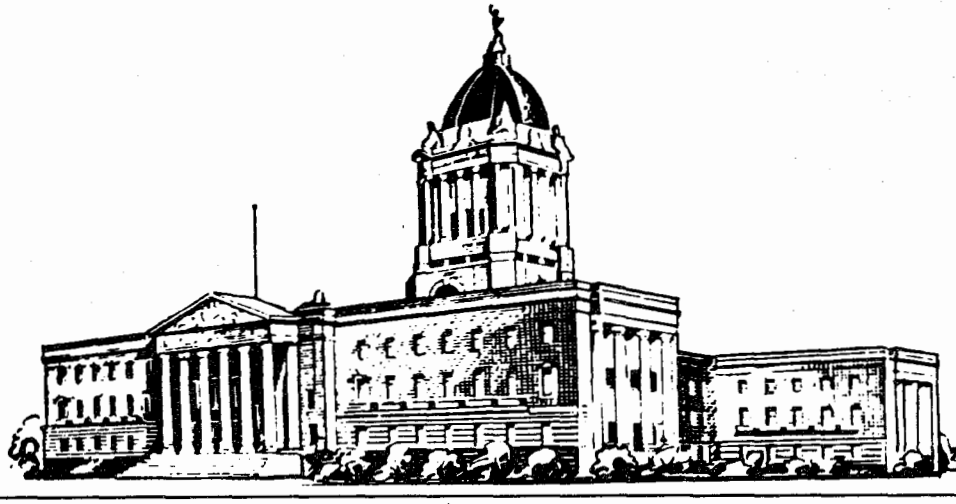
Legislative Assembly of Manitoba

HEARING OF THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. D. James Walding
Constituency of St. Vital



THURSDAY, June 16, 1977, 8:00 p.m.

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TIME: 8:00 p.m.

CHAIRMAN, Mr. D. James Walding.

MR. CHAIRMAN: When we adjourned there was agreement in the Committee that we would hold Section 37 until later. There is an amendment to 38. Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move a new Section 38 Existing Creditors Not Prejudiced. 38 Where, before May 6, 1977, a person became the creditor of a spouse *bona fide* and for value and in reliance wholly or partly upon any specific real property or asset or generally upon the real property or assets that the spouse then had and the indebtedness of the spouse in favour of the person is still outstanding in whole or in part on the day that this Act comes into force, the Act, notwithstanding any provision thereof to the contrary, does not prevent the person after the Act comes into force from taking proceeding to enforce repayment of the indebtedness against such of the property, asset or assets, or any interest therein as may have vested in the other spouse by virtue of the Act.

MR. CHAIRMAN: The amendment as moved. Mr. Graham.

MR. GRAHAM: Mr. Chairman, perhaps we could have an explanation.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, the purpose of this amendment is to ensure that any creditor is not prejudiced in any way insofar as the enforcement of repayment of any indebtedness owing to that creditor by reason of this Act, because there have been a number of changes involving security and marital property and the family assets. It is to ensure that any creditor for *bona fide* and for value is not prejudiced by any of the legislation.

As Mr. Graham knows, there has been some concern that has been expressed, submission-wise, that there would be some adverse effect as a result of this legislation. This is a solid, concrete amendment in order to ensure that there will be no prejudice to any creditor insofar as any of the rights that that creditor might have prior to the passage of this legislation, any existing right by any creditor.

MR. CHAIRMAN: Any further discussion? Mr. Graham.

MR. GRAHAM: Mr. Chairman, it is a rather difficult. I admit I was away for awhile this afternoon, but it seems that we have had a couple of rather substantial changes with respect to Part IV, and we now find that we have a new Section 38 which is substantially different from the amendments that we received, which in turn were substantially different from the bill that we started with.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I wonder if Mr. Graham understands Section 38 which we are dealing with now.

MR. GRAHAM: Quite frankly I don't.

MR. CHEIACK: Well, then, let's make sure he understands it, Mr. Chairman. I don't think we ought to pass this section unless Mr. Graham understands it.

MR. GRAHAM: Mr. Chairman, whether I understand the section or not is a personal thing, but if everybody else understands what is going on and I don't, then that is to my detriment.

MR. CHERNIACK: No.

MR. PAWLEY: Well, I wonder, has Mr. Graham some further questions relating to the explanation that I have provided in connection with the amendment?

MR. GRAHAM: First of all I want to ask: Is this to further ensure or to make more clear in law a security?

MR. CHERNIACK: Yes, the right to the existing creditor.

Mr. Chairman' if I may, I don't know whether I — I will take the responsibility for having asked Mr. Silver if he would prepare something to make absolutely, doubly and triply sure that an existing creditor of a spouse is not jeopardized by the fact that under this Act there has to be a creation of a half interest in the part of the other spouse, so as to make sure that the creditor is not prejudiced. I haven't checked it word for word, because I think that Mr. Silver knew , you know I accept that he knew what he was doing and what the intent was, and I take not only responsibility, but credit for having suggested that we have this kind of a section. I think it is clear, but I think if there is any doubt, Mr. Silver can elaborate on it.

MR. CHAIRMAN: 38—pass? Mr. Graham.

MR. GRAHAM: Mr. Chairman, with a very cursory examination, it appears that there is the additional security here, but I have to say I haven't got the competence to examine every aspect of it.

MR. PAWLEY: Just so I can re-emphasize so there is no misunderstanding, I indicated that it affected all those debts in respect to creditors claims in connection therewith prior to May 6th, this year.

MR. CHAIRMAN: Section 38—pass; Section 39.

MR. JENKINS: Mr. Chairman, the Motion 18 that was distributed, Part V, General, starting with Severability of provisions, would you renumber the numbers 39, 40, for The Dower Act; 41 for

References in Continuing Consolidation, and 42 for Commencement of the Act.

I would move, Mr. Chairman;

THAT Bill 61 be amended by striking out Part IV thereof and substituting therefor the following Part and Schedule as printed and renumbered, and I so move, Mr. Chairman.

PART V: GENERAL

Severability of provisions. 39 The provisions of this Act are severable each from the others, and no provision of the Act that is itself within the legilsative competence of the Legislature shall be held to be invalid by reason only that another provision thereof is found to be beyond that competence. Dower Act. 40 The rights given under this Act are in addition to and not in substitution for or in derogation of the rights given under The Dower Act. Reference in Continuing Consolidation. 41 This Act may be referred to as chapter M45 in the Continuing Consolidation of the Statutes of Manitoba. Commencement of Act. 42 This Act comes into force on a day fixed by proclamation, but it shall not come into force before January 1, 1978.

SCHEDULE

FORM A

(Section 31)

Affidavit by Maker of Instrument

(Where no part of the land is the marital home of the maker).

I, , of , in the Province of Manitoba, , make oath and say:

1. That I am the (grantor, transferor or mortgagor, or as the case may be) named in the instrument above (or within) written (or hereto annexed).

2. That I have no spouse and have never been married.

3. That no part of the land referred to in the instrument above (or within) written (or hereto annexed) is now or ever has been the marital home of me, the (grantor, transferor or mortgagor, or as the case may be) within the meaning of The Marital Property Act.

4. That the land referred to in the instrument above (or within) written (or hereto annexed), or a part thereof, was but is not now the marital home of me, the (grantor, transferor or mortgagor or as the case may be) within the meaning of The Marital Property Act, and no person is now entitled to an interest in the land under The Marital Property Act.

Sworm before me at ,
in the Province of Manitoba,
this day of , 19 .
A Commissioner for Oaths
(or as the case may be)

(If a statutory declaration is made instead of an affidavit, above form is to be altered accordingly.)

FORM B

(Section 32)

Marital Property Notice

To the District Registrar of

Take notice that I, , of , the spouse (or former spouse, as the case may be) of , of , , claim an interest in the following lands and premises under The Marital Property Act:

(Insert legal description of land.)

and I claim priority to any instrument affecting that interest.

DATED at , this day of, 19 .

Witness: Claimant:

FORM C

(Section 32)

Affidavit in Support of Marital Property Notice

I, A.B. , of , the spouse (or former spouse, as the case may be) of C.D. , of , , make oath and say (or solemnly declare) as follows:

1. I am the spouse (or former spouse, as the case may be) of C.D. , of , .

2. The within described lands are the marital home (or former marital home, as the case may be) of the said C.D. .

Sworn before me, etc.

(Add affidavit or declaration of witness to execution.)

FORM D

(Section 32)

Discharge of Marital Property Notice

To the District Registrar of

I, , of , the spouse (or former spouse, as the case may be) of , of , , hereby withdraw my claim to an interest under The Marital Property Act in the lands and premises described as follows: (Insert legal description of land.)

DATED at this day of 19 .

(Add affidavit or declaration of witness to execution.)

MR. CHAIRMAN: We will take it clause by clause. Mr. Cherniack.

MR. CHERNIACK: I would like to point out, if I may, that these sections are the same as the ones in the bill. They have just been retyped and put in new order. That is, the new Sections 39, 40 and 41, I believe, are the same as in the bill, so there is really no change. It is just put in neatly by Mr. Silver that way. Even the numbering has become the same.

MR. CHAIRMAN: Well, in fact it's as the bill.

MR. CHERNIACK: That's right. I wonder, Mr. Chairman, whether we shouldn't use the bill — those three sections have the same numbers and the same words.

MR. CHAIRMAN: One slight change in 42 when we get to it. Otherwise, perhaps we can work directly from the bills.

MR. GRAHAM: Sure.

MR. CHERNIACK: I think Mr. Jenkins should be allowed to withdraw his motion except to the extent that it changes the number of Part IV to Part V.

MR. JENKINS: Okay. Is that agreed?

MR. CHAIRMAN: Is that agreed by the Committee? Fine. Section 39, Page 14 of your bill—pass.

MR. GRAHAM: Mr. Chairman, then motion 18 that was in our distributed amendments has been cancelled?

MR. CHERNIACK: Yes, it's identical.

MR. JENKINS: Well, the first part of the motion shouldn't be cancelled, because Part IV becomes Part V and the renumbering of section 38 as on our distribution here, becomes 39, 40, 41, 42.

MR. CHERNIACK: You don't have to — just look at the bill.

MR. CHAIRMAN: The back page of your Bill 14 becomes Part V.

MR. GRAHAM: Well, Mr. Chairman, I wasn't here earlier but Motion No. 17 then obviously included Section 38 — did it?

MR. CHAIRMAN: It did, but we made them separate motions for the sake of debate.

MR. GRAHAM: No, it's just one motion.

MR. JENKINS: That was this motion we just had here, Harry.

MR. GRAHAM: Very good.

MR. CHAIRMAN: 39—pass; Section 40—pass; Section 41—pass; and 42.

MR. JENKINS: I would move, Mr. Chairman, that Section 42, Commencement of the Act, be amended to read that this Act comes into force on a day fixed by proclamation, but it shall not come into force before January 1st, 1978.

MR. CHAIRMAN: The amendment to 42 as moved by Mr. Jenkins—pass? Mr. Graham.

MR. GRAHAM: Mr. Chairman, dealing with the date of proclamation I realize that there's a great deal of flexibility still here, but I would wonder why the government wants to announce to all and sundry that under no circumstances will it come into effect before the 1st of January. Why didn't they

say that it will not come into effect before the 1st of July? The whole purpose being, Sir, that the Act is going to come into force on a day fixed by proclamation, so why put any other date in there?

MR. CHERNIACK: Mr. Chairman, the purpose I believe is to inform everyone interested that the Act itself will not be effective before January 1st, 1978, so that they should know they don't have to rush to get into court, so that the court will have the time to review the Act and prepare whatever rules or procedures that are advisable in order to do it. So, it's to give everyone concerned plenty of lead time. Now the government could be, could just say, come into force on proclamation, period, and that's the usual way a bill is presented. But the purpose here, is that everyone should know that there's plenty of lead time until January 1st, 1978. I think that's desirable. If however, it is felt that the government should be trusted to give it's own lead time, then we could stop with the word proclamation. I don't advise it, but I trust the government — this one.

MR. GRAHAM: Well, Mr. Chairman, the Member for St. John may trust the government but I assure you that the majority of Manitobans don't.

MR. CHERNIACK: Very clever. So, why don't you agree to January 1st, 1978?

MR. GRAHAM: Well, the point I'm trying to make, Mr. Chairman, is that we do know that the government announced a year ago, that there was going to be a unified family court which was intended and the legislation at that time I think was hailed by all political party's as a step forward. But that court as yet is not in existence. We have indications from the Attorney-General that it may come into force this fall, but I would like to ask the Attorney-General if the Unified Family Court does not come into existence — and I'll use an arbitrary date just for argument purpose — if it does not come into effect before the 31st of March, then I would ask him, if this Act will come into force before that date?

MR. PAWLEY: Well, Mr. Chairman, as indicated the Unified Family Court is being put in readiness to be commenced this fall, hopefully early fall. I don't really see the relationship of this Act to the Unified Family Court. The Unified Family Court is dealing with only one area of the province. It's a pilot project basis, at least for three years, dealing only with the St. Boniface County Court district, and I think with all due respect to Mr. Graham that there is no relationship between this legislation which deals with the entire provincial community involvement of all the Provincial Courts in Manitoba and the interesting Unified Family Court project which is beginning to prepare itself for commencement.

MR. GRAHAM: Well, Mr. Chairman, then I'll ask the Attorney-General a second question. Would he consider the implementation of a unified family court to be of assistance in the operation and the actual performance of the duties of a court in respect of this Act?

MR. PAWLEY: Would I consider it to be of assistance?

MR. GRAHAM: I would consider it to be a definite asset in the operation of this Act.

MR. PAWLEY: I would say to you that it would be probably of greater assistance once there is a unified family court structure developed insofar as Bill No. 60 dealing with maintenance. At this point, I don't see where for the next period of time, the Unified Family Court will be of any assistance in connection with this legislation or I might say, even with the other legislation, because it is a monitoring process, an evaluation process that will continue for a number of years. The eerience that we gain from that will eventually assist us in the overall, but I don't see where the Unifed Family Court project in St. Boniface will be of much assistance to the entire provincial community until we are able to enjoy a certain period of experience so that we can properly evaluate the results from it.

MR. GRAHAM: Well, Mr. Chairman, will not the operation of a unified family court in the eastern judicial districts, will it not in fact handle the majority of cases where marital problems and marital breakdown and division of property and separation and all the rest of it, comes into effect?

MR. PAWLEY: Well, first the Unified Family Court will only deal with the St. Boniface County Court district, not the entire eastern judicial district, so it will take in only the old City of St. Boniface, communities like Steinbach, Emerson, etc., southeast Manitoba. It doesn't take in the entire eastern judicial district only a population of probably 60,000 - 70,000.

MR. CHAIRMAN: The amendment proposed by Mr. Jenkins. Mr. Graham.

MR. GRAHAM: Mr. Chairman, is it the prerogative of a person who is taking a case into court, say in the metropolitan area, is it the position of their residence that decides which court to go to, or can they go to one of several courts?

MR. CHERNIACK: What part of those sections?

MR. CHAIRMAN: Order please. Order please. The Chair does try to give members a certain amount of latitude but there is an amendment before the Committee now having to do with time. Will you make your remarks relevant to the amendment, Mr. Graham?

MR. GRAHAM: Well, Mr. Chairman, I would think that there would be some lawyers who, having known the court procedure in other areas, may have some reluctance to try the Unified Family Court. But on the other side of the coin, there may be those that would be eager and would like to try the new Unified Family Court as a vehicle to see how well it does function in serving the needs of the community.

MR. CHERNIACK: One part of the amendment is the Unified Family Court, Mr. . . .

MR. GRAHAM: Mr. Chairman, really the comments of the of the Member for St. Johns are irrelevant to this, we're talking about the date it comes into effect.

MR. CHERNIACK: Okay then on a point of order, Mr. Chairman.

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

MR. CHERNIACK: If my comments is irrelevant, then to what extent can the Unified Family Court and its attraction to lawyers have to do with changing the amendment from six months from date of proclamation, to January 1, 1978? So my point of order is that we ought to be dealing with the motion before us.

MR. CHAIRMAN: The point is well taken. Mr. Graham.

MR. GRAHAM: Mr. Chairman, in the same thing, if the Member for St. Johns wants this to come in six months hence from the date of proclamation, let him spell it out in this section. That is now what the section reads at the present time.

MR. CHERNIACK: That is what the section reads at the present time. The amendment is that it should be changed to January 1, 1978 and I am supporting the motion mainly to get it before us and over with.

MR. GRAHAM: Mr. Chairman, may I suggest that it is not January 1st, but it cannot be before that date.

MR. CHAIRMAN: No, no, no. Oh yes.

MR. CHERNIACK: That's right, it cannot be before January 1st, 1978.

MR. CHAIRMAN: Is the amendment agreeable to the Committee? (Agreed.) Section 42 as amended — pass.

MR. PAWLEY: Now that means that the bill has been dealt with except for 37, oh, with the schedule, yes.

MR. CHAIRMAN: Forms (a) to (d) were passed this afternoon. That completes Bill 61 with the exception of the one section which we are holding.

Bill 72, Page 1, Section 1 (i)—pass. 1(j)—pass. Mr. Graham.

MR. GRAHAM: Mr. Chairman, we're dealing with amendments to The Queen's Bench Act here, and I am not too sure but I believe that it appears to be the intention, in particular with respect to the Maintenance Act, I believe, to remove The Queen's Bench Act from that jurisdiction. Is that correct?

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Yes, it is.

MR. GRAHAM: Well then, Mr. Chairman, are these amendments here consistent with that intention?

