their determination. I know that you have already dealt with this under 4(4), so I don't intend to speak further on this subject, except to make this amendment which would have been consistent with the position which we took in 4(4).

QUESTION put on the amendment, MOTION lost.

MR. CHAIRMAN: 10(2)—pass; 11, there's an amendment. Mr. Mercier.

MR. MERCIER: I move the amendment as distributed, Mr. Chairman.

Section 11. That Section 11 of Bill 38 be amended by striking out the word "may" in the first line thereof and substituting therefor the word "shall".

QUESTION put on the amendment, MOTION carried.

MR. CHAIRMAN: 11 as amended—pass; 12, 12(a) — Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I would like to move a motion that Legislative Counsel be instructed to prepare an amendment to Part II of 12 of The Marital Property Act, providing for immediate vesting in management of all family assets. I would just like to say a few words in support of this resolution.

During the briefs, which we received from meers of the public, we received one which I thought was rather moving, and which I thought so well demonstrated the need for this particular provision. Meers will recall a Mrs. Parker who appeared before the committee and described her own personal circumstances, how she had been accepted into a mental hospital, and during the three-year period that she stayed in that hospital, her husband had taken off with a mistress and had also disposed of the personal furniture in the home, sold the furniture and other items within the home, and she was left with the three young children upon her return from the mental hospital with the personal furniture gone. Mr. Chairman, there is no adequate protection in the legislation proposed by the Attorney-General to deal with that type of situation. I think that that type of situation can only be dealt with through joint ownership and management of family assets during the term of the marriage.

In the legislation passed last June there was such a provision in the legislation. It was a small step toward complete community property; ownership and management of assets which so many of the briefs had recommended to us, based on experiences in other jurisdictions. At least, Mr. Chairman, in the field of furniture, the car, the cottage — items of that nature which are used together, husband and wife using those items together, jointly — surely it is not too much to suggest that those assets ought to be considered as jointly owned, jointly managed. If it is felt that that is not a compatible type of ownership-management arrangement, then the spouses can very well contract out of that arrangement. But I just thought, Mr. Chairman, when we heard that brief from Mrs. Parker, that that brief probably better than any words that I could utter this evening, demonstrated and focused in on the need for some type of protection in situations such as that.

Mr. Chairman, in the legislation of last year, we did provide that where family assets were sold, disposed of, that if they were sold to a third party, bona fide for value and without notice to that third party, then, in fact, the third party did receive title to the assets, but the one spouse would have the right of accounting as against the other spouse. And I would hope, Mr. Chairman, that we would be prepared to make this forward step, in Manitoba, and not to hold back, not to wait, but to move forward because I think it would be a worthy move in the law for us to undertake.

It is on that basis, Mr. Chairman, that I move this item. It was one of the principles of the legislation of last June which the Attorney-General had indicated that he would uphold. I think that it was a central principle to last year's legislation; a central principle that the vast majority of the public that submitted briefs to us supported, and I see no reason, Mr. Chairman, for a departure or a retreat from that position in the present legislation.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, just a few short remarks because this matter has been debated on numerous occasions now.

Again let me emphasize that we have still included in the legislation the provisions with respect to excessive gifts, to dissipation, the protection of The Dower Act has not been eroded in any way, and I ask meers of the committee to look at Section 6(2) and 6(3), and look at the words "notwithstanding subsection (1)." For example, subsection 6(3), which hasn't been amended, notwithstanding subsection (1) — it's not withstanding the right of a title-holding spouse to dispose of assets. The spouses each have an equal right to the use and enjoyment of any family asset.

That, Mr. Chairman, I suggest creates an inter-spousal right, which can be enforced perhaps by action between them or certainly on an accounting, if an asset is disposed of without the consent of the other spouse.

I again say, for the record, and not particularly as any defence, but no other province has legislated immediate sharing and management of all family assets. Again, as I indicated earlier, under The Family Maintenance Act, I don't see this legislation as being written in stone for the future. As society changes and evolves further it may very well be not such a long period of time before this concept will be more readily accepted.

With that, Mr. Chairman, I think we have taken some steps to protect the right to the use and enjoyment of family assets in the legislation, and it will have to be continually monitored, I think, because, again, as I say, as society evolves it may very well be that in future years there will be a major change in this particular area too.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Mr. Chairman, I think in response to the statements by the Attorney-General, think society has evolved to that stage already. I think that very few people really are against thi notion. Everyone says, That's the way most healthy marriages operate, why not put it in legislation The point is that spouses supposedly have an equal right to use and enjoy family assets. But frankl if those family assets are sold off, or if a pension plan is taken and cashed in and used for somethin else, that right doesn't exist any more. And that's the whole point that we are arguing. I think tha there are examples in the United States and Europe where this has worked, and worked well, an it would appear that — I think the Conservative caucus just isn't prepared to accept this right now even though I think the vast majority of Manitobans is. And I think the Conservative caucus is i a majority right now, and they will enforce that majority in the Legislature. I would expect that thre years from now, we will be back here, and we will be introducing immediate vesting, ownershi and management of family assets and commercial assets.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, just one word in support of the position that the Attorney-Genera has expounded on behalf of the government. I think that it should be noted for the record, an just for the sake of communication with all members of the Committee, that the government part has always had difficulty with the question of interference in existing marriages, and interferenc in private lives and relationships existing between individual Manitobans. And I think that M Cherniack and Mr. Pawley would acknowledge that that was one of the questions that gave th Conservative Party great difficulty when the earlier legislation was being studied under the previou administration, and I would just simply remind members of the position that the Manitoba Law Refor Commission took on that subject. Although I know that it's difficult for some members of th Committee, some members of the House to accept the Conservative position, I think that it's nc unreasonable to ask them to consider the sincerity of the government in respect to that whol question of interference into existing relationships, existing marriages, existing private lives. An for every argument that can be mounted on the side of the amendment proposed by the Honourabl Member for Selkirk, and the support expressed by the Honourable Member for Transcona, bot of which are legitimate statements and ones that have to be searched very conscientiously by a of us, there is, nonetheless, a counter-argument that's embodied in the Conservative position wit respect to the sanctity of those individual decisions and individual relationships that exist, and ou reluctance to interfere unnecessarily into people's lives.

I think that aspect of the argument in the debate and that sincerely held position, should b placed on the record alongside the other points that have been made on this particular aspect the legislation.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I too would like to make a comment along the lines that M Sherman made, and Mr. Parasiuk. I do believe that the sincerity of all MLAs involved in this exercis over a lengthy period of time is beyond question. I think that it has been said — and it might a well be repeated now — that throughout the two committees, the intersessional committee, ov a year ago, and the committee last year at about this time, there was a great deal of desireto d what members thought was right and fair and equitable, and there is no doubt that in our par there was not unanimous agreement on the degree to which we wish to act, and there is no doul that in the Conservative Party there was the same kind of a problem. For me, and this is partisa but I believe it to be true, the NDP would have been expected to, and did, opt for a more — call it advanced — approach to the rights of women in a marriage, because I believe that wom have been hard done by by society and by concept and traditions for many years. And I expecte and it's only right to expect that the Conservatives would take a different point of view, which would call less advanced, reactionary — of course, these are very subjective terms. But the fa is, that the NDP has not hesitated to express its dismay with the status quo in many respects, ar I think that we feel that much has yet to be done to change and to right many wrongs that ha been created by society. And I think that really is a basic difference between our party and t Conservative Party, which I think is more inclined to accept the principle of, as Mr. Sherman p it, of the sanctity of the individual choice. And I respect him and other members of his party f that.

I must also say that the election was fought, not fought on the basis of any concept of marit property law, but to me it was always basic in the entire campaign because I think the NDP positi

during the election was such as one could forecast how we would react on marital property law. And I believed always that the Conservative position generally in the elections was one that would predict the attitude that has revealed itself. I regret that during the election there was no statement by the Conservative Party as to what it intended to do with the legislation, but that's the way it was. Nevertheless, I feel that the people, the majority of the people who voted for the Conservative Party, should have expected to see what happened did happen, that they have no complaint, in my way of thinking, except they may have complaints against Conservatives. But I don't think they have a complaint generally, because they should have known enough to expect this.

And when I say this, I think I might just as well at this point, Mr. Chairman, say what I probably would have wanted to say at the conclusion of our deliberations, in an hour or so from now, to compliment Mr. Mercier, who I think has shown a desire to understand our point of view, and has made certain concessions. I don't mean concessions, has been persuaded, in some ways, by briefs and by some of the points we made — nowhere near as far as it should have been, but still, his attitude, I think, was extremely good throughout the entire —(Interjection)— Well, I may be, but I do think that his attitude has been responsible and responsive and fitting for the job he had undertaken. Although I disagree with many of his decisions, at least they were, to a large extent, debatable. So I feel that we are at the point, with Mr. Pawley's motion, of showing a real difference of philosophic approach, and I am glad that it was brought out that way. I am sure the Conservatives don't dodge it or hide behind it, or are ashamed of their position. We are proud of ours, and when the vote comes, as it will, it will confirm to the electorate where each respective party stands in relation to the basic concept of equal ownership and equal management and equal rights during a marriage as well as after a marriage, when these Acts we are dealing with do come into effect.

And I think it's only right, and I don't think we should make too big an issue of it, as long as it's clear. And I think it is clear, and I appreciate the fact that Mr. Sherman spoke as he did, and at this stage, might I just say that last year when he spoke on the — was it The Property Act? — where he attacked bitterly the position we took, I was surprised and I expressed my surprise, until I learned that that was not his personal position as much as that of his party, and I appreciate that it was his job to speak on behalf of the party in that case, so that I would just honour those few members of the party who parted from the majority of the caucus to vote in favour of the property bill that we had last year.

MR. PARASIUK: Mr. Chairman, I welcome Mr. Sherman's statements that he's made. I think that for the first time, we have a clear indication of what the Conservative position is with respect to family law, and I'm in a sense sorry that he's not had a chance to sit in on these discussions over the course of the last week or so, because I know that he spent a lot of time in this whole process. And frankly, one of the difficulties that I was having is that I saw Mr. Mercier trying to live up to his past statements that these bills, 38 and 39, were really only a tidying up of what was provided or put forward last year, that the principles would be adhered to, that it would only be a matter of tidying it up.

Well, when we found that certain sections of the bills that he's put forward really don't live up to those types of statements, we were somewhat confused, and we kept trying to press people making presentations to us, trying to press the Attorney-General to indicate how this was going to in fact live up to his past statements that the passed Bills 60 and 61 weren't being changed as to substance,. and we were told that there were a number of interpretations that probably would be made; we were told about presumption; we were told about certain things not creating hardships, and I got the impression that Mr. Mercier was a type of negotiator, going back and forth between, I think, the Conservative philosophical position — which was probably being expressed in caucus — and the somewhat illogical positions that often he found himself into, when some of these loopholes in the legislation were pointed out, either by people making presentations

or in the course of our discussion. I think it's important now for us to think about what Mr. Sherman has said, because I think it gives us an indication of why a number of the proposed amendments — which I think that Mr. Mercier has looked at objectively, and has taken back to his caucus — why they have been rejected. I think we have some explanation, that possibly he hasn't in a position to give himself. I'm glad that someone now has come forward with what might be called the Conservative philosophical position on family law. It makes it somewhat easier for us to understand why something which, when looked at somewhat objectively, excluding party philosophies, seems to be quite inconsistent, and we wondered why certain things weren't being agreed to. If we now can look at it in the light of the Conservative philosophical position, of course, it is to be expected that a number of these things wouldn't be contemplated, that immediate vesting and ownership, joint ownership wouldn't be contemplated. That a preamble would talk about equal rights and shared responsibilites, rather than equal obligations, equal responsibilities, that there would be that difference in approach. And I can understand that; I can understand that. I can

that, just as when the Chamber of Commerce came forward and said, "We stand for fair divisions rather than equal divisions," I could understand their particular perspective. I didn't agree with it, but I could understand it.

I couldn't understand someone arguing maybe that fair is equal, because I think there's a difference between the two. I'm glad that he's entered into this discussion and I'm sorry that, frankly, other Conservative members of the caucus haven't entered the discussion so that we could get a clear indication of what their particular motivation with respect to this legislation was.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I intend to speak only once more on this particular resolution. I regret that Mr. Mercier is of the view that society still has to evolve considerably before this resolution would be in order, and Mr. Mercier also has indicated that where time is not ready. . .

And Mr. Chairman, I had the distinct impression that the vast majority of married couples in Manitoba now operate their married lives on the basis that is proposed in this resolution, a joint ownership and management, at least insofar as their family assets are concerned, the family home, family furniture, summer cottage, if there be one, the car, the items that are shared together at least are joint owned and managed. Philosophically, I suggest that 95 percent, at least, of Manitobans now support this concept by their practice in their individual and mutual lives in the marriage relationship.

Mr. Chairman, the only people that I have heard really express opposition to this are those who represent the credit sector of our community, the banks, the trust companies, but certainly you have not heard objection to this from the public that have come to our committee. In fact, the public urged the previous government to go much further than what it did do. It urged us to include all of commercial assets under immediate ownership and management. We said no, let's just take a small step; let's see how it works out; we may in the future then proceed to a system which will include all assets.

But the only people that this is not acceptable to, are the credit sector, again, the banks, the trust companies, and some members of the legal fraternity. But the public has not objected to this. So insofar as evolution of thinking, I suggest that the vast majority of Manitobans now practise this in their daily lives, and insofar as Mr. Sherman's suggestion of interference, I can never grasp why Mr. Sherman is of the view that this is some way or other an interference.

Insofar as third parties are concerned, they will be protected, again, a bona fide purchase for value, no interference in their rights as long as everything is above board. Insofar as that small minority that do not want to arrange their affairs on this basis, then it is simply a process of mutual contracting or agreeing to not have this particular section apply to them. I suspect that there would be such a very very small minority of married couples that would exclude themselves from the provision, so I am afraid that the use of the term "interference" is one that is vastly exaggerated it is one that I have only heard bandied about insofar as representations to us are concerned in the past, by those who represent the credit institutions in our society.

So I would urge the Minister to review this. I would even go so far — I suppose that there not much hope at this point — but I would be prepared to withdraw this resolution if the Minister at this dying moment in the development of the family law, wished to at least give some further thought to this concept before third reading tomorrow.

