Legislative Assembly of Manitoba

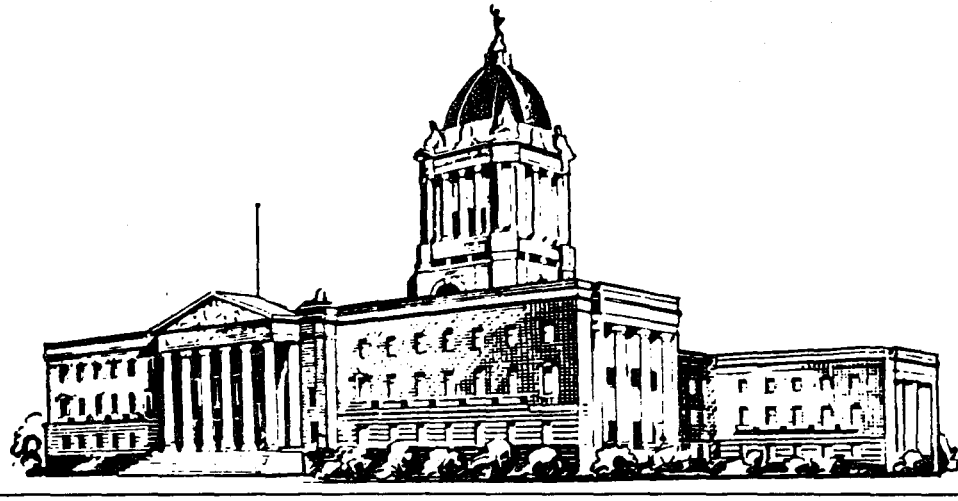
HEARING OF THE STANDING COMMITTEE

ON

STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. D. James Walding
Constituency of St. Vital



TUESDAY, June 14, 1977, 8:00 p.m.

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TIME: 8:00 p.m.

MR. CHAIRMAN, Mr. D. James Walding.

MR. CHAIRMAN: Order please. We have a quorum, gentlemen. The committee will come to order. Before the committee is the amendment No. 5 on Page 2 of your sheets of amendments with a sub-amendment on 2(4). I believe Mr. Axworthy had the floor when we adjourned.

MR. AXWORTHY: Mr. Chairman, I was raising a question in relation to this particular amendment. Going back to the original proposals by the Law Reform Commission which included separated spouses — but that was when they had the position of opting out and that discretion would apply — my concern is that there is a group of people who may in fact be excluded from the application of the Act and whether in fact the protection that they would otherwise receive through the application of the discretionary clauses as recommended by the Law Reform Commission, wouldn't cover them at all so they're really just being cut right out. I am wondering if there is a way that we can look at this particular clause and I would certainly like to hear from the Attorney-General his reasons and explanation on it.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I must apologize, I was straightening out my papers and I . . .

MR. AXWORTHY: I was doing the same thing. The question I was raising was that in relation to Section 2(4) dealing with the matter of the exclusion of those who are separated without agreements from the coverage of this Act. This is different from the original proposals that were made by the Law Reform Commission who did include them as part of the Act under the standard marital regime. Mind you there was a qualifying requirement until they opt out, but in this case they are being totally excluded and we're wondering to what degree does that create hardships in their case.

MR. PAWLEY: Well, Mr. Chairman, I certainly share Mr. Axworthy's sentiments in respect to this Act not applying prior to May 6th, 1977 because it is certainly legislation that one would like to apply in sentiment, to those prior to 1977. The great concern of course that we have is the fact that applying it in such a way that it affects retroactively people who changed their relationship prior to that date, and of course the type of concerns that were expressed in the different briefs that were presented in connection with that, whether it would be fair when people have already separated, even though there is no written agreement, to apply this provision to them. I suppose that hardship situations will occur either way because of our not applying the legislation retroactively, but a line has to be drawn at some point. At some point one has to indicate from this point on our provisions will apply and before that they don't. I would be just reluctant at this point to apply it retroactively to parties living separate and apart before that, because we could involve people who have separated two, three, four years ago but who haven't formalized their separation arrangement. We're not just dealing with people who may have separated two or three months ago but could be dealing with people who are living separate and apart and have been doing so for a number of years, the unfairness that that type of situation could create. So I must say though, while sharing in sentiment with Mr. Axworthy's concern, I have reservations about carrying it any further back beyond May 6th.

MR. AXWORTHY: Mr. Chairman, in terms of the Attorney-General's argument, we are still maintaining though the retroactivity principle in relation to existing marriages with the qualifier of the discretion that has been introduced. Is there some reason why that in effect cannot be applied to those who are under separation? It's not as if we have eliminated the retroactivity position altogether; it still is in the bill for those who have existing marriages.

MR. CHAIRMAN: Mr. Spivak to the same point?

MR. SPIVAK: Yes. In principle, I think we've got a responsibility to recognize that as much as we would like to have situations developed to what we think they should be, our responsibility is to legislate for now and the future, and the problem that we have in any retroactive legislation is whether in many ways we are usurping a responsibility that was really not given to us. For those who in fact were given the responsibility as legislators to enact the laws and to determine the policies in years gone by as to what a particular situation was, if they have failed and we have to provide new policy determinations; or if we think that society's functioning has changed or altered, then there is a responsibility for us to provide, as representatives of the people, a new law. To that extent, there is an onus on us to deal with it on the basis of this period of time when we are here legislating and in the future. In general, retroactivity is not something to be accepted as something as a matter of course because really the law existed before and people operated under the law.

Now, there are going to be some hardships, there is no question about it, and I guess the determination would have to be at what point? I must tell you that I don't think that even the decision of May 6th is a particularly good one. I think that if the law is to come into place as of next week and is to be proclaimed, that's the day. I do not believe that it should even be a determined date simply because that was the date that the bill was introduced or that the government or any majority of members think that that is a date on which it shoule apply. It should apply, Mr. Chairman, on the basis

of the law as it is passed and proclaimed, and becomes the law of the land and it should, in fact, apply in those situations.

Now I know the reasoning and the rationale that has been responsible for this. I know as well that there will be hardships and I accept them. I think that Mr. Axworthy cited an example which really appears to be unfair, but there are going to be a number of unfair situations, and our problem at this point is that we have to deal with the law as it is. We are imposing on those who have been married and are living in Manitoba a set of circumstances whether you agree to it or not because we, as legislators, believe that to be the public policy of this province. It is our responsibility to deal with it as of now and in the future.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I agree with Mr. Spivak's general statement on the extent to which we should assert our power. Because indeed we have a tremendous power in a bill such as this, and I agree with his statement. The question of the date which he raises, it seems to me that that has to be arbitrarily selected. The fact is that the public has been invited to participate in discussions on this question for the last two and one-half years and it may be that . . . well, we know from the couple of the briefs that were presented, that people have already been negotiating on the assumption that a law will be passed and we have also been informed that a number of people have refrained from negotiating for the same reason. Therefore, to say that, as Mr. Spivak suggested, that it should be from the date of enactment would be to fly in the face of the knowledge that people have been negotiating or have been conducting their negotiations on the assumption that a bill of this nature will be passed. Since, as I suggested earlier, there has to be an arbitrary — decision I don't remember who suggested the date as the date for the introduction of the bill on second reading — but it seems to me that that is as logical an arbitrary date as we can find, since that was the time . . . I suppose maybe more logical would be the date the bill was distributed, but I think we can assume that people were not aware of the bill itself and the principles behind it that clearly until it was introduced by the Attorney-General.

Now, I share the thoughts expressed by Mr. Pawley and implied by Mr. Spivak as to the regret that some people will not. . . They won't be treated unfairly it's just that they won't have the benefit of this legislation. They will not be worse off than they were at the time they separated. They would not be better off to the extent that this law could be applied retroactively and I don't want to repeat myself. I agree with what Mr. Spivak said about that, but I do feel that from the date of introduction of the bill, they had a right then to start negotiating on a different assumption. And it seems to me that what we have before us is the logical commencement date for that reason.

MR. SHERMAN: Mr. Chairman, Mr. Axworthy has of course identified one of the central considerations of this Committee throughout the whole study of this proposed legislation. As he will recall when our deliberations began some months ago there were some members of the Committee who felt that any such legislation should be completely retroactive. There were other members of the Committee — and this wasn't necessarily divided along partisan lines — (Interjection) — No, we never divided along partisan lines. There were other members of the Committee who felt that one of the most unacceptable features of the proposed legislation was any suggestion of retroactivity. This is obviously the compromise that seemed, at least up until this point, to have satisfied many members of the Committee. I recognize what Mr. Axworthy is saying. I think I suggested some months ago to the Attorney General and he did not disagree with me, that there is nobody in the Province of Manitoba who is not going to be hurt in some way by some implication of some section of this legislation. There are going to be people hurt and the objective of course is to minimize the hurt and to minimize the number so hurt.

I agree with Mr. Spivak in terms of a rejection in principle of the concept of retroactivity. I would like to be able to hold to that position but I understand the reason for selecting a date of this kind in this legislation because if we didn't have such a date there would be people seeking to take advantage of the opportunity to opt out between now and the time the legislation came into effect. So there would be a greater number of people who would be hurt by the legislation so I would have to say that from the point of view of our caucus, Sir, because we're opposed to retroactivity in principle and because we recognize there has to be some cut-off date to prevent a greater hurt than is going to be the case, we're in favour of the clause as it's presently worded except for some words at the end of the clause on which we're going to suggest a minor change in terminology.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I think the previous comments highlight my concern and that is that through all these bills we should be aiming at a degree of fairness in it. I concur that once you've introduced the notion of retroactivity, you shouldn't be selective in its application. The concern that I've been raising throughout these proceedings has been that if there was going to be retroactive elements to it that the protection against their application was through the use of judicial discretion, that this would then prevent one from applying it. What I've perhaps been hearing from the Attorney-General and others is that maybe those discretionary things are not, in effect, adequate protection

against that being applied because we are saying that if you happen to be cohabiting at the moment the bill was introduced you have a different set of rights and prerogatives than if you happen to have been separated a week before through no fault of your own or whatever and that the protection through discretion that would otherwise be afforded may not be there. Perhaps we're not understanding to what degree and to what extent that discretionary aspect of the bill is really an ability to qualify or protect against improper settlements in these areas. I guess that's the thing that rubs me a little bit the wrong way. I just don't like to see people, because of circumstances all of a sudden find themselves being discriminated against, in fact, by a piece of legislation.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, there are two points that I would wish to comment upon if we did include parties living separate and apart prior to May 6th. One is they may be living separate and apart and there may be no agreement except a verbal agreement. There may very well have been a verbal agreement which could have been entered into between the parties then to apply it retroactively we might in fact be interfering with that type of agreement that existed. There would be of course disagreement as to credibility of the parties which could occur although they would have up until the passage of this legislation accepted the fact that they had an understanding.

Secondly, I think the most important aspect of this seems to me that on May 7th and after for couples still living together they know about the legislation, they can mutually agree to opt out. But prior to May 7th, parties living separate and apart really there is no longer any way that they can mutually likely come together in practice and opt out. So that in fact other couples living together after May 6th have some tool, some knowledge at least available to them prior to May 7th of living separate and apart and of course no likelihood of them being able to come together to use the tool which is available to them in the legislation and mutually opting out. So there is an element, I think, of unfairness that we introduce into the legislation if we proceed retroactively back to take in a period of time prior to May 7th.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: In effect the legislation will become public policy and that simply means that for those who will still be applying to the courts who were separated prior to May 6th but who had no agreement and who may or may not have commenced proceedings at that time, that the judge who is going to have to make the award will make the award at his discretion based on the information and knowledge and can very well take into consideration the public policy as it now exists declared in the legislation to cover the standard marital regime. So therefore in effect an award can be made by a judge based on the announced public policy that is now in operation. I have to say one thing — and I listen to Mr. Cherniack but I want to make this point. I think that there is a danger of the legislators believing that in effect there is an obligation on their part because a policy to be legislated may have been announced and therefore, people in dealing on a day-to-day basis are not sure of what will happen. Therefore there is an obligation on the part of the Legislature to sort of name it retroactively to that date once in fact that policy has been developed even if it hasn't been passed. Now with the exception of a budget, where it's assumed that the budget will run from the day of the announcement and therefore there is great secrecy as to its contents so that there will not be the possibility of an advantage being taken, the policy has normally been for legislators to deal with something as of the date of the legislation, that is the date of proclamantion in the future. I think that there would have to be a very heavy onus on our part to alter and change that.