MR. PAWLEY: Yes there is no change required here as a result of that.

MR. CHERNIACK: The answer was, yes, but . . .

MR. GRAHAM: Okay, okay.

MR. CHAIRMAN: 1(j)—pass. Section 1 — pass. Section 2, Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move THAT the proposed new subsection 6(1) of The Devolution of Estates Act, as set out in Section 2 of Bill 72, be amended by adding thereto at the beginning thereof, the words, "Subject to subsection (5).

MR. CHAIRMAN: The amendment as moved. Mr. Graham.

MR. GRAHAM: Can you read out the amendment as it applies to the Act?

MR. JENKINS: It would read then, Mr. Chairman, Subsection 6(1) of The Devolution of Estates Act, repealed and substituted. 2 Subsection (1) of The Devolution of Estates Act being Chapter D70 of the Revised Statutes is repealed and the following subsection is substituted therefor, subject to subsection (5), and then it carries on. Subsection (5) deals with The Marriage Settlement Act, making that subject to the The Marital Property Act. I believe that is the intent and basis, isn't it, Mr. Silver?

MR. SILVER: What was that?

MR. JENKINS: That the amendment that we're moving here which is subject to subsection (5), and subsection (5) makes The Marriage Settlement Act being Chapter M-60 of the Revised Statutes, which is amended by adding thereto, immediately after subsection 6 thereof, the following section, Act subject to The Marital Property Act. And this is referring to The Marriage Settlement Act. This Act is then subject to The Marital Property Act. Is that correct?

MR. GRAHAM: That would then read in 6(1) and 6(2) at the beginning of each is that, "Subject to subsection 5 where the estate of an intestate who dies, leaving a widow and . . .

MR. SILVER: Yes, that's correct.

MR. GRAHAM: Then, subsection 2, "Subject to where the estate of an intestate . . ." and so on. Is that what you're . . .

MR. SILVER: Yes, but the words, "subject to subsection 5" would be added at the beginning of 6(1) and at the beginning of 6(2), and the reason for this is that by Motion 3, we are adding a new subsection to 6, subsection 5, which affects subsections 1 and 2 of the same Section. I can explain that new subsection now or when we get to it.

MR. GRAHAM: Well, as long as we don't pass this and go ahead with the full explanation of the full Section.

MR. SILVER: And subsection 5 . . .

MR. GRAHAM: Is dealing with real property and issue or estate and issue.

MR. SILVER:. . . explains that the $50,000 mentioned in both the earlier subsections includes any property that the spouse acquired from the other spouse under The Marital Property Act. So that the $50,000 that he or she gets under The Devolution of Estate Act is not in addition to what she or he gets under the new Act, but including. And there's a further qualification that the most recent marital home is excluded from the $50,000.00. She gets that in addition to the $50,000.00. All that is set out in 6(5).

MR. GRAHAM: The most recent marital home is excluded from the estate, then?

MR. SILVER: No, it's excluded from the $50,000.00.

MR. GRAHAM: From the $50,000.00?

MR. SILVER: Yes, in the sense that she gets the $50,000 plus whatever rights she has in the marital home, whatever interest she gets under The Dower Act or the new Act in the marital home.

MR. GRAHAM: So that in effect — and I am just going to raise a hypothetical case — if in fact there was a total value on the estate of a $100,000, and $40,000 of that was for the marital home, she would then get the marital home plus the first $50,000 of the remaining $60,000, and the remaining $10,000. . .

MR. SILVER: She wouldn't necessarily get the marital home. She might get an interest or . . .

MR. CHERNIACK: I believe she has the right of survivorship in the marital home, and that being the case, it is not part of the estate. On death, the home passes automatically to her; it's not part of the estate.

MR. GRAHAM: It's not?

MR. CHERNIACK: I think that's correct.

MR. SILVER: Yes, yes.

MR. CHERNIACK: So that the example is . . .

MR. GRAHAM: So the estate then would only be worth $60,000 and not a $100,000.00?

MR. CHERNIACK: Assuming that, yes.

MR. GRAHAM: So the marital home is not included in the evaluation of the estate?

MR. CHERNIACK: It isn't now. If it's a joint tenancy, it's not part of the estate.

MR. GRAHAM: And if it was tenancy in common it would be.

MR. CHERNIACK: Well then half would . . . Only his half . . .

MR. GRAHAM: So in effect — and I am presuming many things maybe here — but if it was tenancy in common and the house was worth $40,000, the entire thing was worth $100,000, the wife would get half of the $40,000.00. Of the remaining $60,000, she would get $50,000, and the remaining $10,000 would be split. Is that the way it works out?

MR. CHERNIACK: Mr. Chairman, I am having trouble hearing the example, but let's start again. If the marital home is owned as tenants in common, under the law half of it belongs to her.

M8R. GRAHAM: Yes.

MR. CHERNIACK: All right, then, his estate would be worth whatever he has which includes a half interest in the home.

MR. GRAHAM: So then we would reduce the estate to $80,000.00. If the total . . .

MR. CHERNIACK: It is $80,000.00. If it's $60,000 that he has, plus the $20,000 interest in the home, then he has an estate of $80,000.00. That's right.

MR. GRAHAM: So out of the whole thing, then you subtract the first $50,000 which goes entirely to the spouse, and the remainder is split according to his will or . . .

MR. SILVER: No.

MR. CHERNIACK: No. The Devolution of Estates Act has nothing to do with the will. The Devolution of Estates Act only comes into effect when they're . . .

MR. GRAHAM: It's split according to issue.

MR. CHERNIACK: That's right.

MR. GRAHAM: To issue. Well then, I'll change it again and say that if the thing was only worth $80,000 and the marital home was worth $40,000, he has a $20,000 equity in it, so there is a total then of $60,000 to be split. She gets the first $50,000 and the $10,000 then goes to the issue. Now if it was only worth $60,000 instead of $80,000 and $20,000 was involved in the home, the children or the issue would get absolutely nothing.

MR. CHERNIACK: But she's short $10,000 by your figures. I guess the government would pay the other $10,000, eh?

MR. GRAHAM: So in effect, you would have to have an estate that would be worth a minimum with his half interest included in the cost of the marital home, you would have to have an estate in excess of $50,000 before the children would get one cent of anything that is left. Is that correct?

MR. CHERNIACK: Yes, I think that is right. If the member is talking about The Devolution of Estates Act, then there is no will involved anyway, and then we are presuming to say that that person not leaving a will, will expect to leave his wife $50,000, the first $50,000 and then divide the balance.

MR. GRAHAM: Now, if we did not change The Devolution of Estates Act, and the estate was worth $50,000, his wife would be guaranteed $10,000 plus one-half of the remaining $40,000 which would give her $30,000 and the children would be entitled to $20,000.00. Is that right?

MR. SILVER: Yes.

MR. GRAHAM: So in effect, if the estate is only worth $50,000, and I want to assure the Attorney-General there are may estates in this province that are worth less than $50,000.00.

MR. PAWLEY: Yes.

MR. GRAHAM: In effect in any estate that is worth $50,000 or less, the children get absolutely zilch. Is that the way you want to pass this bill?

MR. PAWLEY: Mr. Chairman, I would like to just speak for a few moment to this, because I know what the Honourable Member for Birtle-Russell is concerned about, I believe. I don't know the date that The Devolution of Estates Act was passed, the amendment which dealt with the $10,000 — (Interjection)— 1963. So that since 1963 till 1977 there is a great deal of inflation. But I want to just say in respect to the remarks about children, one of the areas I can recall when I was practising law, even when $10,000 meant a lot more than it does today, 1967-68, is when you would have a young mother with a large family arrive in your office shortly after the death of the father and husband and find, to her dismay, that because of neglect and there not having been a will prepared, which in all likelihood if there had been one prepared, would have left the entire estate to the widow, that because of our laws in the statute books, she would only receive a portion outright; she would only receive the $10,000 plus one-third, if there were more than one child, or one-half if there was only one child, of the balance over and above. The rest was held up in trust, tied up, and she did not have control of her own affairs, and it created a hardship for herself and the children, and could, for many years, because in most of those instances the children were young and she was left with a tremendous burden without the children having a father to raise the family and to, on the limited estate that was left to her, with much of it tied up in trust.

Now, if anything, Mr. Chairman, I would have criticized ourselves here for not having gone further than $50,000, because we are still providing for the possibility of a major chunk of an estate to be tied up and some of those problems that I mentioned still occurring. When Mr. Graham refers to children suffering from this, he is really referring to children 18 years and over, because young children benefit, I am satisfied, from their mother when / left fatherless at an early age, of having their mother having sole access to as much of the estate as is possible because it is her burden, her responsibility, to raise the family and keep things going. Where it is particularly difficult was a farm operation, a lot of farm land involved, it was particularly a problem.

So if anything, Mr. Chairman, I would think that we have been too conservative here and not too generous in providing for the first $50,000 rather than the first $10,000.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, I am glad the Attorney-General raised the issue of the widow left with a farm operation, because I can assure the Attorney-General that I know of many cases where 14, 15, 16-year-old boys have taken over the active operation of the family farm, and have supported their mother, and carried on the operation and have been a great credit to society. Now, in many cases, there is usually a very good relationship between the mother and the son, but there are some cases where the son is far more capable of managing the financial obligations, and I know of many many widows who have a great deal of difficulty managing their financial affairs and rely solely on outside advice for that management capability, or that management input. So I think we are getting down to something here that we should recognize, and that is that the children, whether they are 18 years or less than 18 years or regardless of what age they are, it is a strange thing, you know, that most children in today's society, most — and I am not going to say all — do have a tremendous respect and regard for their parents and they will, in most cases, without any law or anything else, they will do the things that are necessary for the care and protection of their parents. I have a tremendous respect for the young people in society and their willingness to assume those types of obligations. I just feel that when we pass this kind of legislation, I just hope that we are not short-changing the children who, in my estimation, will turn out to be equal or better than their parents were. And I think that when we are passing this kind of legislation, we are in some way casting some aspersions against the integrity of those children.

MR. PAWLEY: Mr. Chairman, I just want to say to Mr. Graham that I am surprised that young people, children of the age that he mentioned, would not welcome this type of change, to know that their mother, the widow of their father, is crippled from operating a business or a farm because of moneys being tied up. I just don't feel, Mr. Graham, that our young people would look upon the present situation and applaud it.

MR. CHAIRMAN: Section 2, Mr. Cherniack.

MR. CHERNIACK: I am sorry, I do believe Mr. Graham is labouring under a misapprehension. I don't think he realizes we are talking about The Devolution of Estates Act, and that Act only comes into force when the deceased neglected to make a will. Now, if he made a will, he could look after his kids. If he doesn't bother to make a will, then the law, the Legislature, has to decide for him what happens. And under the present law, passed by a good, Conservative, 1963 government, they said that it should be at least $10,000 and then divided amongst the wife and children. And a good NDP government is now proposing that it be changed to $50,000 to ensure that before a split, and that is only in the case when the deceased neglected to make a will and therefore neglected to look after the children for whom Mr. Graham has so much concern.

Now, if we ever get to it, the next section will be dealing with The Dower Act. When we deal with The Dower Act, we are talking about the rights of the widow, and there the present law is that the widow is entitled to a life estate in the home and she is entitled to one-third of the total estate. So if the estate is $15,000, the widow would get $5,000 and the children would divide up $10,000.00. We are proposing to change it in accord with the concept of the marital family law, we are proposing to change it so that she gets a half instead of a third, which means if the father goes to the trouble of making a will, he can then make a will leaving his wealth to the children, bearing in mind that she is entitled to half, and the other half he can give to the children if he wants to.

One more point, and that is that if we ever get to The Maintenance Act, which should be pretty soon, Mr. Graham, I must remind him, will read that there is a specific requirement that both parents are liable for the . . . .

MR. GRAHAM: Up to eighteen.

MR. CHERNIACK: Oh, yes, that's right — both parents are liable for the support of their children to age eighteen. Now Mr. Graham seems to be more concerned to look after the inheritance, the unearned inheritance of a child over eighteen in preference to that of a widow, and if that is the case, then I am prepared to opt for the widow, and I would like to put the question.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, I think the political philosophy of the Member for St. Johns is well known. It is a philosophy that I don't espouse. It is a philosophy that the majority of Manitobans do not espouse, but at the same time, we realize that the Member for St. Johns has the ability to influence those of his colleagues to maybe implement his philosophy, and in doing so, not only does he affect his colleagues, but he affects every person in Manitoba. And that is the point that causes me a great deal of concern.

MR. CHAIRMAN: Mr. Jenkins.

MR. JENKINS: Mr. Chairman, given the political philosophy of the Honourable Member for Birtle-Russell, and the Conservative government of the day of 1963 didn't represent the majority of people in Manitoba when they set it at $10,000, nor him. So I think we are talking around here damn riddles. I think we should get on with the question, Mr. Chairman.

MR. CHAIRMAN: Section 2(6)(1), Mr. Brown.

MR. BROWN: Mr. Chairman, I am wondering what would happen if it was the wife who had the property in her name. We were talking about an apartment block before which could be in her name, which the husband was working in, or it could be a farm which could be in the wife's name and so on. We are talking mainly about the widow, but would this also work in reverse?

MR. PAWLEY: Mr. Chairman, if it was the wife that had the property in her name, of course it would only be affected in the event of her death and it would be divided up in the way prescribed here if she died without a will.

MR. CHAIRMAN: Section 2 . . .

MR. BROWN: It says "widow."

MR. CHERNIACK: . . . the interpretation there, they are interchangeable.

MR. PAWLEY: There is no differential.

MR. BROWN: Then why don't we say so then?

MR. PAWLEY: No, but it does. It is in The Interpretation Act to his and her, it interchanges.

MR. CHERNIACK: These legislative counsels do things like that. That's it, it's standard. It is the male chauvinists who wrote the laws and always did it as if they were men dealing with widows, but then somebody passed a law saying that when they say "widow" and it applies a "widower," then it should be so interpreted. All our laws are framed like that.

MR. CHAIRMAN: Section 2(6)(1)—pass; 6(1)—pass. Section 2, Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that the proposed new subsection 6(2) of The Devolution of Estates Act as set out in Section 3 of Bill 72 be amended by adding thereto at the beginning thereof the words "subject to subsection 5."

MR. CHAIRMAN: The amendment as read—pass; Section 2, Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that Section 6 of The Devolution of Estates Act as amended by Sections 2 and 3 of Bill 72 be further amended by adding thereto, immediately after subection 6(4) thereof, the following subsection: Calculation of $50,000 6(5) In subsections 1 and 2, the amount

of $50,000 includes the value of any property, except any interest in the most recent marital home that the widow had during the life of the intestate, acquired from him by virtue of The Marital Property Act.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, here we are introducing an entirely new aspect in the amendments that didn't appear in the bill and while it deals with the same section, it has enunciated a new principle, and I have to say, Sir, that it does cause me some concern because it does radically alter the value of an estate, but when you are dealing with estates in this province, sure, we have the million-dollar estates, but most of the estates in this province, Sir, would fall into this category, and it does have a significant bearing on those estates and when we did hear the submissions, I believe that all of those at that time were making submissions on the basis that we were dealing only with the total value of the estate, and now we have added this new concept which significantly changes the import of the bill.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, if Mr. Graham would please read what is being proposed, he will realize that it reduces the amount to which the widow becomes entitled by the amount she has received as a marital asset, and this should be gleefully seized by him as being more in accord with what he wants, and that is a reduction in the estate, because now what she has received as a marital asset is included in the calculation of $50,000, and therefore she gets less out of the estate than he wanted. She gets less, which is what he wanted in the first place. So now he seems to be objecting to having received something he wanted as being something extra. And it is not a new thing, we are dealing wtih with $50,000, and this defines a reduction to the extent of the marital assets.

MR. GRAHAM: Mr. Chairman, that may be true in respect to anything other than the marital home, but the marital home is also an added aspect in this which, I submit, was not in the original bill.

MR. CHERNIACK: Of course it was. The whole bill is designed because the marital home is gone, because there is a right of survivorship which we already passed in the Marital Property Act.

MR. CHAIRMAN: The amendment as read, the new 6(5)—pass; Section 2—pass; Section 2 as amended—pass; Section 3 as amended— pass; Section 4, Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that Section 4 of Bill 72 be amended by striking out clause (b) thereof and substituting therefor the following clause:

(b) by adding thereto, immediately after the word ,"advancement" in the 10th line thereof, the words "and together with any property except any interest in the most recent homestead or homestead premises that the widow had during the life of the testator acquired from him by virtue of The Marital Property Act."

MR. CHAIRMAN: I was a little premature on that. We should have passed (a) before moving the amendment. Delay that for a moment. Section 4(a)—pass; the amendment as read to 4(b)—pass; 4(b) as amended—pass; Section 4—pass; Section 5—pass; Section 6—pass. Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that Bill 72 be amended by adding thereto immediately after Section 6 thereof, the following section: Real Property Act amended. 6.1 Subsection 57(1) of The Real Property Act, being chapter R30 of the Revised Statutes, is amended

(a) by striking out the word "and" at the end of clause (1) thereof;

(b) by adding thereto, at the end of clause (m) thereof, the word "and"; and

(c) by adding thereto, immediately after clause (m) thereof, the following clause: (n) any interest of a spouse arising under The Marital Property Act.