MR. CHAIRMAN: Are we ready for the question on Mr. Pawley's motion?

QUESTION put on Mr. Pawley's amendment, MOTION defeated.

MR. PAWLEY: Mr. Chairman, I would ask Legislative Counsel to prepare a motion for Report Stage along the lines of this previous resolution, if I can have that understanding so we can proceed . . . .

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Is Mr. Pawley suggesting that Legislative Counsel draft amendments to the legislation which would provide for immediate vesting and management? It may be quite a chore. You might want to have some indication from Mr. Tallin later on as to whether . . .

MR. PAWLEY: I wonder if it would be such a chore, Mr. Chairman, because it seems to me that really what is involved is taking the provisions of last year, and with that as a start, is this too much of a chore at this moment for Legislative Counsel, when you have last year's provisions to work from?

MR. SILVER: I'm not sure exactly what you want.

MR. PAWLEY: The instruction that was in the resolution that an amendment be prepared to provide for immediate vesting and management of all family assets, in the same way that last year's legislation provided for.

MR. CHAIRMAN: Is that redoing last year's?

MR. PAWLEY: Yes. This year's in line with last year's on this point.

MR. CHAIRMAN: Legislative Counsel says that would be like redoing half the bill. Maybe we could leave it so that Mr. Pawley could get together with Legislative Counsel and discuss it between the two of them. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I doubt if any drafting will persuade any members to change their minds, yet this is important enough a principle that it merits debate on the Report Stage. I think that what we should do is to ensure that there is an acceptable motion, which can be debated along these lines. We can't control what the Speaker is going to do, but it may be that there should be some consultation with Legislative Counsel and the Speaker. I don't think anybody wants to burden Legislative Counsel with drawing something which we can predict will be wasted in the sense of it being rejected. Possibly consultation with the Speaker, with the concurrence of the Attorney-General, could draft a motion will be a debatable one, just like we have just debated it. The Chairman did not reject this motion and I'm sure that it would be possible, by consent, by arrangement, to discuss with the Speaker a motion that would be acceptable so it could be debated.

MR. CHAIRMAN: Mr. Pawley, can you take it upon yourself to discuss it with Mr. Tallin?

MR. CHERNIACK: Would Mr. Mercier agree to co-operate?

MR. MERCIER: I wonder if we could wait until Mr. Tallin comes from the other committee that is meeting and have a discussion with him at that time?

MR. PAWLEY: All right.

MR. CHAIRMAN: 12(a)—pass; 12(b)—pass; 12(c)—pass; 12(d)—pass; 12(e)—pass; 13(1) — Mr. Parasiuk.

MR. PARASIUK: On a point of order, that means that you have passed the (a), (b), (c), (d), and (e), but you haven't passed 12. You are holding that until Mr. Tallin comes so that we can get some agreement on that particular motion that is before us, which is an amendment to Section 12.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, it may well be that the motion under 12 —(Interjection)— I'm sorry, I'm getting some assistance here which is helpful to me, but it may be, and again Mr. Tallin may help us, it may be that if we propose to delete all the subs in 12, (a), (b), (c), etc., "in any of the following events or circumstances," if instead of that we said, "Upon the marriage having taken place or the proclamation of this bill, whichever shall occur later." That, as Andy says, may open the door and enable us to proceed.

MR. PARASIUK: So I think we should not pass 12.

MR. CHERNIACK: So I think the suggestion that Mr. Mercier made is a good one. We can just leave 12, come back to it, and I think maybe that will answer it. Let's ask Mr. Tallin when he gets here.

MR. CHAIRMAN: To Mr. Pawley, the Clerk tells me that we could pass the five sections of 12, and 12, and on the preamble or on the motion to report the bill, have a discussion with Mr. Tallin as to what procedure you might follow.

MR. PAWLEY: Mr. Chairman, the only thing I would like to have thoroughly understood is that

we don't want to be prvvented from further dealing with this on the basis of a technicality. If we can have some understanding in our approach to this that we will not be prevented from dealing further on this at Report Stage simply because of a technicality of having okayed Section 12 and then it being said, well, you can't go back now to Section 12 because you have already passed it.

MR. CHAIRMAN: To Mr. Pawley, the Clerk informs me that what we are doing here is going clause by clause through the bill and you can have a discussion with Mr. Tallin about Report Stage of the bill before we report the bill, and at that time get some direction as to what you are thinking as to how you would bring in your amendment.

MR. PAWLEY: Well, okay. I gather that Legislative Counsel is at the other committee. . .

MR. CHAIRMAN: At the Private Member's Committee.

MR. PAWLEY: . . . and he will return here at the conclusion of the other committee, assume.

MR. CHAIRMAN: That is my understanding. Mr. Parasiuk.

MR. PARASIUK: I think that there was one statement made that possibly Mr. Pawley's amendmen couldn't really be developed because it would entail a fair amount of work on the part of th Legislative Counsel, and that is a technical reason. At the same time, I think it is a very importan principle that surely should be debated if people want to debate it and I think that there migh be people outside of this committee who are members of the Legislature who may in fact wan to debate that particular concept which is included in Mr. Pawley's motion. I just don't want u precluded from having that opportunity to debate it in third reading because of some technic difficulties which can be in fact surmounted, given sufficient time or given some direction righ now.

MR. CHAIRMAN: I can assure you we will have an opportunity to debate it.
12—pass; 13(1) — Mr. Cherniack.$

MR. CHERNIACK: Mr. Chairman, I want to move the deletion of the words "with respect to th family assets of the spouses" from the third line — to delete from the third line thereof the word "with respect to the family assets of the spouses." —(Interjection)— Mr. Parasiuk makes a suggestio which is better. That we delete the word "family" where it appears in the third line.

MR. MERCIER: Question, Mr. Chairman.

QUESTION put on the amendment.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Mr. Chairman, I am wondering if the Attorney-General can indicate, because w have not dealt with this before clause by clause, whether in fact he would accept the motion Mr. Cherniack, and if he can't, what are his reasons why he can't? Again, I think this is a ve important — this is one of the pivotal sections of the bill.

MR. CHAIRMAN: Are you ready for the question? Mr. Parasiuk.

MR. PARASIUK: I had hoped that the Attorney-General would again give the reasons why in fa the Conservative caucus can't support this particular amendment. I can't understand why the wordi of amended 13(1) couldn't be used for both family and commercial assets if, in fact, as Mr. Merci has claimed, there really is no real substantive difference between the discretion allowed in 13(and the discretion allowed in 13(2).

Now, we have had a number of people — lay people and legal people — come before us wi mixed opinions as to what the difference in discretion was between 13(1) and 13(2), and there no consensus. Frankly, this will all rest with judicial interpretation. And this is exactly what this b was to do away with. It was to reduce judicial interpretation because it was judicial interpretati in the past that really had caused the need for the development of this type of bill. And we ha had tremendous disagreement between people coming before us, as to what the intent of 13 and 13(2) is. We have had the Minister really telling us that the discretion in 13(1) really isn't great

and is possibly a touch less than that in 13(2), but it really won't amount to very much. And that's why it doesn't make that much difference whether in fact something is classified as a family asset or as a commercial asset. That's why pension plans, for example, won't be categorized as family assets because, according to Mr. Mercier, if they commercial assets they will be shared 50-50, if there is a breakup. That's his impression. That's his interpretation. But the discretion allowed to those items which are family assets will indeed be different from the discretion for those items which are commercial assets.

And we are saying that if the government is saying that there really is no substantive difference in the discretion to be used between family and commercial assets, we are saying they should put their money where their mouth is, to be blunt about it, and accept the same type of discretion for both categories of assets.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I want to follow up with some comments relating to the words of the Member for Transcona, because we have the brief from Mr. Schulman suggesting that there was no difference, basically, between the discretion of family assets and the commercial assets. We also had that submission by one Leigh Halprin to this committee. On the other hand, Mr. Chairman, we have had briefs from other lawyers, such as Alice Steinbart, to this committee indicating the contrary.

But I want to point out that the brief from the Manitoba Bar Association was very very clear on this point. On Page 2, for instance, of the Manitoba Bar Association brief, they indicate Bill 38 takes a totally different approach. It's basic provisions are, and then they mention, "(b) a narrow discretion to vary the equal division of family assets; (c) a limitless discretion without guidelines to vary the equal sharing of the commercial assets."

Now, this is the brief by the Manitoba Bar Association. It's a brief, as I would understand, that would be most representative of the legal community and their interpretation as to whether or not there is restricted discretion on the one hand with family assets and unlimited discretion insofar as commercial assets are concerned.

Mr. Chairman, I would have to concur with the observations by the Manitoba Bar Association.

Now Mr. Mercier, and I believe quite sincerely, has indicated that he feels that there is little difference in the discretion of family and commercial assets. He shares the view placed before this committee by Mr. Perry Schulman.

But certainly what we have before us is a real mixed situation, a fine kettle of fish, where we have the representatives of the Manitoba Bar indicating — it's not Saul Cherniack speaking now, it's not Willie Parasiuk or Howard Pawley but they represented the Manitoba Bar Association — telling us that we have provided for limitless discretion without guidelines to vary the equal sharing of commercial assets.

Now, in view of that, and in view of what Mr. Mercier's expressed intentions are, then I would think that it would have to follow from the brief of the Manitoba Bar Association that Mr. Mercier would want to tighten up the provisions here to provide for the same discretion both family and commercial, so that there cannot be future misunderstandings insofar as legal interpretation, at this point. To do otherwise is to provide for that wide variation of interpretation, which we have observed before this very committee on one hand from Legal Counsel, such as Myrna Bowman and on the other hand from Legal Counsel such as Perry Schulman. I would think and I would expect that the Attorney-General would want to tidy up this in order to ensure that it meets his expressed intentions.

MR. MERCIER: Mr. Chairman, another aspect of the Manitoba Bar Association brief that the Member for Selkirk didn't refer to was contained on Page 1, where they recommended unilateral opting out which they said was necessary in our view because of the effect of retroactive change of a very substantial nature in the law relating to marital property for persons who are already married.

Mr. Chairman, we will be proposing some amendments in the next Clause 13(2) to attempt to respond to some of the concerns expressed by delegations before the committee. I feel fairly confident, particularly with the further introduction of those amendments, that there is indeed not a great deal of difference between the discretion outlined in 13(1) as compared to 13(2). We do feel that some judicial discretion is necessary but, again, emphasizing the basic presumption of equal sharing.

I would point out to members of the committee, again, not in any particular defence of what we are doing but so that everyone is aware that in every other province in Canada the various Legislatures in B.C., Alberta, Saskatchewan, Ontario, New Brunswick and others, have enacted

which does provide for judicial discretion probably to a greater degree than any of our sections do. As I believe we are going fairly far in attempting to enforce the basic presumption of equal sharing.

Mr. Chairman, I believe, again, without repeating myself too much, the Silverstein case is kind of an example of the attitude of judges, I think, to show that the basic presumption will only be varied, for example, under 13(2) where it is clearly inequitable.

I hope, Mr. Chairman, to monitor not only the cases that develop in the Province of Manitoba but in other provinces. This is a substantial change in the law. It meets the common-law deficiency, the one that in fact sparked, I think, all of this legislation and, Mr. Chairman, I hope we can pass this legislation and have some experience under it. Again, it's not written in stone; there may very well be amendments that we wish to make in the future, depending on the experience, but I think I am satisfied that there will be equal sharing and equitable sharing where the circumstances require and we will have to await the actual experience under the legislation in the courts before we go any further.

MR. PAWLEY: Mr. Chairman, the Silverstein case concerns me, rather than reassures me. The Silverstein case, insofar as the 50-50 division of assets is concerned, really is dealing with the marital home, and insofar as the commercial portion of the assets are concerned only a small part, really, of the commercial assets were divided on a 50-50 basis. Two commercial parcels weren't even touched but the 50-50 was really dealing with the family assets. And I think that is a natural type of outcome that family assets will, in the vast majority of cases, be dealt with on a 50-50 basis. I would expect that to be the case with the Attorney-General's bill before us, that the marital home and family assets will, in most cases, be dealt with on a 50-50 basis.

Silverstein disturbs me because what we are faced with there is the judge permitted other considerations to enter into his thinking. For instance, the question of a gift, a gift from Silverstein to Mrs. Silverstein, he ruled that in his view a gift, as defined by the Ontario legislation, did not include a gift from a husband to a wife and therefore he was able to overcome the position which Mrs. Silverstein had taken before the court that the property was hers solely because of a gift from Silverstein. And the court also permitted considerations pertaining to tax advantages to weigh in its thinking insofar as arriving at 50-50 sharing.

So I say to the Attorney-General Silverstein is not reassuring at all. In fact, if anything, Silverstein causes me more worry about the direction which we are going and if Silverstein is an example of the direction in which we can expect this legislation to take, then indeed I am deeply moved and more and more concerned about the direction in which we are taking.

So, getting back to the point, I say to the Attorney-General that in view of the . . . And I would like to, again, read from the Bar Association on Page 3. They state "Bill 38 does contain a presumption of equal sharing, it is true, but the discretion to vary that is so broad as to greatly diminish the value of the presumption."

Now, I don't know why we cannot have the provisions which were adopted last year of equal sharing, limited discretion, in harsh unconscionable situations and mutual opting out type of arrangement. If we can't have that, Mr. Chairman, I have to say to you — and I neither encourage the government to go one direction or another if they are not prepared to accept the principle that was established in last June's legislation — but I'm not too sure that the Bar Association proposal is not a better one than is being proposed by the government, that we have limited discretion on equal division of commercial assets with unilateral opting out. I never thought I would be forced to say that but I have reached the point where if I had to choose between what the government has given us and what the Bar Association has proposed, at least I could say to you that in 20 years time we probably would have reached a situation in Manitoba where 95 percent of the marriages would be based under the equal sharing arrangement, which was the direction which we tried to take last June. What we will have here is, in the words of the Bar Association, a discretion that is so limitless that it will be — and as the Bar Association implied throughout their brief — that will be very very difficult for interpretation.