I think that there has been a problem with legislation and I cite the land bill that we're going to be dealing with in Law Amendments in the next day or two as another example where in fact there is a retroactive feature in terms of the date. The bill is not law and yet in effect there is a reference in the bill to the date from which this will apply, which will be prior to tomorrow's date and it would seem to me that there is a danger on our part of simply saying that, well this will be the policy, therefore everyone should know, therefore everyone should take into consideration what we may ultimately do. What we may ultimately do and what we actually do are many things. It's not just the legislation, it's the amendments, it's the discussion and the debate that takes place and in many cases the regulations still to be announced which are not even dealt with by this Committee which in effect can have a direct bearing. I think there has to be a very heavy onus on us not to enact retroactive legislation and I think the explanation that's been given is one that can pass a certain test of reasonableness but at the same time I still would object to that argument on the basis of the position that I've made. I think again, that the answer to what Mr. Axworthy is saying is realistically the fact that those who will be dealing with these matters of anyone in fact in the direct situation that Mr. Axworthy is mentioning will have to, I believe, and will — will not have to but I think will — take into consideration the public policy of the day. He doesn't have to accept it — he or she doesn't have to accept it — but I think that that would be a pretty important influence and that, I would hope, would relieve those situations in which there may very well be some position where someone's situation has in fact been prejudiced.

MR. AXWORTHY: Well, Mr. Chairman, I think there are two comments and I would really pose

them as questions because they both come from lawyers whose knowledge I would respect. One is that judges would take as a presumption a piece of public policy that has been passed, even though it doesn't apply to the people before them, and they would say , I suppose by some principle of transference I guess, that they would say the same thing should be applied, and I wonder if that is a general condition, whether that is normally the case or whether . . . . Certainly my experience in trying to deal with some of the judges' judgments that have been made in the past is that doesn't seem to be the case, that they don't seem to deal in terms of those presumptions.

The second one — and I don't think the Attorney-General answered it — because it may be upon which a lot of this particular question I have or issue I am raising hinges, and maybe future ones, and that is that if the introduction of the discretionary clauses which come later, 37 (1) and (2), were to be considered the way to overcome the difficulties with retroactivity, is the Attorney-General in fact admitting that they are not now such protections and, if so, why would they not then apply to all classes of people under this Act, or in fact are we being told we have discretion without really having it?

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, two points. Firstly, Mr. Axworthy's point about the discretion. I think that the discretionary clause is fairly limited, but I can visualize that if you open it up retroactively, then a person has nothing to lose except costs to go back 20, 30 years and hope to build a case on the discretion which is not wide, in my opinion, and that, then, creates not only an awful lot of, a whole rush, I believe, of cases into court, but I think unfairly into court, because the parties never contemplated this law and therefore made their own deal on the basis of the law as they knew it. Therefore, having made a deal or an arrangement or gone into a separation with the law as they knew it, I still don't say that they are hard done by. I'm sorry to say they are just not helped, but they are no worse off. Having said that, I recognize the unfortunate but not a hardship. I don't accept the word hardship, only to the extent that I am sorry that we didn't pass the law sooner, and maybe that's one reason why I am anxious that we pass the law now. I don't know what else I could say along that line because I think that there has to be that.

Now, in connection with Mr. Spivak's point as to date, if we continue this discussion and if we come to an agreement today to make that date any later than today, then I believe there would be repercussions, the kind that are protected by the principle of retroactivity to Budget Day announcements. There are many marriages that are not stable, that are delicately held together, and one of the points I objected to in the Law Reform Commission dealing with unilateral opting out was the compulsion for a spouse to make a decision within six months to opt out. I thought that that could, in itself, break up a marriage which may yet have a fairly long life, not necessarily a smooth life, but one that people can live together and work it out. I thought if we follow the Law Reform Commission and we say you must make your decision within six months or forever hold your peace, a person may make that decision and break up that marriage, and that's what I didn't like there.

What I am saying about this is that anybody listening to this debate and thinking that we might go beyond today for that last date might be well advised financially, and in an insecure or a fragile marriage, to break it tomorrow, separate tomorrow rather than take a chance. That's why I think the principle of retroactivity is very important in this case, because people will act in the expectation of knowing something, just as I do compare that with Budget Day and I don't disagree with anything Mr. Spivak had to say about the reluctance to pass retroactive legislation. That's why I come back to May 6th as being logical, although as of this moment, I wouldn't mind if somebody said May 14th, but just for the reasons I don't think we ought to signal in any way the possibility that it will be a date in the future. So I would say May 6th is still the logical one.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: On public policy, I just wanted to mention that I am informed that there has already been . . . now, I don't have the written report of it, but I gather that there have been some decisions already made, based upon public policy, that this bill was going through, so I think there has been some —in answer to Mr. Axworthy — some reference already to that, to the fact that this is policy in the court. From what I gather, I have been informed of this.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: . Well, Mr. Chairman, I frankly favour proclamation myself. What about the people — and you know, Mr. Axworthy gave an example and I guess I know one myself, I guess we all do now that this legislation is in effect — about somebody who had started the action but it hadn't been completed yet? Before May 6th. That's one case and it's well along but it's not completed yet. They just haven't separated from one another in the house because of the children, etc., until things are final, but they decided long before this legislation to make application for separation. They are caught with this legislation now, but as far as proclamation is concerned, when we are talking about going until January 1st, you know we're talking about more than a half a year right at the present time.

I think that that's a long time to be in this sort of a situation.

I believe we have to have a date, but couldn't there be something there that . . . this section should be there, but I think that there should be something, if somebody can prove that they had started action with their lawyers or made application for separation, that that should be considered, or else I think we have to go to proclamatio .

MR. CHERNIACK: I wonder if I could ask Mr. Johnston, are you speaking about an action commenced for a separation and maintenance, or for division of property already or for a declaration of an interest in property not yet owned because there are these different angles. I would like to respond to whichever it is that . . . .

MR. F. JOHNSTON: Well, I'm afraid I can't go into that. I just know that the lawyers are from both sides. There has been application for separation, the whole thing has got them in a bit of a turmoil.

MR. CHERNIACK: . Well, Mr. Chairman, if I may, the separation aspect would come up in the other bill, in the maintenance bill, because this doesn't deal with separation, this deals with division of propert. I imagine if somebody started an action under The Married Women's Property Act, then their rights are as they are now, but if they have not separated as Mr. Johnston says, then they would come under this Act. And and the fact that the January 1st date has been suggested I believe is that people will know with certainty what the law will be, but will be able to plan ahead and look ahead and possibly discuss mutual opting out of any part of this. But the law will still be effective retroactively to May 6th so that should not adversely affect the people, the fact they delayed.

I think it was the and I don't know whether it was privately or when they made their briefs, , who said that there has to be lead time and that's why I think it was suggested that there be six months or so of notice in advance of what will become the law, so that people don't just rush headlong into court without being able to reflect on their rights. I have accepted that as being logical, although I don't see any particular reason in the Act to say not before January 1st, as long as there is lots of notice of it. I think that's the point, and I might say that lawyers that I have talked to who expressed some concern about the lead time said that having the lead time is useful, but knowing the Act, once it is enacted, predicts the date would give them both the lead time and the ability to negotiate now.

MR. F. JOHNSTON: Mr. Chairman, I must admit I am still no following Mr. Cherniack's first statements about the . . . as I said, I'm not familiar with their case other than I know that an action has been started for separation which was done before May 6th.

MR. CHERNIACK: Well, let me try again. If it's separation, if it's really separation and maintenance, then under the present law they would be going under The Wives and Childrens Maintenance Act, I assume, and that Act is more restrictive as to the nature of the grounds for separation. I believe that in the maintenance bill, which we are not dealing with yet, there is a provision that says that any proceedings already commenced may continue under the new Maintenance Act so that there would be no prejudice to people. They might have a broader scope. I still don't know if that answers Mr. JKOHNSTON. I don't know how much better I could do.

MR. F. JOHNSTON: Well, in that case, the only thing that would apply here is the commercial assets part of it.

MR. CHERNIACK: Only if they were not separated prior to May 6th.

MR. PAWLEY: I think the other concern, Mr. Johnston, is that some further lead time is required in order to analyze completely the tax implications and, if necessary, to obtain any clearances through Ottawa if any clearances are in fact required. Certainly the indication has been from the Federal Minister of Justice that he would hope the provinces would proceed on this basis, but I am not awae of what effort has been undertaken to this point in Ottawa to really thoroughly analyze the tax situation. It may be that there could be some lead time required there, as well as for parties, of course, that might be concerned about the same aspects.

MR. F. JOHNSTON: Well, getting back then to the proclamation end of it being that the time of proclamation, what is wrong with the . . . it is suggested here that the lawyers believe there should be some lead time. Well, certainly if hey know that this Act is going to be proclaimed on January 1st, they certainly would start to advise their clients accordingly. I don't see any reason why they can't be advising them that way and have it come in when the legislation is put through. I don't think that people are going to rush out and get this thing done. If their marriage is on the rocks now, this legislation isn't going to save it. I assure you of that. It might help it, but it isn't going tc save it. So I don't know why we can't go for proclamation.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Well, Mr. Chairman, I would like to think further on the point that Mr. Johnston raised, whether advancing to proclamation might be a solution to the problem, but I am a little bit concerned about the statement made by Mr. Cherniack because I think it carries with it some implications that trouble me more than anything else I have heard, and that is that the powers of discretion are limited. I think he said, and there was an undertone to that which I am not sure I liked, because the basic position that I have taken, I think our group has and others have, is that we were concerned about the retroactivity principle. It has always been one of the major difficulties with this

bill and the representation made before this committee by numerous people under questioning and otherwise was that if you were going to have it, you had to allow for a degree of latitude and discretion to make sure that the thing didn't apply in harsh and unfair ways. So the government, by its own admission, has now changed its mind to some degree and introduced a discretionary aspect but . . .

MR. CHERNIACK: Well, read it.

MR. AXWORTHY: Well, I have read it and the question is that the interpretation that is being given is . . . to what degree does that really then provide some adequate means of dealing with that retroactivity principle? Because if it does deal adequately with it, then there is no reason why those that separate shouldn't be brought under it, because then there would be no unfairness. If it doesn't deal with it, then we should be rethinking the basic proposition as to whether in fact we are being fooled a little.

MR. CHERNIACK: Mr. Chairman, I don't know who is being fooled. The proposed retroactive sections have been in our hands for a few days now, Section 37, I think it is, which indicates that there shall be a discretion in extraordinary circumstances — I forget the exact words — but it would have to be something very unusual, not just slightly unusual. I think that's clear. I only said that in spite of that, I would think that people, given the right to go back after having been separated for some period of time to reopen matters, have nothing to lose except court costs to go ahead and try. I think that would be a heavy burden on the court and has given to people already separated new rights to try and have a separation of assets of long ago.

MR. AXWORTHY: How would that be different, though, from people who are already married and would be separating in this case and if they're . . . .

MR. CHERNIACK: Well, they are still living together.

MR. AXWORTHY: Well, but they will still be going to the courts in great numbers then, eh?

MR. CHERNIACK: Well, they are still living together. One would hope that, in spite of what Mr. Johnston thinks, the separation rate would not be increased to that extent, but if it is, at least they know their rights. And although he thinks it will speed it up, I think it may well, once they consider the implications of this Act, it may well keep the marriage together longer. It's a matter of opinion only.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I think that Mr. Axworthy may be placing a good deal of faith on the interpretation of Sections 37(1) and 37(2) which we haven't got to yet so we can't discuss them. But I see Mr. Axworthy's concern and I think that it's based on the fact that he thinks that he reads the amendments as introducing considerable discretionary intervention into the kinds of cases that might be considered. We don't think or I, personally, don't think that discretionary allowance is that wide and I intend to say something about it when we get to that section. The only thing that I would like to leave with Mr. Axworthy on this point and I'm sure he's considered it is that for the problems and the difficulties and the inequities that he sees resulting from a lack of retroactivity, I submit that there are probably an equal number that would result from retroactivity. That having been the impasse that we've always been at is the reason why I feel that realistically we have to come to some sort of a compromise.

MR. AXWORTHY: Mr. Chairman, I don't think Mr. Sherman stated what my concern is. I have a real concern though that one class of people is being treated differently from another. That's my basic concern and while it may be difficult to work out I think that part of our job here is to see if there some solution, rather than simply blithely saying, well, sure there are going to be hardships and we can't worry about them. That's as bad as some people who appeared before us and said on the other side there are going to be hardships which I didn't accept either.