MR. CHAIRMAN: The amendment as read 6(1)(a)—pass; 6(1)(b) —pass; 6(1)(c)(n)—pass; 6(1)—pass; Section 6 as amended—pass. Section 7, Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that the proposed new section 36.1 of the Wills Act as set out in Section 7 of Bill 72 be amended by striking out the word "bequest" where it appears in the first line and again in the third line and again in the fifth line thereof and substituting therefor in each case the word "gift".

MR. GRAHAM: Can we have an explanation of this?

MR. PAWLEY: Yes. Mr. Chairman, the reason for this amendment is that the word "bequest" which was earlier used in the bill may not include a devise of real property and therefore we have substituted the word "gift".

MR. CHERNIACK: "Bequest" means personal property, not real estate.

MR. GRAHAM: Then gift can include anything?

MR. CHERNIACK: Yes.

MR. GRAHAM: It in effect enlarges the sphere does it?

MR. CHAIRMAN: The amendment as read—pass; Section 7, 36(1) as amended—pass; Section 8—pass; Preamble—pass; title—pass; Bill be reported.(Agreed)

MR. GRAHAM: Mr. Chairman, I suggest that we complete Bill 61 before we start on Bill 60.

MR. CHERNIACK: That's not fair. Mr. Sherman and Mr. Axworthy were promised we would not deal with 37 until they were available, but it was agreed we would go ahead with Bill 6O. It would not be fair to them to carry out Mr. Graham's suggestion.

MR. GRAHAM: Does that agreement that we go ahead with Bill 60 meet with both their approvals?

MR. CHERNIACK: Ask Mr. Brown. He's sitting right beside you. Don't take our word for it.

MR. BROWN: Yes, Mr. Chairman, this was the arrangement that had been made previously, but if Mr. Graham objects, I suppose that he is entitled to his objections.

MR. GRAHAM: Does that meet with the approval of Mr. Axworthy?

MR. CHERNIACK: Yes.

MR. CHAIRMAN: For Mr. Graham's information, the Committee agreed before adjournment at 5:30, that they would go through Bill 60, and if there were any particular sections that members wished to have delayed so that Mr. Axworthy and Mr. Sherman could speak to them, that the Committee would be prepared to lay those over.

MR. CHERNIACK: Mr. Chairman, I'd like to elaborate on that. I understood that Messrs. Axworthy and Sherman would indicate to us which sections they had concern about, and I'm not aware that they've done that unless Mr. Patrick knows of any. I would suggest, Mr. Chairman, that we proceed in a normal course but we understand that when Messrs. Axworthy and Sherman come back, they can, as has been done all along by this Committee as a matter of courtesy, indicate certain sections of Bill 60 they would like reviewed and I for one, will support them. (Agreed)

MR. CHAIRMAN: Do all members have copies of the amendments? Bill 60. Mr. Graham.

MR. GRAHAM: Mr. Chairman, dealing with Bill 60, I think that it should be pointed out that I can only speak for the four members on our side; I'm not too sure of the position of the Liberal Party on this. But so far in this Committee meeting, I think that there has been an overwhelming desire on the part of most Committee members to ensure . . . We did a tremendous amount of work on Bill 61 to try and get a piece of legislation, imperfect as it may be, but to try and get it operative and into position where the public of Manitoba could at least know what the intention of the government was and where everybody stood with respect to the intentions of the legislation.

MR. CHAIRMAN: Excuse me. Is the member speaking on a point of order. There is nothing else before the Committee at this moment.

MR. GRAHAM: Mr. Chairman, perhaps I should say that was just an introduction to Bill 60.

MR. CHERNIACK: No. That's not in order. —(Interjection)— On a point of order. When this Committee first met, Mr. Sherman asked for agreement to making a preliminary statement — that was granted. He made a statement covering all three bills, he made a proposal, and then we proceeded to deal with the bill. I think we heard Mr. Graham's speech when Mr. Sherman made it and I think we should go on now with the business of the Committee.

MR. GRAHAM: Well, Mr. Chairman, in that case I move the Committee rise.

MR. CHAIRMAN: Question. Those in favour that the Committee rise please raise one hand — four. Those opposed — five. The motion is defeated.

Section 1, Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that section 1 of Bill 60 be struck out and the following section be substituted therefor: Definitions. 1 In this Act,

(a) "child" includes a child to whom a person stands *in loco parentis;*

(b) "judge" means a judge of a County Court or a judge of a Provincial Judges Court (Family Division);

(c) "parent" includes a person standing *in loco parentis* to a child;

(d) "spouse" where used in relation to another spouse means the person who is married to that spouse, and "spouses" means two persons who are married to each other.

MR. CHAIRMAN: The amendment as moved, take it a clause at a time; 1(a)—pass; 1(b)—pass. Mr. Graham.

MR. GRAHAM: Mr. Chairman, dealing with the change in the definition where we removed the Court of Queen's Bench, can the Attorney-General tell us that the removal of the Court of Queen's Bench will be beneficial to those who are going to have problems with the maintenance in the province, and in fact we may be removing from them, one additional avenue in which they can seek redress.

MR. CHAIRMAN: I'm not sure that that particular court appears in this section, Mr. Graham.

MR. CHERNIACK: Mr. Chairman, the removal of the use of the Court of Queen's Bench was in line with the thinking that the Court of Queen's Bench is a very busy court right now, and should not be burdened with Maintenance Act legislation, which could be kept at the level of the County Court and the Provincial Judge's Court. It was an administrative decision which left the Queen's Bench out simply because of the fact that it is now a very very busy court. This is a decision I suppose which is an administrative one by the Attorney-General.

MR. GRAHAM: Mr. Chairman, dealing with that same point. I believe we did hear numerous representations before the Committee where the , judges felt that they would use the Court of Queen's Bench because, they used various excuses, but they felt that problably they would get a better . . . I shouldn't say the reasons why they used it because I would be interpretating somebody else's words, but I was left with the impression that they used the Court of Queen's Bench because

they thought they had probably better treatment in the court, and they were more assured of an equitable settlement. That is my impression that I got, and I would hesitate to put that in the words of any one of the witnesses that appeared before us. If that is the case and if somebody wants to correct me in that impression, let them go ahead, but are we not then denying to many people a court which, in the opinion of some anyway, may be a better qualified court to handle their problems.

MR. CHERNIACK: Mr. Chairman, the Q.B. does not now have any jurisdiction under the Wives' and Children's Maintenance Act.

MR. GRAHAM: Mr. Chairman, dealing with the same issue, does the Queen's Bench have the right to handle any property?

MR. CHERNIACK: Yes.

MR. GRAHAM: Does this Act, in any place in this Act, give to the court the right to decide the use of property?

MR. CHERNIACK: No, I think only the use of the marital home. That's my impression.

MR. GRAHAM: So in effect then, it could conceivably be that the Queen's Bench could act in that respect.

MR. CHERNIACK: Not the title to the marital home but the use of the marital home which is within the competence of the County Court and the Provincial Judge's Court.

MR. CHAIRMAN: 1(b)—pass; 1(c)—pass; 1(d)—pass; Section 1 as amended—pass; I wonder if there would be an inclination at this time on the part of the Committee to go back to Bill 61 and complete the outstanding section?

MR. CHERNIACK: Mr. Sherman isn't here.

MR. CHAIRMAN: Mr. Sherman indicated to me he would. . . .

MR. CHERNIACK: I wouldn't want to go on without him.

MR. PAWLEY: Let's carry on until he returns. Carry on to the next section until Mr. Sherman is back, and then we'll go over to the Properties.

MR. CHAIRMAN: Part I, section 2—pass; Section 3, Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that section 3 of Bill 60 be struck out and the following section be substituted therefor: Personal expenses. 3 The right of a spouse to support and maintenance within the meaning of section 2 included the right, while living with the other spouse, to periodic reasonable amounts for clothing and other personal expenses and the right to sole discretion, free from all interference from the other spouse in the use of those amounts.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I guess that the basic question still remains on the enforcement of this provision. Again you've established in a certain number of rights and it does come back to the enforcement provisions. I wonder if the Attorney-General has has had an opportunity to think about how again that would be applied.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I have basically looked upon this as a declaratory right. I suppose it could be possible to enforce it, but sometimes I think that declarations such as this do provide a useful purpose. I think realistically speaking, if it comes to enforcement, there really wouldn't be much left of the marriage relationship. I have considered this to be basically one of a declaratory right clearly spelled out in the law, which is not unusual because there are many declarations of right spelled out in various laws.

MR. AXWORTHY: Mr. Chairman, I recognize the value of the declaratory right, but I also think that something is lost if it is solely that, in that those who take it literally or with some intent and meaning find that there is absolutely no way of enforcingit. I suppose it comes back in part to the discussion we had — I believe it was yesterday afternoon — when we did talk about perhaps a need for some form of conciliation agency or whatever it is that would aid and abet in the enforcement of that. I think the Attorneyeneral indicated he's going to set up some form of task force to look into those issues. Maybe that is the best way of handling it. I don't have a firm opinion in my own mind, but I could see certainly — Well let me just give by way of example from another field. I know that in the United States over a period of time that they had to study certain rights for those on public assistance and welfare, and the public welfare system there worked on the basis that most people wouldn't take advantage of their rights. It was only in the 1960s when all of a sudden a group of activist lawyers decided that they would go and begin trying to enforce those rights in the courts and so on, and therefore challenged the system and almost broke the system apart. I think that the same analogy that we could take from that example could apply here. What would happen if in fact a number of people decided that they wanted to give effect to that and started challenging a whole set of situations based upon a declaratory right. It isn't statute. I assume the courts, it would be expected that they'd have to cope with it. I mean the courts take quite literally what this LLegislature says. It may be then that we could be opening up a whole area of disputation or litigation — certainly activism — and I em not against that necessarily, but one once you declare that those are the intents then it is the right of everyone then to try to give meaning to that intent. I don't know whether we should give instruction as to where

that should be channeled or whether in fact it should be limited.

MR. PAWLEY: Mr. Chairman, I should point out that there is a right. I expressed an opinion that once a right was exercised — I am not sure of the effectiveness — but I gather that one can enforce the order so that there is, in 8(1)(a), that an order could be obtained. **MR. AXWORTHY** Is that in the original bill or in the amendments? **MR. PAWLEY**: It's in the original.

MR. CHERNIACK: It's (2)(a) in the bill; it was 8(1)(a) in the amendment.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, Mr. Exworthy has put forward one point that I had in mind, but there was another point that did come to mind and that was with respect to places where the two spouses were both living together. Under Bill 61 we give them the right of joint management, but here we give one spouse the sole discretion over a portion — and I admit it's only a portion — and I was just wondering if there was a possibility of some conflict in that.

MR. CHERNIACK: Personal clothing is by definition left out of assets in the other Ect.

MR. PAWLEY: I think that's your answer to that question, Mrr. Graham.

MR. CHAIRMAN: The amendment to Section 3—pass; Section 3 as amended—pass.

MR. PPAWLEY: I wonder, now that Mr. Sherman has returned, whether he and Mr. Axworthy would prefer to see us go ahead and finish up 60 now or go back to 61 and deal with the discretion.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I am agreeable to the consensus of the Committee. y own preference, if you wanted my vote on it, would be to go back to 61 and clean it up.é

MMR. CHAIRMAN: Is it agreed by the COMMITTEE6 (Agreed)

MR. CHERNIACK: Bill 31, 37(1)—pass?

MR. CHAIRMAN: The amendment to 37(1) has been moved. Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, just before closing at 55:30 ae were still discussing this question of the definition of the concept of circumstances and how they would apply Are these . the amendments that we received this afternoon or are they new ones?

MR. PAWLEY: These are the amendments you received this afternoon, but they were distributed . . .

MR. AXWORTHY: Mr. Chairman, I don't want to detain the Committee further but I still am concerned about the wording within Section 37(1) and the way in which the concept of extraordinary financial or extraordinary nature or value of their property would be interpreted by the courts to imply that the discretion applies only where there is a large gross amount of property or wealth to deal with, as opposed to the much more common cases where there is modest assets and where what is far more important are the circumstances of hardships or unusual relationshipthat would cause the discretion to be applied. I must confess I thought that the wording that seemed to spontaneously spill from the lips of Mr. Cherniack during one of his discourses was certainly more acceptable to me where he was talking about extraordinary or unusual circumstances as opposed to introducing the idea of financial or property values in it. I wonder if the members of the Committee would like to consider that.

I think in response to the issue I raised, you use the words "enusual" and "extraordinary circumstances" which would be the presumption that would guide the application of discretion in this case as opposed to extraordinaryfnancial circumstances or extraordinary —(Interjection)—

. **CHERNIACK**: Mr. Axworthy will agree that I was describing a situation; I was not suggesting words but he liked the words. But actually the words are here. What Mr. Axworthy, I tink, wants to remove is the words "financial or other," just to leave it as "xraordinary circumstances." That's really the point.

MR. AXWORTHY: Ye. And I'd be prepared to move that, Mr. Chairman.

MR. CHERNIACK: But that seems to reduce the discretion because here it says "extraordinary financial or other circumstances." I don't think it really changes the discretion either which way because "extraordinary circumstances" is part of this the sentence and "extraordinary financial circumstances" is part of the sentence and "extraordinary financial or other circumstances" is in the sentence.

MR. AXWORTHY: Mr. Chairman, I am sorry I don't know what qualifications Mr. Cherniack has in the area of English grammar — I don't pretend to have that much — but the reading of the clause is very clear that when you have an adjective connected to a noun, it usually means that's what it refers to. W en you say "extraordinary financial" that's exactly the meaning I would take of the word and not describing circumstances.

MR. CHERNIACK: Do you mean then it should say, "extraordinary financial circumstances or extraordinary other circumstances?" Would that be . . .

MR. AXWORTHY: T e only concern I have is that the introduction of that phrase, "extraordinary

financial" really, I think, puts a very very . . .

A MEMBER: Extraordinary applies to both financial and . . .

MR. CHERNIACK: Well that's what I thought but Mr. Axworthy just gave me a little lecture on grammar which disagrees with that.

MR. AXWORTHY: Well you see, the thing is repeated again where it says "extraordinary nature or value of their property." Again the implication seems to be that we're talking about only those situations where there is massive amounts or complicated kinds of property relationships and so on, and I don't think that that is necessarily the kind of situations where we hope discretion might apply. I used the example this afternoon; it was a fairly simple one, but one that would not be dependent upon having that kind of . . . you know, under these circumstances you could say, well, someone with a million dollars and all kinds of property holdings tucked away in different trusts may be able to apply for discretion but someone who simply puts some money away in a bank for the education of their kids would not be able to gain discretion.

MR. CHERNIACK: Mr. Chairman, that example is exactly the example of what I disagreed with, Mr. Axworthy will recall. If his change would accomplish what he is talking about, I will agree with him and I say that we're talking now about "assets hereafter acquired" that the discretion should not be used to determine as between the savings of one party to be designated by that person contrary to the wishes or management of the dependent party, and I don't agree with that. I am just saying I don't agree with it and if he wants to accomplish his purpose by making a change then I accept his reasoning and therefore I don't agree with that change. That's my reaction.

MR. AXWORTHY: Mr. Chairman, I don't want to engage in another long dialogue but I think if my interpretation is correct that the other result would be equally as unacceptable to him and that is that discretion would only be exercised in the kinds of circumstances where there is high value property, complicated financial intricacies' and so we're saying discretion would therefore only apply to one veryslect group of people. I think that's what would happen if . . .

MR. CHERNIACK: Well at that point I'd be willing to clarify so that we're talking about both very rich and very poor.

MR. AXWORTHY: Well how about those in between?

MR. CHERNIACK: Well I think "extraordinary financial circumstances" to me means can be extraordinarily low as well as extraordinarily high. But if the common meaning is assumed by Mr. Axworthy to mean only extraordinarily high, then I would be quite prepared to say in this section we mean extraordinarily high or low, maybe "extraordinary and unusual" would be more clear. But I think that if the interpretation is that it will only apply to the very rich, then I agree; that's not correct. t should be applying to those cases where the financial circumstances are very unusual, and that would include very low. Now if "extraordinary and unusual financial" — if that will help I would work towards that even though it's cumbersome. I know we just lost Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I hate to run out but I just was told that The City of Winnipeg Ect has now been brought forward in the other Committee, so I may have to get on my roller skates. MR. PAWLEY: I wonder if we should go back to the maintenance. MR. AXWORTHY: Sorry for the interlude but I have to get back because I have some amendments to move on that.

MR. PAWLEY: Mr. Chairman, if Mr. Axworthy would like to be here for this section, I would be prepared to suggest we go back to the maintenance again. MR. CHAIRMAN: Have we with the approval of the Committee? (Agreed)

We have . reached Section 4 Mr. Jenkins.

MR. JENKINS: I move that Section 4 of Bill 60 be amended (a) by renumbering subsection (1) thereof as Section 4; and (b) by striking out subsection 4(2) and 4(3 ereof.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, dealing with this section we're talking about a spouse has the obligation after separation to take all reasonable steps to become financially independent of the other spouse. Ae have removed the original suggestion of a three-year period; we have removed from the legislation the desire that was indicated in the Law Reform Commission where they urged very strongly that every possible step be taken to ensure financial independence as soon as possible. But here we've left it in very vague and, I suggest, uncertain terms and I just wonder what would happen if one of the spouses failed to do that. What happens in that case?

MR. CHERNIACK: The court clearly is concerned to watch at all times the obligation to comply with Section 4 and it's contained, I believe, in the proposed amendments supplied. MR. PAWLEY: Well I just wanted to add, Mr. Iherniack, if I could — also we have referred to 23 — Application to vary or discharge order — that too, I think, meets his concern. It refers back to (i) on 5(1)(i) which states that you have to become financially independent. It was our view, upon further review of this, Mr. Graham will remember that many of the briefs referred to 2(4)(2). That would only add confusion if there had to be applications back to the court every so often under this section, and the three-year period would also not serve any useful purpose.