And I don't believe — and I don't want to argue the amendments in advance — but I don't believe that the amendments would change that a great deal. And very quickly, returning to the Silverstein case, the Ontario legislation that was used by the court to rule on the 50-50 basis, did not include a provision, "nature of assets," which still is in the Attorney-General's bill on 13(2); still there, but it's not in the Ontario legislation. And that particular factor, I think, also opens up the doors pretty wide.

MR. CHAIRMAN: Are we ready for the question? Oh, Mr. Parasiuk.

MR. PARASIUK: Mr. Chairman, I don't think that the Minister's answers have been convincing 13(1), the discretion in 13(1) is much tighter than the discretion in 13(2), despite what he says tc

the contrary. And we find that we are getting into one of these illogical situations again. And I'm wondering whether in fact the answer isn't the answer provided with respect to Section 12 by Mr. Sherman, and that is, that the Conservative Party philosophy will not tolerate too much government intervention in a marriage relationship, and more specifically, that the Conservative Party philosophy won't tolerate interference in commercial relationships, or very much interference in commercial relationships, but it is willing to tolerate more interference in family relationships, and in terms of family assets. But it draws the line when it comes to commercial assets and commercial relationships. —(Interjection)— Yes, business is business.

Now, if that's the case, then at least I can understand that position. I won't agree with it, but I can understand it. It has a rationality to it; it has a consistency to it. But this other position that is being put forward, that somehow 13(1) equals 13(2), isn't true at all; it's completely illogical, it's contradictory, it's inconsistent, and it can't be supported and it can't be defended. So, I'd like spokesmen — either the Attorney-General or Mr. Sherman — to indicate whether in fact that's not the reason. Because if that's the reason, then at least I can understand it, but I can't understand the reasoning right now of the Attorney-General when he says that 13(1) really is the same as 13(2) when we've got so much documented evidence and learned opinion which says the contrary.

A MEMBER: Question.

MR. CHAIRMAN: Are you ready for the question, the question on Mr. Cherniack's motion?

QUESTION put on the amendment, MOTION lost.

MR. CHAIRMAN: 13(1)—pass — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, if you look at the bill that we passed last year, we find very similar wording, only they aren't related to commercial assets. And the last words, "or the extraordinary nature or value of any of their assets," are words that I do not fully understand in relation to marital assets. I have tried to recollect what provoked those words to be used in relation to commercial. I'm not sure I know but I can understand that under commercial assets, there could be some peculiar nature of an asset that would be indicative of the need for separate treatment. But I don't understand it in relation to marital assets, and I'd like to understand it. I'd like to hear Mr. Mercier explain what is meant by that.

MR. MERCIER: Mr. Chairman, I don't see why I have to explain legislation of the previous government to them; they have four members here.

MR. CHERNIACK: Mr. Chairman, that intrigues me so much; now we are told that this is not his legislation. Here we have the Attorney-General bringing in a bill which mangles the concepts of the bill we passed last year, and now he's saying he doesn't have to explain his legislation. It is his. I'll be glad to take credit for that which is properly ours, but this is his bill. And for him to say he doesn't have to explain — he doesn't have to explain anything, but this is his bill, and if he doesn't want to, that's one thing; if he can't, that's another thing. If it's neither he wants to nor he can't, then I would move that we delete the words, "or the extraordinary nature or value of any of their assets as they appear at the end of 13(1).

MR. MERCIER: Mr. Chairman, is the Member for St. Johns indicating that members of his party did not understand the legislation which they passed last year?

MR. CHERNIACK: Mr. Chairman, the Attorney-General can play around as much as he likes; it's only 10 after 10, and he can play games if he wants to. I think he suggested the game-playing last year. I'm saying to him that I can understand that there might be some commercial assets that have an extraordinary nature or value, because commercial assets can go to a very broad extent, with great. . . It may well be related to the peculiar skill of the husband or the wife. I can imagine that a diamond-cutter — having diamond cutting equipment in his commercial business — is not one that should have to divide that ownership of that asset with his wife. So, now that I've helped Mr. Mercier understand the wording of last year's legislation, could he please help us understand the wording of this year's legislation, where he uses these expressions in relation to marital assets?

MR. MERCIER: Well, Mr. Chairman, I agree then, it is those kinds of circumstances which I believe the legislation is intended to cover. Extraordinary nature, may refer, for example, I suppose, to very valuable art collections perhaps that might appreciate in value a great deal over a particularly short

period of time. The purchase of perhapsan extraordinary or very expensive home during a marriage that is of very short term duration, I think those are the kinds of things that the section was intended to cover.

MR. CHERNIACK: Mr. Chairman, now that I understand that the Attorney-General did indeed have a different purpose with these words than last year's legislation, I would ask for the question of support for my motion to remove those words. Because if he talks about an expensive home, then clearly, these words were not intended to cover that last year because they were completely excluded as marital assets. So, now we know, the Attorney-General is using these words in a different sense, and I disagree with it, and I hope I can get some support for opposition to it.

MR. CHAIRMAN: Question on Mr. Cherniack's motion to delete the words at the tail end of 13(1).

QUESTION put on the amendment, MOTION defeated.

MR. CHAIRMAN: 13(1)—pass. 13(2) — and there are some amendments.

MR. MERCIER: Mr. Chairman, I would move the amendment as distributed, and would — I'm sure you will want to proceed clause-by-clause through that amendment, and perhaps I could first of all ask Legislative Counsel to offer a legal opinion about the rules of construction we heard so much about from delegations before the Committee.

MR. CHAIRMAN: Are you ready for the question on the amendments?

MR. MERCIER: No, Mr. Chairman, I asked Mr. Tallin a question.

MR. CHAIRMAN: Oh, I'm sorry. Mr. Tallin.

MR. TALLIN: I'm not aware of the rules of construction to which reference was made, but there are general rules of construction of statutes that stem from rulings of courts where they have held that where the Legislature uses different words in similar situations, particularly if they're in the same statute, that they intended there to be a different meaning. Therefore, 13(1), which uses words "grossly unfair and unconscionable" in very similar circumstances, and in a section which is immediately adjacent to another section where they use the words "inequitable," would, I think, construe the two sections as to mean two different levels of discretion. How different those levels of discretion are will depend, I suspect, upon the case law. My own feeling is that things which are inequitable are not necessarily everything that's unfair. The general background of equity is something which stems from special rules which the courts developed in chancery for things which they thought were not just normally unfair, as they realize most laws are, but were rather exceptionally unfair, and I would suspect that they$$ would say that "grossly unfair and unconscionable" is something more than just the normal inequity which they would find stemming from the traditional viewpoint of what inequities are and what kind of rules equity relied on. I don't know whether that's of any assistance to the Committee or not — probably not.

MR. CHERNIACK: Well, it sure clears things up.

MR. CHAIRMAN: Are you ready to proceed? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, there is a clear distinction between the treatment expected o marital and commercial assets, and I think that that's the conclusion we can draw from what Mr Tallin has stated. And that distinction is to be reflected by the words used. Now, I understand there's going to be an amendment, but I suppose we ought to go in the regular way, according to the letters.

MR. CHAIRMAN: All right. 13(2)(a), there is an amendment. Is it . . .

MR. CHERNIACK: It's not (a); it's not (a), Mr. Chairman.

MR. CHAIRMAN: In place of it. Well, that's what I meant, isn't it? To amend Section 13(2)(a), i it ? Is my understanding not correct?

MR. CHERNIACK: No, the (a) is the amendment proposed. I think if you go by (a), (b), (c), Mr

Chairman.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, I'd like to pursue this matter just one step further with Legislative Counsel. He's indicated that he is not aware of the rules of construction that were referred to, but there are two different levels of discretion. I would like to have his opinion on the record as to how far apart or close together those two levels of discretion are.

MR. TALLIN: Well, because of the background of equity and how the courts have looked at inequitable situations, what they have found to be inequitable situations usually they — as I've pointed out — usually they've talked about something which was beyond the normal unfairness of ordinary law, something which was rather exceptionally unfair, I would think that the two levels of discretion would be fairly close together.

MR. CHERNIACK: Mr. Chairman, possibly while we're still discussing with the Legislative Counsel if we could get his opinion on whether the wording such as it is here, "having regard to any circumstances the court deems relevant including," in his opinion, restricts the discretion to these clauses, or gives broad discretion, because the suggestion was made that these words would have the effect of limiting the court to dealing with these, are they ten items?

MR. TALLIN: I would think the courts would not consider that they were restricted to clauses (a) to (j) but would go beyond.

MR. CHERNIACK: Yes, I appreciate that because Mr. Schulman, I think, took the position that this was restrictive, and I think Mrs. Bowman, on behalf of the Manitoba Bar, said that this is wide open. I agree with that, and therefore since I believe — and we will be hearing this from the Attorney-General that he did not intend it to be broad; I think that we'll discover that he wanted it much more limited by these items — that I will propose an amendment to deal with that. I suppose we ought to be dealing with the particular items first.

MR. CHAIRMAN: Okay. 13(2), the first amendment is (a) the amending . . .

MR. CHERNIACK: I'm sorry, Mr. Chairman, I think we actually should be dealing with 13(2)(a), 13(2)(b), and go down the line.

MR. CHAIRMAN: Well, pass them and then go back to the amendments, is that what . . .

MR. CHERNIACK: Well, the first amendment he has is item (g).

MR. TALLIN: No, the first amendment is in the preamble to that.

MR. CHAIRMAN: My understanding, to Mr. Cherniack, is that there are five amendments here and the first one is: "by adding thereto immediaely before the word inequitable."

MR. CHERNIACK: Mr. Chairman, the procedure is that you call 13(2)(a), 13(2)(b), (d), (e), (f), and then you come back and say 13(2), that's when you deal with what you call the preamble. I call it the main portion of the clause. That's my understanding of the way it's done.

MR. CHAIRMAN: Yes, but then what about in the amendment (d) there, "by striking out the clause (j)," what if I pass the clause (j) and then we come along and . . .

MR. CHERNIACK: You won't pass (j) because that will be amended. I just think that what you have, (a) "clearly inequitable," should be the last amendment and all the rest would be in the order in which you see them.

MR. CHAIRMAN: As long as we arrive at the same end result, I don't care how we handle it.

MR. CHERNIACK: Absolutely, you're right.

MR. MERCIER: Mr. Chairman, I agree, that rather than get into any procedural wrangling, could we not just deal with the amendment and then come back and deal with anything else?

MR. CHAIRMAN: The motion as read? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, t.he reason I would like you to stick to what I believe is the accepted practice, is that after we debate all items (a) to (j) as amended by the Attorney-General, we then come back to what is stated are the factors and whether or not this includes them. And then we deal with — is it "clearly inequitable," or "grossly inequitable"? — and should the circumstances include, or should they refer only to those . . . Therefore I think we should deal with the circumstances first and then the b's not only traditional, I think, but also more logical. However, I'm not going to press the issue.

MR. CHAIRMAN: The problem, Mr. Cherniack, I have in following your method, is that the second, or (b) of the amendments, says "strike out (f)," does it not?

MR. CHERNIACK: No, Mr. Chairman, I'm sorry. The (a), (b), (c), (d), of the amendment sheet is only a guide to the mover of the motion, of the amendments, as to the order in which he would want to do it . But I think, Mr. Chairman, you have to go by your bill, where you usually go to subsections first and then to the main section.

MR. CHAIRMAN: Yes, 13(2)(a)—pass; (b)—pass; (c)—pass; (d)—pass; (e)—pass; (f) — there's an amendment on (f).

MR. MERCIER: Move the amendment, Mr. Chairman. Actually I have moved the amendment, I thought.

MR. CHAIRMAN: Yes, well, earlier he said . . . Okay, Mr. Mercier moves the amendment in (f).

MR. CHERNIACK: That's the deletion of (f), Mr. Chairman.

MR. MERCIER: Right.

MR. CHAIRMAN: 13(2)(f) as amended—pass; 13(2)(g).

MR. MERCIER: Move (g) then, Mr. Chairman. It's just a relettering of the clauses now that is . . .

MR. CHERNIACK: Mr. Chairman, I want to deal with (g) , and if I succeed, then this motion as to relettering would come after that.

MR. MERCIER: Well, Mr. Chairman, I think the relettering has to come now, doesn't it, that the deletion has taken place?

MR. CHERNIACK: Go ahead and do it, but Mr. Chairman, I'm going to move the deletion of (g , and if I succeed that will change the lettering, won't it?

MR. TALLIN: Just move the deletion of (f) and allow the Legislative Counsel to reletter after whatever other amendments.

MR. CHERNIACK: That's a good idea.

MR. CHAIRMAN: All right. Mr. Tallin has suggested that we just . . .

MR. TALLIN: Just move the deletion of clauses and authorize the Legislative Counsel to change the lettering to make it consistent later.

MR. CHAIRMAN: Right, excellent. All right, 13(2)(g) — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I would move that (g) be deleted. I have not heard any arguments in favour of including it. We have clearly established that assets acquired by way of gift, inheritance before the marriage, after the separation, are not assets that have any role to play in the division as between the spouses, because we come back to the principle that assets accumulated, during a marriage are in principle and presumed by the Attorney-General's bill to be equally shared. Now we start with that, and that's an important principle, a great big presumption, and suddenly w

see here that the court is expected, having regard to any circumstances they deem relevant, including what? — assets which have been acquired by either spouse in a way altogether different.

Now what it means to me is this, Mr. Chairman. I, the wealthy father want to ensure that my daughter will be financially independent throughout her lifetime — and I am happy that she's married to whomever she married, but I make her a gift, or I leave her an inheritance which will give her that financial security. I haven't done that in order to deny her the right to share equally in the assets acquired during the marriage by the two spouses. That's an addition over and above that. Therefore, it is suggested here that the court may charge back to her some part of the equal sharing which is presumably hers, to be influenced by the fact that she may have received a gift or an inheritance. So that of all of the factors suggested here, this one stands out, to me, as being completely unrelated to any of the assets of the marriage. They've been excluded and why bring them back in?