I'm more concerned about seeing if there are ways of ameliorating it and that's why I'm raising the question without being definitive about it. I would hope that there would be some ways of assuaging those as much as possible and as I say, I have some more difficulties now in my mind considering the statements that have been made concerning the ability to apply discretion and make sure that there isn't a rigidity on it. But it does mean that if there is still a retroactivity principle existing in the bill for those who are presently together and that they are going to consider commercial assets going back throughout the marriage and therefore be able to apply discretion, then we are saying that that same right does not apply to those who happened to have been separated without an agreement up to this time. That is, I guess, the concern that I have, that here really is a class of people who are being taken and set apart in this respect. Maybe there isn't a solution to it. I'm just not satisfied that we've thoroughly examined whether there is or is not. We're almost too easily saying well, that's one group of people, I'm sorry, that's tough luck and they're going to have to suffer with it or something now. I do think the Attorney-General made a valid point which I do accept and that is that the opting out principle is available to those who are still together and therefore they do have a certain quality of difference to their status but I still am concerned about setting up different classes of citizens under this bill and I think that's what we're heading toward.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: I don't argue with that. We have suggested that for some time that different classes of citizens are being set up under this bill. That's one of the things that is wrong with the legislation. —(Interjection)— Mr. Cherniack says the answer is not to pass it all ever. We offered our answer at 11:30 in the morning and we stand by it, but we're now at a point where we're looking at the proposed amendments clause by clause . All I can say to Mr. Axworthy is that essentially I agree with what he is saying, but it's not confined to this clause. I agree with what he is saying in terms he doesn't perhaps intend it to be applied to the total legislation, but we feel it can be applied to a very great deal of the legislation, a great many of the clauses.

MR. CHAIRMAN: Are you ready for the question on the subamendment? Sub-amendment — pass; Clause 2(4)—pass. Did you have an amendment, Mr. Sherman?

MR. SHERMAN: No, in consultation with Mr. Cherniack, Mr. Chairman, I decided it's not necessary. Thank you.

MR. CHAIRMAN: 2(4)—pass; 2(5).

MR. CHERNIACK: 2(5) was deleted.

MR. CHAIRMAN: It was moved as part of the motion, if members do not want it to stand they should vote against it. Mr. Axworthy.

MR. AXWORTHY: Are we on 2(5), Mr. Chairman, or on 2(4)?

MR. CHAIRMAN: Yes. It is part of the amendment that has been moved.

MR. PAWLEY: Well, can we agree by leave that 2(5) is deleted. We feel that this is already covered under another section insofar as divorced persons are concerned. This section is not required. It would be redundant.

MR. CHAIRMAN: The Committee has only to vote against it and pass on to the next one. Mr. Axworthy.

MR. AXWORTHY: Well, I have one question. If it is covered in the other legislation — but I'd like to raise it under this particular section dealing with decree absolutes, that doesn't include decree nisi yet it is usually at that stage where the property settlements are made. I'm wondering if that would be covered under the other aspect of the bill.

MR. CHERNIACK: Decree absolute would be the last date, 30 days after the decree absolute is the last date. You can start earlier, much earlier.

MR. AXWORTHY: That would be the last date, so you could have a settlement of decree . . . ?

MR. CHERNIACK: Yes.

MR. AXWORTHY: Okay.

MR. CHERNIACK: Mr. Chairman, Mr. Lyon has just suggested that Mr. Jenkins who moved the motion could withdraw 2(5). By consent you can do anything. May be that would be . . .

MR. JENKINS: Do I have the consent of the Committee to withdraw Clause 2(5)? (Agreed)

MR. LYON: Could we have that extended to most of the amendments. . .

MR. CHAIRMAN: With the leave of the Committee, of course. 3(1). Mr. Sherman.

MR. SHERMAN: On the last line thereof, I'd like to ask legal counsel whether the term should not be "joint tenant" rather than "joint owner"?

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: Joint owner really has the same meaning. A joint owner would mean one of two people who are on a certificate of title as joint tenants and not as tenants in common. Now if we simply said joint tenant I think it might not convey that idea and this clause and other clauses relevant to this point, to the same point were reviewed with the Registrar General of the Land Titles Office and he found it to be satisfactory.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Wouldn't it better to be registered as a "joint owner, as a joint tenant" thereof?

MR. SILVER: No, that would be redundant.

MR. SPIVAK: No, to be registered as a joint owner, as a joint tenant thereof. Because your registration as a joint owner is registration as a joint tenant. They will not accept any for joint ownership. application

MR. SILVER: I think when we get to Part III, I think it is, where all the details of land titles registration are contained, it will become clear as to precisely how and interests arising under this Act is to be registered. It is there that we speak of as "joint tenants" and not as "tenants in common". Here we are merely using descriptive words to describe the interest that the person acquires under this Act.

MR. SPIVAK: What Mr. Silver is saying though is that "joint owner" — the legal definition of "joint owner" is a person who is a 8joint owner but not registered as a "joint tenant". You're not saying that?

MR. SILVER: No, I'm not saying that. I'm saying a "joint owner" is the same as one of two people who are registered as "joint tenants" and not as "tenants in common". What I am saying is, that if we say a "joint tenant", I'm not prepared to say that that really means one of two people who are registered as "joint tenants" and not as "tenants in common". But I do know that if we say "joint

owner" we mean one of those two people.

MR. CHAIRMAN: 3(1) —pass; 3(2). Mr. Sherman.

MR. SHERMAN: We would raise the question as to whether the present wording does not ignore equities with respect to third parties and whether the clause should not read: Where premises are the marital home of two spouses and where one spouse is entitled to be registered as the owner thereof then both spouses are entitled to be registered, etc. The way it's presently worded, it seems to us to ignore the possible third party equity.

MR. PAWLEY: Could you repeat that Mr. Sherman, please?

MR. SHERMAN: Yes. Our examination of the clause suggested to us that in its present wording it ignores equities with respect to third parties, where there's a third party involved and that we would feel that would be taken care of if the clause were worded where one spouse is entitled to be registered as the owner thereof, then both spouses are entitled to be registered as the owners thereof as joint tenants etc.

MR. SILVER: Well, there may very well be and probably are other and better ways of wording this section, but we're not saying that the third person in whose name the title is, that his interest can merely be wiped away and forgotten about. We're merely saying that a spouse who thinks that he or she is entitled to an interest under this Act in that property, even though the title is not in the name of the other spouse, that spouse can apply for an order. And, indeed it may develop in the course of the application for the order that the third person is entitled to remain on the title and that nothing can be done about it and that third person's interest will then remain. But it may also be discovered that the third person is on the title merely to avoid the results of this act. And in a case like that the court might order that the title be indeed transferred to both of the spouses as this section suggests.

MR. SHERMAN: But you're saying that the way it's presently worded is not tantamount to saying that you can just wipe that third party name out of the . . . ?

MR. SILVER: That's right, that's what I'm saying.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Well, what about the situation where there's a judgment and in effect registration hasn't been taken in the name of the one spouse because of that. Are you suggesting now that the other spouse is able to get title to both names even though there may very well be a judment?

MR. SILVER: Mr. Chairman, if the applying spouse is not worried about the existence of the judgment, if the judgment has not attached yet, if the spouse is not worried about any anticipated judgments let's say, then the spouse will apply, will ignore it and apply. But if there is a judgment then that judgment will surely prevent any registration being made unless it is made subject to that judgment.

MR. SPIVAK: So the order for the judge vesting title will in effect not be realized, simply because one of the spouses has judgment . . .

Q **MR. CHERNIACK**: Mr. Chairman, I want to talk to . . . about the wording. Aren't we concerned here that if there is an equity by one owner' that the equity should be jointly owned, that if there's a debt, be it an encumbrance, like a mortgage or be it a judgment, then it should be subject, any transference would have to be subject to the existing rights of creditors or third parties and I think the important thing is to recognize that I don't think we could pass a law that would wipe out an existing registered judgment or an encumbrance and therefore I think it means the equity and I'm assuming that's what it means. I don't want to debate the wording because I accept Mr. Silver's . . .

MR. SPIVAK: But in practical terms, there can be a judgment that a spouse has prior to his marriage. And there can be an application afterwards in which the other spouse asks for title to be registered in both their names as joint tenants and that really is not an encumbrance of the family or of the marital home.

MR. CHERNIACK: Does Mr. Spivak mean, not a registered judgment?

MR. SPIVAK: No, I mean a registered judgment.

MR. CHERNIACK: If it's registered then surely the creditors are entitled to go after that marital home whatever it is if it's registered.

MR. SPIVAK: . . . but I am saying, how are the land titles going to be able to give effect to the order vesting title in the names of both spouses as joint tenants?

MR. CHERNIACK: Well I think it would be done subject to the rights of the execution creditors just like today's law if a bridegroom owns a house and has a judgment registered against him and then he, on marriage, transfers the house to himself and his wife and as joint tenants, they must register it subject to the judgment which will have priority against all the land. I think that's the present law and I think that's the way it ought to be and frankly, I think that's the way it is in this section but I defer to Mr. Silver's opinion.

MR. SPIVAK: The point is: Will the registrar allow the transfer to go through?

MR. CHERNIACK: Subject to . . .

MR. SPIVAK: Subject to the judgment?

MR. CHERNIACK: Subject to the judgment.

MR. SILVER: Well, if the court finds that there is nothing to prevent the title from being transferred from the name of that third person to the name of both spouses, the court will make that kind of an order and will see that under Part III, the Registrar-General's office is empowered to accept that order and file that order and at that basis to effect that registration.

MR. SPIVAK: Well, my belief would be that if a court was to order this, that the Registrar-General will reject it on the basis of the judgment, will in effect reject the transfer, notwithstanding the fact that it's a court order.

MR. CHERNIACK: But then wouldn't a court order make it subject to?

MR. SPIVAK: Well, you know, the court may not be aware of it at that time because you see the principle here very simply is that it is a marital home. The title has not been taken. One spouse wants the title in both their names, as joint tenants — they have a legal right to have that — and simply says in court, "I want that." And the court says, "Yes, you are entitled to it." And gives it to them. The fact is, that order of the egistrar-General, will he or will he not recognize it if there is a judgment against the — in this example, say, the husband.

MR. CHERNIACK: Mr. Chairman, I am satisfied in my own mind that if there is any encumbrance then the court order would vest, subject to any existing encumbrance, including a judgment which is registered. If it is not registered then, of course, it won't be protected. But I have another suggestion to make, and that is that the question raised by Mr. Spivak — unless somebody here with a great deal of certainty answers — could be approved subject, Mr. Silver, to just double-check this one point — we won't be dealing with this on third reading for some time, and . . .

MR. PAWLEY: Correct me if I'm wrong, Mr. Silver. You have already contacted the District Registrar of the Land Titles Office.

MR. SILVER: The Registrar-General.

MR. PAWLEY: The Registrar-General, and this provision has been cleared through him.

MR. SILVER: As a matter of fact, this provision about applying to a court for an order vesting title is his recommendation.

MR. CHAIRMAN: 3(2)—pass? Mr. Spivak.

MR. SPIVAK: If the other spouse supplies the court with an injunction against him, then we'll have a legal case as to whether he has or has not that authority.

MR. CHERNIACK: As long as the creditor isn't adversely affected.

MR. CHAIRMAN: 3(2)—pass; 3—pass. Section 4. 5(1). Mr. Sherman.

MR. SHERMAN: Section 4, the application part. Well, it would come into 5(1), too, Sir. I raise the same question with respect to the term "joint owner" as I raised on 3(1), whether the phrase should not be "joint owner as a joint tenant", and I simply ask at this juncture whether Mr. Silver's answer to me is the same on these as he gave me on 3(1)?

MR. SILVER: The answer is the same.

MR. SPIVAK: What I would like to know is . . . You have obviously discussed this, again, with the Registrar-General. In effect, what you are now suggesting is that there will be, in terms of a transfer of land, a clause that will basically express this. This is what you are suggesting then. You are going to have this in every transaction because the District Registrar isn't going to know whether it's a marital home or not.

MR. SILVER: Oh yes, he's going to have to know. The affidavit in the transfer of land and the instrument will disclose that and other relevant information that he will have to know before he accepts an instrument for registration.

MR. SPIVAK: Let's just understand this, is it going to be on the basis of the affidavit of one spouse, or are you going to require both spouses to, in effect, provide an affidavit? If one spouse just simply says it is not the marital home, is that going to be accepted as such? Or are you going to require the confirmation by both spouses of what is the marital home?