MR. GRAHAM: Mr. Chairman, will this section as it is presently worded not in effect really invite

litigation and constant applications to the court for varying orders, etc?

MR. CHAIRMAN: I wonder if we could handle this on a little more systematic basis, if we took it one part at a time to be sure what we are speaking of. MR. GRAHAM: Well, Mr. Chairman, we are dealing with Section 4.

MR. CHERNIACK: No, 4(1).

MR. CHAIRMAN: There is an amendment to it. The amendment to renumber 4(1) as Section 4. MR. GRAHAM: That's right. So there is only one Section 4. MR. CHAIRMAN: The amendment is in three parts, Mr. Graham. Part A of the amendment is to renumber 4(1) as 4—pass. Second part is to delete 4(2).

MR. GRAHAM: And (3).

MR. CHAIRMAN: Take them one at a time. Delete 4(2)—pass. And to delete 4(3)—pass?

MR GRAHAM: Mr. Chairman, you now have got a very simple section which I was talking about in the first place, which was the original 4(1), except that we reduced the number, took the (1) off. It says, "Notwithstanding subsection 2, a spouse has the obligation after separation to take all reasonable steps to become financially independent of the other spouse."

Mr. Chairman, we heard representation in some of the briefs talking about the problems that occur under separation, and ultimately into the divorce courts after that if the case may be, where we were told that people were unreasonable, they acted in various manners, and they were vindictive and everything else. Now here we have taken a very allncompassing — it sounds like a nice term when we say "reasonable" — but really, what does reasonable mean? I suggest to you, Sir, that when we leave this section as it is now, then what you are in effect doing is legislating maintenance in perpetuity. That, in my estimation, is what will occur. You will have constant varying orders and petitions coming into court on an almost monthly basis by the other spouse trying to get out of it because the wife or husband did not take reasonable means, and I would suggest that we are going to have a real nightmare of litigation, because we have not put on any specific time limit on when we would expect a person to attempt to achieve financial independence.

I have sought outside advice on this, and the information I get from the learned members of the legal profession that I have talked to indicate that they are equally as concerned, and probably I am not expressing their concern in as eloquent a manner as they can over this very particular aspect of it.

MR. CHAIRMAN: Mr. Cherniack. **MR. CHERNIACK**: Mr. Chairman, what I heard from the legal members of the delegations that appeared was the very difficult problem of attempting to define what is a financialy independent person. **MR. GRAHAM**: Right.

MR. CHERNIACK: That's what I heard, yes. Well, if that is the case, then we are not trying to set up a problem for the courts which was originally here, because it said, "They shall take reasonable steps to become financially independent," and then we said, "After they are financially independent for the term of three years, then, under those circumstances, the maintenance ceases."

In the first place, there is nothing here, from the way Mr. Graham describes it, that says that after three years they are assumed to be financially independent. That is not correct. What it says is that after they achieve financial independence and that continues for three years, it stops. That has been eliminated mainly because of the difficulty involved in attempting to define it. That would put us in court all the time.

If Mr. Graham wants to take the trouble to look at proposed amendments on Page 2, Section 5(1)(i), he will see that "the court shall consider (i) where one spouse is financially dependent on the other, whether and to what extent the dependent spouse is complying with the requirements of Section 4." So the judge now will look on these cases, to look at 4 and say, "Is this spouse complying with 4?" So that is where he is supposed to look at it. Now if Mr. Graham would take the trouble to look at Page 8 of the proposed amendments, and look at Section 23(1), he would see that there can be an application of any person affected by an order to a judge and a judge of the court may, subject to Section 5, make an order varying or discharging the previous order. So when the spouse who is paying for maintenance believes that financial independence has been achieved, he would then apply under Section 23(1) for the order to be varied or discharged; and the court, under 23(1), will make an order subject to Section 5, which brings the court back to 5, and will look at (i), where the court is required to consider whether or not the dependent spouse is complying with the requirements of Section 4, which says that the spouse shall take steps to be financially independent.

Now either that spouse has achieved financial independence, in which case the order is discharged, or if, to the judge's satisfaction, that spouse is not taking all reasonable steps to become financially independent, the judge must then take that into account and vary the order. So it seems to me that we have answered the points made by the briefs presented by the legal fraternity. And may I say at this stage that our Committee of draftsmen studied every brief that was presented in an attempt to deal with every valid point. And this was a valid point. And when they came up with this suggestion to remove 2 and 3 and rely on these other sections that I have cited, they have now made this a workable thing, where, before that, the lawyers were afraid that it was not workable.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, with all due respect to the Member for St. Johns — and I wish he would have listened — I have indicated to him that the very arguments that he is presenting will be the arguments that will be used to proliferate one court appearance after another. That is the point that I have been trying to make, Mr. Chairman.

MR. CHERNIACK: How would you have prevented it under 4(2) and (3)?

MR. GRAHAM: Mr. Chairman, I have suggested to the Minister, or . . . . perhaps I should call him the Minister in charge of this bill.

MR. CHERNIACK: I am happy to have helped the Minister in doing it.

MR. GRAHAM: But, Mr. Chairman, here we have a very vague wording which says that they have to take "reasonable steps." Now the husband is maybe the one that is being the aggrieved person and he says, "Well, I went down and I tried to get a job yesterday." In his mind, he is taking a reasonable step to acquire financial independence. Or, if he was an alcoholic, he might say to his other spouse that he didn't have a drink yesterday. That is his reasonable step that he is taking toward achieving financial independence.

We have a real Catch-22 situation here where there is no attempt being made by the legislation to give direction to the court, and I suggest to you, Mr. Chairman, and to the Attorney-General, that unless we are willing to provide the court facilities to handle situations like this, we will end up with exactly the situation that was pointed out very clearly to the Committee by Mr. Rich, who himself is a part-time judge and does know that aspect of it; who is also, although he appeared as an individual, he also happens to be the chairman of the Law Society. And he pointed out that unless we provide the court facilities to handle, and handle properly, all aspects of this bill, that we are going to end up with what he called "another Spadina expressway," which is nothing more than an invitation for everybody to head in the direction of the courts. But unless we give them the proper direction at the other end, expressed in terms of legislation, there is going to be mass confusion and no end of trouble in the actual implementation of what we here, I think, expressed a desire to attain, and that is namely financial independence for the other spouse. But we haven't given the courts any direction in what avenues or guidelines to use in measuring what that financial independence should be.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, first, in fairness to Mr. Rich, because I don't think he should be misunderstood — and the Member for Birtle-Russell — Mr. Rich was referring, when he made mention to Spadina speedway, the increase in the number of cases in the courts, he was referring to the very two sections that we are proposing right now to take out. His brief did influence us, because he did suggest that there would be an increase in the traffic to the courts; he said that there would be an increase due to the fact that there would be difficulty and confusion relating to the three-year period. So all that we are doing here when the member refers to Spadina speedway, is attempt to resolve the criticism that was launched by Mr. Rich. We have accepted some of the validity of his complaint and we are removing those sections. Now does the Honourable Member for Birtle-Russell suggest that we put them back in? It seems to me that is what he is proposing, that we should not delete 4(2) and 4(3), but should reinsert them, despite the criticisms that were launched by Mr. Rich in Committee when he suggested that these sections would carry us along the Spadina speedway to proliferization of court cases.

MR. CHERNIACK: That's what he wants.

MR. PAWLEY: Secondly I think I should point out that all we are doing here is codifying the existing common law. It is the law now that parties must take all reasonable steps to become financially independent, and we are codifying that requirement, codifying it into this bill, that very aspect of the common law.

I should mention that insofar as the reference to reasonable steps, the reasonable steps refers to both the timing in which those steps will be taken and the nature of those steps. It relates to both the timing and the nature of the steps, and the court will be charged with the responsibility of determining, as the court must determine now, as to whether or not the steps undertaken, as to their timing, as to their nature, whether or not they are reasonable.

There is another point that has been mentioned to me, that the three-year period caused confusion because at the end of that three-year period was normally the point in which a divorce petition was launched. The removal of the three-year period removes that possibility. So I really don't know just what Mr. Graham is proposing. If he is proposing that we put back in 4(2) and 4(3), then he is in fact placing us into the fire of the very criticism that Mr. Rich referred to, which is what he has based his argument upon.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, I think perhaps the Attorney-General should go back and read Mr. Rich's testimony. If he can refer Mr. Rich's reference to the Spadina expressway to Sections 4(2) and 4(3) of the bill, then I suggest, Sir, that he is reaching a long way, because the way I read Mr. Rich's testimony — and if you want to, I will read it . . . .

MR. CHERNIACK: No, no. No, no.

MR. GRAHAM: I know it is all in front of you, but as I read his testimony, that is not what he was saying at all. He was saying, "there are going to be many avenues of litigation and problems that the court will have to resolve when you haven't give us anything at the end of this avenue. You haven't given us the court facilities that are going to be required to answer, and a great deal of the questions of the public, who, I presume, intend to use the court process; the public is going to have to use that." And that is a quotation from Mr. Rich on Page 486.

MR. CHERNIACK: Question, Mr. Chairman.

MR. CHAIRMAN: Section 4 as amended. Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I have a question I wanted to ask the Attorney-General. I am sorry if the ground was covered while I was in the other Committee. I would like to ask him — and I know there is an obvious answer, but I want a deeper answer — what happens if the supported spouse does not become financially independent? Now I know the obvious answer is the court ultimately will just cut that spouse off maintenance, presumably, but can the officers of the court lay an information against . . . . Say you are a supported spouse. Can the officers of the court lay an information against you and fine you for not becoming financially or trying . . . .

MR. CHERNIACK: No. You just cut them off.

MR. SHERMAN: You are just cut off.

MR. CHERNIACK: Sure, what else? Can't put them in debtor's prison any more.

MR. SHERMAN: When that's the area of course or one of the areas that's open to judicial discretion.

MR. CHERNIACK: Yes.

MR. SHERMAN: Well, I understand the problem that Mr. Graham is having here, and probably it exists in the minds of others in our caucus, because of the really fundamental change that has occurred in this particular piece of legislation. When the Committee was first hearing delegations before we got into the legislative session we heard over and over again repeated entreaties for a short-term rehabilitative maintenance program that would not add up to a life sentence that person ordered to pay maintenance and that seemed to be the direction we were moving in for good or ill. Now, what Mr. Cherniack and the Attorney-General are telling me, Mr. Chairman, is that on the basis of subsequent representation made after the legislation came before the Legislature for consideration, they were persuaded that that kind of a system is not working.

MR. CHERNIACK: No, no. By the briefs we heard.

MR. PAWLEY: Mr. Chairman, we provided for that.

MR. SHERMAN: That's what I mean, subsequent delegations.

MR. PAWLEY: Would Mr. Sherman refer to 5(1)(i), because 5(1)(i) is a provision that is not in the existing Wives and Family Maintenance Act, and it's geared deliberately to provide for the very type of remedy that he just referred to, the short-term rehabilitative assistance.

MR. SHERMAN: 5(1)(i) in the amendments?

MR. PAWLEY: Yes.

MR. SHERMAN: I think Mr. Cherniack and I are saying the same thing — that it was the briefs subsequently heard.

MR. CHERNIACK: What do you mean by subsequently?

MR. SHERMAN: Well after the Legislature gave second reading to the bill and we began to hear public representations because you know. . . All I'm saying is if you will recall last November, December, January, what we heard was a pretty potent appeal for short-term rehabilitative maintenance.

MR. CHERNIACK: Mr. Chairman, I would like to respond by saying that unfortunately to my way of thinking, when we sat in the between session Committee, we didn't hear very many lawyers.

MR. SHERMAN: No.

MR. CHERNIACK: And then the lawyers finally woke up to the fact that we wanted to get their opinions, and they started giving their opinions in this Committee. There they brought to our attention a number of features of what they considered weaknesses and I think that we've done a pretty good job of tightening up, and this is part of that tightening up process and that's why I think it's in precisely there. I think that this bill will be vastly improved by the proposed amendments which are based on the presentations by all the briefs, but largely influenced by lawyers who practice family law, and by Mrs. Bowman's brief which represented the group of family law. I think we've done a good job with it, but let's go ahead and see what we've done. Surely we have not hurt it by removing what they all pointed out was very difficult and impossible to do. Remember they all said, "We don't know what to say, we don't know what it means." So, we've removed that and put the onus on the judge, which is much more discretion than he was originally going to have, to determine the extent to which they are complying with section 4 which is left. I think that's an advance for clarity. . . to Mr. Graham.

MR. SHERMAN: Well, that is what I was trying to get at Mr. Chairman, that in fact, the first round of briefs took a particular view that was not tempered to any great degree by opinions from the legal profession. The second round of briefs did contain opinions from the legal profession and that

persuaded the government to move in the direction of these amendments. But, it does reflect a fairly fundamental change in direction from where we were — let's say four to five months ago. I simply suggest that as a rationalization or a reasoning for Mr. Graham's approach, I think it's understandable in those terms. But now the government is saying that on the basis of the experience of lawyers in the Family Law field, that that kind of idealistic concept that we were looking at last February is not practical and not workable to that degree, because the machinery isn't there.

MR. PAWLEY: Mr. Chairman, I'd like to ask Mr. Sherman if I could whether 5(1)(i) does not meet the ideal type of request that he's referring to?

MR. SHERMAN: Well it does, except that's it's open-ended.

MR. CHERNIACK: Well so is this other.

MR. GRAHAM: Mr. Chairman, at the same time though, doesn't 5(1)(h) offer almost the antithesis of that: where any impairment of the income-earning capacity and financial status of the spouse resulting from the marriage. Doesn't that open it up to almost a perpetuity?

MR. CHERNIACK: Maybe we could come back to the motion, Mr. Chairman. We'll be dealing with (h) and (i) and all the rest as soon as we deal with the motion before us.

MR. CHAIRMAN: Section 4 as amended. Mr. Graham.

MR. GRAHAM: Well, Mr. Chairman, I just want to point out one factor — I think it was touched on by the Member for Fort Garry here, Mr. Sherman. He pointed out that if a spouse fails or refuses to make any attempt at financial independence there's no penalty whatsoever.

MR. CHERNIACK: . . . because he's cut off.

MR. GRAHAM: The person that fails to live up to a maintenance order, there is quite a severe penalty. I just want to point out. . .

MR. PAWLEY: Well, Mr. Chairman, the penalty is the penalty that presently exists. If they're making no effort, no effort to become financially independent, they're simply cut off. I don't know what other penalty that we should impose. There's no penalty now provided and I don't know whether Mr. Graham is proposing that we insert a penalty into this bill to penalize in addition to the cutting off of maintenance. I trust he isn't, because if he is, then it's a brand new concept that he's proposing.

MR. GRAHAM: Mr. Chairman, the Attorney-General can fantasize all he wants, but the point I was trying to make, and I think that I have made it, was that if the person makes no reasonable step . . . Now, when it comes to the court and that person says, "no, I went down and tried to get a job in Eatons yesterday." Is the judge going to rule that as being a reasonable step?

MR. CHERNIACK: That's up to him isn't it, that's up to the court.

MR. GRAHAM: I believe, Mr. Chairman, in all sincerity that there will not be a variation on the order, because I suspect that anyone can show a reasonable step being taken to achieve financial. . .If they fail, then that's a different matter, but they can show that they took a reasonable step, and it's so easy to show.

MR. PAWLEY: The court need not accept it as being reasonable.

MR. CHAIRMAN: Are you ready for the question? Section 4 as amended—pass. Mr. Graham.

MR. GRAHAM: No, I didn't say anything.

M MR. CHAIRMAN: Section 4 as amended—pass; Section 5. Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that subsection 5(1) of Bill 60 be struck out and the following subsections substituted terefor:
Factors affecting order 5(1). . .

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, on a point of order, in order to speed things up, may I I suggest we all have before us the motion Mr. Jenkins is going to read. I would suggest that we waive the reading but ask him to point out the changes from the form we have before us.MR. CHAIRMAN: Agreed? Carry on.

MR. JENKINS: There is no change until we get to 5(1)(cc) after the word "Living" in the first line thereof, strike out "and lifestyle". TThen there is a new subsection (k) which I will read out.
5(1)(k) The circumstances under which the separated spouses are living and the likelihood that — strike out "such" — those circumstances can reasonably be expected to affect the financial status of the — strike out "parties" — and substitute "spouses" — and whether or not, strike out "such"

MR. SHERMAN: . . can reasonably be expected to affect the financial status of the parties?

MR. CHERNIACK: Spouses.

MR. JENKINS: Off the "spouses" instead of "parties" and whether or not, and then strike out "such" and substitute "those" and then carry on until; those circumstances as are conducive to reasonable effort being made, strike out the word after "made" "by the dependent spouse" to become financially independent. You have that now, Mr. Sherman?

MR. SHERMAN: Yes, thank you.

MR. CHAIRMAN (Section (1)(a) to 5(1)(g) were read and passed.) 5(1)(h) Mr. Graham.

MR. GRAHAM: Mr. Chairman, dealing with SSection 55(1)(h), it says "'any impairment of the income-earning capacity and financial status of the spouse resulting from the marriage and it shall be a factor affecting the order." I would like to ask the Attorneyeneral, does that not in effect really say that maintenance will be paid in perpetuity? **MR. CHAIRMAN**: Mr. Pey.