MR. MERCIER: Well, Mr. Chairman, first of all I think we have to remember the presumption of equal sharing and the fact that the circumstances must be clearly inequitable after the amendment passes before there is any variation. I think, Mr. Chairman, it's interesting to note that in the Ontario legislation, which really only has a presumption of equal sharing with respect to family assets and not commercial, but also in B.C., they include gifts and inheritances as assets to be shared between the spouses. We haven't gone that far to do that, but we are suggesting that one of the factors that could be taken into consideration are gifts and inheritances in extreme cases, obviously when a value of the assets has to be considered. I think it's a situation, Mr. Chairman, where judicial discretion is required so that it's only done in cases where it's clearly inequitable.

A strong argument could probably be made, and we haven't succumbed to it yet, but perhaps they should be included if there is to be true sharing between spouses. We haven't yet gone that far, Mr. Chairman. We are including and I support the inclusive of this factor in the circumstances where it's clearly inequitable that a variation should be made.

MR. CHERNIACK: Mr. Chairman, the principle as I understand it behind this bill is to recognize that assets acquired by a couple during their marriage belong to them equally. It is true that the Conservatives have rejected the principle of immediate sharing. It is true the Conservatives have rejected the principle of joint management. But still I thought they would stand behind the principle that a wife and a husband each contribute equally to the accumulation of assets of the marriage, each in his or her own way. But the reason that gifts and inheritances were left out, is that they had nothing whatsoever to do as a couple in accumulating these assets. Now the Attorney-General is prepared to consider that gifts and inheritances should be included. Well that's a thought; that's great egalitarian approach. I wish he would pass it on to all members of society so they all share equally in what each has gathered together in any way whatsoever, but it certainly would be contrary to the principle that a person has a right to make a gift and know that the recipient of the gift will have the right to keep that gift. This would almost be an invitation to a person not to make a gift or a bequest lest it be used to the disadvantage of that person. To me, I'm surprised because it seems to me that this is more consonant with the people who have a greater degree of concern for accumulation of material assets, those who say, "Well, this is important that they have this kind of money," should be the ones to fight to protect the spouse who has received it by way of gift or inheritance. And here, there seems to be a contradiction of what I thought was a philosophic approach, where the Attorney-General says, "Well, maybe we should throw gifts and inheritances into the assets to be divided." I'd like to know, is that really where they're heading? Is that what they think is right?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Well, Mr. Chairman, I would like to assure Mr. Cherniack, through you, that many of us did wrestle with and have wrestled with the question that he raises in relation to this particular subclause. But there are three points that I think probably should not be overlooked. In the first place, it's the intention, or the hope of the government, whether it seems easy for the Opposition to accept or not, to reduce inequities in situations of this kind, not to increase the possibilities of inequities, and I believe that if Mr. Cherniack envisions the whole spectrum of situations that could arise, that he would have to concede that there could be inequities that would result from specific division of commercial assets that didn't take into account the assets and the financial standing of one or the other of the spouses. And it's not always the case of the wife who would be the one to suffer, or the one to benefit. You can easily envision a situation in which the husband, for example, who may have developed a business or contributed3$make, or commend to Mr. Cherniack, is that this particular section doesn't say that division can be varied in all cases where either spouse has assets, etc., etc. The preamble clause reads that this would be one of those situations to which

the court could give regard as being relevant. The court may well regard it as being irrelevant in respect to a great many cases, most cases, perhaps even all cases. But one can envision individual cases where one partner could be left with substantially minimal assets and support by virtue of the fact that the commercial assets, when they came down to division, really amounted to very little anyway. I think that the attempt that is being made here is one to anticipate as well as a government or any legislators can anticipate exceptional circumstances, and to reduce the possibility of inequity, rather than expand the possibility of inequity. That is why that sub-clause is in there and I want to reassure Mr. Cherniack again, through you Mr. Chairman, that it has been examined and has been searched pretty conscientiously by the government.

MR. CHERNIACK: I have to ask Mr. Sherman if he does believe that in a case such as he cited where the husband has worked away and accumulated commercial assets of no great magnitude, but inherits a substantial sum of money, that the wife has in any way contributed to the accumulation of that asset, or has somehow acquired a right, an equitable right, to share in assets that have been built by someone else and given to this husband? Is that in consonance with the concept here of the equal right to share in what they have together built? To me it is a complete contradiction . I know that concerns that I have had expressed to me in the last year have been usually on the part of a father who says, "I have given to my son or my daughter a substantial inheritance and I don't want that that should be divisible between the couple. My son will be liable to maintain her and he will be liable to split with her what they have accumulated themselves, what they earned and what they saved," but I have heard from quite a few people of means, a concern which was reflected in our legislation which excluded gifts from others from having any right to share. It seems to me, from what Mr. Sherman said, that they are really now prying into . . .

You talk about going into the private affairs of a couple and now we are going beyond that; now we are going into the private decisions of people who are not in the marital relationship and we are saying to them, you may have intended a gift to be given to your son, now part of that gift is going to your daughter-in-law, or vice versa. And that's in spite of the fact that in the definition of the section, as I recall it, we exclude gifts of inheritance unless they are intended to be, and were given with the intention, to be divisible between the two. Now we are saying even though we have excluded them, and having already recognized the possibility that they were intended to be split, now they are throwing in what some third party has contributed to one of the two and they are saying that should be thrown in. It just doesn't seem right to me, Mr. Chairman, and contrary to the principle. I again express surprise that it comes from the Conservative Party, from whom I would have expected possibly more protection on behalf of that third party's decision than I might have expected from my party.

MR. PAWLEY: Well, if Mr. Sherman wants to deal specifically with Mr. Cherniack's point, I could defer to Mr. Sherman. I notice he wanted to respond.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman, and I thank Mr. Pawley. I am not suggesting, Mr. Chairman, through you to Mr. Cherniack, that in principle, that either my colleagues or I believe that assets acquired by way of gift or inheritance should be incorporated into the general assets to be divisible. In principle, we believe in the separation and the separate distinction of that kind of asset. But when Mr. Cherniack refers to the original position that I took with respect to interference or intervention, there is a sharp distinction here.

We are talking about a situation where a marriage has collapsed, has terminated, or is about to terminate, and the two parties to it are seeking equity in the courts. The point that I was raising earlier about interference or intervention had to do with the arrangements that are made between mature, consenting adults in a healthy relationship, not a relationship that has reached collapse. So I don't think the two situations are analogous and I also suggest that unlike Mr. Cherniack, he may feel differently, but if he were leaving or bequeathing something to one of his children, I think most people think in terms of that child, male or female, going on to enter into a happy marriage in which they would readily accept and adopt that child's spouse as one of their children, a part of their own family, and I think that if you look at the situation where a woman has devoted a great deal of her time and energy to supporting a household so that a man can build a business and the man is not a good businessman, or turn it the other way around — I am only using probably the majority situation — and he is not a good businessman but she, nonetheless, has given of her time and her years to support him in those abysmal efforts which have wound up with commercial assets that are worth next to nothing, but there are some assets by way of gift or inheritance, that I, as the father, would have felt, should have gone to my daughter-in-law, whoever she might turn out to be, as well as my son, that a court should have the right to determine whether a gross inequity

would result in dividing the meaningless commercial assets equally, when one spouse had substantial assets and the other spouse had none.

My final word on the subject, Mr. Chairman, is that it is not mandatory anyway. It is only there for the court to consider if it regards those circumstances as being relevant.

MR. PAWLEY: Mr. Chairman, as far as Mr. Sherman's point is concerned, I would think that if we were dealing with a situation where there is such a financial imbalance as that introduced in Mr. Sherman's example, that if we had used the wording which would be comparable to the discretionary wording provided for in 13(1), "to any extraordinary financial or other circumstances of the spouses or the extraordinary nature or value of any of the assets," that surely, Mr. Chairman, that type of wording would cover the type of example that Mr. Sherman has advanced to us. If the wording in 13(2) would not provide presently sufficient discretion to deal with Mr. Sherman's instance, without opening the door, it seems to me, to opportunities for a much greater latitude than that type of latitude which Mr. Sherman has in mind . Mr. Sherman has given us a very extreme type of example which I think could be dealt with without having to make specific reference as we are doing here, to gifts or inheritances. I would just like to leave that thought with you in support of what Mr. Cherniack has proposed, that this section be deleted. I don't believe it is necessary to even accomplish the particular concerns that Mr. Sherman has advanced.

But secondly, I mentioned the Silverstein case earlier and it seems to me that (f) gives rise to the same sort of problem which resulted from the Silverstein case. In the Silverstein case, where it was alleged that Mr. Silverstein had gifted a home to Mrs. Silverstein, the court held that a gift from one spouse to another was not considered a gift under the provisions of the Ontario legislation, in which the factor was worded somewhat similarly to this. So I would ask the Attorney-General, also under this item, if he could assure us that a gift from one spouse to the other would be considered a gift under this section, or would the ruling be comparable to the ruling in the Silverstein case? Maybe Legislative Counsel would wish to provide us with an opinion on that, because this very point, this very section was dealt with in the Silverstein case in the way I indicated.

MR. TALLIN: I'm afraid I was working on another amendment for you, Mr. Pawley, and wasn't really paying attention to this point.

MR. PAWLEY: What I was indicating, if I could again just mention, that in the Silverstein case in Ontario, a section somewhat similar to this section, the court held that where Mr. Silverstein apparently had gifted a house to Mrs. Silverstein, so when it came to a question of determination of equal division of assets, the court held that a gift from one spouse to another was not contemplated under a section similar to this. So my question is whether or not that reasoning would likely be exercised by a court in the wording which we have before us in the draft bill?

MR. TALLIN: Gifts from a husband to a wife, or from a wife to a husband are matters which might be divisible under this Act, unless they happen to be gifts which were made as part of a spousal agreement.

MR. PAWLEY: So you feel that a gift from a husband to a wife would be considered as such under this section.

MR. TALLIN: It would be a divisible asset under this section.

MR.PAWLEY: I wish I had the Silverstein case. I would just say to Legislative Counsel, he might wish to review the Silverstein case in Ontario dealing with that very point and the ruling by the court there, and the wording wasn't all that dissimilar from what we have here. However, I don't want to get lost in that, just to raise that for consideration by Legislative Counsel. That's all I have to say on this subject.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, would the Member for Selkirk care to restate the suggestion he made with respect to the extraordinary . . . ?

MR. PAWLEY: Mr. Chairman, it was my view, and Legislative Counsel can confirm, that the type of extraordinary example that Mr. Sherman posed to us would be covered under the wording under 13(1) very clearly if it was a family asset. "Extraordinary financial or other circumstances of the spouse or the extraordinary nature or value of any of the other assets." And I would have thought that even under 13(2) that that type of extreme example would be covered without having to provide

us with a factor specifically relating to gift or inheritance.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Well, Mr. Chairman, I think it's clear that in including this section we were only attempting to refer to the unusual situations where there was an extraordinary value of those assets, compared to the actual family and commercial assets. We would be prepared to amend (g) so that it stated "where either spouse has assets of extraordinary value", and then continue on "to which this Act does not apply by reason of their having been acquired by way of gift or inheritance", and strike out "and the value of those assets."

MR. PAWLEY: To my mind it's an improvement. I don't know how Mr. Cherniack thinks.

MR. CHAIRMAN: Is that agreeable, Mr. Cherniack?

MR. CHERNIACK: Mr. Chairman, I think at this stage I should withdraw my amendment to permit Mr. Mercier to make his amendment.

MR. CHAIRMAN: Does Mr. Cherniack have the agreement of the committee to withdraw? —(Interjection)— Firstly, to the members of the committee, does Mr. Cherniack have the agreement of the committee to withdraw his amendment? (Agreed) Mr. Mercier's3$ amendment to (g).

QUESTION put on the amendment, MOTION carried.

MR. CHAIRMAN: (g) as amended—pass. (b) — Mr. Pawley.

MR. PAWLEY: (h), Mr. Chairman, I have been concerned about (h) and I would just like some discussion in connection with it, because Mrs. Sisler, for instance, in her brief posed the question to us, what is the relevancy of dealing with a factor the nature of the assets? My concern has been that it's a wide opportunity for looking at assets and determining by the very nature of those assets that they relate more to the husband or to the wife, and I would like Legislative Counsel to offer his opinion , if he would care to, as to what type of assets would fall into this type of description and nature of the assets and what type of situations would fit.

MR. TALLIN: The one that repeatedly comes to my mind is a vested pension right, which is growing and which was accumulated partly before marriage and partly during marriage and will continue to be contributed to partly after marriage, and which may not become a right to any refund or any rebate for another 20 years. Now, the difficulty of trying to figure out what is an equal division of that asset, having regard to what was contributed during the marriage portion of the pension scheme, is very difficult and then to decide what kind of a right you are going to give with respect to that accumulation is again very difficult. Are you going to provide that some right 20 years in the future is going to be divided in some portion? And if you divide it in a portion now, will that be fair, having regard to the fact that perhaps only the last five years under the pension scheme will perhaps determine the amount which will be paid?

The difficulty of trying to figure out, for instance, what the rights in a teacher's pension scheme will be 30 years from now when one of the parties begins to receive a benefit under it, how you are going to divide that in an equal share when he or she is going to be contributing for another 30 years.

MR. PAWLEY: Well, let me pose this type of situation, because Legislative Counsel has given us a good example. My concern is in connection with farmlands where a son acquires farmlands from his father by purchase; he operates those farmlands; he takes over the father's machinery generally by way of acquisition but probably for less than market price, though not a gift or inheritance, and operates the farm. Would those assets come within this particular section?

MR. TALLIN: Well, I suppose the court could find that that would be so, but I don't see anything particularly unusual about that kind of an asset, which would raise an inequity in dividing it equally. It's something that can be disposed of right now.

MR. PAWLEY: Well, you see, the argument against disposing of it right now that a court would weigh, and which certainly would be presented to the court, is . . .

MR. TALLIN: I don't think that the court necessarily has to order the disposal of it, but they can

find a value of it because it can be disposed of right now. But the asset in the pension scheme cannot be disposed of now and therefore it's difficult to value.

MR. PAWLEY: It all narrows down to what case law is going to disclose. I have an uneasy feeling that this section may be interpreted pretty broadly in situations where the asset obviously relates to the — in the example I gave — to the husband or to the father, because of the passage from generation to generation of farmlands or farm machinery, or whatever, be it cattle, livestock, that the court might very well, in its discretion, consider that by its very nature as to be the husband-oriented asset.

