

LEGISLATIVE ASSEMBLY OF MANITOBA

Wednesday, July 5, 1978

Time: 8:00 p.m.

OPENING PRAYER by Mr. Speaker.

MR. SPEAKER, Hon. Harry E. Graham (Birtle-Russell): The Honourable Member for Inkster on a point of order.

MR. SIDNEY GREEN: Yes, Mr. Speaker, I don't know whether it's by error or otherwise, but it seems to me that you read a prayer which the Assembly agreed would be discarded some two years ago. We have all unanimously agreed that we do not acknowledge that there is a Divine Right of Kings and that the legislators are here making laws by some divine authority. I would respectfully request, Mr. Speaker, I don't know whether you've lost the new prayer, but I would respectfully suggest that you have read the wrong prayer, and I would like to know that from this day forward you are not going to be reading that prayer.

MR. SPEAKER: If I have erred, I apologize to the House.

Presenting Petitions . . . Reading and Receiving Petitions . . . Presenting Reports by Standing and Special Committees . . . Ministerial Statements and Tabling of Reports . . . Notices of Motion . . . Introduction of Bills.

ORAL QUESTIONS

MR. SPEAKER: The Honourable Member for St. Boniface.

MR. LAUNT L. DESJARDINS: Mr. Speaker, my question is to the Minister responsible for lotteries. There was a write-up in today's Tribune stating that the Minister responsible for lotteries for British Columbia would not allow the retailers of the Western Lottery and the Provincial Lottery to sell the Loto Canada Lottery. Is it the intention to have that in Manitoba and any other western provinces, or is that only for the Province of British Columbia?

MR. SPEAKER: The Honourable Minister of Consumer Affairs.

HON. EDWARD MCGILL (Brandon West): Mr. Speaker, in response to the Member for St. Boniface, my first knowledge of this action by British Columbia was through the press. The only agreement as to action by all of the provinces that indicated their objection to the further intrusion of the Federal Government in the lotteries field was to refer the matter to the next meeting of First Ministers and to ask them to give priority consideration to this action, which all but one of the provinces indicated objection to.

MR. SPEAKER: Orders of the Day. The Honourable Member for Selkirk.

MR. HOWARD PAWLEY: Mr. Speaker, my question is to the Minister of Tourism and Recreation. Can the Minister confirm that the Interlake offices of the Department of Tourism and Recreation have been moved from Selkirk to Gimli?

MR. SPEAKER: The Honourable Minister of Industry and Commerce.

HON. ROBERT (BOB) BANMAN (La Verendrye): Mr. Speaker, the Selkirk Office, which contained one recreational director, I understand that there is a new one that has been hired and will be placed in Gimli to serve the Interlake area.

MR. PAWLEY: Mr. Speaker, my question to the Minister of Labour pursuant to the answer or non-answer from the Minister of Tourism, I gather that the Minister of Tourism has confirmed the transfer of the office and I think the Minister would agree, there are three, not one, employees that

are affected.

Could the Minister of Labour advise me whether there is any policy in government that will provide for a compensation where employees have to travel an additional 50 miles to their place of employment as a result of transfer of government offices.

MR. SPEAKER: The Honourable Minister of Labour.

HON. NOA PRICE (Assiniboia): Mr. Speaker, I will have to take that question as notice and get back to you.

MR. SPEAKER: The Honourable Member for St. Johns.

MR. SAUL CHERNIACK: Mr. Speaker, I would like to clarify something with the Minister of Education. I have been asking him for some period of time about the completion of an agreement between the Universities of Brandon and Manitoba. I realized yesterday that the Minister did not answer me precisely when I referred to an agreement between the Universities of Brandon and Manitoba. I now have to ask him very directly, is there an agreement between the Universities of Brandon and Manitoba, and if there is, is he prepared to table it?

MR. SPEAKER: The Honourable Minister of Education.

HON. KEITH A. COSENS (Gimli): Mr. Speaker, I am very pleased to have the opportunity to clarify this matter, and I think it has arisen because of the use of the names of the universities in a certain way, which may have confused the Member for St. Johns. It may have confused the Minister.