MR. PAWLEY: 4 No, it won't, Mr. Chairman, what it does mean is that if the spouse has been. . . her skills, her capacity to earn has been impaired due to the length of the marriage which she has enjoyed. For instance she might have been a secretary or a teacher or enjoyed some other skill prior to marriage, then over a period of the marriage, say 10, 15 years, she losesthat skill or that capacity to earn. It's been impaired by the length of the marriage. Then there is a recognition that one of the factors ought to be that she should be placed back. She should be given an opportunity to repair her capacity to earn, so that is being taken into consideration, the earning capacity, the restoration of that earning capacity.

Now, one has to couple that of course with the obligation on her part to become financially independent, so at a certain point, if she has been able to repair that impairment, then a spouse could apply for an order to terminate the payments based upon the fact that she has become financially independent, or ought to become financially independent. On the other hand it could be that the impairment is age, or health, and she is not able of course to become financially independent. That would be another consideration the court would have to apply in that circumstance.

MR. GRAHAM: Mr. Chairman, the Attorney-General made several references to the length of the marriage. I don't think that is involved in this, is it? I think that comes down further.

MR. PAWLEY: No, but usually impairment, impairment of earning capacity would occur as a result of marriage and length of time in which that marriage existed and that's the only context in which I sd the term length.MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. C airman, I just want to point out that an impairment consists of the nature of the work that is being done by the spouse during the marriage, which could be housework, rearing of children, which would mean that the skill that that spouse may have had, or whatever tactile or mental agility was required for whatever job she was trained to do, would be adversely affected. Also, if she was involved in the homemaking aspects for a long time then that impairment would be greater.

And when we come to (j) IILL POINT OUT THAT IF A MARRIAGE SUBSISTED FOR A MONTH THAT ALONE WOULD BE GOOD REASON NOT TO WORRY TOO MUCH ABOUT THE NEEDS OF THE SPOUSE FOR MAINTENANCE. Therefore, Mr. Pawley is quite right in saying the impairment under (h) would involve the length of time during which that person was denied the opportunity to retain the skill, and (j) would involve something altogether different, not altogether different but not quite related and that is the extent of the responsibility of the supporting spouse.

MR. GRAHAM: Well, Mr. Chairman, I would like to take a case. . Supposing a person has been married for 20 years. At the time they were married they were a registered nurse. Now, at the end when separation occurs, for those 20 years that spouse did not work in anything other than the maintenance of the home and all the domestic duties of maintaining a household, if on separation she immediately takes a job doing that type of work in some other field, separate and apart from the marital home, would that be classified as financial independence, or would there be an impairmentearning capacity capacity? Would that be . . . .

MR. CHERNIACK: I would like to deal with that. Mr. Graham says that she went to do that kind of work. If he means did she go to wash floors, or had the opportunity to retrain herself to be a nurse, then I , if I were the judge, would say that she has not achieved financial independence if she has to scrub floors. O the other hand, if, after six months or so, she gets a refresher course in nursing and is able to become a full-fledged, fully earning nurse, then I believe she has achieved financial independence. The point is that the judge has the discretion here, not the legislator. All the legislator does is give some guidelines to the judge by which the judge can determine it.

MR. GRAHAM: That would be considered an impairment of earning capacity?

MR. PAWLEY: Yes, the impairment would be if, in order to restore herself to the earning capacity which she enjoyed prior to marriage, she has to, during an interval of time after the termination of marriage, do certain things in order to restoreat earning capacity, such as Mr. Cherniack mentioned, the refresher course, or take some other training or schooling or develop herself in some other way so that she can restore herself to her normal earning capacity.

MR. GRAHAM: A further supplementary question, then. If she chose to follow the route of doing the housework type of job, when she had an equal opportunity to take a nursing job — because she made that choice, would this section still apply?

MR. CHEIACK: Section 5(1) would apply.

MR. GRAHAM: There is an impairment of earning capacity.

MR. CHERNIACK: Mr. Chairman, may I point out to Mr. Graham that Section 5(1) says, "The judge shall consider the following factors." Not just (h), but all of them. **MR. PAWLEY**: All these factors.

MR. CHEIACK: And therefore with all that together, he will come to a conclusion. He will not do it on the basis of any one if he follows the sense of this section.

MR. PAWLEY: In the example Mr. Graham provided, I think the answer would be no.

MR. GRAHAM: I am just asking the question.

MR. PAWLEY: Yes. But he would consider all the factors.

MR. CHAIRMAN: 5(1)(h), Mr. Sherman.

MR. SHERMAN: One minor point on (h), to give Mr. Silver another nightmare, Mr. Chairman. I would prefer to see that subclause read "impairment of the income capacity," etc., rather than 'any impairment." Ms reason being — perhaps it isn't valid but let me put it to Mr. Silver — that in fact in probably 99.9 percent of cases, a wife, because she gets married, can be said to impair her income earning capacity and financial status. If she hadn't gotten married and she had worked all the way up the ladder in a natural progression of promotions, she would be at a different level of earning and a different financial status. That is an impairment. If you are looking at any impairment of income earning capacity and financial status of a spouse, that, seems to me, could be taken into consideration and it shouldn't be taken into consideration. What we are really talking about is her capacity to be able to support herself from this day forward. MR. CHAIRMAN: Mr. Silver.

MR. SILVER: I would say that "any" does not mean "every." It doesn't mean every impairment. We use "any" when we want to convey the idea that if there is an impairment, any impairment that occurs, and recognizing at the same time that there may not be any impairment, that is all that word means. It is just to provide some kind of logic to it. If we just say "impairment" without anything before it — (Interjection)— Well, we could say "the impairment," but that would be wrong because we don't know whether there is an impairment. "Any impairment" means any existing or any impairment that occurs.

MR. SHERMAN: I was reading "any" in this context as being interchangeable with "every," but you are saying it isn't interchangeable with "every." MR. SILVER: I think it also means "every" — "any impairment" necessarily includes "every impairment." **MR. CHAIRMAN**: 5(1)(h)—pass; 5(1)(i)—pass; 5(1)(j)—pass; 5(1)(k), Mr. Graham.

MR. GRAHAM: Mr. Chairman, the wording in this certainly causes me some concern. When we put probabilities into sections of legislation, where we say "and the likelihood that those circumstances can reasonably be expected," that's, in my mind, getting into a pretty iffy type of situation.

MR. PAWLEY: Mr. Chairman, it provides discretion to the court — the likelihood that those circumstances can reasonably be expected to affect the financial status of the spouses, so that there is some relationship as to the circumstances in which the parties, separated spouses, are living, and whether or not those circumstances affect the financial status of the spouses. It provides discretion to the court to determine.

MR. GRAHAM: I would suggest, Sir, that it provides confusion to the court. MR. CHAIRMAN: 5(1)(k)—pass; 5(1) as amended—pass; 5(2), Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that subsection 5(2) of Bill 60 be struck out and the following subsection substituted therefor: Domestic Service as Financial Contribution (2) Any housekeeping, child care, or other domestic service performed by a spouse for the family is a contribution to support and maintenance within the meaning of Section 2 in the same way as if the spouse were devoting the time spent in performing that service in gainful employment and were contributing to the earnings therefrom to support and maintenance.

MR. PAWLEY: This is the clause that members will recall came under a lot of criticisms in the briefs, that the way it was previously worded it provided too much opportunity for too many other aspects to be brought into the picture, too many fault aspects.

MR. CHAIRMAN: The amendment as moved. Mr. Graham.

MR. GRAHAM: Mr. Chairman, I heard some of the briefs as well as the Minister and I would like him to identify, for my information anyway anyway, what would be classified as a domestic service. MR. PAWLEY: Any household service — cooking, washing the floor, etc., etc., mending the clothes.

MR. GRAHAM: Doesn't that come under housekeeping?

MR. CHEIACK: Not necessarily.

MR. PAWLEY: The thing is that housekeeping, child care, and then domestic service is a kind of an umbrella term which would take in any duty, any work, that would not fall into housekeeping and child care — driving to the store, for instance; entertaining your guests; entertaining the boss, one's husband's boss. MR. CHAIRMAN: The amendment as read—pass; 5(2)—pass; Section 5 as amended—pass. Section 6, Mr. Jenkins. MR. JENKINS: I don't think we go until after Section 6(4). MR. CHAIRMAN: 6(1)(a)—pass; 6(1)(b)—pass; 6(1)(c)—pass; 6(1)—pass; 6(2)—pass; 6(3)—pass; 6(4)—pass. Mr. Jenkins.

MR. JENKINS: Yes, Mr. Chairman, I move that Section 6 of Bill 60 be amended by adding thereto immediately after subsection 4 thereof the following subsection: Order to Disclose Financial

Information. 6(5) Where a person fails to observe a provision of this section, a judge, upon the application of a spouse, may make an order requiring the person to observe the provision on such terms as the judge deems proper.

MR. GRAHAM: Mr. Chairman, just a little further on we have another penalty section, where we have set out the maximum. In this one we haven't done it. I was just wondering, if the counsel was so inclined to advise us whether or not we should set a maximum in this particular section.

MR. PAWLEY: I just would like to point out to Mr. Graham it is a contempt of court provision, and I don't believe that, generally, contempt of court provisions have any ceiling imposed insofar as the amount of any fine or penalty in those circumstances.

MR. GRAHAM: Mr. Chairman, I don't think that this refers to a court order, does it?

MR. CHERNIACK: Of course. It says "a judge." "A judge, upon the application . . . "

MR. GRAHAM: "Fails to observe an order . . . ." Oh, pardon me, I was looking in the original. Then could I ask the Attorneyeneral, in a case such as this, and I am not too familiar with the law of precedence in court, but would the first judgment handed down in a case like this become a precedent for the handing down of judgments in subsequent cases? **MR. PAWLEY**: It could. It would depend, Mr. Chairman, on the circumstances in each individual case. If the circumstances were to repeat themselves, were similar, then it could very well be a precedent, depending upon the particular level of court in which the decision was handed down. Certainly if, for example, it was a Court of Appeal decision that a certain level of penalty be imposed under certain circumstances, then that would be a precedent by which lower courts in the province would be bound by. On the other hand, if it was simply a penalty handed out by a Family Court judge, it would only be influential within that level of court. It depends upon the level of court and of course on each case, depending upon the circumstances, which could vary from one case to another.

MR. CHAIRMAN: 6(5)—pass; Section 6(5)—pass; Section 6 as amended—pass. Section 7(1), Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that subsection 7(1) of Bill 60 be struck out and the following subsection substituted therefor: Application for Relief. 7(1) A spouse, or any person on behalf of a spouse, may apply to a judge for relief under this Part where the other spouse is in breach of an obligation under this Part, or where the applicant spouse desires an order for separation or an order for custody of or access to any child of the marriage.

MR. GRAHAM: Mr. Chairman, I would like to deal with this in connection with the next motion, which removes the restriction. In the original bill it was intended that an application that was limited to a request for relief under this "shall not be made by a spouse more than once in a twelve-month period." We have removed that restriction, and I am sure there must be arguments for the reason for removing that restriction, but again I suggest that are we not here inviting almost unlimited litigation?

MR. PAWLEY: I think that that need not be feared. The concern about a restriction, one per year, is that it might prevent an application that might be deserving more frequently than on a yearly basis. What are we to do to compel somebody to wait till the one-year period is out, even though that person might, in fact, have a valid claim for a variation — the husband is changing jobs frequently. — (Interjection)—

No, that's the other item. Mr. Silver just mentioned to me that of course the judge may throw out any frivolous claim so that we need not worry about repeated frivolous claims to the court because the court need not entertain them, and certainly if the party came back a second time with a frivolous claim, they would be dealt with with heavy costs.

Now, returning to this present motion before us, it is an attempt to meet the concern that Mr. Axworthy expressed earlier, that we had no provision anywhere dealing with compelling relief in any given circumstance.

MR. GRAHAM: Mr. Chairman, the Attorney-General indicated the court might rule on repeated ones with very heavy costs. I would like to ask him if the court can assess costs at an arbitrary figure, or can they assess any figure they want for costs?

MR. PAWLEY: Within limits, Mr. Chairman, the court can impose costs. They may vary very much from one case to another, certainly they vary, but they are within certain limits that the court would operate under.

MR. GRAHAM: A further question to the Attorney-General. Would the Attorney-General consider a further amendment which would allow relief only when circumstances change in a substantial manner?

MR. PAWLEY: Mr. Chairman, the court would handle that. The court would not provide relief unless it was satisfied that the circumstances had so substantially changed in order to provide the reasonable grounds for any variation of the order. So the court would handle that.

MR. GRAHAM: Mr. Chairman, my concern is that we have elimi eliminated ted one court. We are now down to two courts, and whenever a person makes an application, it has to be heard. I think there is a possibility we may be putting an unduly heavy load on the courts if we can allow them to adjudicate every possible thing that comes to court.

MR. PAWLEY: Mr. Chairman, there is nothing now to prevent . . . .

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

MR. CHERNIACK: I don't want to interrupt the discussion, but I would like it to apply to Section 7(3), when it is going to be deleted; and applied to Section 23, I think it is, which deals with reapplications. I am sorry, Mr. Chairman, I would like us to stick to the motion before us so we can deal with it. Mr. Graham must know that we are not at 7(3), and yet he is discussing it.

MR. GRAHAM: I am dealing with 7(1).

MR. CHERNIACK: Yes, that's right. And he must know that we are going to be on 23, which talks about applications for variations. I don't really want to prevent the discussion, but I don't want to be repetitive. If we can agree that this discussion is now taking place and that we will not repeat the discussion when we come to deletion of 7(3) or the variation in 23, by all means, let's have it. But let's do it once and not repetitively.

MR. GRAHAM: Mr. Chairman, I am not a legal person, but it is my understanding that an application for relief is usually filed by the person against whom the order is placed.

MR. CHERNIACK: No, no. That's wrong.

MR. GRAHAM: Is that wrong?

MR. CHERNIACK: No.

MR. GRAHAM: An application for relief can be filed by either one? Either spouse?

MR. CHERNIACK: Yes, yes. That is what it reads. Read it.

MR. GRAHAM: And a variation order is almost the same as an application for relief?

MR. CHERNIACK: Right.

MR. GRAHAM: I thought a variation applied only to an order that was already in existence and . . . .

MR. CHEIACK: Yes. To go up, to go down, either way.

MR. GRAHAM: Well, have we got a duplication, then, of sections in the bill?

MR. CHEIACK: I don't think so. I think this entitles the application and 23 deals with variation or discharge. But I don't want to get too technical except, Mr. Chairman, I would like to deal with it.

MR. PAWLEY: Mr. Chairman, I am not inferring there is any problem now in our court system, because anybody that is not on Legal Aid, it is going to cost them money for legal fees to make the application, and with Legal Aid of course a lawyer has to sign a certificate that it is an action of merit before he would make the application. So I think in either regard there would be limited application. Really we are not changing anything here from the existing, because anybody now at any time can apply to the court for a variation if there is a change in the circumstances — either party.

MR. CHAIRMAN: Section 7(1)—pass; Section 7(2)—pass; 7(3), Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that subsection 7(3) of Bill 60 be struck out.

MR. CHAIRMAN: The amendment as read—pass; Section 7 as amended—pass; Section 8, Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that Section 8 of Bill 60 be struck out and the following section be substituted therefor as listed on Page 4.

MR. CHAIRMAN: There is one change to the printed amendment.

MR. JENKINS: I would refer members of the Committee to Clause C of 8(1), and I will read it out as it is here now: "That neither spouse shall enter upon any premises where the other spouse is living separate and apart from the spouse first mentioned."

Do you want me to read it again, Mr. Sherman?

MR. SHERMAN: Yes, please.

MR. JENKINS: In the second line — I will start again — I will read it slowly:

"That neither spouse shall enter upon any premises where" — 'where' new word, strike out 'whether' — "the other" — then add the word "'spouse' is living separate and apart" — strike out 'from the former' and add "from the spouse first mentioned."

MR. CHAIRMAN: The second line of (e) clause C, should read clause D. Typographical error. The amendment as read, 8(1)(a). 8(1)(b)—pass; 8(1)(c)—pass;

MR. GRAHAM: Mr. Chairman, dealing with Section 8(1)(c), I wonder if counsel had considered the possibility of a person in the course of his normal duties — and I suggest maybe a meter man for the hydro or the City of Winnipeg — may have to enter those premises.

MR. CHERNIACK: Oh, boy! Mr. Chairman, this is not compulsory. The judge may order, and I am sure that he would say, "However, if the normal course of his duties, he is required to enter and behaves himself and has five guards around him, that he would be permitted to do it."

MR. BROWN: I am wondering if we should add to that particular clause — or maybe we should have it this way, "That neither spouse shall enter upon any premises where the other is living separate and apart from the other, separate and apart from the spouse first mentioned, unless permission is granted." I mean to just absolutely say that there is no way that they can get together.

MR. CHERNIACK: You mean, unless permission by the spouse is granted.

MR. BROWN: Yes.

MR. CHERNIACK: Mr. Carr says stay away from it, it is dangerous.

MR. PAWLEY: I would just mention that Mr. Carr has indicated that if such a clause went in, the danger would be that the spouses would end up in court in disagreement over whether or not permission n had in fact been given.

MR. BROWN: I can't hear you.

MR. PAWLEY: Mr. Carr mentioned that if in fact such wording was included, permission, that there would be too much difficulty in that there would be constant disagreement as to whether or not in fact permission had been given, and we would end up in a lot of hassle and disagreement in court as to whether or not permission had been granted.