MR. SILVER: That and other questions are covered in Part III. But, for the moment, I will say, just to attempt to answer you before we get to Part III, that the Registrar will accept an affidavit by one of the spouses and will rely on the affidavit in the same way as he relies right now on the affidavit of one person to the effect that a house is not a homestead within the meaning of the Dower Act. But to protect this spouse from a false affidavit of that kind, the spouse will be able to register a caveat if he or she is afraid that the other spouse might register that kind of a transfer of land with a fraudulent or false affidavit. Once a caveat like that is registered, the Registrar will not accept any registration at all on that property.

MR. CHERNIACK: Mr. Chairman, Part III is very extensive in dealings of the Land Titles Office with forms attached to it. Mr. Silver has told us that this has been checked by Mr. Lamont. At this stage, I don't know what greater authority we can do than have legislative counsel confirmed by the Registrar-General of Manitoba.

MR. SPIVAK: I think it's a question of policy as well. I mean if we're suggesting that spouses file caveats on land — you know, if you want to break up a marriage I think that will be the easiest way of doing it, let them file a caveat. Then obviously there will be cases where there is some knowledge that

something may happen and therefore that can be filed. Obviously, you can also go to a judge and ask for a vesting order immediately. There may be reasons. But the thing that concerns me, and has done from the beginning — and we'll get into it now; we don't have to debate it now — is really talk about procedures and the arrangements that are going to be arrived at, and what we're talking about. Because if you're saying that the Registrar is going to accept one affidavit, that's fine; but if you're saying both, then I think that involves a whole host of transactions that are not really part of this, in which there will be additional hardship in normal commercial transactions.

MR. CHERNIACK: Mr. Chairman, we're now talking about the marital home, which is the homestead under the Dower Act. As far as I can read all of this, it repeats the protections that now exist under the Dower Act. The non-owning spouse can, today, file a caveat. I think it's called a dowry notice; I'm not sure of the term.

MR. SILVER: It's a caveat under the new system; a notice under the old.

MR. CHERNIACK: So that there is provision now where a spouse can register a protection and the additional right that that spouse can rely on is that the owning spouse will not perjure himself in dealings with the Land Titles Office. The important thing I think we have to make sure is that the creditors are not adversely affected. I think that the bill does provide that as between the spouses there is accountability. But surely Mr. Spivak is not suggesting that we do more or less than the Dower Act now does to protect people and that means that any creditor will be in the same position under this dealing with commercial loans or whatever, as that same creditor is today under the Dower Act. I don't see the difference, and if I did it might help me understand the problem.

MR. SPIVAK: The Registrar-General is not going to register any document at all until he is assured by an affidavit that, in effect, the instrument is not dealing with the marital home. You know, I'm now talking about documents other than those that are in joint tenancy and which are presentable for the procedure there, if that's going to be the position.

Now, all I am saying, if that if that will be accepted on the basis of the single affidavit of the person who is registered, then I don't think you have any hardships in commercial transactions. But if in fact it will be the requirement that there be the signature of the other spouse, then I think in commercial transactions that will create hardship.

MR. CHERNIACK: Mr. Chairman, I would have to point out to Mr. Spivak that Part III does give this in great detail and, I think, answers his concern. We will come to it yet, but I think that's the place to make sure. I think his concern is answered in Part III.

MR. CHAIRMAN: Section 4—pass; Section 5(1)—pass; 5(2)—pass; 5(3). Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I would ask Mr. Cherniack, or the Attorney-General, or legal counsel, whether after the term "lien or other security" it would not be advisable to insert the phrase "registered or unregistered"?

MR. CHERNIACK: How could it be unregistered and still be sold? I'm sorry, Mr. Chairman, I was inviting an answer. I don't see how it can be sold under any unregistered lien. The only way you can sell the marital home is through the Land Titles Office. The only way you can take proceedings is under a registered document of some kind. Therefore, I don't see unregistered security as being able to sell the land. If it can be, then I may not be up-to-date on the law.

MR. SHERMAN: Well I understand, Mr. Chairman, what Mr. Cherniack is saying with respect to mortgages and liens, but it was after the term "other security", and that was may question, as to whether that security would always be registered.

MR. CHERNIACK: In order to result in a sale, it would have to be registered for a sale order. Now, Mr. Silver may have some other opinion.

MR. SILVER: Well, I simply want to say that just as we are not saying registered or unregistered lien, we are not saying registered or unregistered mortgage, or registered or unregistered encumbrance. We are just saying "mortgage, encumbrance, charge, lien." Real property law is such that . . . No, I withdraw that. So that if it is possible under real property law for a sale to take place where one of these things is unregistered, then it's all right, because we're not saying registered mortgage, we're just saying mortgage. So that it can mean registered and it can also mean unregistered; and the same applies to lien, it could mean both.

MR. SHERMAN: All right, thank you.

MR. CHAIRMAN: 5(3). Mr. Spivak.

MR. SPIVAK: I want to just talk about a couple of things. First of all an option. Suppose the property is sold as a result of an option.

MR. PAWLEY: Suppose what, Mr. Spivak?

MR. SPIVAK: The property is sold by an option.

MR. PAWLEY: An option?

MR. SPIVAK: Yes, an option can be in existence now in which the signatory of the . . . Even the Dower's consideration may be, but not the signatory of the person as far as the marital regime is concerned. Is that covered?

MR. CHERNIACK: Mr. Chairman, I do believe that any existing agreement, or any agreement that

gets in ahead of time, protects the third party, but that the spouse adversely affected has the right to an accounting from the spouse who made some kind of transaction which adversely affected the non-owning spouse. But I think the whole intent of this bill was that it should not adversely affect the rights of bonafide creditors for value. That would apply the same to a bonafide purchaser. I believe it's in here somewhere but I don't think it comes under 5(3) because 5(3) deals with the surplus moneys on the sale by an encumbrance.

MR. PAWLEY: Mr. Chairman, if I could just add for Mr. Spivak's benefit, I am advised that this section is taken from The Dower Act. Obviously there hasn't been any difficulty that's been brought to our attention on it to this point.

MR. SPIVAK: Well, let me put another example. It may have been taken from The Dower Act but the rights are different, because really the part that he is talking about, is the surplus of money after a sale under whatever situation arises, which is available to both parties; a spouse is entitled to one-half. What happens in a situation whereby the house may be the marital home, registered in the name of one spouse, in which the mortgage is a mortgage owned by the spouse's company and there is a mortgage proceeding that has to take place, a mortgage sale. And even though the spouse is not registered, is entitled to her 50 percent as right as a result of this Act, those proceedings ; do take place situations new can arise, in which case the surplus may not be there. Have we dealt with that situation at all or not?

MR. CHERNIACK: We sustain, Mr. Chairman, that the same protection that now exists in the The Dower Act would exist there. And I believe it would then mean that if this company owned by the owner proceeds to realize under the mortgage, then indeed, it is a fraudulent act as between the spouses and I believe that there is a proper course of action and accountability. I think that is the important thing. It would have to be proven, however, that indeed, there was a wrong done. It seems to me that under a mortgage sale of a homestead you have to serve the spouse under The Dower Act. So surely the protection is there; anyway the spouse would know, unless there is perjury.

MR. CHAIRMAN: 5(3)—pass. 5(4). I believe there are some further changes to this section. Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I would move that clause 5(4) in the second line thereof, after Section 3, strike out the word 'assumes;' "clause (a) — becomes upon becoming so registered, liable to the other spouse for one-half of any indebtedness incurred by that other spouse in the acquisition or improvement of the premises; and (b) clause upon becoming so registered, liable for one-half of any tax that becomes payable by virtue of the registration."

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Could we use the corrected version complete, if you don't mind.

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: "A spouse who is entitled to be registered as a joint owner of premises under Section 3," and then we have "clause (a) — becomes upon becoming so registered, liable to the other spouse for one-half of any indebtedness incurred by that other spouse in the acquisition or improvement of the premises; and (b) — b clause ecomes upon becoming so registered liable for one-half of any tax that becomes payable by virtue of the registration."

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, may I just explain the change. When we discussed this, we did not want to make the receiving spouse liable to a creditor to whom that spouse was not then liable, so we said rather than say "becomes liable for half of the indebtedness," we are saying, "becomes liable to her spouse for the indebtedness." Say a man owns a house and owes money to someone else for moneys advanced to acquire the property. Then the suggestion was made, and I made it, that this could be interpreted that the receiving spouse becomes liable to the creditor and that brings in a new liability. So instead of that, Mr. Silver has changed it so that it is clear that when there is that kind of an indebtedness which is not necessarily registered against the property, that the indebtedness of the owning spouse remains and the spouse receiving a joint interest becomes liable to the spouse for a half-interest in that indebtedness so that it is accountable.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Mr. Chairman, I'm going to ask a couple of questions here. The marital home under Section 2, I believe, becomes joint ownership, doesn't it? Then we are referring to Section 3 which is talking again about the marital home. And joint ownership gives management, doesn't it, joint management? Why would anybody register? Why would any spouse register when they have got joint ownership, joint management; why would they register and have all the liabilities and everything put on their shoulders?

MR. CHERNIACK: Mr. Chairman, I think that joint ownership carries with it joint ownership subject to any registered encumbrances. But then, let me give an example . . .

MR. F. JOHNSTON: . . . I read this, "upon becoming so registered." Does that mean you

automatically become so registered?

MR. CHERNIACK: On application one becomes registered.

MR. F. JOHNSTON: On application?

MR. CHERNIACK: Yes.

MR. F. JOHNSTON: Mr. Chairman, why would I want that problem?

MR. CHERNIACK: Mr. Chairman, it's the equity that's shared, it's not the liability that can be beyond the equity. The example I could give is that if I buy the marital home and my brother lends me the money and I give him a note for it instead of a mortgage, I might have clear title but I might still owe my brother a considerable amount of money borrowed for the acquisition. Then what Section 5(4) says is that if my spouse wishes to have her half-interest registered, then she has to take it subject to sharing with me in the liability to my brother for the moneys advanced to buy it and she therefore becomes liable to me for half of the moneys that I owe to my brother who advanced me this money with which to buy it. I think it's only fair. In the end, she doesn't lose by it because she acquires her registered ownership and only for the equity.

MR. F. JOHNSTON: . . . only if she wants to become . . .

MR. CHERNIACK: She doesn't become registered unless she certifies . . . But there's no reason why she shouldn't want to.

MR. F. JOHNSTON: Why should she want to?

MR. CHERNIACK: She loses nothing.

MR. F. JOHNSTON: She gains any indebtedness incurred and any taxes . . .

MR. CHERNIACK: She gains the equity subject to the indebtedness. But she doesn't have to if she doesn't want to.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: You have just made a statement; where does it say that?

MR. CHERNIACK: It says in 3(1) which we have just passed, "the other spouse is entitled to be registered." And under Part 3, there are ways whereby she can become registered.

MR. SPIVAK: Oh, yes, I accept that but where does it say that it's the equity specifically?

MR. CHERNIACK: It says she becomes registered as joint owner and under 5(4) it says she becomes liable for half of the debts. I just don't see that as . . .

MR. SPIVAK: Well, if there's no application of the vesting order, her rights are there and she is entitled to what you are saying, I mean, that is what we are assuming. I'm just simply asking you, if she doesn't apply and she doesn't ask to be registered, where are her rights protected that it is clear that it is only the equity that we are talking about?

MR. CHERNIACK: Well, there is no more that she can claim to be entitled to than the equity.

MR. SPIVAK: She is entitled to the marital home, 50 percent of it.

MR. CHERNIACK: To the equity of it. But 5(4) is the one that makes her liable for half of the indebtedness. I wish I could answer but I can't answer because I don't understand the question.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: It only makes her liable if she volunteers but I think I follow Mr. Cherniack when he says that she doesn't lose anything because she becomes a half-owner in a house.

MR. CHERNIACK: Subject to one-half of the indebtedness set out in 5(4).

MR. F. JOHNSTON: Subject to one-half of the indebtedness. But then the breadwinner or whatever spouse is bringing in the money has got to pay the taxes. If she does not become involved, she has full management and if she doesn't register, she still has full management.

MR. CHERNIACK: She doesn't have management until she has joint ownership surely.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: I just want to have it clear. We're not at cross purposes here; what we are trying to do is resolve it. If in fact, under 3(1) she is entitled to be registered as a joint owner, obviously if she is registered as a joint owner and there are liabilities with respect to the marital home, the marital home is encumbered, it is on the title, it's known, it's determined. But in effect, take Mr. Cherniack's example, the loan from the brother is not registered. It is a liability and therefore all that she is entitled to is 50 percent of the equity; we're not quarreling with that. But the problem at this point is where does it say that?