However, the University of Brandon supplies the courses for the BUNTEP IMPACTE Program. Formerly it provided the courses for the Winnipeg Centre Project. As of the last few weeks the Winnipeg Centre Project has been transferred to Winnipeg and to the University of Manitoba who will now provide the courses.

The agreement that the Member for St. Johns speaks of or refers to between Brandon and the Department of Education, the formal agreement setting out the responsibilities of both parties to the particular projects carried on at Brandon, has been signed, is on my desk and I would be quite willing to table that for the Member for St. Johns.

The agreement between the University of Manitoba and the Department of Education regarding the Winnipeg Centre Project is, I would say, about one day away from arriving on my desk. It has been held up for some small legality and I am sure the Member for St. Johns, being a member of that profession, can appreciate that these things have to be checked through rather carefully, they are formal agreements. I would expect it any day now and at that time I will table it as well.

MR. CHERNIACK: Mr. Speaker, I rise on a matter of privilege. Mr. Speaker, it has been a number of times and I would have to check the record to see how many times I asked the Minister whether there was an agreement to be signed between the Universities of Brandon and Manitoba and not until this moment have we learned, Mr. Speaker, that there is no such agreement at all.

I rise on the point that I believe that I and other members who are interested in this question have been misled by this Minister who must have known all along that he was not dealing with an agreement between those two universities, but rather, he now tells us, with two separate agreements between his department and two universities.

Mr. Speaker, I raise that point because the Minister said he is glad I gave him an opportunity to clarify a situation which he must have known about all along and never had the courtesy — and I use that word in all its sense — to advise me that when I kept referring to an agreement between the Universities of Brandon and Manitoba that they were not contemplated, that indeed when I asked yesterday if they were signed that they were not signed and yet he left the impression that they were signed.

Mr. Speaker, I raise that point not that it may be germane. I don't know what person there asked for a question but, Mr. Speaker, I must point out that that person obviously knows nothing about the procedures in this House or he has not listened, one way or the other.

Mr. Speaker, I say as a matter of privilege that it was the Minister who had the knowledge which I didn't have and he never had the courtesy to correct me in my misapprehension as to the parties to the agreement. And on that basis, Mr. Speaker, I feel that he has misled me and perhaps other people and, most important, I think he has misled the students involved in the Winnipeg Centre Project, who are the ones who have been in touch with me constantly worrying about their future and being concerned about what was being developed in the program, in what they thought was an agreement between the Universities of Brandon and Manitoba. And on their behalf, Mr. Speaker,

I have to indicate concern and regret that the Minister has led us down an alley which he knew was the wrong one.

MR. SPEAKER: The Honourable Minister of Education on the same point of privilege?

MR. COSENS: Yes. Mr. Speaker, there has certainly been no intention to mislead the Member for St. Johns at all on this particular area. If I have erred, it is in perhaps expecting that he would realize that there would be no earthly reason for any agreement to be signed between two universities who are actually sharing nothing. One university is responsible for two projects; the other university is responsible for another project and if I have erred in not understanding that that was what the Member for St. Johns comprehended, then I suppose I have expected that he had a greater knowledge of the particular projects in question than he had, and if that happened then I certainly would apologize to him. There was no intention to lead him down any particular garden path at all. I was trying to be quite specific and I did have some problem understanding why he kept insisting that there should be an agreement between two universities who, as I say, are not sharing anything in this particular area. They have each separate responsibilities to different programs.

Once again, as I say, Mr. Speaker, I would apologize to the Member for St. Johns if he feels that there has been something intentional here, but I assure him there hasn't been.

On another point, the Member for St. Johns mentions . . .

MR. SPEAKER: Order, order please. We can only deal with one thing at a time. The Member for St. Johns has raised a point of privilege which, after listening to the arguments from both sides of the House, I find is completely unfounded; it's a matter of interpretation of what has occurred and is not a matter of privilege at all.

The Honourable Member for St. Johns.