MR. CHERNIACK: Mr. Chairman, may I point out to Mr. Brown I have had experience with this kind of a clause. If permission is given temporarily on an occasion, then the person giving the permission won't complain about it. It's where a spouse tries to get in and permission is not being given, that there would be a complaint. And therefore I would say there is no point in saying what is obvious, that if I let you come in, then obviously I have let you come in. But it is difficult to prove that and I have always advised, in my cases, stay out. If you want to meet, don't meet in that house, stay out so you don't get involved in a scrap later on, "Did I or did I not give permission?"

MR. CHAIRMAN: 8(1)(c)—pass; 8(1)(d)—pass; 8(1)(e)—pass; 8(1)(e) as corrected —pass; 8(1)(f)—pass; 8(1) as corrected and amended—pass; 8(2), Mr. Graham.

MR. GRAHAM: Mr. Chairman, in this one where the spouse's consent is required, does that consent have to be given with independent legal advice?

MR. CHERNIACK: No. The judge is there.

MR. SHERMAN: Mr. Chairman, presumably there should be an apostrophe on spouse's, either before or after the second "s."

MR. CHERNIACK: No. "Where both the spouses consent to the maintenance."

MR. SHERMAN: Oh, yes, that's right. I misread it. I read it as a subject of that phrase.

MR. CHAIRMAN: 8(2)—pass; Section 8 as amended—pass; Section 9(1), Mr. Jenkins.

MR. JENKINS: I move that subsection 9(1) of Bill 60 be amended: (a) by striking out the words "of separation or an order that includes a provision for the separation of the spouses" in the first and second lines thereof, and substituting therefor the words "containing a provision under Clause 9(1)(a) ; and (b) by striking out the words "the spouse who has or is given custody of any child of the marriage" in the third and fourth lines thereof, and substituting therefor the words "one of the spouses."

MR. CHAIRMAN: 9(1)(a)—pass; 9(1)(b)—pass; 9(1)—pass; 9(2), Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that subsection 9(2) of Bill 60 be amended by striking out the words "by a judge of the Court of Queen's Bench or a judge of a county court" in the first and second lines thereof.

MR. CHAIRMAN: 9(2)—pass. Mr. Graham.

MR. GRAHAM: Mr. Chairman, this is just to show my ignorace of law. Has a judge of the provincial court the authority to deal with the sale of property in this respect, or do we have to amend The Real Estate Act to give the judges authority to handle real estate?

MR. CHERNIACK: To handle what?

MR. GRAHAM: Do provincial judges have the constitutional authority to handle matters of real estate in this?

MR. CHERNIACK: This is not ownership as I read it.

MR. GRAHAM: No, this is the postponement of a sale, but at the same time, the same judge may, later on, order the sale.

MR. CHERNIACK: Didn't we just pass an amendment to the The Real Property Act, making it subject to the marital . . . ?

MR. GRAHAM: I don't think so.

MR. PAWLEY: Mr. Chairman, Mr. Graham questions the constitutionality of this provision. We feel it is constitutional — not to say that at some point it may be challenged, I don't know, but it is our opinion that it is constitutional.

MR. GRAHAM: Mr. Chairman, first of all I didn't challenge this; I asked a question.

MR. CHAIRMAN: The amendment as read—pass; Section 9(2) as amended—pass; Section 9(3)—pass; Section 9 as amended—pass; Section 10(1), Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that subsection 10(1) of Bill 60 be amended by striking out the figures and the letter (8)(2)(b) in the second line thereof, and substituting therefor the figures and the letter (8)(1)(c).

MR. CHAIRMAN: The amendment as read — pass; 10(1) as amended—pass. 10(2). Mr. Jenkins.

MMR. JENKINS: Mr. Chairman, I move that subsection 110(2) of Bill 60 be struck out and the following subsection be substituted therefor: Penalty. 10(2) A spouse who violates subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine of not more than 3500 or to

imprisonment for a term not exceeding 30 days, or to both such a fine and such an imprisonment.

MR. IHAIRMAN: 10(2) as amended—pass. 10 as amended —pass. There's a little bit of caucusing going on at this end of the table. Committee recess for two minutes.

Order please. We have reached Eection 11 of the bill and there is an amendment to it. Il'll get Mr. Silver to read it please.

MMR. SILVER: The motion is that Section 11 of Bill 60 be struck out, and the following section be substituted therefornmarried cohabitation. 11 Where a woman has lived and cohabited with a man for a period of one year or more, and he is the father of any child born to her, this Act applies *mutatis mutandis* and the woman or any person on her behalf, may, within one year from her ceasing to live and cohabit with him, make an application under this Act for relief in respect of herself, or if she has custody of the child in respect of both herself and the child.

R. CHAIRMAN4 Mr. Sherman, would you move that amendment?

MR. SHERMAN: Yes, I'd be pleased to move that amendment, Mr. Chairman, as read to the Committee by Mr. Silver.

R. CHAIRMAN: Teamendment as read. Is there any discussion? Mr. Cherniack.

MR. IHERNIACK: Mr. Chairman, I'd just like to comment that my apprehension about the original 11 was that it seemed to take away from certain rights that are now given to a common-law wifeu under the The Wives' and Children's Maintenance AAct. And there is , I believe, no intention so to do. This new, revised section seems to bring back to a large extent the provisions that exists in today's law, and I think that that's why I concur with the amendment as

MR. CHAIRMAN: Section 11 as amended!—pass. Part I as amended—pass. Part II, Section 12(1)—pass. Section 12(2).

MR. JENKINS: Mr. Chairman, I move that subsection 12(2) of Bill 60 be amended by adding thereto, immediately after the word "child's" in the fourth line thereof, the word "natural".

MR CHAIRMAN: The amendment as read to 12(2)— pass. 32(3), Mr. Jenkins.

MRenkins; mr. Chairman, I move that subsection 12(3 of Bill 60 be amended by adding thereto, immediately after the word "child's" in the fifth line thereof, the word "natural".

MR. CHAIRMAN: The amendment as read. Section 12—pass. Section 13—pass. Section 14. Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that Section 14 of Bill 60 be struck out and the following section be substituted therefor:: Application for relief. 14 Any person on behalf of a child may apply for relief under this part where there is a breach of an obligation toward the child under Section 12.

MR. CHAIRMAN: The amendment as read. (Agreed.) Section 14—pass. Section 15(1), Mr. Jenkins. MR. JENKINS: Mr. Chairman, I move that Section 15 of Bill 60 be amended(a) by striking out subsection (1) thereof; (b) by renumbering subsection (2) thereof as Section 5;

(c) by striking out all the words in the first two lines of the Section, as renumbered and substituting therefor the following words, "Order. 15 Upon an application for relief under this Part, a judge may, subject to Section 13, make an order containing any one or more of the following provisions;" and

(d) by striking out the words "periodic amounts" in the second line of clause (a) of the section as renumbered and substituting therefor the words "lump sums or periodic sums."

MR. CHAIRMAN: The amendment as moved and corrected. 18(a) striking out subsection 31) thereof. (Agreed)

(b) renumbering subsection 2 2 as Section 15. (Agreed.) 15(d)—pass. 15 as amended — pass.

MR. SILVER: Excuse me, that isn't 15(d). (d) is not a clause of Section 15. (d) is a clause of Motion 18. 15 stands by itself. MR. CHERNIACK: It's a correction of 15(a). I think he's right, Mr. Chairman. You did call (c)—pass, and then (d)—pass, and then 15 as amended . . . MR. CHAIRMAN: Yes, 15(2) as amended—pass; section 15— —pass. MR. CHAIRMAN: Section 16. Mr. Jenkins, Motion 19.

MR. JENKINS: Mr. Chairman, I move that section 16 of Bill 60 be struck out and the following section be substituted therefor:Choice of forum. 16 An application for relief under this Act may be made to

(a) a judge of a County Court; or

(b) a judge of a Provincial Judges Court (Family Division).

MR. CHAIRMAN: The amendment as read? 16(a)—pass; 16(b)—pass; 16 as amended—pass. Section 17—pass. 17—pass. Mr. Graham.

MR. GRAHAM: Dealing with Section 17, am I given to understand that if a person started proceedings in Provincial Judges Court, that if he was unsatisfied there, he could no longer move to the County Court?

MR. CHAIRMAN: Mr. Pawley. **MR. PAWLEY**: He would only be able to appeal any decision that he was dissatisfied with from the Family Court to a higher court. It would have to be by way of an appeal, not by way of repeating the trial itself.

MR. CHAIRMAN: 17—pass?

Order please. That is really not a proper amendment. Teproper procedure is to vote the section down if members do not wish it to stand.

Section 18?

MR. CHERNIACK: I'm going to vote against it, Mr. Chairman.

MR. CHAIRMAN: Shall Section 18 pass? Section 18 is defeated and lost.

Section 19. Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that Section 19 of Bill 60 be struck out and the following section be substituted therefor. That would now become 18, wouldn't it?

MR. CHAIRMAN: Before you go, just on a procedural point, I wonder if it would be better to proceed as according to the amendment and then move it at the end to renumber everything.

MR. JENKINS: Yes, okay, I would do that, Mr. Chairman.

MR. CHAIRMAN: Would that meet the agreement of the Committee, that we renumber at the end? (Agreed) MR. CHERNIACK: Change the present numbering at the end and move that all the numbers be renumbered.

MR. JENKINS: Mr. Chairman, I move that section 19 of Bill 60 be struck out and the following section be substituted therefornswer, discovery, particulars. 19 Prior to the hearing of an application under this Act, the respondent has the right to file an answer to the allegations of the applicant, and the applicant and respondent each have the right to obtain from the other any or all of the following:

(a) An examination for discovery.

(b) Interrogatories. (c) Particulars.

MR. CHERNIACK: Mr. Chairman, I interrupt. As Mr. Jenkins pointed out, there is a typographical error. The word, instead of "Interrogations," should read "Interrogatories."

MR. CHAIRMAN: The amendment as moved and corrected, 19(a)—pass?

MR. MR. SHERMAN: We just want the okay from our friend from the Attorney-General's department.

MR. GRAHAM: Mr. Chairman, I don't know what "interrogatory" means, but I suspect that you have a logical reason for changing it.

MR. CHERNIACK: Because it's correct. If you look at 19, you'll see the original is — that what is correctly stated is "Interrogatories" and I'm sure the secretary typing out Mr. Silver's handwriting took it as "Interrogations."

MR. CHAIRMAN: 19(a)—pass; 19(b), as corrected—pass; 19(c)—pass; 19s. —(Interjection)— Mr. Silver has just informed me how we can get over our renumbering problem. We can do that by renumbering this section to 18. Would you so move a sub-amendment, Mr. Cherniack?

MR. CHEIACK: Oh yes, I'd like to do that Mr. Chairman.

MR. CHAIRMAN: Is that agreed?

MR. GRAHAM: Mr. Chairman, wouldn't it be better to just move ahead as it is and then change all the numbering in one motion?

MR. CHAIRMAN: Mr. Silver points out to me that two more sections down, which has an (a) and a (b) will now be split up and we will get back into the numbering. . . Sub-amendment agreed to. 19 as amended and renumbered to 18—pass. Section 20 as printed. Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that Section 20 of Bill 60 be amended by striking out the words "The failure to file an answer does not of itself entitle the applicant to default judgment, and" in the first and second lines thereof and substituting therefor the words "Notwithstanding the failure to file an answer" and to renumber the section, number 19. MR. CHAIRMAN: The amendment as read.

MR. PAWLEY: In other words, the technical failure of. . .

MR. SHERMAN: Iesn't alter the meaning. . .

MR. PAWLEY: No, it doesn't alter the meaning.

MR. SHERMAN: Okay.

MR. CHAIRMAN: Agreed? Section 20 as amended and renumbered as 19—pass. Section 21.

MR. CHERNIACK: Move that it be renumbered 20, Mr. Chairman.

MR. SILVER: So that (a) will read "by renumbering the section as Section 20."

MR. CHERNIACK: In other words there's no change to it.

MR. CHAIRMAN: Mr. Jenkins. **MR. JENKINS**: Mr. Chairman, I move that Section 21 be renumbered 20 of Bill 60 be amended. . .

MR. CHERNIACK: No, no.

. JENKINS: No? Is that all?

MR. SILVER: Wait a minute, that's all and then we make a new motion calling it 23.1, then we'll say that Bill 60 be amended by adding thereto, immediately after Section 20, as renumbered, the following section. That'll be 21.

MR. JENKINS: As Mr. Silver read that I'll move it.

MR. CHERNIACK: Mr. Chairman, just " 21 as printed will be renumbered 20." Move it.

MR. JENKINS: I so move, Mr. Chairman. **MR. GRAHAM**: Mr. Chairman, dealing with an interim order can I ask, is there any time limit on an interim order? Can it carry on indefinitely? **MR. PAWLEY**: I think it carries on, does it not, until such time as the court deals with it on a permanent basis. There's no time limit for the interim order. It exists until such time as the court makes a determination. Or, the court may have placed a time. . .

MR. SILVER: Well, probably the interim order itself would contain some kind of limitation, or some kind of direction as to when to return to court, something like that. Chances are that it would but because it is an interim order, I would take it that it must be that way. MR. CHERNIACK: Well, Mr. Chairman, I believe it means that he can make an order without having all the information before him and then he makes it as the last words are, "make such an order as he deems just." Then surely he would say, to be reviewed upon receipt of certain additional information or after a report has been received from some other office of some kind. The nature of the interim order is described within itself to the extent to which it's interim.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: The reason I asked it, was I was wondering if the interim order applied only to section 19, where there was a failure to file an answer and additional information was needed. Or does it apply to any other circumstances?

MR. PAWLEY: It refers only to the two previous sections.

A MEMBER: What's that?

MR. PAWLEY: The interim order applies only to the two sections prior to. . .

MR. CHERNIACK: No, it's the other way around. The judge may say that whereas it is necessary for a respondent to file an answer or to get interrogatories and to go through certain of the court pleadings, then whilst they are waiting for that to happen the judge might say, "well but meanwhile the applicant has to have something on which to live, so that in order to permit compliance with — we'll have to change the numbers — 18 and 19, the judge can make an order temporarily until those possibilities are carried out. So it's not limited to 19, it's in order to enable time to comply with 18 and 19 — that is the new 18 and 19 — the judge can make an interim order.

MR. PAWLEY: Yes, it's a very general provision at the present time for an interim order to be requested from the court.

MR. CHERNIACK: Mr. Chairman, may I make a motion that numbers 19 and 20 in the third line be changed to numbers 18 and 19.

A MEMBER: I'm sorry, "or".

MR. CHERNIACK: The word is "or" but it's the numbers that have to be changed. MR. CHAIRMAN: That sub-amendment moved by Mr. Cherniack is that agreed to? (Agreed). Section 20 as renumbered and amended—pass. There's one further change then in the next motion. Would you read the next motion, Mr. Silver, please.

MR. CHERNIACK: I can make this, Mr. Chairman. That bill Bill 60 be amended by adding the following section immediately following the renumbered section 20, Ex parte interim order. Section 21, an interim order under subsection (1) may, upon. . .

A MEMBER: Under Section 20. **MR. CHERNIACK**: Thank you. An interim order under Section 20, may, upon the motion of any party to the proceedings and if the judge is satisfied that it is necessary, be made ex parte. **MR. CHAIRMAN**: The amendment as corrected. (Agreed) 21 as renumbered—pass; Section 22, Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that Section 22, of Bill 60 be amended by striking out the words "or interim order" where they appear in the first line thereof, and again in the third line thereof and again in the fourth and eighth lines thereof. A MEMBER: "Or interim" should have been there to begin with.

A MEMBER: It should be fifth instead of eighth.

MR. JENKINS: Oh, fifth. Fifth line thereof, that correction.

MR. CHAIRMAN: The amendment as corrected—pass. 22 as amended—pass. Section 23. Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that Section 23 of Bill 60 be struck out and the following section substituted therefor: Application to vary or discharge order. 23(1) Upon the application of any person affected by an order made under this Act or made under The Wives' and Children's Maintenance Act before the repeal thereof, or upon the application of any person on behalf of the person affected, a judge of the court out of which the order issued, may, subject to section 5, make an order varying or discharging the previous order. Discharge of order on cohabitation. 3(2) Where subsequent to the making of an order under this Act, the spouses resume cohabitation a judge of the court from which the order issued may upon the application of either spouse vary or discharge the order.

MR. CHAIRMAN: The amendment as read, section 23(1)—pass; 23(2)—pass; 23 as amended—pass? Mr. Graham.

MR. GRAHAM: Mr. Chairman, just before we pass that, we have orders at the present time under The Wives' and Children's Maintenance Act and I would assume that the intent is to gradually transfer those all over to this particular Act. Is that right?

MR. PAWLEY: Mr. Chairman, existent orders of course would continue to be dealt with as per the order that was obtained under The Wives' and Family Maintenance Act so they would not be affected, the existent orders. But where an action is commenced under the Wives' and Family Maintenance Act and this Act takes over in the interval, on the date of proclamation, then the matter would be coleted under this Act, so we don't have a backo-back type of arrangement with one case being dealt with under Wives' and Family and the other case under this. But orders under the Wives' and Family Maintenance Act would not be affected by this Act.

MR. GRAHAM: At the present time, actions under the Wives' and Children's Maintenance Act can occur in the Queen's Bench. Is that right?

MR. PAWLEY: No, they all take place in the Wives' and Family Maintenance Act in the Family Court. In the County Court, I'm sorry. So there's no change here.

MR. GRAHAM: Okay.