MR. CHERNIACK: Mr. Chairman, to me in 5(4), it says that she becomes liable to her husband for one-half of the liability incurred by him in the acquisition of the premises and for any taxes that become payable.

MR. AXWORTHY: So what happens if she doesn't register?

MR. CHERNIACK: If she acquires the rights, she also acquires the debts.

MR. AXWORTHY: But she is not required to register under the Act.

MR. CHERNIACK: Well, then why should she be liable for the debt if she doesn't register?

MR. AXWORTHY: That's the whole point.

MR. CHERNIACK: Then you are saying, so she won't get her half. Well, she won't get it. — (Interjection)— But the husband is the one to whom she is liable so surely he is going to see to it that

she doesn't get the registration at any time except after an accounting where she is liable for a debt. If this is inadequate, I think I should back out of this because if you are talking about the structure of it, then by all means let's improve the wording. I don't have any problem with it. By all means, let's spell it out more.

If the honourable members say that 3(1) should say "to be registered as joint owner thereof subject to such registered encumbrances as may exist," okay, if that's what's needed. I don't think it is needed, but . . . .

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, are we in fact reducing the security of the third party if it is an unregistered loan, a personal loan say, using the example that Mr. Cherniack gave. He borrowed $20,000 from his brother and suddenly he only has a half-interest in the property. But his brother has to collect all of that from Mr. Cherniack. He has no right to call on the third party, Mr. Cherniack's spouse, for the other half. I think you are reducing the security for the third party.

MR. CHERNIACK: He didn't get security; he didn't ask for security.

MR. GRAHAM: No, he didn't ask for security because at that time he felt that you had, probably, a greater asset than you now have.

MR. CHERNIACK: Mr. Chairman, Mr. Silver already has an amendment to take care of that. Where would it fit in, Mr. Silver?

MR. SILVER: Section 38.

MR. CHERNIACK: He plans it for Section 38.

On the point Mr. Graham raised, maybe we can read it, Mr. Graham, or come back to it if we don't.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: . . . is the one that we were raising. It is not; it is a totally different one. I think what we are trying to say is, going back to Mr. Johnston's first intervention, that the registration is voluntary. It is an entitlement; it is not a requirement. It is only when the registration takes place that the one spouse begins to acquire not only certain halves of the liabilities, however it is registered. What is the incentive for registration? Why would anybody is their right mind want to register? They wouldn't want to register because, in this case, they would simply have half of the rights without having any of the encumbrances until they register, so there would be no registration. So why would they bother? That is the issue that we are raising.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: I think the legislative counsel will read, and my problem is because I am not sure of his wording exactly, 5(4), which says "a spouse who is entitled to be registered as a joint owner of premises under Section 3," and then he said "Clause (a)," and if you can just read from there on . . . because I think then you will see the point.

MR. CHERNIACK: You notice it is not "owing at that time." It is the total I think.

MR. SPIVAK: "A spouse who is entitled to be registered as a joint owner of the premises under Section 3" and then read the next part.

MR. SILVER: Clause (a) , "Becomes, upon becoming so registered, . . . "

MR. SPIVAK: Okay, here is the point. We might as well stop right here. "Becomes upon being so registered." That is the point.

MR. SILVER: Upon becoming so. . .

MR. CHERNIACK: Becomes what?

MR. SILVER: That means that the spouse becomes, upon acquiring ownership of that joint interest, when the spouse acquires ownership that is when the spouse, at the same time becomes liable for one-half . . . .

MR. SPIVAK: That's not the intention . . . .

MR. CHERNIACK: Mr. Chairman, I can't hear the discussion and I would like to. Mr. Silver was elaborating and I think we should hear him out.

MR. SILVER: I just wonder if it is clear to everyone that by saying "upon becoming so registered," it is meant "upon becoming the owner, the joint owner of premises."

A MEMBER: Oh, no. That certainly isn't clear . . . .

MR. SILVER: And the reason we are saying "upon becoming so registered" is because that is the only way that she can possibly become the owner. —(Interjections)—

MR. CHAIRMAN: Order please. Can we have a little bit of order and just one member at a time. The Chair will get confused otherwise. Mr. Sherman, please.

MR. SHERMAN: Mr. Chairman, could I refer Mr. Silver and Mr. Cherniack to Clause 2 of the bill, "Joint Ownership of Marital Home. Where premises are the marital home of two spouses within the meaning of The Dower Act both are deemed to be the joint owners thereof on every legal or equitable interest therein for all purposes and whether or not both are actually so registered."

MR. PAWLEY: I think you must be reading the old Section 2.

I wonder, would it clarify matters if, under 5(4), the third line, after "so registered," we added the words "as joint owner."

MR. SHERMAN: Mr. Chairman, in response to the Attorney-General, of course I am reading the old Section 2 because there is no new Section 2. There is a new Section 2(1) and a new Section 2(2), etc., etc., but there is no new Section 2. We have already passed Section 2 and it is the old Section 2.

MR. PAWLEY: No, there is Motion 5. It says "that Division 1 of Part 1 of Bill 61 be struck out and the following section and Division be substituted therefor."

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: On a procedural point, I don't see any disagreement amongst any of us on what this ought to say. What it ought to say is that if, I believe we agree, that if, as, and when the spouse asserts her right to be registered as an owner, she becomes liable for one-half of whatever moneys were borrowed by the owner with which to buy the premises. I think that is what it means. I am quite satisfied that Mr. Silver should be given an opportunity, and not under pressure, you know, under our jumping on him, to work out the wording if this wording is not satisfactory. I really don't want to debate whether the wording is satisfactory or not as long as we all understand the intent.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: The problem with the principle here that we are talking about is: Are you really suggesting that she has to assert her right, or she has that right without that assertion? Because, you see, if it is asserting the right, then you are really imposing on the other spouse, the wife, something that she doesn't have to do under The Dower Act because those rights are there whether she asserts them or not.

What I am saying at this point is that my understanding is that that was a matter of right. Therefore if it is a matter of right, she may assert her right to title, to be registered, so that there in fact is knowledge to the world of that, but she has that right as of this bill. She has a 50 percent interest in the marital home, and therefore the problem is . . . and she does not have to register, there is no obligation to register, because even if she doesn't register she still has the right. But her right really is the net of the home, encumbrances against the home, the liabilities, being something that has to be shared by her equally, as it has to be shared by her spouse.

MR. CHAIRMAN: Mr. Axworthy.

MR. PAWLEY: Can Mr. Goodman make a comment which might help?

MR. AXWORTHY: I was just going to raise the same point. I guess what we really are trying to find out — we have got a lot of things dealing with the registration, but the fact of the matter is, as we read it, you don't have to register to be the half-owner, and it is only an entitlement, and that we simply say that therefore all these other things that are incumbent or flow from registration, why would anybody in their right mind want to register if they already have the right anyway?

MR. GOODMAN: The problem with the old Section 2 is that it sort of conflicted with The Real Property Act in Torrens title. We have, in the new division, a right of survivorship, the fact that nobody can deal with that land without the consent of the other spouse. The fact that she, let's say assuming it's the husband that has the land in his name, the wife can take it at any time that she wants to or the other spouse can take it at any time and she doesn't lose anything by it. As I say there is the right of survivorship, so that she has everything that in principle we say that we are giving to her, and yet if she is not registered as owner, it doesn't, it shouldn't follow of course that she'd be responsible for half of that liability up until the time that she does become registered . . .

MR. AXWORTHY: Well, Mr. Chairman, I think that was the point, that why would anybody want to register if they already had the rights under this Act without registration but had none of the liabilities, why would anybody in their right mind want to register or are you saying that the only way in which one exercises their right is by registering?

MR. CHERNIACK: Well, Mr. Chairman, that's my interpretation.

MR. AXWORTHY: Well, that's what we're trying to find out.

MR. CHERNIACK: My interpretation is that you don't force property on a person. My interpretation is that we recognize the entitlement , just an automatic entitlement to be a joint owner and under this proposed 5(4) which is what we're discussing now, we also say that if that right is exercised, then the indebtedness attached to the property should be shared and, as I see it, the danger that members have suggested is that you may find the indebtedness greater than the value of the property and if the ownership is automatically forced on a person, the debt may become greater than the value of the property. If that is the point raised, then I would say no, that it has to be when that person registers the interest, either by way of a caveat or by obtaining an order.

MR. AXWORTHY: Mr. Chairman, I don't think that was the point that was being raised. Let's try to re-say it. What we were trying to find out is whether the Act so reads that the one spouse automatically acquires a right, a 50 percent right in a property without registering.

MR. CHEIACK: Let's get the wording correct. Automatically acquires a right or an entitlement to be registered.

MR. AXWORTHY: May I finish? Or does the right only become active when they register?

MR. PAWLEY: Yes.

MR. AXWORTHY: Okay, that's the point.

MR. CHERNIACK: Yes, when they exercise their right.

MR. AXWORTHY: When they exercise their right but up to that if they do not register, they in effect are not, if they don't have 50 percent ownership, management, etc., they must register . . .

MR. CHERNIACK: I believe that's correct. They must register in the Dower Act.

MR. PAWLEY: No, they have the right to usage . . .

MR. AXWORTHY: That's the confusion. Even if they're not registered, that's the whole point. You see, Mr. Chairman, the way the Act reads, they have all the rights without registering, and yet we have all these sections dealing with registry and it is only on the registration that they acquire the other liabilities and so on so there seems to be some real anomaly there that I think has to be clarified.

MR. SPIVAK: I agree with that point, I don't think that's been resolved. If they have the managerial responsibility, then in effect they have the right, even before they exercise the entitlement to registration. Now, the other problem is . . . let's take a situation where there is no encumbrance but the title is in the name of the husband and it is the marital home. There is nothing to suggest that he can't hypothecate that for whatever purposes, the wife not having exercised her entitlement. It simply means at that point that when she does exercise her entitlement she is subject to that and that encumbrance with that hypothecation may prevent her from every being able to register her interest or in any wise obtain it. This is the problem I think we have in dealing with this because I think what we're really talking about is notice to the world and the obligations of people dealing with the marital home to know in effect the interest, including the wife, herself.

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: In reply to Mr. Axworthy's latest comment, I think Mr. Goodman may wish to reply to Mr. Spivak's latest comment. We tried as you can see from Section 2 of the printed bill, we wanted by the terms of the Act to vest one-half of the interest in the marital home in the name of the spouse without anything to be done further by her, but upon checking it, upon reviewing it with Mr. Lamont of the Land Title's Office, we were told that that was impossible because it would go contrary to the paramount principle of The Real Property Act, that anyone can rely on a Certificate of Title. In other words, if a Certificate of Title says that this house, this property, belongs to one spouse, we cannot, by this Act, say that it belongs to both spouses or to anybody else. So, we had to change that for that reason and that is why the other spouse's acquisition of a one-half interest is based on registration and that's why we call it an entitlement to be registered.

MR. AXWORTHY: A question based on that. I think that's beginning to clarify it so that the definition of right is one that has to be actively exercised by one of the spouses; it would not come to them simply by the passage of the bill, what the bill simply entitles them to exercise that right, therefore there is an act of volition on the part of one spouse to become the half owner and that therefore all the other things in Section 5 follow from that. I think that that should be very clear because it has not been my understanding up to this point in time.

MR. SILVER: No, but care should be taken that while the actual ownership depends on registration and does not exist until there is registration, the incidental rights, management, survivorship, use, non-severability, those apply even . . .

MR. AXWORTHY: Automatically.

MR. SILVER: . . . automatically, even where there is no registration, even while there is no registration.

MR. AXWORTHY: I see, okay.

MR. CHERNIACK: But then, Mr. Chairman, that is the way I understood it. What I then would like to clarify is that the spouse is liable on an accounting for half of the indebtedness and if that's not clear, I think it should be clarified and I wonder if counsel have agreed on the rewording of 5(4). I gathered that Mr. Goodman had also prepared some different kind of amendment to the same extent to 5(4). I wonder if they could clarify that, if we're all agreed that that's the way it should be.

MR. AXWORTHY: Just to finish it, it does raise a question I think started with Mr. Johnston, and that is that if a spouse on the passage of the Act, declares all these incidental rights other than that of ownership, which he or she would have to exercise through an Act of their own, going down and changing it at Land Titles. Then they still raise the question why anyone would bother exercising that, because they already enjoy some of the other prerogatives without any of the liabilities.

MR. CHERNIACK: But it was a sale.

MR. SILVER: The whole point is the ownership, equity. . .