MR. TALLIN: Well, I was thinking of another type of right which, by the nature of it, might be very difficult to divide in half, copyrights in unpublished works, patents in inventions which have not yet reached any commercial development, and that type of thing. The nature of the asset itself means that it might require that you don't divide it is half; you say one party has it because, without further development, the patent right that's already there will be useless. You can't divide the further development.

MR. PAWLEY: Well, I wonder if I could ask the Attorney-General, because this factor is not included in the Ontario legislation as one of the factors and I don't know where this particular factor originated. It's not in the Ontario Act. I'm wondering what the Attorney-General's intention was and where this factor originated from.

MR. TALLIN: I think perhaps it originated from my fertile brain.

MR. PAWLEY: I wish it had been less fertile.

MR. TALLIN: Probably the Attorney-General does, too.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Mr. Chairman, isn't the Legislative Counsel really talking about the appraisable nature of the assets?

MR. TALLIN: To some respect, I think that's true, yes.

MR. PARASIUK: Because when you look at it just at the nature of the assets one starts wondering what's being considered and I'm wondering whether in fact it shouldn't be qualified that way or described that way. And therefore I think there would be far less consternation as to what this means and the possible open-ended nature of the term "nature", because the examples you have given — and I think the examples the Attorney-General has given in the past — have really dealt with appraisability, to what extent can it be easily appraised. And maybe that should be clarified in this legislation and is specific, and it indicates it's specific, because my understanding is that all the indications here in these discussions don't mean anything when it goes before the courts.

MR. TALLIN: No, that's true.

MR. PARASIUK: So we can say that we think that this is what it means and if, in fact, that's what it means then I think we should say that's what it means, because we will have a situation arising a couple of years from now where we will say, "Well, really, we didn't mean that but somehow it has been interpreted differently.'.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, one evening we had quite a discussion about this when we were hearing delegations and I pointed out a couple of examples where, because of the nature of the assets, there was an unusual increase in value from the evaluation date, which was the date of the separation, to the accounting date, which was sometime later, and that by virtue of provision of this factor the court could take that into consideration.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I just want to pose this to the Attorney-General. The examples that Mr. Tallin provided us with really relate to examples of assets. Sure enough, assets that are very

difficult to calculate the value of. And therefore the solution that is being posed to us is that we set those assets aside, that they will not be shared.

Surely, Mr. Chairman, that runs contrary to the intent and to the spirit of this legislation, that certain assets because it's difficult to calculate the value and appraise the value will be set aside on one shelf while we divide the value of other assets that can be calculated more easily.

So I am wondering if we should not specify that certain assets will not be shared at all, if that is the intention, certain assets, so we don't open it up to a wide, wide variety of different potential assets that we don't foresee this evening. Or else we don't try to deal with that under another section dealing with appraisal of assets. So we can at least attempt to place some value to those assets, as difficult as it may be, but surely we don't want to exclude them from any equal sharing simply because they are very, very, very complex and difficult to calculate value on. —(Interjection)— My colleague points out 14(2); surely there is something we could do there to deal with that type of situation.

MR. MERCIER: Mr. Chairman, in the examples cited by Mr. Tallin, I don't believe anyone in the industry itself could predict the value so I don't know how we're going to come up with a formula for predicting it. I suggested a couple of other areas where it could refer to and I appreciate that the Member for Selkirk has approached this and other sections of this particular section with some of his own doubt about the presumption of equal sharing. That's where I think his real concern lies and that's where we seem to have our differences of opinion or interpretation of this section and I think that's where we will have to wait.

MR. PAWLEY: Mr. Chairman, if I could just give another example, and I direct this to Mr. Tallin, if for instance we have an asset such as the — I'm sorry if I'm recreating the whole issue of marital home, but I'm still very concerned about that — and I suppose maybe Mr. Tallin has missed my earlier discussion on the marital home but the marital home situation is difficult to appraise because of the inability to advise the court, and for the court to determine whether the marital home is saleable by law or not, and therefore it is difficult to know whether the marital home would be worth $2,000 or $50,000.00. Could that come within the intentions of that factor as well?

MR. MERCIER: We are only dealing with commercial assets. I don't think this section is intended to apply to marital homes, or to family assets.

MR. PAWLEY: I see, yes you're . . . .

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Mr. Chairman, all the examples given regarding the nature of the assets really, I think, deal with trying to establish a value for those assets. Now, I don't think they have anything to do with factors beyond 50-50 asset sharing. I think they have to do with fair market value, and I'm wondering whether in fact we couldn't take those items into account when we look at fair market values, taking into account the appraisability of the assets, or the extraordinary appreciation or depreciation of the assets, the way in which the Attorney-General has put forward examples, or looking at the examples put forward by the Legislative Counsel. It strikes me that that is a far better place to put those points in, and then it doesn't open up an endless topic, and that's the nature of the assets. Everyone can say, "Well, the nature of the assets are extraordinary," and everyone's assets can then be seen as being extraordinary, and then you will have endless wrangles over what that means, because I think it's a very vague notion. We've spent quite a bit of time trying to determine what it is, so since it's so indefinite, why don't we take it out and put in something more definite regarding valuation in 14(2).

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I agree that the example I gave a little earlier was not a good one, because it related to the family asset, but if we then take the balance of the land that is adjacent to the marital home then it will be very very difficult to evaluate, because of uncertainty as to what the value is of the home which is contained within the quarter section, whether the remaining value is 'x' or 'y', which could vary a great deal according to the saleability of the farmstead, which forms part of that. Then I'm wondering if we have a problem in determining, in this instance. . .

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, I wonder, to just throw this out, what the Member for Selkirk migh

think about deleting (a) to (j), putting a period after "relevant".

MR. PAWLEY: Well, the problem is, Mr. Chairman, that we've already had opinion from Legislative Counsel that we are not restricted in any way to (a) to (j) that other factors not listed here can be included, so I fear that unless we restrict, which I believe Mr. Cherniack does have an amendment forthcoming which will restrict us to the factors we end up listing, and no other factors, that Mr. Mercier's little amendment would be counterproductive.

MR. CHAIRMAN: It would really widen things. If that's a small amendment, what's a big one like? Mr. Cherniack.

MR. CHERNIACK: Well, Mr. Chairman, I've been listening and I've been reading the Silverstein case for the first time, and I see that there are different interpretations that I lend to it than others have done, but we were dealing with the nature of the assets, and Mr. Mercier then tried to throw a curve. Well, tonight's football night, and I don't know if you throw a curve in football?

MR. CHAIRMAN: Just long passes.

MR. CHERNIACK: Yes, long passes. I'm prepared to discuss the principle but I have to know just where we're going with these sections, and I was going to participate in the debate on Mr. Mercier's question, but I don't think that's necessary. I think we should deal with these sections, and then I'm prepared to discuss throwing them out, as he seems to — I don't say favors it or if he was bargaining . . .

MR. CHAIRMAN: It was a suggestion, I believe.

MR. CHERNIACK: Well, I didn't know it that was a debating suggestion or a serious one.

MR. CHAIRMAN: To try to wake up the committee.

MR. CHERNIACK: Well, he woke me up.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Mr. Chairman, I'd like to get a response from the Attorney-General with regard to my suggestion, that (h) be deleted, and that that item be taken into account in 14(2), and I'm quite certain, that given the examples that the Attorney-General's given, and the Legislative Counsel has given regarding possible difficulty in valuing the assets, that that could be covered in the section dealing with fair market value.

Otherwise, I think what we are trying to do, really, with this legislation is to make it as simple as possible, and we are not trying to leave it so open-ended and vague that it will be fodder for great legal wrangles, and we all know that there is a great deal of confusion as to what the "nature of assets" really means. We've had examples, but we can't put those examples in, so I think that the examples are related to market value, or trying to establish a value for the asset, so I think in order to make or limit the possibility of extended legal wrangles, that we should put it into 14(2). I'd like the Attorney-General's response to that suggestion?

MR. MERCIER: The answer, Mr. Chairman, is no, we'll leave (h) in. Could we have the question, Mr. Chairman.

MR. PARASIUK: Well, then could I make one other suggestion? Would he then change it to the "appraisable nature of the assets"?

MR. CHAIRMAN: Is this 14(2) you are talking about?

MR. PARASIUK: No, I'm talking about (h), if he will not accept putting it in 14(2), will he then qualify it so that we don't have it left open and as vague as it is right now?

MR. MERCIER: I'd have to consider that, Mr. Chairman, "to be appraisable."

MR. CHAIRMAN: Can we have the question on (h)? I'll have to get some assistance from Mr. Pawley. I'm not sure whether he moved a motion or not earlier? Did you move a motion on (h)?

MR. PAWLEY: Mr. Mercier has indicated that he is prepared to consider the suggestion by my colleague, so I am not intending to propose any amendment . . .

MR. CHAIRMAN: But you had not made an amendment? All right. Is the committee prepared to go on to (i) and so on? All right.

13(2)(i) — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, on (i). I've been reading, I've been skimming the Silverstein case, and there's relevance to (i) in that case. There are two kinds of assets discussed in the Silverstein case. One is a family asset, which is presumed to be shared equally; the other is commercial assets which have no presumption.

Now, there was an effort made to combine the Silverstein case or the Ontario Law into 13(2) to deal with commercial assets, and I don't think it came off very well. Because where the Silverstein case deals with commercial assets, the wording of Section (i) is dealt with, that is, "the effect of the assumption by one spouse of housekeeping," etc., being a factor " on the ability of the other spouse to acquire, manage." T hat was related to commercial assets not family assets, and there the court looked at it and said, "Yes, she's entitled to a quarter." It didn't say she was entitled to a half.

MR. MERCIER: There's no presumption of equal sharing.

MR. CHERNIACK: Exactly, so when it says that there is an assessment to be made on the basis for commercial assets to take this into account, the court looked at it and said, "That's worth a quarter." And the Attorney-General says, "Oh yes, but there's no presumption of equal sharing." Well, here there's a presumtion of equal sharing, but the court is invited to look at a factor, which a judge in Ontario says is only worth a quarter, and if they are looking at this and they follow that learned judge's opinion, they'll say, "Oh well, but we are entitled to use our discretion to vary it, and since it's only worth a quarter, then it is clearly inequitable to go to that presumption of half, and therefore we'll do that." And when Mr. Mercier, in his argument, referred to the Silverstein case, where the judge says something to the effect that it is presumed — the word there is a presumption of equal sharing — the Legislature did not intend the court to be entitled to exercise any broad jurisdiction to divide family assets, then the judge is dealing with only a part of Section 13(2). There, when that comes, " the family assets to be divided," they talk about an "agreement, duration of cohabitation, duration of the period they have lived apart, the date when property was acquired" — now we know where that section came from; the one that we deleted, "the extent to which the property was acquired by in heritance or by gift" — now we know where that came from, and I think the Attorney-General said that that is included in the commercial assets. I hope he'll correct me, but I think he said that in Ontario gift is included, and therefore they lifted it out of there without proper review. Then it says, "any other circumstance relating to the acquisition," etc. which is the old (j). These are the factors that the judge says he must consider which he should not influence too strongly to change the Legislature's intention.

But not (i), (i) is not in the Ontario legislation dealing with equal sharing; (i) is worth 25 percent, according to that very same judge, and therefore I want to know why is (i) in there? What's the purpose of (i) if not to reduce, if not to say, we started with equal sharing and then what do we say? The judge will take into account the assumption by one spouse of any housekeeping, child care, or other — Mr. Chairman, that can only be used to reduce the value of the contribution of that spouse. Otherwise, what's the point? Here we are talking about equal sharing, presumption of equal sharing, but the judge may consider clearly inequitable this factor. Why? Because it may be considered less than half, and indeed in the Silverstein case, where he gave her full marks for rearing two daughters, for bringing them up well, for providing a home, he gave her full marks for that portion of her contribution, and having giving her full marks, he said she's entitled to 25 percent of commercial assets. And I believe that (i) is intended to reduce the value of the housekeeping, etc., below the 50-50 margin, 50-50 presumption of sharing, and I would say that I'm opposed to (i). I don't think that should be taken into account, because it seems to suggest the judge would now say, "Did she wash the floor every day or only once a week? Did he come home and find a good meal on the table or a poor meal on the table?" And I think that that is damaging, and should be removed , and if I thought it was worthwhile, then I understood, but I don't see why it is helpful in any way to the judge to consider$ that as a circumstance, except, as I say, to reduce the value of domestic work of the spouse. So I'm opposed to it.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: I agree with my colleague; I'm glad he raised this, because if in fact there is some

presumption of 50-50 sharing of commercial assets, you just impart largely because of (i). So then, why you'd put it in as something that will be considered after the presumption — I think it's one of the inherent reasons for the presumption.

MR. MERCIER: Mr. Chairman, I agree we could delete it.

MR. CHAIRMAN: It's been moved by Mr. Cherniack that the Section (i) be deleted. All in favour? (Carried)

I believe there's an amendment on (j) as distributed.

That subsection 13(2) of Bill 38 be amended

(a) by adding thereto, immediately before the word "inequitable" in the 6th line thereof, the word "clearly";

(b) by striking out clause (f) thereof;

(c) be relettering clauses (g), (h) and (i) as clauses (f), (g) and (h) respectively; and

(d) by striking out clause (j) thereof and substituting therefor the following clause:

(i) the extent to which the financial means and earning capacity of each spouse have been affected by the responsibilities and other circumstances of the marriage.

(j)—pass (as amended). 13(2).

MR. CHERNIACK: Mr. Chairman, there is an amendment. —(Interjection)—

MR. CHAIRMAN: Yes. Legislative Counsel is going to change the lettering. On 13(2), there is an amendment.

A MEMBER: Move it.

MR. CHAIRMAN: On 13(2), it's been moved by Mr. Mercier — an amendment as distributed. All in favour? Mr. Sherman.

MR. SHERMAN: That is originally amendment (i) which will now become a different letter; that's amendment (i) that was to go in place of the original (j). Is that correct?

MR. CHAIRMAN: Maybe, to the members of the Committee, Mr. Mercier can explain the amendment a bit, the one to 13(2) — some members of the Committee are having a hard time following that amendment. Is there an amendment to 13(2), or is it passing 13(2) as amended?