MR. CHAIRMAN: 23 as amended—pass; Section 24.

MR. GRAHAM: Were there some changes in numbering here?

MR. CHAIRMAN: No, we're back on track. Section 24 as printed in your bill—pass; Section 25. Just hold on a minute, there might be an amendment to come on this. Mr. Jenkins.

MR. JENKINS: I move that section 25 of Bill 60 be struck out and the following section substituted therefor: Hearing in private. 25 Before hearing an application under this Act, a judge may, if any party to the application so requests, direct that the hearing be held in private, and in that event no person other than the parties and their counsel and witnesses shall be present.

MR. PAWLEY: The only change is there has to be a request.

MR. CHERNIACK: By one of the parties.

MR. PAWLEY: Yes.

MR. CHAIRMAN: The amendment as moved.

MR. GRAHAM: There's no compulsion on the judge to carry out the request of one of

MR. PAWLEY: No, it's within his discretion.

MR. CHAIRMAN: The amendment as read—pass; Section 25 as amended—pass; Section 26(1)—pass; 26(2) Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that subsection 26(2) of Bill 60 be struck out and the following subsection be substituted therefor: Effect of appeals. 26(2) Where an appeal is taken from an order made under this Act, the appeal shall not operate as a stay of proceedings, but the order may be enforced as though no appeal were pending unless the judge who made the order or a judge of the Court of Appeal otherwise order.

MR. CHAIRMAN: The amendment as read—pass; 26(2) as amended —pass; Section 26—pass. Section 27(1) Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that subsection 27(1) of Bill 60 be struck out and the following subsection substituted therefor: Security deposit or bond. 27(1) An order made under this Act may require the person against whom it is made to (a) deposit a specified amount in court, or with such person as the judge making the order deems fit, to be held as security and for use in the event of default or in the event of any subsequent order increasing the amount of any payment required to be made under the order; or

(b), to enter into a bond with a specified amount, with or without sureties, who shall severally justify and be approved by the judge making the order, condition for the fulfillment of the order.

MR. CHAIRMAN: The motion as read, 27(1)(a). Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I would just like to ask the Minister. We heard, I suppose, almost every representation in this bill had to do with the fact that the present means of achieving some degree of enforcement and surety on payment was required and that the present system didn't work. I would really like to understand what the difference is between this amendment and the original part of the bill and what difference does it make, how much does it move towards trying to achieve better guarantee of payment under this arrangement?

MR. PAWLEY: I don't think, Mr. Axworthy, that it can be said that there is any movement here towards guaranteed payment, even by any stage of progression.

MR. CHERNIACK: Mr. Chairman, if I may, I think that we have not really dealt with the very valid points that remain about a greater enforcement, and I do think that the suggestions that were made were made with sincerity, but without a complete recognition of all the problems that are involved in some of the suggestions. I think it was easy to say, "If you can collect income tax, you can collect these payments." I just don't think it is applicable, and I think that this proposed Section 27(1), the one that is before us now, does provide for the deposit of money or a bond which, of course, would apply where the court feels that the person against whom the order is made has the money or a bond available. I am sure a court won't put somebody in jail for not putting up a bond if the court doesn't

feel that it is available, but I think that we have to recognize the Attorney-General saying that it is the clear intention of the government to involve itself immediately into a detailed study of the method to deal with enforcement of orders, at the same time as it is looking into conciliation process and premarital information. And I think that that is the important thing we have yet to do. I don't think that we should try to pretend that we have dramatically strengthened the opportunity to enforce payment in any guaranteed way such as was suggested, that government should pay shortfall and then look for it from the others. Obviously the government hasn't gone that far. I don't know if that answers Mr. Axworthy.

MR. PAWLEY: I would just add one more link to what Mr. Cherniack has mentioned. I think, dealing with the task force, there are many very valid suggestions that were made, and I would like to just refer to one, and that is that where there is a defaulting spouse and the location of that defaulting spouse is not known, it is the height of absurdity that government agencies; that some arrangement cannot be given or made; that that type of information be provided in some sort of . . . just the address to assist in locating those that are defaulting under a court order.

And remember the references to the income tax and the unemployment insurance, and I am sure there is some provincial too, that one could refer to. But that is the situation at the present time and that is one of the greatest problems spouses have in collection, is that spouses disappear and they can't be tracked down.

MR. AXWORTHY: Mr. Chairman, I wonder, in this case, I realize that there are a lot of means of enforcement that are, of course, beyond legislative enactment and have to be program or policy enactment, and also some are outside of jurisdiction, particularly in The Income Tax Act. I wonder why, in this case, there couldn't be written into the legislation that an officer of the court, whether it is a sheriff of whatnot, could be assigned by the court in those cases where they have deemed fit to be the prosecutor of the enforcement.

As I understood many of the briefs, people were saying that many women are simply unable — for lack of means or because they are handicapped with time, too many children — they just don't have the available resources to even take initial steps to protect themselves. It would seem to me that one of the additions, perhaps to the legislation, would be to give the court the right — maybe not in all circumstances, but certainly the right — to address an officer of the court to undertake, on behalf of the applicant, the prosecution of the enforcement order.

MR. PAWLEY: Mr. Chairman, one of the areas that I think we have to explore much more closely is this area. As I understand it, upon the complaint of a spouse now, the enforcement officer is to do much of what Mr. Axworthy is suggesting. They ought to be calling in the defaulting spouse, finding out from a defaulting spouse why payments are not being made, discuss it with the defaulting spouse, and to perform a more active role. In fact that is why the enforcement officers were brought on to staff, back in 1971, I believe.

I have indicated that I think that there is room for improvement, and I think that should come through clearly from the briefs to us. I question whether we need to write it into the legislation, because I think that the enforcement officers ought to be undertaking that role now. If they are not, then we should attempt to find out by what means we can provide them with better techniques to do so, than appear to be exercised by them in some cases now. But I don't think you need to write that into the legislation, I think they can perform that active role now.

I think also, as Mr. Cherniack mentioned, it ties in with the task force, that I think we have to really delve into every suggestion that has been made and attempt to come up with some other thoughts too as to what other jurisdictions have done and how we can improve our machinery here.

We have done a number of things here. The enforcement officers and the garnisheeing order taking dominant role over other claims, creditors' claims and garnisheeing orders, but obviously there is still much more that can be done here in this province.

MR. AXWORTHY: Mr. Chairman, I will take the Attorney-General at his word on that, it may not be necessary to write the strictures in. The only thing I feel is that we've spent a lot of time on — I haven't spent much time on this bill, but certainly on the other bill — ensuring that there was a very minute instruction to the courts as to the ways and means that they should be carrying out these orders and the availability of resources, and it seems to me that the care with which we apply to that should equally be applied to this one. I won't pursue in saying that I am trying to find some written way of doing it, I mean to say I will take the Minister at his word, but it does seem to me that the whole Act does hinge very much on a major upgrading of the enforcement order procedure, otherwise all that we are doing here really is not worth that much if in fact you can't apply it very well. That seemed to be the message we were getting very loud and clear.

MR. GRAHAM: Mr. Chairman, I was going to get involved, but in the interest of time, I will pass.

MR. PAWLEY: I want to just assure members before we leave this point that I very readily and very openly say that there is much more that I think we can do, and I think we have to start exploring those various techniques. That is why I think a task force is important, I think that is why it is important we examine our present facilities to see in what further ways they can be improved. I think that was the

message that came through pretty loud and clear from many of the briefs.

MR. CHAIRMAN: 27(1)(a)—pass; 27(1)(b)—pass; 27(1) as amended—pass; 27(2), Mr. Jenkins.

MR. JENKINS: Page 10 again, motion. I move, Mr. Chairman, that subsection 27(2) of Bill 60 be amended by striking out the words "current bank" in the third line thereof.

MR. CHAIRMAN: The amendment as read—pass; 27(2) as amended —pass.

MR. JENKINS: Back to Page 8 again.

MR. CHAIRMAN: On Page 8, 27(3), Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that subsection 27(3) of Bill 60 be struck out and the following subsection be substituted therefor: Imprisonment for default in security. 27(3) Where a person fails to make a deposit or to enter into a bond pursuant to an order under subsection (1), a judge of the court from which the order issued may order the person to be imprisoned for such a period of time not exceeding 30 days as he may direct, there to remain unless and until the deposit is made or the bond is entered into, as the case may be.

MR. CHAIRMAN: I believe there is a typographical error in the fifth line, the second word "exceeding ' is misspelt.

MR. SHERMAN: Mr. Chairman, I recognize there certainly has to be some weight of the law, there has to be some penalty, but what does throwing the person in jail for a period not exceeding 30 days, or as the judge may direct, do for the person who was supposed to be receiving the maintenance? I guess the answer is nothing.

MR. PAWLEY: Mr. Chairman, it is a very good question. I think that courts are very, very reluctant ever to put the person in jail. Remember, the placing of the person in jail is not for non-payment, but is for failure to respond to the order of the court, contempt of court. It happens from time to time when you get a very difficult situation where there is a spouse — that is just on the most unreasonable sort of stubbornness — who refuses to pay and it is a very, very last resort. WWhen I was practising I only had one such experience where I acted for a wife whose husband just absolutely refused, no matter what urgings, what pleadings, what effort we undertook. There was just no other way and finally this was the last resort, and after two nights he ended up paying, after every other effort was undertaken. So I think there are very few instances where one has to proceed to that very last resort. I only know of one case in my own experience where one had to go that far, but I am afraid it does happen from time to time. Now, this compares with 40 days in the present . . . .

MR. CHERNIACK: Mr. Chairman, the section that is in the printed bill is almost identical with that of The Wives' and Children's Maintenance Act, so that if The Wives' and Children's Maintenance Act says that the magistrate . . . .

MR. SHERMAN: What section is that, Mr. Cherniack?

MR. CHERNIACK: 27(3).

MR. SHERMAN: No, it's not.

MR. CHERNIACK: Oh, it's 26(2), Page 6. Right at the bottom of Page 6. It says that "for such period as the judge directs there to remain unless a bond is sooner given." And that is the same, in effect, as the printed bill, and the amendment is less threatening in that it says, "Not exceeding 30 days." I suppose it can be renewed, but at least a judge can't make it sort of a debtor's prison forever, he can only do it for up to 30 days, and then I suppose there would have to be a new hearing. So I think this is more — may I use the word — civilized here.

MR. SHERMAN: I would only say to that that I guess that The Wives' and Children's Maintenance Act hasn't worked very effectively for some persons who should be legitimate recipients of maintenance, and I don't expect that this will work much more perfectly, will it? And any committal that was very lengthy in nature, or sort of a repeated committal, an additional 30 days, or an additional 30 days really doesn't do anything for the person who is supposed to be receiving the maintenance, it just eliminates all possibility of that defaulter earning any money which could be attached.

MR. CHERNIACK: Mr. Chairman, I do not really have too much experience with this portion of The Wives' and Children's Maintenance Act, but I would think that now we are dealing with a case where the judge believes that the person is financially able to post a cash bond — that is a deposit — or to get a bond with sureties, and therefore would insist that he do it. We're coming next to a case where there is default in payment, and there I would think that — at least in our case — in The Wives' and Children's Act Maintenance Act, they go to jail for default in payment, whereas here the provision will be in default of the order which may mean factors other than payment.

Again I would think that the courts would not put a person in jail in order to make it impossible for him to make payment, that would be self-defeating.

MR. SHERMAN: But there would always be the cases of the persons who would go to jail rather than make the payment.

MR. CHERNIACK: I really don't think that that's common. I don't know that people . . .

MR. SHERMAN: It really comes back I guess to the point that Mr. Axworthy has already raised. . .

MR. CHERNIACK: What's that?

MR. SHERMAN: . . . that at the present time we're dealing with a pretty nebulous and ineffective system of enforcement in terms of the relief for the spouse who is supposed to be getting the maintenance.

MR. CHERNIACK: I agree.

MR. CHAIRMAN: The amendment as moved and corrected—pass; 27(3) as amended—pass; Section 27 as amended—pass; Section 28, Mr. Jenkins.

MR. JENKINS: I now refer members to Page 9. Mr. Chairman, I move that Section 28 of Bill 60 be struck out and the following section substituted therefor: Penalty for default under order. 28 A person who fails to fulfill a provision of an order or interim order made under this Act is guilty of an offence and is liable, on summary conviction, to a fine of not more than $500.00 or to imprisonment for a term not exceeding thirty days or to both, such a fine and such an imprisonment, unless the provision is sooner fulfilled.

MR. CHAIRMAN: The amendment as read. Mr. Sherman.

MR. SHERMAN: With the same lukewarm enthusiasm, Mr. Chairman.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, I see something here that may be a cause of some concern to people. It is my belief that in most cases where there's a failure to live up to an order, there is probably very good reason and one of those reasons may be a lack of financial resources.

MR. CHERNIACK: No.

MR. PAWLEY: No.

MR. CHERNIACK: . . . I just don't agree.

MR. CHAIRMAN: Mr. Pawley. Mr. Graham.

MR. GRAHAM: If there is no lack of financial resources, I would suggest the order would probably be looked after. But here we find that there's going to be a fine levied and instead of the money going to the agreed spouse, it's going to be going to the provincial coffers.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Well, Mr. Chairman, here I do have experience with it. If there is no financial resource then the court does not order payment. The court will only order payment when the court is satisfied that there is a financial resource or that the person refuses to either pay or refuses to earn the money which the court believes can be earned to pay, so that the only time an order is made is when there is payment possible. The failure to pay is not inability to pay but refusal to pay. And that may well be why the court could put on a fine and enforce it as a fine, with the default of imprisonment, so that the stubborn person who does not comply with the order will have a punishment that goes with it. The reason I agreed with MMr. Sherman that this is kind of nebulous is that I think that when the defaulting person defaults, he probably leaves the jurisdiction. That's why II think it's not too effective. But if he stays in the jurisdiction, if he can't pay the court won't put him in jail for not paying, but it will put him in jail if the court believes he can pay and refuses. I think that's the basic reason for it.

MR. CHAIRMAN: The amendment as read, Section 28—pass; 28 as amended—pass. Shall Section 29 pass?

MR. CHERNIACK: No.MR. CHAIRMAN: Section 29 is defeated and struck out. Section 30 — (Interjection)— Well, perhaps we'd better read it. There is a change to take care of the numbering problem. Mr. Silver, would you mind . . .

MR. SILVER: Well, we've struck out 29.

MR. CHERNIACK: Well, it's in here. Oh, I see.

MR. CHAIRMAN: A change in the wording too.

MR. SHERMAN: That Section 29 of Bill 60 be struck out. —(Interjection)—

MR. CHAIRMAN: As a procedural matter, the Chair refused to accept a motion to delete.

MR. SHERMAN: Okay.

MR. SILVER: All right. Now we go to Motion 33. A motion that subsection 30(1) of Bill 60 be amended:

(a) by renumbering the subsection as Section 29;

(b) by adding thereto immediately after the word "for" in the fist line thereof, the words "support and," and

(c) by striking out the words "without being filed in a county court under Section 29."

MR. JENKINS: Mr. Silver read the motion and I would so move.

MR. CHAIRMAN: The motion as read:

(a) to renumber . . .

MR. SILVER: We still have to deal with 32, subsection (2).

MR. CHAIRMAN: Make that as a separate motion.

MR. SILVER: Okay.

MR. CHAIRMAN: (b)—pass; (c)—pass.

MR. SILVER: Now there will be a new motion, 33.1:

THAT subsection 30, sub (2) be renumbered as Section 30, and

THAT the word and figure "subsection (1)" in the second line thereof be struck out and the word and figure "Section 29" be substituted therefor.

MR. GRAHAM: All done in one good motion.

MR. SILVER: Okay, that's all for that.

MR. JENKINS: I would so move, Mr. Chairman.

MR. CHAIRMAN: The amendment as read—pass. Section 30 as renumbered and amended—pass. Section 31—pass; Section 32—pass; Section 33(1). Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that subsection 33 . . .

MR. CHAIRMAN: Oh, just a minute.

MR. SILVER: There are changes there. Shall I read it?

MR. CHAIRMAN: Read it, please.

MR. SILVER: Okay, it's simpler.

THAT subsection 33(1) of Bill 60 be amended by striking out all the words after the word "Act" where it appears for the first time in the second line thereof;

AND also striking out all the words in the third line thereof,

AND also striking out the words "of a county court" in the fourth line thereof.

Has everybody got that?

MR. SHERMAN: No. Would you give us that again, Mr. Silver?

MR. SILVER: Should I explain?

MR. SHERMAN: Yes, indeed —(Interjection)—

MR. SILVER: No, he had his own. Would you like one of these?

MR. CHAIRMAN: The amendment moved by Mr. Jenkins. 33(1) as amended—pass; 33(2)—pass; Section 33 as amended—pass; Section 34—pass; Section 35—pass. Section 36(1). Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that subsection 36(1) of Bill 60 be amended by striking out the words "or the Queen's Bench Court" ' in the third and fourth lines of Clause (c) thereof.

MR. CHAIRMAN: (Section 36 was read and passed.) Section 37—pass? Mr. Graham.

MR. GRAHAM: Mr. Chairman, is The Wives' and Children's Maintenance Act going to go out of existence immediately, or are any orders existing under it going to remain in effect?

A MEMBER: Yes, they would remain in effect. There's a transitional . . .

MR. GRAHAM: There is a transitional period, is there?

MR. SILVER: Yes, 39, but not for orders. The orders, of course, would continue to exist.