MR. PAWLEY: . . . wouldn't receive the equity.

MR. AXWORTHY: Well, that should be clear, that if in fact then, someone for reasons of indifference or ignorance or whatever it may be, doesn't exercise their rights, then in fact the 50-50 split of the marital home does not apply on sale and ownership. Is that correct? It's not intended, but that's the way it seems to be working out.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Could I ask the Attorney-General for clarification of that comment that he just

made to Mr. Axworthy when he said, "It's the equity." Is he talking about the equity in total or is he talking about the equity minus the liabilities that are cited in 5(4)? Is he saying that unless the other spouse registers, he or she is not entitled to the equity at all or is he saying that they're only entitled to the equity minus the liabilities?

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Equity. Mr. Chairman. . .

MR. SHERMAN: Well the interest in the house after liabilities.

MR. PAWLEY: Yes, it would be the interest after liabilities. Unless there is registration, as I understand it, that equity would not be secured.

MR. SHERMAN: But, you're not saying to Mr. Axworthy that the mere fact of not registering precludes or eliminates that spouse's interest in the marital home. You're not saying that are you?

MR. PAWLEY: No, no.

MR. SHERMAN: You're saying that what it simply means is that that interest must be subjected to a mathematical subtraction whenever either that marriage comes to an end or the home is disposed of. At that point the liabilities would be subtracted from the value of the home.

MR. PAWLEY: That's right.

MR. SHERMAN: But the spouse even though unregistered, would still have his or her 50 percent interest in the remaining sum after the liabilities were subtracted.

MR. PAWLEY: Yes, the 50 percent after the liabilities are taken.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: The problem again you know, if you're going to suggest that it has to be byvesting in the name to the entitlement, then it will not be a commission of an illegal offence then, I would assume , to deal with the property if it is in the name of the spouse in anyway he sees fit.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Part III does set out that the owner, the single registered owner of jointly owned premises of the marital home, has to swear an affidavit which will include that the property is not the marital home. If it is the marital home, the Land Titles Office — and we're coming to that later I believe — is prevented from permitting a disposition of that title without the adequate signature of the spouse. —(Interjection) — Hypothecation includes that, unless it's hypothecation of title only. —(Interjection)— Well, but then it's not registered. Then it's only the interest of the person involved and therefore, if the spouse has not taken the trouble to arrange to have the title issued, then of course that title doesn't give the full picture just the same as in the case of a dower interest, and I don't think that we should become too confused about this because it is not that difficult. I think the important thing that Mr. Silver pointed out, is that the wording had to coly with the needs of the Real Property Act as to entitlement rather than registration. That's pretty important. —(Interjection)— Well, it doesn't if we accept that Part III carries forward to the spouse all the protection that is needed to make sure that there is not a disposition. That applies the same way as . . . Mr. Spivak says hypothecation. If I take the clear title to my property which is in my name alone today into the bank, the bank can hold the title but the bank cannot take away my wife's dower rights.

MR. SPIVAK: And she may never get them.

MR. CHERNIACK: Why wouldn't she?

MR. SPIVAK: Because the bank may hold the title.

MR. CHERNIACK: I'm sorry, the title is only evidence as the title does not mean that the bank can refuse to give it up to protect the dower rights of the wife. If the husband should die and then the title has to be transmitted with a life estate to the wife, she'll get that without the bank being able to take it away.

MR. SPIVAK: After the husband dies?

MR. CHERNIACK: Well, I'm saying that that is evidence of the fact that the wife is protected. —(Interjection)— The dower right is clear in the Act, in the Dower Act, and no husband can hypothecate more than his equity in that property. So that if he hypothecates the whole title, he still cannot do anything — as a matter of fact the bank doesn't even acquire the right with which to take that title away, all it can do is hold the title and the Land Titles Office can dispense with a Waiver of Title. I think we are making this a little bit more confusing than it really is by bringing in these problems that would exist today under The Dower Act, if indeed they were problems.

MR. SPIVAK: But the spouse has certain rights enunciated by both legal counsel and Mr. Goodman — the rights with respect to the Act —but the husband that is dealing with the title that is in his own name as the marital home, by pledging it to the bank or to any kind of financial institution, has a right to deal with it. Now, Mr. Cherniack says that he can only deal with his half interest, but if in fact there has been no application for vesting and entitlement to become registered, the rights really are rights that are spelled out under certain sets of circumstances — one of survirorship. I don't see that there is a prevention or there exists something that stops the husband with dealing with that title and in fact pledging it and pledging in terms of the total ownership, because the entitlement is there. It's a right but the right does not exist until registration takes place.

MR. CHERNIACK: Mr. Chairman, may I ask Mr. Spivak whether today, a husband who is a sole owner of the homestead cannot go to a bank and hypothecate the title and in doing so, surely Mr. Spivak is not suggesting that he is pledging the property, because if he were pledging the property, surely he could not do it without the consent of the wife.

MR. SPIVAK: He's pledging the title.

MR. CHERNIACK: Just the title? Just the evidence of ownership, and the wife's right are not abridged nor are his in the property.

MR. SPIVAK: You're saying that the wife then, even though the title is pledged, would be able to apply for joint ownership under the vesting order 5(4).

MR. CHERNIACK: Just the same way that she can today prevent her husband from mortgaging the property to the bank or selling that property. The Dower Act protects her now and surely the banks know that or else they would ask for the mortgage rather than hypothecation. I think that Mr. Silver has drawn this in such a way that the rights to the marital home, give the wife the same protection as against strangers, that the Dower Act today gives against strangers. The only thing that I think has to be clarified is the wording of 5(4) to make sure that she is liable for debts. I think that's the important thing. Other than that, I think she has at least the protection of the Dower Act and more than that under Part III, she has the right to actually be registered on application.

MR. SPIVAK: Just on the last part. I assume that you're going to make a change on that, on what Mr. Cherniack has said, because I agree with him and I think that that has to be done.

MR. CHERNIACK: On 5(4), the liability. I'd like to hear Counsel again and see if they're satisfied with it.

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: I'm satisfied that it says what it is intended to say. I have no doubt there are quite a few other and better ways of saying the same thing and I suppose we could toy around with it and find other ways of saying it that more of us would find satisfactory. But I think it says what it is intended to say.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: In the light of what was discussed, I'm wondering whether the problem is that she becomes liable upon becoming registered or would you say that she ought to be liable on entitlement? Is that the difference that we seem to be debating? Liable on entitlement or liable on registration?

MR. SILVER: The question is, do you want to say that a spouse even though he or she is not yet the owner of a one-half interest and may never be the owner of the one-half interest, should immediately become liable for a liability that was incurred because of that property. Or do we want to say, no, until that spouse becomes the owner, only then does it make sense for her or him to assume his or her share on the liability. That's what it boils down to.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: I just want to ask one question. If the liability was greater than the market value of the marital home, would they both share equally in the liability?

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I think, Mr. Chairman, that is what we are getting at, that if we determine that she should only assume the liability or half the liability, and she arranges to have her right registered, then she could protect herself from the negative asset — that is for being liable — by not requesting the change until after she is sure that there is equity there in which she would share. That's one way. The other way would be as Mr. Graham described it. If we say she is automatically the owner, then she is automatically the debtor — then Mr. Graham is right. It could be, and I think that's a matter that we ought to decide here, is which is the fairest way to deal with it.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Mr. Chairman, I can go back to discussions when we were at the hearings and this came up quite often, if there's joint ownership there has got to be joint liabilities. Now somebody has management and all the other rights that we assume that this Act has, that's when it all came about, 50-50 — if the house is sold and somebody gets half, that somebody should be responsible for the liabilities as well. And under this particular section, I still say that if she doesn't register, she has no responsibility for any liabilities. But if the house is sold, she gets half.

MR. CHERNIACK: Mr. Chairman, I am inclined to agree with Mr. Johnston. I think that just as she is entitled to half, so she should be liable for half. Now these are people who are living together, they still got a marriage going for them, and I would think Mr. Johnston is suggesting that if she acquires the ownership, let us say, she should acquire the liability, half of it. I think that that is right and I would probably remove the words, "upon becoming so registered," so that it's clear that when she is entitled to it, she owes it. And the only thing is, if the couple agreed that she ought not to acquire what may be a negative asset, if as in Mr. Graham's case the indebtedness is greater than the value, then they can b y this bill, mutually from opt out that ownership her acquiring they both agree she shouldn't. And therefore, I opt with Mr. Johnston that, you know, just thinking it through, that by acquiring the right

to own it, she should also acquire the debt for the half interest.

MR. PAWLEY: Maybe Mr. Silver will be given an opportunity to prepare an amendment along those lines.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I'm a little concerned that we're beginning to twist and turn and losing sight of what the bill is about — and the bill is about 50-50 division of property. Now we're moving backwards instead of forward and I think we've lost sight of that, because we're saying that can only be exercised according to the Registrar of Land Titles, when in fact the spouse who is presently the owner decides to go and register. So in a sense, that is not the full right that was normally assumed under this bill. It may be that it has to be and all we are giving them is the entitlement to become an owner, not ownership — that they will have to exercise that. Now that will take a very major step I would suggest in public education, because there is going to be a lot of women kind of confused, saying, "Boy, the bill is passed and now I'm half an owner," and somebody comes along saying, "No, you're not, baby, because you haven't registered." Now you're saying, even though you are not registered, not a half-owner, you better take the debts. —(Interjections)— No, that happens to be the explanation that has been given.

MR. CHERNIACK: That is Mr. Axworthy's explanation.

MR. AXWORTHY: Well Mr. Chairman, I am sorry, it's not my explanation; I heard it from Mr. Silver. I think you should listen to him as well so you understand what he is saying.

MR. CHERNIACK: Mr. Chairman, I would accept Mr. Axworthy's reprimand in the spirit in which he gives it. I would say that under Part III where the owner, the single registered owner, cannot deal with his property without his spouse being involved in it, just as under The Dower Act, so does that person who is entitled by the passing of this Act to be a joint owner, acquires that right and cannot be defeated in that right except by the perjury of the husband. And since she has that right, then I see nothing wrong with her having the liability because that property cannot be disposed of or dealt with without her participating in the sale under Part III. Now, if I am wrong, I want Mr. Silver who has been listening to me, I am sure, would correct me about that. That's my understanding of it.

MR. AXWORTHY: Well, Mr. Chairman, the original statement was that the Act had to be changed in order to be in accordance with The Real Property Act. That change has in fact changed this bill, and nd it's now turned it into a two-step procedure that first the bill gives entitlement or a right, but the right must be exercised by an act of registration, then one become a half owner. It's only when the second step takes place that all those rights begin to apply. If you're talking simply about the first step, Mr. Silver said the only thing attached to that are incidental rights, not full rights of ownership.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I think that the problem that we have is one that was made very clear by Mr. Silver that the Registrar-General is unable to deal with it in any other way but that the ownership has to take place upon entitlement. Now I don't know what other way we can mechanically deal with it except to deal with it in that manner. If there is some other way, then I'd be happy to find out but I am not aware of any other approach that can be used.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: I'll tell you what we can do then by legislation is express it, recognizing that that is in fact the intent, recognizing as well that the entitlement to be registered really confers nothing more than what we've really declared as a policy. So therefore in effect, in order to be registered, if one wants to be in a title, that we have to comply because of The Real Property Act, and so therefore we say what we are saying. But ignoring that, the right still exists whether they are in fact registered or not, because in effect we are saying that they can't deal with the property anyway. So it may very well be that we need something else that will express that. That's really how we started off at the beginning. I don't know what that would be but I think we'd have to look at that in terms of coming up with something which will basically express those things.

MR. PAWLEY: I think your concerns unfortunately we could have dealt with under Part III. I think that many of these questions would be better answered because that very subject matter that Mr. Spivak has referred to is dealt with in Part III.

MR. CHAIRMAN: Mr. Johnston.

MR. J. F. JOHNSTON: Mr. Chairman I wanted to bring up something after Mr. Axworthy spoke. I seem to recall Mr. Silver saying that the Registrar-General said that we can't give a person ownership unless she registered. We can say in this Act that all these powers are there, or all of the 50-50 ownership, which is my interpretation of the reason for this whole legislation, that marriage is a 50-50 affair, we can do that. And we're doing it in this Act. But the Registrar-General says that we can't do it unless there's an application for registration from the spouse. Now if that doesn't happen, there is no splitting of liabilities.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, there is a very slight difference between being the owner and

the registered owner, and that difference is the recording of ownership. I can buy a piece of property, I can get a transfer, I can hold the transfer in my pocket, I am the owner. But the title in the Land Titles Office is still in the name of the vendor. Now I own the property and I am entitled to be the registered owner, but I have to register the transfer, and until I do, I am not the registered owner but I am the owner. So let's go back. I am presuming now to give a little lecture in first year law, but there was a time when a passing of a deed under the old system, passed title without registration, and registration was not necessary but was advisable. With the torrens system, it became necessary to register a transfer in order to deal with the property. It had to be a new title and had to be issued. So as in the old system when I could buy property and take a deed of land and keep it in my pocket, and when I made a sale, I would give that deed plus another deed to my buyer. My buyer is now carrying around my deed and his deed and he is the owner but not registered.