MR. MERCIER: We're adding the word "clearly." We have passed (b), (c) and (d) — as I understood the procedure, you are now moving back to (a).

MR. CHERNIACK: That's right — to your (a) — you mean your amendment.

MR. MERCIER: To our amendment (a).

MR. CHERNIACK: Yes.

MR. PARASIUK: On a point of order, if I may, Sir.

MR. CHAIRMAN: Mr. Parasiuk on a point of order.

MR. PARASIUK: On a point of order. I thought that under the old (h), that is, the nature of assets, the Minister indicated he would consider appraisable nature of the assets — and I saw him discussing this with the Legislative Counsel — has he had a chance to look at that or consider it? So that would be something that you may bring forward on Report Stage, or . . . ?

MR. MERCIER: Report Stage, I think. We won't have an opportunity . . .

MR. PARASIUK: Okay. Well , if you do not bring it forward in Report Stage, would you then have Legislative Counsel put it forward in my name?

MR. MERCIER: Yes.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Original subsection (i) has been deleted . . .

MR. CHAIRMAN: Right.

MR. SHERMAN: Now, my question was, original subsection (j) — has it been replaced by new subsection (i)?

MR. MERCIER: Yes.

MR. CHERNIACK: Now numbered (h).

MR. SHERMAN: ''the extent to which the financial means and earning capacity,'' etc., now goes in as (h).

MR. CHERNIACK: It's going to be (h).

MR. SHERMAN: Yes. Thank you.

MR. CHERNIACK: And now, Mr. Chairman, we have an amendment to add the word ''clearly'' before the word ''inequitable,'' right?

MR. CHAIRMAN: Right.

MR. CHERNIACK: Sixth line.

QUESTION put on the amendment, MOTION carried.

MR. CHAIRMAN: 13(2) as amended, Mr. Cherniack.

MR. CHERNIACK: And now, Mr. Chairman, the Attorney-General suggested deleting (a) to (h)' I guess it is. He didn't propose it — I think he said, ''Would you like to delete it?'' Mr. Chairman, I'd like to delete it on this basis: Mr. Tallin has explained to us what some of us contended all along, and that is, that 13(1), speaking about ''grossly unfair'' or ''unconscionable,'' is different from ''clearly inequitable.'' There's a degree of difference. And the Attorney-General intends that the division on family assets should be more rigidly adhered to than as a presumption, than commercial assets, so that the discretion of the courts shall be more limited in family assets than commercial. These are my words, but I believe that that's the Attorney-General's opinion. All right.

I object to the court having wide open discretion which this Section 13(2) gives it. In spite of the changes qe've made — and I now quote an eminent authority who, in my mind, has a great deal of weight, and that is, that there is no limitation. —(Interjection)— Well, I said that there's nothing wrong with having a great deal of weight — an opinion — his opinion has a great deal of weight. And he agrees that there is no limitation on the extent to which the court can go into this, but we know that ''clearly inequitable'' is supposed to be a limitation.

Mr. Chairman, I think that it would be not acceptable to me because I want 13(2) deleted, and when we finish polishing 13(2), I intend to vote against it, because I don't want it there — I don't think it belongs in this concept. But of course, I had proposed to delete the word ''family'' in 13(1), and maybe if we could delete 13(2), then we could agree on deleting the word ''family'' in 13(1). But, dealing with 13(2), it seems to me that we could say ''would be clearly inequitable,'' and then go back to 13(1) for words, ''having regard to any extraordinary financial or other circumstances of those causes or the extraordinary nature or value of any of their assets.'' On that basis, the court will say, ''All right; we're really dealing with this pretty much the same way, except for that difference in restriction as between 'grossly unfair or unconscionable' and 'clearly inequitable.''' The court will have something to work with.

But here, when we're saying ''any circumstances the court deems relevant,'' I have to ask the Attorney-General very directly, does he intend the court to be influenced by the conduct of the parties? Is fault going to be a factor? In my opinion, fault was never going to be a factor in division of assets, because that was a division of the rights already earned. In maintenance, we've already gone through the whole thing, and fault is a factor to some extent. I don't believe it was intended that fault should be a factor in the division of either commercial or family assets, and therefore I would like to suggest that there are several ways to approach it, and I'm very flexible on this. We can say specifically, fault or conduct shall not be considered by the court. We could say that the division would be clearly inequitable, having regard to the following factors and no other, and then keep (a) to (h); or we could just say, clearly inequitable considering having regard to any

financial or other circumstances of the spouses.

Now, any one of those is something we could work with. So I start now by saying to the Attorney-General, do you intend that conduct or fault should be considered, and if you don't, do you not agree that it could be considered?

MR. MERCIER: Mr. Chairman, we have, I think, attempted to be fairly flexible with respect to amendments to this particular section, but we have gone as far as we intend to go with respect to any any further amendments to this section. The court, as Mr. Cherniack has stated, can consider any circumstances the court deems relevant, which would satisfy the court that there is a clearly inequitable situation.

MR. CHERNIACK: Mr. Chairman, I do agree with the Attorney-General. He has been — I wouldn't say flexible, but co-operative, in trying to get about the best legislation possible, and I think that we all have that same effort, although we have a different philosophic approach to some extent. But I think it's only fair that I do get an answer to my question. Does the Attorney-General, and do his colleagues, want that fault or conduct should be a factor in determining the division of assets? I think it's fair to ask that, because once we know what they want, we can then bring in wording, we can vote on it, and that could be established. But failing that, it appears to me that some judges might say, if this is a division based on a presumption of assets,I will be concerned with the assets, I will be concerned with the ability of each of the spouses to live a full life, financially or economically, without the other. I will not consider fault, because that has nothing to do with the division of assets. Another judge may say, Well, I'll think about fault, because I don't like the looks of that guy, and he may have been misbehaving, and therefore I will. So that I think that we should know what is the intention of the legislation, and that's a simple question. There may not be a simple answer, although it's not difficult for me. I think it's fair to ask that.

MR. MERCIER: Mr. Chairman, I think conduct as such is already in the Act, in the dissipation section. It's included in Factor (a) in 13(2) — unreasonable impoverishment. I think conduct could further be considered as it relates to the financial circumstances of the parties. I don't think we're talking about the kind of fault where a husband beats the wife, or vice versa.

MR. CHERNIACK: Mr. Chairman, that's . . . I'm sorry.

MR. MERCIER: But we're talking about the kind of conduct that relates to, I think the financial . . .

MR. CHERNIACK: How it affects the financial — Well, Mr. Chairman, that was helpful, and I think we are making some progress in this discussion, because I can understand dissipation is taken care of in (a). I don't know what else might be — possibly the fact that a husband loves money so much that it would hurt him not to have it, which is —(Interjection)— that's the Fedon case, I gather. —(Interjection)— Well, you know, if a judge is going to consider that, I will not comment, if he's a friend of mine, so I don't want to comment about what was behind his saying so. But, if the Attorney-General now says, "No, conduct in relation to the financial affairs shall be a factor, and not, say, beating the wife"— let's say that, please, Mr. Chairman, and I appeal to the Attorney-General to say that, because I agree with him, that it should not be a factor, and I think we should exclude that clearly from the judge's consideration. Because a judge might be influenced by an emotional or an adverse action that has nothing to do with finances.

Could we agree to put in something that indicates that any financial circumstances, possibly — or just say somewhere in the subsection, the fault, as it is unrelated to the economic or financial assets shall not be a factor. Is that a fair suggestion?

MR. MERCIER: I would have to give some consideration to that, Mr. Chairman.

MR. CHERNIACK: You know, Mr. Chairman, unfortunately, we have the pressure of people saying, "Let's get finished; let's get it out of this Legislature, and that consideration be given to it." Well, by all means — if Mr. Mercier will think about it, that's a step forward, isn't it?

MR. MERCIER: Mr. Chairman, let me take a moment then, in view of that comment, to praise the talents of Mr. Tallin. We adjourned last night at 3:00 a.m., I was in the office at 9:30 and Mr. Tallin had the amendments drafted and typed that we discussed last night that we would consider. Perhaps I should hesitate to try that on him again tonight.

MR. CHERNIACK: Mr. Chairman, I think that that's progress.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Well, I am worried in one sense on this, because if the Minister has said that, say, sexual conduct will not be a factor in determining how the commercial assets will be split.

MR. MERCIER: Well, it depends whether he is doing it during business hours and letting the business run down.

MR. PARASIUK: But that's not the way it is used in terms of punishment, and that's the way it is being used, I think, with respect to maintenance. It is punishment. Now, will sexual conduct be —(Interjection)— No, will sexual misconduct be used as a reason for punishment in dividing commercial assets? Now, I gather that the Minister is saying, no, it wouldn't, and yet we have had people come before us who have indicated that they, as legal counsel, would push to have that. You know, if they had to grasp at straws, that is the straw they would grasp and they think they have a very good chance of making that case, and this is not someone who has just sort of come in off the street, this is someone who has worked on family law, was a member of the Minister's Review Task Force with respect to family law. I think we have to take those comments very seriously and if indeed it will take the extra half-day, or whatever is required to give Legislative Counsel sufficient time to do the work required to ensure that that which we wish with respect to this legislation is indeed put in the way in which we wish it. I think that we are all sort of caught in a pressure cooker of wanting to ensure that this legislation is the best legislation possible. The points that have been raised, I think, have taken some time but once we know that we are agreed on something then I think that we should ensure that that which we agree on is put in the legislation exactly the way we agree, because I'm still brought back to what people have said and what I think the Legislative Counsel has confirmed: We may have an understanding of what this means, but unless we say it explicitly in the legislation, it doesn't mean anything when it comes before the court and I think it is important for us to put in our consensus exactly the way we mean it, explicitly in the legislation.

MR. CHAIRMAN: Question on 13(2) — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I have some amendments to make, then, as I indicated. I would move that we delete all words after the word "inequitable," in the sixth line and substitute therefor the words, "having regard to any extraordinary financial or other circumstances of the spouses."

QUESTION put on the amendment, MOTION defeated.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I have an amendment to put forth. I propose that we delete the words in the sixth and seventh line which read, "Any circumstance the court deems relevant including," and substitute for them the words, "Only the following circumstances and no others.' There, Mr. Chairman, we are indeed limiting the court to what we have now discussed, and I think we have come to an agreement, more or less, that these are the factors.

QUESTION put on the amendment, MOTION defeated.

R. CHAIRMAN: 13(2)as amended -- Mr. Cherniack.

R. CHERNIACK: Mr. Chairman, as I understand it, the Attorney-General is going to look at (g) to consider e appraised nature of the assets and also in regard to conduct or fault, say, financial. Would that be aving regard to any financial circumstances, is that . . . Well, the whole concept of limiting it to financial rcumstances, I understand is what the Attorney-General will look at.

Well, Mr. Chairman, I would just like to include that, if he said no, and maybe if he said yes, I would ill like to suggest that there be a 13(3) which would read: "The conduct of the parties in relation to ich other and without regard to the financial circumstances, shall not be considered by the court."

I say that, Mr. Chairman, in view of the fact that the indication is that it is not intended that they should . . . . The government has rejected my efforts to limit the circumstances which the court shall view. still says "any circumstance" and since it is the intention of the government that not the conduct in lation to their personal relations with each other / that should not be a factor / then I would want to y so. Possibly, I should move it, bearing in mind that. . .

R. CHAIRMAN: Can I pass 13(2)?

R. TALLIN: That's what Mr. Parasiuk asked me to prepare for him, I think.

R. CHERNIACK: Oh, all right.

R. CHAIRMAN: Basically the same? Mr. Parasiuk.

R. PARASIUK: Yes, I 5hink Mr. Tallin will be looking at the appraisable nature of the assets and I would pe that he would look at this one as well, prepare both of these for Report Stage . . .

R. CHERNIACK: On conduct?

R. PARASIUK: Yes.

R. CHERNIACK: And that would depend on what Mr. Mercier decides to do about limiting it to ancial.

R. PARASIUK: Precisely.

R. CHAIRMAN: 13(2), as amended—pass; 14(1)(a)—pass; 14(1)(b)—pass; 14(1)(c)—pass; 14(1)—pass; (2).

R. MERCIER: I move an amendment, Mr. Chairman. There is a typographical error; it should be "value" tead of "evaluation."

R. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, this again reopens a battle which was lost earlier but I think it more vividly illustrates the importance of the efforts that were made to obtain some definition of marital home. It clearly states , "the evaluation of any asset should be the amount that the asset might reasonably be expected to realize if sold in the open market by willing seller to willing buyer." Now, if by law there can be no sale by a willing seller to a willing buyer, then I ask the Legislative Counsel how the value would be determined.

MR. CHAIRMAN: Mr. Pawley, can I put the question on Mr. Mercier's amendment changing the

word?

QUESTION put on the amendment, MOTION carried.

MR. TALLIN: Well, I suppose the only answer I can give to that is that it would be impossible for the court to follow the section.

MR. PAWLEY: You see, Mr. Chairman, that is exactly the concern which I felt right from the very beginning of these proceedings, that we are going to be dealing with a situation involving marital homes, and because of the provisions of The Planning Act, because of municipal laws where those marital homes cannot be sold, and Mr. Tallin has just indicated to us that it will be impossible for a court to attach a value thereto, which I share 100 percent. So again, I don't want to be repetitious but I think that this again illustrates the problem which we raised earlier: What does a court do?

MR. CHAIRMAN: Mr. Mercier.

MR. TALLIN: The mere fact that certain kinds of assets may not have an open value, may not have an open market for the particular segment that you are talking about, doesn't necessarily mean that they may not be able to come to a value under here. What I was really concerned about was an asset of the nature for which there was no open market at all because it was the kind of thing that can't be sold. If you are talking about the marital home, I think they can value that under this section on the basis that they would value the whole farm and ask the appraisers, what would the farm be worth as is, what would the farm be worth without the home on it? Then the difference would be the value of the hmme.

MR. PAWLEY: But you see, again, I am aware of the fact that I am repetitious but I ask Mr. Tallin — he has two municipalities, A and B and in one municipality the marital home can be split off and can be sold. The court therefore can establish a value which may be quite high because of the fact that it is a saleable home. But in Municipality B, by law, that home cannot be split, so it is left to some type of valuation based upon the fact that it is part of a larger unit, but certainly quite a wide variation from any value which would be attached in Municipality A, because by law the marital home can be sold to third parties.