MR. CHAIRMAN: Section 37—pass; Section 38—pass. Section 39? Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I move that Section 39 of Bill 60 be struck out and the following section substituted therefor: Transitional. 39 Any application brought under The Wives' and Children's Maintenance Act and not completed before the coming into force of this Act shall be continued under this Act as nearly as may be possible.

MR. CHAIRMAN: The amendment as read? Mr. Sherman.

MR. SHERMAN: I understand the amendment. I was never sure that I understood the original clause. Does this amendment reverse the intent of the original 39?

MR. CHAIRMAN: Mr. Cherniack. Mr. Silver.

MR. SILVER: Well it does, yes. Previously actions commenced under The Wives' and Family Maintenance Act would be completed under the Wives' and Family Maintenance Act. Now we are saying, although the action has been commenced under The Wives' and Children's Maintenance Act, it will be completed under this Act. The reason for that is that we did not feel it would be right for the court to be hearing at the same time and in the same period of time, actions brought under certain clauses, persistent cruelty, assault, etc., etc., and the very next case back to back not having to prove those same grounds. So it seemed to be inconsistent and a very poor way to proceed so that's why the amendment.

MR. SHERMAN: So it does in fact reverse the intention that was contained within the original 39.

MR. CHERNIACK: Yes. The other one made it appear that those who have already started have to continue under that old Act.

MR. SILVER: Yes. **MR. CHERNIACK**: Adthose who have not yet started would have the benefit of the new Act, so this brings them right away under this Act.

MR. SILVER: Okay. **MR. CHAIRMAN**: The amendment as read, Section 39. Mr. Sherman. **MR. SHERMAN**: Yes. Quite honestly, I wasn't sure of the intention of the meaning of 39. I suggest this is an academic point now, but it was ambiguous and could be interpreted two ways. The amendment makes the intention clear.

MR. CHERNIACK: Clear, yes.

MR. CHAIRMAN: The amendment as read—pass; Section 39 as amended—pass; Section 40—pass. Section 41, Mr. Silver, would you like to read that . . . MR. SILVER: . . . whole last line?MOTION No. 37 - THAT section 41 of Bill 60 be struck out and the following section substituted therefor: Commencement of Act. This Act comes into force on a day fixed by proclamation.

MR. CHAIRMAN: The amendment moved by Mr. Jenkins, as read.

MR. SHERMAN: That this Act comes into force on a day to be fixed by proclamation.

MR. CHERNIACK: Period.

MR. SHERMAN: And eliminate the last phrase? MR. CHERNIACK: Yes.

NR. SHERMAN: Okay.

MR. AXWORTHY: Can you explain that?

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY I think the reason that we arrived at that decision that we might not need to tie ourselves down to a January 1st date, January 1st, 1978. . . . Pardon?

MR. SILVER: There may not be any reason for delaying it that long.

MR. PAWLEY: No, no. Because we may have the forms and whatnot completed well in advance of that, and I think we would like to see this operate as soon as we could. . .

MR. SILVER And it isn't the kind of thing that people have to have lead time.

MR. PAWLEY: Mr. Silver mentions that people don't require lead time under this Act.

MR. CHAIRMAN: The amendment as read—pass; 41 as amended —pass; Preamble—pass. Bill be reported.

I refer honourable members now back to Bill 61. Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, before we proceed with what would normally be the last part of this, I'd just like to raise a couple of questions. One is, that if you recall in our discussions last evening, I raised the issue of whether on the application for an assessment and evaluation the division of assets shouldn't take place on the death of a spouse, and I gather that the representatives of the other two caucuses were going to canvass their members to see whether in fact such should be considered at this stage or what their own reaction would be.

I know it's not the time to do it, but I thought the principle was important at the time and if there's been any developments on that I'd like to hear about them. If not I suppose we would have to leave it. MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I've been thinking about it and frankly I think there are ramifications that I haven't grasped yet. I would be quite prepared to discuss it again. I don't know whether the caucuses are ready to deal with this but I would even like to think that it's a matter that I would like to get a number of legal opinions on. There are many ramifications and that's why I told Mr. Axworthy earlier that this, in my own mind, is something that I personally would want to study over the longer haul. It's contrary to the recommendations of the Law Reform Commission. They did not recommend it, and I don't believe that they spent very much time reviewing it themselves. I have to admit that I would be apprehensive, although I certainly agree with the proposal that Mr. Axworthy makes offhand, that's my reaction.

MR. CHAIRMAN: Mr. Pawley.

R. PAWLEY: His concept is one that I think is very attractive to us. I say that sincerely to Mr. Axworthy. The only concern I think that we have is to make a change which would seem to be rather major, quite major at this point.

MR. CHAIRMAN: Mr. Axworthy. MR. AXWORTHY: Mr. Chairman, I'm wondering if there is that feeling — and I haven't heard from Mr. Sherman or other members of the Conservative caucus yet — but I'm wondering if in fact, just to not to let the thing stop there, whether the matter should then be referred to the Law Reform Commission for examination for a report back.

MR. PAWLEY: Yes. I would be very willing to do that and would commit myself to do so.

MR. AXWORTHY: Okay.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, in response to Mr. Axworthy, I can't give him a caucus position on it at the moment, but I can assure him that consideration would be given it by our caucus. I think his suggestion of putting it before the Law Reform Commission for examination is a good one. It's certainly one we would agree with. I did not have a chance to pull my full caucus on it. I talked to two or three caucus members and our feeling was that it was worth considering. I might have difficulty getting it through the whole caucus right at this point.

MR. AXWORTHY: All right. As I say, I understand the difficulties of the timing, but if the Attorney-General would refer it, then I think that would at least keep it entrained.

MR. CHERNIACK: Keep it alive, that's right. Some of us could forget it.

MR. AXWORTHY: Okay.

MR. CHAIRMAN: I refer the attention of honourable members then back to the amendment to 37(1).

MR. AXWORTHY: Mr. Chairman, I have one further question perhaps before we left that , and it was because of the confusion this afternoon between two committees. It's my understanding that when I was away that the part of the bill concerning independent legal advice was deleted, which I am much surprised at, and I simply want to register my opposition to that particular position. I'm not sure of the reasons why. I don't know where the opposition came from or what the movement was, and I

don't necessarily want to reopen the case although . . . well, perhaps I do want to reopen the case on this. I'm wondering what the timing would be or if it was a close vote and what-not, maybe it should be reconsidered. But I really think that to take the step of opting out without that kind of requirement is missing something. Was there any other alternate proposal, or just that couples can now opt out without any recourse whatsoever. **MR. PAWLEY**: I think I have to indicate that our caucus spent considerable time reviewing that particular item and they felt that this was an obligation that we were imposing beyond any existing obligations that are imposed in statutes that people shall or must obtain a legal advice for. Even in contrast to the provisions of The Dower Act, release of Dower Act does not require legal advice to be obtained. And I don't believe there are any other statutes where that is required.

I want to certainly indicate to Mr. Axworthy that I have some personal reluctance that I must admit that it is a requirement that doesn't exist in other statutes, other provisions. Certainly on the other hand, it is a very major move that a spouse does in a situation such as this, in agreeing to opt out.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, maybe just to express my concern on the record, I think if there's been anything clear from all that we've gone through, is that this is a very complicated piece of business, and I'm just really concerned that the decisions that couples decide to take be based upon a clear understanding of what the options and requirements of the law happen to be; decisions could be made in ignorance of the law and therefore a lot of troubles would ensue, that would be my concern. I know it's an unusual step, but you know, I hate to kind of as a layman try to work my way through these without having good counsel, and I suppose most individuals would do that or perform it, but those that don't may find themselves in some traps because they don't know how the law reads and what it involves.

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: I simply want to bring to the attention of the members that on the question of independent legal advice, that even where a statute does not require independent legal advice, almost any lawyer — I can't think of any lawyer who would not do it; if a lawyer doesn't think of it I don't think that lawyer is competent — a lawyer who is drawing up a document between spouses, settling property matters and so forth, would normally not allow both spouses to sign the thing together in his presence, while they are both together. He would normally take the precaution of sending one of them to execute it in front of another lawyer, and the other lawyer would make some effort to explain it to her; and that is in my experience a normal procedure in documents of this kind where competent lawyers are concerned' and without any special provision in any statute. So that the fact that there is no provision in this statute for independent legal advice doesn't mean that there won't be any. But I'm not expressing an opinion as to whether or not it is a good idea to have it in the statute.

I should add to that, that the practical consequences of a lawyer permitting an agreement of that kind to be signed without the benefit of separate legal advice to one of the spouses, is that that agreement could be attacked in court, could be challenged, and even though the spouse signed it the spouse himself, or herself, could come into court and say, "I signed it, but first of all I wan't sure what I was signing and I did not have independent legal advice." And the court could very well overturn that agreement, even though there is no provision in any statute that that agreement must be signed with the benefit of independent legal advice.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: I wonder if I could ask one question, so that when we get to 37 we are really then on the final stage of the bill. I was not sure under what area I should bring this up because it comes into the area of limitations. There are limitations in 61(1) with respect to dissipation of commercial assets, one with respect to applications under section 33, but what about registration on a title? There is no time limit on this.

MR. CHERNIACK: Right.

MR. SHERMAN: I want to ask the question whether a spouse can come back several years later and claim entitlement to registration on a property title on the grounds that, you know, you could say, "Well I never exercised my right, but I always had that right." 33(1) deals only with applications to a court, is that not correct?

MR. CHERNIACK: : Yes, that's correct.

MR. SHERMAN: And registration rights don't have to be exercised through making application to a court?

MR. CHERNIACK: : That's right. But, Mr. Chairman, I would like to remind Mr. Sherman that the spouse can unilaterally only register a caveat, and a caveat — I don't know if Mr. Sherman knows the implication of a caveat — it means "beware", I claim a right; it doesn't mean I have a right, it means I claim a right. So unilaterally that's all a spouse can do is to register a caveat which could then be removed by — it's a simple procedure — the district registrar will notify that person that the caveat has been challenged, and that person has 14 days within which to start a court action to enforce the

right, otherwise the caveat is removed. At that stage then, this unilateral decision has to be referred to court where there would be a hearing.

The other thing a person can do is apply to court for an order which would then have the consequence of having notice served on the registered owner, and then there is a hearing. The only other way to be registered is by the two parties together registering. So, I don't think there can be anything adverse to the interests of the registered owner, by the fact that the registration is made 20 years after the right has arisen. Does that help?

MR. SHERMAN: Yes, but the fact is, Mr. Chairman, a spouse could come back, as you say, 20 years later and file a caveat.

MR. CHERNIACK: Yes, but that signing of a caveat does not give a right, it just declares . . .

MR. SHERMAN: Then has to be supported . . .

MR. CHERNIACK: Oh, yes.

MR. SHERMAN: They can't actually claim registration, they have to . . .

MR. CHERNIACK: No, a caveat means beware anybody dealing with a title, subsequent to the registration of caveat, should know that I, so and so, claim that I have an interest in land by virtue of . . . then whatever reason, in this case it would be the marital home — and then the procedure is simple, any person, any registered owner, applies to the land titles office and asks for what is called a 14-day notice,. Am I correct Mr. Silver?

MR. SILVER: Yes.

MR. CHERNIACK: And, then the notice is issued, and the notice reads, not verbatim, but it reads to the intent that.: We the land titles office, district / iegistrar, give you notice that unless you start an action in court to enforce the right you claim within 14 days, and file what we call a *lite pendente*, which means file a certificate that the matter is in court. If you don't do that then the caveat is automatically removed in 14 days.

MR. SHERMAN: But, you could start an action in court.

MR. CHERNIACK: Oh, sure.

MR. SHERMAN: And that could be 20 years after you actually had those rights, but simply didn't exercise them.

MR. CHERNIACK: Yes.

MR. SHERMAN: So, in fact, there is no time limit on it.

MR. CHERNIACK: No, and again I say, Mr. Chairman, because we have already declared that that is not an entitlement, but is an actual ownership. We have said, "is deemed to be and entitled to be registered." So, 20 years later, 40 years later, you could still assert a right that you have. Does that help?

MR. SHERMAN: Well, yes it helps in understanding it. I'm not sure that I agree with the principle that there shouldn't be a time limit.

MR. CHERNIACK: I think it's true. I think you will agree because we gave her that ownership.

MR. SHERMAN: Okay.

MR. CHAIRMAN: May I refer committee members now back to the amendment 37(1) which has been moved. Is there any further non-repetitive debate? Mr. Sherman.

MR. SHERMAN: Well, just one thing. I don't think this is too repetitive, Mr. Chairman, because Mr. Axworthy has been concentrating on the term "extraordinary financial". I think his point is well taken. I am equally disturbed by the term "unconscionable." It is only when a judge considers a 50-50 sharing to be unconscionable that he would vary the division, and there aren't very many names of the judiciary that come to mind, perhaps one, who I would think would want to act in a way that they thought was unconscionable. So it is unlikely that the decision to vary would ever be invoked. So, I don't see that the discretionary principle is really that effective, but it is better than nothing.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I wonder if I could raise one suggestion here.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'd like to just record the interesting feature that I believe that this is too broad, and I think that Mr. Sherman thinks it is too restrictive, and I think that Mr. Axworthy has the feeling that it is restrictive, and I think we each sincerely hold those feelings. I am not sure the extent to which we disagree in principle, or just to interpretation, but I am struck by the fact that I really would like it to be veiy very awkward and unconscionable for a judge to change that 50-50 without very good reason; on the other hand, people think otheiwise. I am inclined to feel that unless we can arrive at words that are different and satisfy us, that I would just as soon go along with these words — I personally — I even considered a sort of a free vote situation, you know, I don't think it is a party policy that much. But, I for one would rather go with these words rather than broaden the discretion, and I would guarantee you that it won't be long before this section will be reviewed both in court and then in the Legislature. Laws like this we can't make now and for all time, and I personally would rather have this kind of restrictive one — which I don't think is restrictive enough — and next year and two years later there will be court decisions that will bring this back into the legislative

arena. So, for want of any other suggestion that appeals to me, I would like to go ahead with 37(1) as it is.

MR. CHAIRMAN: 37(1)—pass; 37(2). Mr. Pawley.

MR. PAWLEY: Mr. Chairman, if I could just indicate a concern that I have developed in respect to 37(2).

MR. CHAIRMAN: Can I have that moved before you speak to it. Mr. Jenkins will you move 37(2) as printed.

MR. JENKINS: Mr. Chairman, I so move.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: 37(2), as it is worded, only relates to commercial assets, excluding family assets, and I think that probably for 75-80 percent of Manitoba families, the assets are the bulk of their estate, and yet 37(2) does not provide any discretion insofar as they are concerned. So it would be my inclination to suggest that we take out commercial so that 37(2) would apply to all assets, family or commercial, putting in the word "shareable." You know, many of the hardship cases, when we consider them, that we've heard, have dealt with families in where there's only the home and a small bank account and some furniture and car, and as 37(2) is worded, referring only to commercial, it would not be assisting those particular complaints brought to us. So, I would like to suggest that we take out commercial and put in shareable so that we apply 37(2) to . . . I could make that by way of an amendment that it be shareable rather than commercial.

MR. CHAIRMAN: The sub-amendment moved by Mr. Cherniack. Is the sub-amendment agreed to? (Agreed) Any further discussion on 37(2)?

MR. AXWORTHY: Well, Mr. Chairman, even in here we once again have what I think could be a bias built into the way in which the courts will interpret this, when you say "imbalance in the relative financial or other contributions of the spouses to the marriage" — it seems to me again that the whole purpose of this Act was to get away from the idea that those who make financial contributions are somehow superior to those who don't, that contributions of one spouse which are totally non-financial are not being counted. And I think that again, the use of the word "financial" would mean again if someone had been out making great mounds of money and the other spouse was 'at home, doing the things that they do, then that obviously could be considered to be an extraordinary imbalance and I again wonder whether the word financial there would skewer the thing too much into the direction of simply measuring that in a scale of things and not using the financial contributions in the scale of things as opposed to general contributions.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Well, Mr. Axworthy makes a strong point. I'm a little concerned about the Murdoch case being exactly this way, where the court there apparently said, well the duties other than financial don't weigh as much as the financial. Now, I don't know. I would be inclined to go along with Mr. Axworthy and say, in the relative contributions of the spouses, take out the words "financial or other" on the assumption that Mr. Axworthy is right, that the court would not weigh financial housekeeping but rather weigh the whole thing as a package. I would take a chance on going along with Mr. Axworthy. I hope we're right. How can we tell. I would go along with that.

MR. AXWORTHY: I would so move that. . .

MR. CHERNIACK: . . . deletion of the words "financial or other" in the third typewritten line. What do you think?

MR. PAWLEY: Yes, I would agree to that as well.

MR. CHAIRMAN: The sub-amendment moved by Mr. Axworthy to delete the words "financial or other" in the third typewritten line.

MR. SHERMAN: I don't suppose, Mr. Chairman, that the Honourable Member for St. Johns would be prepared to carry on and eliminate the word "unconscionable?"

MR. CHAIRMAN: The Chair wouldn't permit two sub-amendments on the floor at the same time. Is the sub-amendment agreed to? (Agreed)

MR. PAWLEY: I don't think Mr. Axworthy would agree to that.

MR. SHERMAN: Well "grossly unfair," that's pretty descriptive' pretty definitive.

MR. SILVER: Why don't we just say "unjust" instead of all that stuff.

MR. CHAIRMAN: 37(2) as amended—pass; 37 as amended—pass; Preamble—pass; Title—pass; Bill be reported—pass. Committee rise and report.