Now under the torrens system, title will only be issued upon registration. I visualize that the whole intent — and that's in the Law Reform Commission — it was never changed. I think our Committee always accepted the principles of a marital home being jointly owned by enactment; that the Act, whatever it says, should say that the ownership is in both parties, but the registration is necessary in order to record it. And I do think that Part III protects the person who has not recorded it, and I do think that in order to dispose of the property, there would have to be a recording at the time of disposition. Now I think that's the situation; I don't think it's a problem. The only thing is that I don't think it's clear — the point Mr. Johnston raised, which I am inclined to agree with, that upon the acquisition of the marital home with the passing of the Act, whichever comes later, the indebtedness for acquiring the home should become an equal liability, half and half. I don't think it says that quite so clearly, but I am inclined to think that it should. And we still recognize throughout the Act the bilateral opting out.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I think I recognize the intent of the bill and I think I understand Mr. Cherniack. Mr. Cherniack understands the intent and makes it clear to me, although it may have been difficult for him, to explain that intent to me. I think what we're concerned with here though is that Mr. Cherniack is not going to have the opportunity to explain that intent the way he has explained it before this Committee, to every wife and husband, every spouse in the Province of Manitoba. The bill in its present legalese, in the manner in which it is presently written, does not say clearly what a great many people expected the legislation to say, that is that a marital home is jointly owned and jointly belongs to a wife and a husband. The problem is that we are dealing here with legal technicalities. Mr. Cherniack deals in real property law i obviously and he understands the difference between ownership and registered ownership. But I would humbly suggest, Mr. Chairman, that 99 percent of the people in the province don't understand it, and what they expected out of this legislation was a clear definition of equal ownership rights and equal ownership of that marital home. They are now being told that that doesn't automatically follow. There is a procedure that has to be gone through before that takes place, and that once that procedure is gone through, there are certain liabilities that accrue to the spouse taking that procedure which can be avoided if the procedure is not taken. And the difficulty is not simply in 5(4). The difficulty lies in the whole presentation of the concept of the joint ownership of the marital home. I understand the concept. It's the presentation of the concept that has now become muddied and difficult.

MR. CHERNIACK: May I make a suggestion? I wonder if Mr. Silver would object to it, or if he thinks Mr. Lamont would, that in place 3(1) which is the first we referred to joint ownership, if we say, "Where premises are the marital home of two spouses, they are both deemed to be joint owners thereof, and when only one of the spouses is registered as owner, the other spouse is entitled to be registered as joint owner." If we can express the intent that they should both be owners, but recognize that when only one is registered then the other is entitled to be registered along with it, then wouldn't that take care of it. Mr. Sherman says, "Let's have it clear so anybody reading it understands it." Now, is there anything wrong with saying that this law deems them to be joint owners, but when only one is registered as such, the other is entitled to be registered as joint owner. Is that not an answer?

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: I think the Registrar of the Land Titles Office would object to it on the same grounds that he objected to our prior Section 2.

MR. CHERNIACK: But if he objects to it, does that make it a problem? Because what we are saying, what Mr. Sherman was saying is that he wants it understood that they are automatically entitled to own jointly. And then we say when only one of the spouses is registered, the other is entitled to be registered as owner. So all we're saying is — well, I don't want to repeat myself.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I was going to suggest, Mr. Chairman, if 5(4) made it clear, and if an application is required in 5(4), that the assumption of a debt takes place upon ownership even before registered ownership. That's really what we're dealing with — ownership and registered ownership — and that

the debt which I think would be fair, would be assumed upon ownership. That is only involving the claim insofar as the one spouse against the other spouse for one-half of any debt encountered. If that was made clear in 5(4), it would not deal with the problem.

The concern that was expressed by Mr. Sherman insofar as the concept, I think that Manitobans recognize the fact that in order for any legal relationship to be formed, that often processes are required according to law — certainly, if joint tenancy is to be obtained insofar as a title registration is to take place, the document; the same case here, a step has to be undertaken in order to be recorded as a joint tenant. But the ownership is still immediate even if that ownership is not registered.

MR. AXWORTHY: . . . which grows out of that. There are probably a number of instances where the registered ownership of the home is determined primarily for tax reasons, that one spouse may take the registration on in order to save the other certain taxes on capital gains and everything else. How would this particular interpretation that we are now receiving apply to those cases where — (Interjection)— Yes, I know we are not supposed to talk about taxes. —(Interjections) — Yes, and it comes into taxes. But there are cases where one spouse will say, "You register the house in your name because of prospective capital gains arrangments and because my income is higher, therefore, it would be to my tax advantage if the house was sold." Now under this situation where Mr. Cherniack is saying you are really the owner, but you are not the registered owner, what happens if you maintain that *status quo*? No one bothers to register it, then it is a tax law arrangement.

MR. PAWLEY: Mr. Chairman, it would be nothing to prevent an individual from opting out if they are concerned about some tax implication. I don't think they're . . . .

MR. AXWORTHY: Opting out of the whole standard marital regime?

MR. PAWLEY: No. Out of this part, this part only, if there is concern about a tax implication.

MR. CHERNIACK: That's Number One. Number Two, I don't think there is capital gains . . . .

MR. AXWORTHY: But I mean, not on that, but there are tax reasons for doing that.

MR. CHERNIACK: Might be estate taxes.

MR. AXWORTHY: Yes.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: One of the problems I have here is understanding why the Registrar-General will not accept something like Mr. Cherniack has suggested, not in that exact wording, but something which would in effect express it. Where is he . . . Because we are simply saying that where the premises of the marital home of the two spouses and they are deemed to be joint owners, and I just would add the other thing, that they are entitled to be registered as such, and only one of the spouses is registered and the other spouse is entitled to in fact register. Why would he object to that position?

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, rather than us deal in distance, I would suggest that we have the Registrar-General here tomorrow. especially when we are dealing with Part III, , which deals with all the mechanics of registration.

MR. CHAIRMAN: That being the case, would the Committee be prepared to put over 5(4) until tomorrow and continue with Section 6?

MR. SPIVAK: I would like to raise another point with respect to 5(4). The one point that Mr. Cherniack has raised with respect to indebtedness I think has to be considered as well. We may want to deal with that as well at the time, tomorrow. But I want to deal with the question of . . . about any tax that is payable, and I am not sure, again, of the exact wording, but the problem here is this. The tax that we are talking about is not the registration tax, that is, the tax on registering the documents. We are talking of any provincial or federal taxes, provincial or federal. Now really what we are saying is any provincial or federal tax that is payable by the one spouse really should be payble by the other spouse to the spouse. I mean it's really the intertransactions that we are talking about between themselves. In other words, the tax that will be liable is the tax on the spouse that is the registered owner, not the tax of the spouse who is applying, even though she may have to share it 50-50. So in effect the wording should really be, "Any tax that . . .", and I haven't got the change that you made but it is "Any tax that becomes payable by virtue of the registration. " So it really should be "any provincial or federal tax payable by the registered spouse," because he or she will be the one paying that tax that becomes payable by virtue of the registration.

MR. CHERNIACK: How is that different in effect from what it now says?

MR. SPIVAK: Well, it says that "Any tax that becomes payable . . . . "

MR. CHERNIACK: As a result of this Act. Payable by either, and I agree with Mr. Spivak, it should be . . . It would be payable by the transferor, but why limit it to that? If there is any tax payable because of this, whatever it is should be split 50-50.

MR. SPIVAK: Well, okay.

MR. CHERNIACK: But the wording, again, is something we could . . . .

MR. SPIVAK: Well, all I am suggesting in connection with the wording — I am not talking against principle — the problem we have here is that I don't know what tax we are talking about. There is reference to the fact that it would not be capital gains tax.

MR. CHERNIACK: Yes. I don't believe there is any, but it was in there and my own reaction was, Well, if there is any tax that becomes payable . . . . I don't think there is any in the marital home, but I thought, Why not leave it there once it is there? It will certainly apply in all the others. It could be recaptured depreciation. There could be capital gains tax. And therefore I don't see that a tax liability will arise as a result of the transfer of the marital home. I don't think so. And it could be eliminated, but my own thought was, It says: any tax that becomes payable. If no tax becomes payable, there is no problem. If there is a tax, why shouldn't they split it 50-50.

MR. SPIVAK: But we can't really legislate about a federal tax.

MR. CHERNIACK: But we are not saying the tax is not payable. We are saying that if tax is payable, it should be split.

MR. SPIVAK: But even in our legislation, it really is on . . . . Yes, any federal tax, any provincial or federal tax, where it is legislated . . . .

MR. CHERNIACK: If it is payable, it should be split.

MR. SPIVAK: It should be split, and we have the right to legislate that any federal tax payable by one spouse is payable by the other?

MR. CHERNIACK: No. What we are legislating is that one-half of the liability should be paid to the other, that is, the transferor, usually the husband, becomes liable for $1,000 of tax. Then she has got to pay him $500.00.

MR. SPIVAK: Yes. That's liable for a federal tax?

MR. CHERNIACK: Well, yes.

MR. SPIVAK: But all I am saying is, you know, again the question about our right and our jurisdiction.

MR. CHERNIACK: Mr. Chairman, the jurisdiction we are asserting is as between the two spouses.

MR. SPIVAK: Yes, that's right.

MR. CHERNIACK: That's all.

MR. SPIVAK: But that's all I am saying, and that is all I believe that should be expressed in that section. It is between the spouses.

MR. CHERNIACK: I thought it says that. Well, I'm sorry, I'm sorry. The wording of the change says, "liable one spouse to the other." You don't have it there unless you wrote it out from Mr. Silver's words. —(Interjection)— Oh, well. Oh, I see. I thought it should apply to both.

MR. SILVER: Well, , it should go in Clause (b) as well.

MR. CHERNIACK: Mr. Spivak is right then. I misunderstood. We cannot say that a person is liable for payment of a federal tax which is payable by another person. All we can say is that that person is liable equally to the other, to share in that tax.

MR. SILVER: I don't know, perhaps this is wrong, but I think the assumption was that once the spouse becomes a registered owner, that both are now the registered owners, that any tax . . . well, property tax, anyway, would be payable by both.

MR. CHERNIACK: Oh, yes. But that wouldn't be by virtue of the registration. We are really talking about tax that arises as a result of this transfer, and clearly no matter which one of the two spouses becomes liable for it, the other one should be liable for half of that to the other spouse. I think we are in agreement on that. It is just a question of the wording, Mr. Chairman.

So, Mr. Chairman, if we can leave 5(4), Mr. Silver now knows the intent about the tax, and we can wait till we hear from Mr. Lamont. May I suggest we can go to 6?

MR. CHAIRMAN: Is it agreed, then, that the Committee hold over 5(4) until tomorrow? (Agreed) Perhaps the wording can be then straightened out and duplicated for the Committee so that each member can have a copy tomorrow.

Section 6—pass; Section 7(1), Mr. Spivak.

MR. SPIVAK: Again, the question of entitlement comes in. Under Section 3, Entitlement to become registered owner, no interest can be transferred without the consent. Basically that is what we are saying. Basically it is not several, so therefore we are saying the interest cannot be transferred.

MR. CHERNIACK: It seems to me, Mr. Chairman, that Section 6 really describes what we have been talking about all along.

MR. SPIVAK: That's right, yes.

MR. CHERNIACK: I think it does a better job than all our talking did.

MR. SPIVAK: It doesn't deal with the question , it just deals with the inability for one spouse who may be registered to be able to deal with that property as if it was his own or her own, without the interest of the other spouse, which means that everyone dealing in a transaction will then have to, as a matter of course in terms of any transaction, whether it be commercial or otherwise, will now have to have in their dealings — and that is what I want to have — something very clear, which would be clearly stated as part of any agreement, with respect to notice that there is no interest in The Marital Property Act. And I think that is what we are really talking about in terms of transactions. So that what we are really talking about is a basic change in all transactions within the province.