However, I accept the fact that we have dealt with this and I am not going to continue to hash it out, except I think we are inviting a lot of problems.

MR. CHERNIACK: But you will say, "I told you so," won't you?

MR. PAWLEY: I would prefer not to.

MR. MERCIER: We'll give it further consideration.

MR. CHAIRMAN: Question on 14(2) as amended—pass; 15(a)—pass; 15(b); 15—pass; 16(a) — Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I don't have a printed amendment. I have written out an amendment that I would like to present to committee. It may not be worded as clearly as I would like because I have had no opportunity to consult with Legislative Counsel, for which it is my fault, but I want to at least present an idea to committee.

Mr. Chairman, I would like to move that Legislative Counsel be instructed to prepare an amendment to Section 16 that will, insofar as farm lands are concerned, provide that upon disposition or sale of same, that the amounts payable by a spouse to another, may be satisfied by instalment payments based upon the productive value only, and the balance will be payable upon disposition or sale, same being the difference between the productive and market value of the said farmlands.

Now, by way of explanation, assessment office can determine a productive value or agricultural value of farmlands, and a market value of farmlands. There is a difference, and certainly in the municipalities surrounding the City of Winnipeg, there is a very wide difference between agricultural value and market value because of the speculative nature of the farmlands in the area surrounding the City of Winnipeg. But to compel a sale of some of the farmlands in the 50-mile radius of the City of Winnipeg, with this large chunk of speculative value attached thereto, would work a hardship such a hardship that I would fear that the court might use wide discretion and not treat it on an equal basis. So that I am making this amendment. I don't have to make the amendment if the

is interested in pursuing it; I can leave it with him. But I do want to place this problem before the committee.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, to the Member for Selkirk, would you not think that under Section 19, the time for complying with an order, that that situation could be resolved "where the court is satisfied that immediate compliance with the order or judgment will work a hardship or is otherwise inexpedient, the court may order that payment be made by instalments, with or without interest. . . " etc. I acknowledge that there could be a problem when you compare the productivity value of some of the farmland to its market value. I believe that it could be handled under Section 19, where the court has the discretion to allow payments to be made by installments.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Mr. Chairman, I think that that would deal with the hardship that might be created in trying to just pay off the productive value of the land. The difficulty arises with respect to the speculative or market value of the land, where it bears no relationship to productive value. So you could be farming and making money off that land but you're still not in the position, through installment payments, to pay off the market value of that land unless you sell it. That's the only way you can do it. And therefore I don't think the installment issue there — the installment mechanism — would work. That's why I think the distinction has to be made between productive and market value and I think it's a fairly common distinction that exists when people talk about trying to value farm land.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Pawley went further to suggest that the market value be caught upon disposition and that section goes on to further state that the court may make some further order as it thinks fit to secure the payment, so that it would be quite open to the court to require that upon the disposition of the lands that affect the full amount owing be paid.

MR. CHAIRMAN: Mr. Pawley, are you satisfied with Mr. Mercier's answer?

MR. PAWLEY: Well, I think and I believe that the situation that I presented might very well be dealt with under Section 19. I'm not doubting Mr. Mercier's assurance, I'm just wondering — Legislative Counsel stepped out just for a moment, eh?

MR. CHAIRMAN: Mr. Tallin, could Mr. Pawley put a question to you for clarification?

MR. PAWLEY: Just so we could feel 100 percent assured on this. Look at the respect and esteem you are held in, Mr. Tallin.

The problem which I created insofar as the hardship in the sale of farm lan difference between the market and productive value, are you satisfied that type of situation can be dealt with equitably insofar as the installment payments and final payment, or the proceeds upon disposition under 19, Section 19?

MR. TALLIN: No, I would think that there would be some circumstances arise where the difference between the productive value and the market value of property might be so enormous that the method of payment wouldn't be able to overcome the difficulty. I think the only way you could deal with it would be probably under 13(2), to provide some method of making something less than an equal sharing.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, I would ask Mr. Tallin to consider the part of Section 19 that says, "The court may order that the payment be made by installments with or without interest or may otherwise allow the spouse such time with or without interest, in which to comply with the order for judgment." So that there can be a situation where the court doesn't even ask for any payments until disposition of the property.

MR. TALLIN: That's true, an interest may be a very pertinent issue, particularly if it's a high interest rate — to be relieved of a high interest rate. But it seems to me that if the difference between

the productive value and the market value is really extreme, in the nature of, say — productive value might be one-tenth of the market value for some peculiar reason — there's just no way that even the principle amount could probably be paid off on a long-term extension basis which would be satisfactory to any court, I would think. The difference between a million dollars division and $500,000, and the productive value at $100,000 — if it's really a productive value of $100,000 — you're talking about perhaps $10,000 a year, and there's no way you can pay off $500,000 in a lifetime, even without interest, on a $10,000-a-year income.

MR. MERCIER: Just one more comment, Mr. Chairman. I would think that if the difference between the productivity value and the market value is that extreme, then, assuming the husband were the owner of the land and the wife were the non-titleholding spouse who is entitled to the equal division, then I would demand the property be sold and there be immediate payment.

MR. TALLIN: Well, that's another alternative, I agree; but that may not be the solution that the party would want.

MR. PAWLEY: Yes, and the other problem, if I could just add to Mr. Mercier's. Where this is going to be a problem is the municipalities close in to the City of Winnipeg, because there is a wide differential between productive value and market value there. There's just no way that a farmer can, for the value of the land, can carry out effectively a farm operation if he had to pay market value for that land. Usually he is continuing to do so because it's been in the family for some time. So that I worry about this then, that we may in fact be forcing sales. I want to encourage continuation of agricultural use of this land; I hate to see it subdivided, though maybe there is no other alternative. Maybe I'm entering into totally other areas that relate to planning again.

MR. CHERNIACK: I'm aware of the problem raised by Mr. Pawley; I'm aware of the concerns that people have expressed. I believe that Mr. Mercier is correct in firstly, pointing out that where there is an extreme case, then I, as the spouse who claims an interest, would demand that there be a sale. Why should that person be adversely affected by the fact that the owner doesn't want to sell it and wants to keep it on this productive basis?

I agree that it is a problem in the minds of many; I don't think it's really a problem. And I would say to Mr. Mercier, that he has my sympathy, because he will be finding people complaining bitterly that he is forcing them to sell the farm. I don't think he is, and I believe, in all cases that the courts should exercise discretion on that. I would be prepared, I think, to say the court may take into account the difference between productive value and speculated value and may postpone the difference until the time of sale. But I don't think it's necessary, it's just maybe a politic thing to do. Since I'm not here to advise Mr. Mercier on his political stance or strategy I'm not that concerned, because I think in the end it'll work out.

MR. PAWLEY: Well, Mr. Cherniack represents St. Johns constituency — I represent Selkirk constituency where it is a major problem. It's not because people there are farmers or engage in speculation, just through unfortunate events they happen to be ending up sitting on land that's very valuable.

MR. CHERNIACK: That's fortunate, not unfortunate.

MR. CHAIRMAN: Mr. Pawley, we're just about to conclude 13 hours of clause-by-clause debate on this; please, let's not have a split in the NDP ranks at this time.

MR. PAWLEY: I'm not going to press this matter further, but I do feel that it may be something that will have to be looked at further in the future.

MR. CHAIRMAN: 16, 16(a)—pass; 16(b)—pass; 16(c)—pass; 16—pass.
17(1)—pass; 17(2) — there's an amendment.

MR. MERCIER: I move the amendment as distributed, Mr. Chairman.

Subsection 17(2). That subsection 17(2) of Bill 38 be amended by adding thereto, immediately after the word "defendant" in the fourth line thereof, the words "at any time before the action has been set down for trial".

MR. CHAIRMAN: It's been moved by Mr. Mercier as distributed. (Agreed)
17(2)—pass (as amended).
17(3) — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'm not happy with 17(3). It's a straight copy of what happened last year. I don't know how happy I was last year, but I'm really not happy with it. But it's certainly better than the outlandish suggestion that the Chamber of Commerce made, but I suppose I should be grateful that the Attorney-General has not accepted that — or he did — I think he did in the case of The Maintenance Act. That's all, I have nothing else to add.

MR. CHAIRMAN: 17(3)—pass; 17(4) — there's another amendment. Mr. Mercier.

MR. MERCIER: Move it, Mr. Chairman.

Subsection 17(4). That subsection 17(4) of Bill 38 be struck out.

MR. CHAIRMAN: Moved as distributed by Mr. Mercier.

MR. CHERNIACK: I need an explanation on that, Mr. Chairman. I oon't understand it.

MR. MERCIER: Mr. Chairman, it has been deleted because Section 69 of The County Courts Act and Section 101 of The Queen's Bench Act already provide for appeal to the Court of Appeal.

MR. CHAIRMAN: All right. 17(4) has been deleted—pass. 18(l) — there's an amendment. Mr. Mercier.

MR. MERCIER: Move it as distributed, Mr. Chairman.

Subsection 18(1). That subsection 18(1) of Bill 38 be struck out and the following subsection be substituted therefor:

Limitation period on death.

18(1) Where a right to a division of assets arises in favour of a spouse under this Act other than upon the granting of a decree absolute of divorce or a decree of nullity of marriage and the other spouse subsequently dies, no action in respect of the right shall be commenced against the estate of the deceased spouse after six months from the date of death.

MR. CHAIRMAN: Motion to accept it as distributed—pass.

18(1) as amended—pass.

18(2) — another amendment.

MR. MERCIER: Move it as distributed.

Subsection 18(2). That subsection 18(2) of Bill 38 be amended

(a) by striking out the words ''under Section 17'' in the third line thereof;

(b) by striking out the figures ''90'' in the second line of Clause (a) thereof and substituting therefor the figures ''60''; and

(c) by striking out the figures ''30'' in the second line of Clause (b) thereof and substituting therefor the figures ''60''.

MR. CHAIRMAN: As distributed. 18(2)(a) as amended—pass. 18(2)(b) as amended—pass. 18(2)(c) as amended—pass. 18(2) as amended—pass. 18(3) — there's another amendment.

MR. MERCIER: I move the amendment as distributed, Mr. Chairman.

Subsection 18(3). That subsection 18(3) of Bill 38 be struck out and the following subsection be substituted therefor:

Saving provision.

18(3) Where a person is prevented

(a) by lack of knowledge of the occurrence of a death or of the date thereof; or

(b) by lack of knowledge of the granting of a decree absolute of divorce or a decree of nullity of a marriage or of the date thereof; or

(c) by uncontrollable circumstances; as the case may be, from commencing an action within the applicable limitation period fixed in subsections (1) and (2), a court may extend the limitation period by such length of time as it deems fit.

MR. CHERNIACK: Mr. Chairman, could we have an explanation rather than have to read it and figure this?

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: This is as a result of the Manitoba Bar Association presentation, Mr. Chairman. They suggested that the section be clarified so that there can be no doubt that an application for extension may be made either before or after the expiry of the initial period. It appeared from the wording of the previous section that an application for extension must be made before the expiry of the initial limitation period.

MR. CHERNIACK: Because it extends it, is that what you mean?

MR. MERCIER: Extends it, that's right. Extends the opportunity.

MR. CHERNIACK: No, this says also "court may extend the limitation period."

MR. MERCIER: Right.

MR. CHAIRMAN: Okay?

MR. CHERNIACK: No, I don't understand it. I guess I shouldn't care; it's technical, and I assume Legislative Counsel has agreed with the need for that change.

MR. MERCIER: Right.

MR. CHERNIACK: I wish I understood it.

MR. MERCIER: Well, the previous section said "before the expiry."

MR. CHERNIACK: Oh, I see, it was "before the expiry." I understand. I'm sorry, I didn't read it that way.

MR. CHAIRMAN: Okay. 18(3) —(Interjection)— Yes, the amendment to 18(3)—pass; 18(3) as amended—pass.
19— Mr. Cherniack.

MR. CHERNIACK: Well, the Attorney-General didn't go as far as taking other suggestions of the Manitoba Bar. The Manitoba Bar said, connection with 19, that — I know there's another amendment — I don't think that covers it. I have to read that yet. The Manitoba Bar pointed out that any lawyer worth his salt will always try to make out a case of hardship, and they suggested the word "excessive" hardship and that makes sense to me, and I would like to move that the word "excessive" be inserted to precede the word "hardship" in the fourth line of Section 19.

MR. MERCIER: Well, Mr. Chairman, we've just heard from the Member for Selkirk, the difficulties that may ensue because of the difference in productivity value and the market value, and because of those reasons, I am reluctant at this stage in the Act to make it excessive. I would prefer to see the Act in operation and see how the section is interpreted, because it's a brand-new Act, and I would rather leave it the way it is at this point in time; see how it's interpreted, and maybe it will be necessary in the future to provide an amendment for "excessive." But, because of the kinds of problems that the Member for Selkirk has pointed out, I would prefer not to make that amendment at this time.

MR. CHERNIACK: Mr. Chairman, do you not realize how hardship will be created merely by the Attorney-General saying he doesn't want to say "excessive hardship," because this deals with the court varying its decision on the basis of a hardship and he says he'll wait to see whether or not it needs amendment, and I would think that that's because he will find there is a hardship created I would think it would be better to do it so the court understands that it shouldn't be too easily persuaded, unless it is sure that there is a serious hardship, a substantial hardship, an excessive hardship.

MR. CHAIRMAN: Question on the amendment? Do you want to put it to a vote?

MR. CHERNIACK: Well, you have to. I moved it. Oh, you mean a recorded vote? No, I don't think that's necessary.

MR. MERCIER: I'd like to see a recorded vote.

QUESTION put on the amendment, MOTION lost. (Yeas 3; Nays 6)

MR. MERCIER: Mr. Chairman, does everyone seated at the table have to vote?

MR. CHAIRMAN: Yes.

MR. CHERNIACK: No.

MR. MERCIER: I don't believe the Member for Selkirk voted.

MR. PAWLEY: Did I have a vote?

MR. CHERNIACK: You do if you are in your seat, but which assigned seat is ours?