MR. CHERNIACK: That is exactly the same as The Dower Act.

MR. PAWLEY: Mr. Chairman, I believe that is covered in Part III of the Act.

MR. CHERNIACK: Well, the same as The Dower Act in any event.

MR. PAWLEY: And again it would be an area that the Registrar-General could deal with, and I believe it is covered already in Part III.

MR. SPIVAK: But the problem here, it is not a question here of the Registrar-General, because it may never reach the Registrar-General stage. What we are really talking about is notice in terms of all transactions with respect to property, that in effect there has to be a statement by someone that there in fact is no marital property interest.

MR. CHERNIACK: Mr. Chairman, that is why I am saying to Mr. Spivak that it is exactly the same as our present Dower Act. This is not a commercial asset, but if it were offered as a security, say, for a commercial loan, then obviously the rights of the parties are protected to the extent that The Dower Act today protects the rights of parties. And therefore I frankly don't see any difference. Anybody dealing with the home of another person by way of security as a commercial way would want the same protection as they may or may not want with The Dower Act today. Am I not right about that?

MR. SPIVAK: Yes. The third party would not necessarily know that it is a home.

MR. CHERNIACK: The same applies now.

MR. SPIVAK: That's right, but we are now saying that . . . .

MR. CHERNIACK: You see, the only difference I see, Mr. Chairman, is The Dower Act says that the spouse is entitled to a life interest, and to — what is it, one-third? Oh, I am already showing you that it is a long time since I read it — the right to live in there for her life. Therefore, anybody who deals with that home without knowing that right is taking subject to the risk of The Dower Act. Now under this Act we are saying that beyond The Dower Act is an equal ownership now, rather than deferred. But is there any really, any difference to a person lending money on the security of that?

MR. SPIVAK: A dower right interest is something that exists but may not come into play until death. The Marital Property Act is a right that is in play immediately and has other factors, one of which is vesting, which also can occur. So I think there is a difference and all I am saying is that it is not something that can be assumed may occur, it is something that has to be spelled out so that those who are dealing with whatever property will know whether it is or is not a marital home. And all I am saying is that we recognize that in this, and I am not objecting to it, but it is clear that it is going to change the nature of all transactions, because it is going to be necessary to clarify this because I mean what is a home, what is a marital home at this point?

MR. CHERNIACK: Mr. Spivak is concerned about an unregistered lodging, apparently, because if it is to be registered and mortgaged, say, then that is taken care of. That is why I still think it is like The Dower Act. Somewhere or other we have a section dealing with . . . that we don't want to adversely affect the rights of a third party who is dealing bona fide for value, and I think there is that protection.

MR. CHAIRMAN: Section 6—pass; Section 7(1)—pass; 7(1)(a) —pass; 7(1)(b)—pass? Mr. Spivak.

MR. SPIVAK: In dealing with 7(1)(b), if acquired before the solemnization of the marriage, and I would assume, in contemplation of the use of the premises of the marital home, I would think that there would have to be something that would indicate, and in effect was used as a marital home, that is . . . .

MR. CHERNIACK: 7(2).

MR. SPIVAK: 7(2). Well, 7(1)(b) said . . . .

MR. CHERNIACK: 7(2), "except where there is no marital home."

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: The preamble to that subsection answers that question. It says, in the third line, "that on, upon, or after the coming into force of the Act, the marital home . . . " so we are talking about a situation where it has become the marital home in fact, and (a) and (b) go on to qualify that. If a home that is the marital home, and they both live in it, is subject to this Act, depending on how it was acquired, how and when it was acquired, that's what (a) and (b) explain . So we don't have to repeat and say again that it actually becomes a marital home.

MR. CHAIRMAN: 7(1)— pass; 7(2)—pass; 7(3)(a), Mr. Sherman.

MR. SHERMAN: 7(3)(a), Mr. Chairman. Does this mean that a release under The Dower Act would have no further validity after May 6, 1977?

MR. PAWLEY: No, it wouldn't.

MR. SHERMAN: It wouldn't?

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: This doesn't really affect anything under The Dower Act. This merely says that where, for purposes of The Dower Act, where a home is no longer subject to The Dower Act, dower rights, it still remains subject to the rights of a spouse under this Act. That is all it means.

MR. SHERMAN: Well, if we could look ahead, just jump ahead, Mr. Chairman, to 28(1)(b), which I have to do to raise the question, does that not say by implication what I have suggested in my question? It deals with releases and quit claim deeds before May 6, 1977. So would that not by

implication suggest that a release of that kind after May 6 would no longer have any validity, which brings me back to 7(3)(a), release under The Dower Act?

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: Well, that certainly is not the intention. The release referred to there is not . . . Well, I think it's consistent. Even if we say that a release in 28(1) includes a release under The Dower Act, I think it's consistent.

MR. SHERMAN: 28(1) includes a release on The Dower Act. So then, 7(3)(a) means that a release under The Dower Act after May 6or has no validity have I got it twisted around?

MR. CHERNIACK: It does not remove the right of the spouse to the joint ownership, as I understand it.

MR. SILVER: No. Well first of all sub-section 28(2) is going to be deleted, because the requirement for independent legal advice . . . .

MR. CHERNIACK: He said 28(1)(b) instead of . . . .

MR. SILVER: Yes, but he's also talking about 28(2), which is the one dealing with validity of these.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: This is the situation. hhere have been releases of dowers that have taken place prior to May 6th, prior to the coming into force of this Act and its application. Those releases of dower were made under the existing law. Surely you are not suggesting now that the standard marital regime changes and alters that release. If we are . . .

MR. SHERMAN: We're not.

MR. SPIVAK: Are we guessing that we're not?

MR. PAWLEY: No, that's certainly not saying . . . . Mr. Chairman, the changes would not affect any releases under The Dower Act. 28(1)(b) should take care of that, if you'll just refer to that. "Subject to sub-section 5, the standard marital regime does not apply to spouses who have (a) release or a claim deed affecting any marital home or assets of the spouses or either of them where the release or deed was given to one the other before May 6, 1977."

MR. SHERMAN: Yes, but I'm talking about raises under the The Dower Act after May 6, 1977.

MR. PAWLEY: Under 28(3) you could vary the standard marital regime in any way you wished.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'm reading 7(3) to relate to the marital home, the one in which both parties are entitled to ownership, I assume that includes the possibility that only one could be registered as the owner because the other has not exercised the right. I think what this 7(3) is intended to mean and it's in line — the wording isn't but the intent is in the Law Reform Commission, which I could read if it's deemed advisable — is that a release under The Dower Act nor a separation, divorce or annulment will act in order to lose for the spouse the half ownership or the entitlement to half the value of the marital home. That's what I read it to mean, that even though they both registered as joint owners, then nothing. . . 7(3) doesn't have to apply, because they're the owners. But, if they are not yet both the owners, then I read 7(3) to mean that the spouse who is not registered does not lose his or her right to a half interest in the proceeds or the sale of that house or the use of it merely because under The Dower Act, which includes divorce or annulment or separation which under The Dower Act wipes out the use of The Dower Act, that that would not take away the right of the spouse to the half ownership even though she's not registered. I think it's a protection there' and here is . . . .

MR. SHERMAN: No. I understand that, Mr. Chairman.

MR. CHERNIACK: Let me just then say that when you referred to 28(3), all it says is that prior agreements, prior to May 6 agreements, are not affected by this la. They stand solid and secure. That means that a person may have given a dower release prior to May 6 and that stands, but if it's after May 6, that will not lose that person the right to ownership, that person has to give up the right to ownership in a positive way. That is what be, I interpret 7(3) or the intent of it to and if you like, I can read the Law Reform . . . .

MR. SHERMAN: Well, I understand that, Mr. Chairman, that it is precisely of what Mr. Cherniack has said to me that I had the question in mind to begin with, because that would seem to say to me that after May 6th — not before — after May 6th, a release under The Dower Act would have no validity. But the legal counsel has said to me that that can be taken into account by 28(3). I was looking at 28(1)(b) I think I said, didn't I?

MR. CHERNIACK: Yes, that's right.

MR. SHERMAN: 28(1)(b). Legal counsel tells me that if I look at that would make it possible for a release under 1977, The Dower Act after May 6, still to be valid.

MR. CHERNIACK: Yes, it means that if they usually opt out of the right to joint ownership of the marital home, The Dower Act still still protects the unregistered spouse under The Dower Act and then you would still need a release to be able to let go of that right, because there is nothing in this Act as I understand it, that initiates The Dower Act. This is superiosed as an additional security or additional right.

MR. SHERMAN: Well, that was my question.

MR. CHERNIACK: I think that's it.

MR. CHAIRMAN: Section 7(3)(a)—pass; 7(3)(b)—pass; 7(3)— pass; the amendment as proposed with the exception of 5(4)—pass. Division 2, Mr. Jenkins. Waive?

MR. CHERNIACK: Mr. Chairman, I suggest we waive the reading of . . . .

MR. PAWLEY: That's just what I was going to do. Mr. Chairman, I would move that Division 2 of Part 1 of Bill 61 be struck out and the following Division be substituted therefor: Division 2 Shareable Assets Sharing of certain assets. 8 Every shareable asset of a spouse is subject to the provisions of Division 3 or 4, as the case may be. Shareable assets. 9(1) For the purposes of Divisions 3 and 4 but subject to subsections (2) and (3) and section II, every asset acquired by a spouse before or after the coming into force of this Act but shareable asset, except the following:

(a) Subject to section 10, any gift, inheritance or trust benefit conferred upon the spouse with the express or implied intention of benefiting that spouse exclusively. (b) The income from or accrued appreciation in the market value of any asset described in clause (a), where the asset is conferred with the express or implied intention that the income or accrued appreciation should benefit the recipient spouse exclusively. (c) Any damage award or settlement in tort in favour of the spouse, except to the extent that the award or settlement for loss to both spouses. (d) The proceeds of any insurance claim of the spouse for damages, except to the extent that the proceeds are compensation for loss to both spouses. (e) The cash surrender value of any insurance policy the premiums of which are paid by a third party as a gift in favour of the spouse, with the express or implied intention of benefiting that spouse exclusively. (f) An asset that has already been shared under Division 3 or that has already been taken into account in an accounting and equalization under Division 4, or that has already been shared equally between the spouses otherwise than under those Divisions. (g) Any payment made or asset transferred, conveyed or delivered by one spouse to the other pursuant to an accounting and equalization under Division 4. (h) An asset exchanged for or purchased with the proceeds of sale of another asset that is not a shareable asset within the meaning of this Division, or exchanged for or purchased with the proceeds of sale of any marital home that is not subject to the standard marital regime. Asset disposed of before May 6, 1977. 9(2) An asset acquired by a spouse before the coming into force of this Act, but no longer owned by the spouse on May 6, 1977, is not a shareable asset. Asset shared unequally. 9(3) A shareable asset that has been shared between spouses, but not under Division 3 or 4 and not on an equal basis, remains a shareable asset but for the purpose only of such further sharing thereof as may be needed mathematically in order that, upon completion of that sharing and after taking into account the previous sharing, the asset will have been shared on an equal basis between the spouses. Presumption as to gift, etc. 10 An asset acquired by a spouse by way of gift, inheritance or trust benefit is deemed, prima facie and for the purposes of clause 9(a), to have been conferred upon the spouse with the express or implied intention that the asset, and any income therefrom or accrued appreciation in the market value thereof, should benefit that spouse exclusively. Certain assets deemed shareable. 11 An asset of a spouse that is not a shareable asset but is held, used or dealt with during the marriage in a manner indicating an intention on the part of the spouse that it should be treated as as a shareable asset is deemed to be a shareable asset. Burden of proof. 12 A person claiming that an asset is not a shareable asset within the meaning of this Division has the onus of so proving. 7. MOTION:

THAT Division 3 of Part I of Bill 61 be struck out and the following Division be substituted therefor:

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: I'd just ask a question before we do' with respect to 5(4). Is the Registrar-General coming in to the Committee tomorrow to discuss what the Committee feels should be the wording of 5(4), or is he coming in with an amendment that we will be looking at? Is he coming in on the basis of an amendment that the government is preparing on that or are we going to be starting from scratch by discussing with the Registrar-General what our difficulties are, and use that as a jumping off point to draft a clause that is understandable to all?

MR. PAWLEY: Mr. Chairman, I think we should really wait until we arrive at Part III before we call the Registrar-General in so that we are dealing with him when we are also at Part III which is a subject matter of his concern. Is that okay?

MR. SHERMAN: Okay.

MR. CHAIRMAN: Is that agreed? Committee rise.