MR. CHAIRMAN: There isn't. The motion has been defeated.

19(2). As distributed, that's the last amendment on Page 6.

Subsection 19(2). That Section 19 of Bill 38 as amended be further amended by renumbering the present section as subsection (1) and by adding thereto, immediately after subsection (1) thereof as renumbered, the following subsection:

Order for sale. 19(2) Where under Section 17 a court makes an order or gives judgment against a spouse for the payment of money, the court may further order that a specified asset or specified assets of the spouse be sold and that the payment be made out of the proceeds of sale.

19(1) as amended—pass. 19(2), which Mr. Mercier just moved now — the motion. Pass?

MR. CHERNIACK: Just a minute, Mr. Chairman.

MR. MERCIER: This is a recommendation of the Bar Association that we have agreed to, where they recommended that in talking about Section 16, the court should be given the power to order the sale of assets where necessary in order to satisfy the judgment.

MR. CHERNIACK: But the court shall determine which asset?

MR. MERCIER: Yes. I think that's probably where it is unable to get satisfaction. —(Interjection)—

MR. CHAIRMAN: (Sections 19 to 24 were read and passed.) 25—pass.

MR. CHERNIACK: Nay.

MR. CHAIRMAN: On a recorded vote?

MR. CHERNIACK: Sure.

QUESTION put on the amendment, MOTION carried. (Yeas 6; Nays 4)

MR. CHAIRMAN: Section 25 —pass. Section 26—pass; Section 27—pass.

MR. CHERNIACK: Mr. Chairman, on 27, I want the next one — an indication of why the delay.

MR. MERCIER: Well, Mr. Chairman, I expect it would be much less delay than was encountered with the proclamation of the bill last year. I would expect that a likely date for proclamation would probably be October 1st.

MR. CHERNIACK: Is there any factor that would affect this? I mean, Mr. Mercier has said, under maintenance, he was waiting for rules to be passed. Are there rules necessary for this?

MR. MERCIER: Yes. Well, that's my mistake. There's no particular rules that would be necessary for the introduction of this bill.

MR. CHERNIACK: But it seems to me that this is law, which has taken a long time to develop — very slow in getting going — it's very late in coming. Why shouldn't it be on Royal Assent? There's no reason I can think of and you know I just don't know. There are times when it is advisable

to get things ready, but this is a statement of the law. Well, why should anybody be adversely affected by any delay? And it is intended that this Act be not only passed, but proclaimed, so why isn't it? And you know, I think that there should always be a reason for doing something adverse to the norm, and the norm should be when the Queen's representative nods his head and it becomes the law of the land.

MR. MERCIER: Well, Mr. Chairman, I appreciate the concern for the early proclamation of this legislation, because I recognize that a lot of people are anxiously awaiting the passing of this particular legislation because of their particular circumstances, and recognizing that concern, I agree to proclaim the legislation just as early as possible.

MR. CHERNIACK: Well, Mr. Chairman, may I ask — maybe Mr. Mercier will have a look at it, and may I ask that Legislative Counsel prepare an amendment to say "by Royal Assent," and then we can go right along? Can you prepare an amendment for Royal Assent?

MR. TALLIN: Yes.

MR. CHAIRMAN: Preamble—pass; Title—pass.

MR. CHERNIACK: Well, Hold up.

You have an amendment there or more than one. There are two preambles.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, we would move that Bill 38 be amended by striking out the enacting clause thereof and substituting therefor the following preamble enacting clause:

Whereas it is desirable to encourage and strengthen the role of the family in society, and

Whereas for this purpose it is necessary to recognize the equal position of spouses as individuals within marriage, and to recognize the marriage as a form of equal partnership, and

Whereas in support of this recognition it is necessary to provide in law for joint ownership and control of family assets during marriage, an equitable settlement or disposition of the affairs of the spouses in the event of the unfortunate breakdown of the marriage.

MR. MERCIER: Well, Mr. Chairman, we too looked at the preamble to the Ontario legislation which Mr. Pawley's amendment closely follows. We didn't agree that it would be satisfactory, and unless Mr. Pawley can demonstrate some changes that should be made in the preamble we are suggesting I would prefer to stick with our preamble.

MR. PAWLEY: Well, of course, Mr. Chairman, our preamble reflects the position which we have taken in respect to the immediate vesting of family assets, that those assets ought to be shared during the marriage, not upon the termination of the marriage, and I accept the fact that the government had voted against that provision, but I would think that would be the basic area of disagreement.

MR. CHAIRMAN: Are you ready for the question on Mr. Pawley's amendment? Mr. Parasiuk.

MR. PARASIUK: Mr. Chairman, I just want to speak to the amendment that's been put forward by Mr. Pawley. I think it's much more straightforward, and I think indicative of what everyone here says that this legislation is about, and that is, that we are trying to encourage and strengthen, the role of the family in society. We talk about equal position of spouses; we talk about equal partnership. Now, the Minister has said that he's not willing to support this type of preamble, but what we have before us as his preferred position is a statement that says marriage is an institution of shared responsibilities and obligations. No statement there regarding equality between parties recognized as enjoying equal rights. Now, when that statement "equal rights" comes out, it reminds me much more of the Chamber of Commerce statement, where they talked about fair sharing and equal rights. And if anything ran counter to the whole spirit of the family law proposals that we've had before us, it was that particular submission.

Now, I find it somewhat surprising then, when I look at the preamble, to see wording which is much more indicative of the position put forward by the Chamber of Commerce than that which seemed to have been put forward by all members sitting in this Committee. And that's why I'm wondering whether in fact the Minister would not reconsider the type of preamble that he's put forward, because it really does not recognize the fact that we are talking about marriage as a form of equal partnership.

MR. CHAIRMAN: Question on Mr. Pawley's amendment to the preamble? Mr. Pawley.

MR. PAWLEY: You know, the one that is placed before us really doesn't indicate and stress what all this exercise should be about, and that is, the strengthening of the family unit. I see no inference in the preamble, and I would think that, you know, there may not be much need for a preamble, it may not be good drafting, but at least if we're going to utilize a preamble, then we should zero in on what we want to emphasize philosophically, as the position that is being taken right at the commencement.

I think that there should be some reference to the fact that we are attempting to encourage and strengthen the role of the family in society and here in this preamble that's been distributed to us by the government, they talk about marriage being an institution. Well, there are many institutions in our society but surely the family is unique from other institutions in our society. They speak about shared responsibilities and obligations and again, of course, as the Member for Transcona has pointed out, there is no real recognition of equality there and there is simply reference to share which may be a greater share on one part than another part. I just think that particular whereas clause was very, very vague. Then, unfortunately, and I know that the government is tied into this because of the position they've taken on the legislation, but rather than speaking in terms of equal division again, there is reference to "presumption" in the event of breakdown of the marriage, of equal sharing family and commercial assets.

So I would urge the Attorney-General, before he locks himself into this rather non-descript, and I think ineffective, preamble — and I must share some of the concerns expressed by the Member for Transcona that this is a preamble that would not, to any great extent, upset the Winnipeg Chamber of Commerce — that the Attorney-General should not lock himself in with this preamble but should reconsider it and ascertain whether he can improve it and strengthen it prior to report stage. I would urge him to do so because this preamble that he has prepared will be with us for many many years and I think it reflects not a very healthy position at the very beginning.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Domino makes a very strong point. We are going to change this Act; we are going to make it more representative of what society expects shall be the relationship between people. You know, I'm not as enthused as Mr. Pawley is to get a preamble to this bill that will describe it any differently than what it is and I think that probably the Attorney-General knows best what it is, and that is what he says it is. He says that "marriage is an institution of shared responsibility and obligation between parties recognized as enjoying equal rights." While he says that they are recognized as enjoying equal rights, I think they are not recognized as enjoying equal rights but he says they are, so that's what the legislation says.

And then he says that we will have a presumption that they are entitled to equal sharing. Well, that's good because he says it elsewhere. I would like to suggest to him and I would suggest to Mr. Pawley that when we change this law to make it more representative of fairness and equality, then we will put in our own preamble. But it might be of interest to the Attorney-General to put in the first two clauses of Mr. Pawley's amendment which is supportive — not just that it is an institution of shared responsibilities but "it is desirable to encourage and strengthen the role of the family." He should be only too thrilled to include that sentence in with his resolution portion. And also, I think it is more honest to say, as Mr. Pawley does, that it is necessary to recognize the equal position of spouses as individuals rather than to pretend that that is the case.

Mr. Chairman, you just told me, let members know that there were 30 hours of briefs and this s the 14th hour or 15th hour of deliberation on this stuff in this year, 1978. There were many more ıours in 1977; there were many hours in 1976. If it were true as Mr. Mercier postulates that as ɔetween parties recognizing joint equal rights, and enjoying equal rights, then why was it necessary :o go through all this before? However, if he thinks that is it, I really think he ought to consider ɔorrowing, stealing, taking from Mr. Pawley the first two sentences of the preamble which are really ine statements and then stick with his own about the presumption of equal sharing and I think hen he might even have the best of both considering that you won't accept the principle established n Mr. Pawley's.

Having made that suggestion, — possibly I was sarcastic, maybe I was sarcastic — but in all ıincerity, I'm suggesting that it would be an improvement to marry the two and since we're talking ıbout marriage, that might be an advisable thing.

Now in the end, I'm not too hung up on what Mr. Mercier decides to do and his colleagues vill do as he says, so . . .

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I don't think that any one of us would . . . Well, first of all, let me say that the preamble which was worked out in consultation among members of the government caucus, to my knowledge, was not influenced in any way by the Winnipeg Chamber of Commerce To my knowledge, it was not either designed as a consequence of anything the Chamber of Commerce might have to say or designed to meet any suggestions that the Chamber of Commerce might have had to put forward.

Secondly, I don't think anybody would argue with the desirability of enshrining the principle of encouraging and strengthening the role of the family in society. I think that that position has been put forward by many members of the committee, both committees, this year and last year, many times irrespective of party affiliation. But I would just say to members of the Opposition that we're dealing here with a preamble of The Marital Property Act. I think that a case could be made for a preamble underscoring the importance of strengthening the role of the family where The Family Maintenance Act is concerned. We're dealing here specifically with The Marital Property Act specifically with the institution of marriage which is an institution; it's also a Holy Sacrament in the view of many persons but it certainly stands on its own two feet or four feet as an institution. don't think that it's derogatory to refer to it as an institution.

I don't subscribe to the view that Mr. Pawley's second paragraph — good as it is — says any better what the government is attempting to say with respect to marriage and the relationship of the parties to a marriage than the first paragraph of the Attorney-General's proposed preamble puts the case.

QUESTION put on Mr. Pawley's amendment, MOTION lost. (Yeas 4; Nays 6)

QUESTION put on Mr. Mercier's amendment, MOTION carried. (Yeas 6; Nays 3)

MR. CHAIRMAN: Preamble passed as amended. Title —pass ; Bill be reported.

MR. PAWLEY: Mr. Chairman, in the preamble to The Family Maintenance Act, I think Mr. Mercier indicated that there was one prepared. I suppose that will be introduced at the report stage in the House.

MR. TALLIN: I understand the bill has been brought back to the committee to deal with it.

MR. CHAIRMAN: Mr. Mercier has a motion on the preamble.

MR. MERCIER: No, I don't really have a motion, Mr. Chairman. I'm trying to find Mr. Pawley's proposed preamble. I indicated, I think, that we would accept the proposal of Mr. Tallin and not Mr. Pawley's proposed amendment. We're not really hung up on having a preamble in The Family Maintenance Act. It is, I think, unusual, as I indicated earlier, to have a preamble. I think Legislative Counsel would prefer not to have a preamble at all. We don't really see any particular need for a preamble in this piece of legislation. The Act speaks for itself. So I'm not moving that a preamble be included in The Family Maintenance Act.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I'm going to express some reservations about Mr. Tallin's amendment, not that I'm trying to suggest that ours is that much better. I suppose in a way we are, with all due deference to Mr. Tallin. But I'm concerned about the fact that in the proposed amendment, where it is indicated it is advisable to provide for the mutual obligation of the spouses to contribute reasonably to each other's support and maintenance and the support and maintenance of the children, it seems to me that there has to be some expression of equitable maintenance to a spouse upon the marriage breakdown for the central objective of the legislation to provide for that reasonable maintenance so that the receiving spouse can obtain financial independence, so there isn't an interminable maintenance payment. It is expected the one spouse will, as soon as it is possible and practical be able to get back into the workplace and be again sufficiently productive as to be independent of the other. I wish that aspect could be included and I really do wish, and I'm not going to say any more to it, but I do wish that some reference could be made to the role of the family in society you know, maybe again the marriage is necessary of all these, but there could be some recognition of that.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, I don't think at this stage we're prepared to accept any preamble to The Family Maintenance Act. It may be that after further consideration we will, but at this stage I don't think we would accept any.

MR. CHAIRMAN: Mr. Cherniack.

MR. Tallin's proposed preamble and the reason I'm doing that is that I think that this law, like the other one, breaks new ground in Manitoba — not new ground — it's rebreaking old ground, but at least it is declaring the principle of equality, of rights, and the mutual obligations and the need for both to maintain each other and their children. I think that makes it positive rather than negative. I'll move it.

MR. CHAIRMAN: Moved by Mr. Cherniack. Ready for the question?

QUESTION put on the amendment, MOTION lost. (Yeas 3; Nays 7)

MR. CHAIRMAN: Preamble—pass; Bill be reported—pass. Mr. Tallin would like to . . .

MR. TALLIN: Would the committee give us the instruction to renumber the bills so that they are consecutive and we don't start off with new Acts which have decimal numbers and that sort of thing?

MR. CHAIRMAN: Agreed? (Agreed) Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, as in the case of The Maintenance Act, I ask that this will be redone and distributed because it's such a cut-up piece of legislation, you know, it's not legible any more. So it will be redone will it?

MR. MERCIER: We're trying to do that.

MR. CHAIRMAN: To the best of their ability.

MR. CHERNIACK: Oh, I'm sure . . .

MR. MERCIER: We probably won't have time to have it reprinted but we'll have it at least . . .

MR. CHERNIACK: No, no, zerox it.

MR. CHAIRMAN: Committee rise? Committee rise.