MR. CHERNIACK: On a point of order, the matter of privilege which you do not recognize appears to be one where the Minister found it advisable to apologize, and I accept his apology. Therefore, Mr. Speaker, I believe that he accepted the fact that I had been misled. He says he did not mislead me and I accept that, but the fact is that I was misled. The trouble is that the Minister of Health doesn't seem to realize that when you have an expression saying an agreement between party A and party B, it means between two people and not anything else and the Minister of Health doesn't seem to understand that. I hope the Minister of Education could correct him.

Mr. Speaker, I accept the apology of the Minister of Education and, Mr. Speaker, I now ask him again — he has agreed to table the agreement between his Department of Education and the University of Brandon — will he agree to table the agreement between his department and the University of Manitoba, which apparently has not yet been signed involving the project I've been asking about for a number of weeks, and which he thinks will be signed tomorrow. Will he agree to table that as soon as it's signed?

MR. SPEAKER: Order please. Before I allow the Minister to answer, I want to point out that the Member for St. Johns had no point of order. The Honourable Minister of Education.

MR. COSENS: Mr. Speaker, I think I said earlier that I would be prepared to table the agreement that is presently on my desk between Brandon and the Department of Education regarding the IMPACTE Program and the BUNTEP Program which are the responsibility of Brandon as far as delivery of courses are concerned. When the contract arrives on my desk concerning the Winnipeg Centre Project and the University of Manitoba — and I expect it within the next few days, hopefully tomorrow, but perhaps I can't guarantee that — I will table it also for the member.

MR. SPEAKER: The Honourable Member for Elmwood.

MR. RUSSELL DOERN: Mr. Speaker, I would like to direct a question to the Minister of Health. In view of the report that there was a 30 minute delay at Misericordia Hospital in giving treatment to a coronary patient, someone who was brought in on an emergency with a serious heart problem, in view of the fact that there was a 30 minute delay in getting to that person and the fact that the person then died, would the Minister investigate that situation and report to this House?

MR. SPEAKER: The Honourable Minister of Health.

HON. L.R. (BUD) SHERMAN (Fort Garry): Mr. Speaker, I'm certainly fully prepared to investigate the situation. I have investigated it at least up to this point, and I can carry the investigation further. I'm informed by the hospital and by the Chief of the Medical Staff at the hospital that the interim

was between 10 and 15 minutes, not as indicated by the relatives of the person who died, and further, that that particular patient was not brought into the hospital as such, not in terms of the literal interpretation of that term, that he walked into the hospital and there was apparently no immediate indication that the case was of that emergency in nature. But I'm advised that the response was normal and there was no undue delay, however, I can look into it further.

MR. DOERN: Mr. Speaker, I'd also ask the Minister whether he might consider reviewing the admission procedures in Manitoba hospitals in the emergency wards, because I can indicate from my experience, which is pretty limited, but on two or three occasions it seems that the normal procedure is to sit someone down, take all the details, type it out, wait in line, and in the meantime, when there is an emergency, anyone going through that procedure may die or be seriously injured as a result.

I wonder if there might be some way of reviewing the procedures, and maybe having some system whereby people can be treated first and then examined in terms of paper documentation later?

MR. SPEAKER: The Honourable Minister of Health.

MR. SHERMAN: Well, Mr. Speaker, I certainly can investigate that with the Health Services Commission, and I will do, but as I say, I am advised that the staffing pattern and procedures were normal and that the delay in the view of the medical staff, and there are two sides to this story, but in the view of the medical staff and the nursing staff, was not untoward or unusual considering the fact that the patient walked in under his own physical power.

However, I will investigate it and cause it to be investigated by the Health Services Commission.

MR. SPEAKER: The Honourable Member for Brandon East.

MR. LEONARD S. EVANS: Mr. Speaker, I would like to address a question to the Minister of Municipal Affairs. Inasmuch as the Legislature has rejected the bill which would have allowed the City of Brandon to annex a certain piece of property to accommodate the expansion of a mobile home facility, is the Minister now going to take the initiative . . .

MR. SPEAKER: Order please. May I suggest to the honourable member that asking questions about something that has happened within this Legislature is entirely out of order.

MR. EVANS: Mr. Speaker, I am not going to discuss the bill. I was going to request some information of the Minister pertaining to the future about a very urgent matter.

My question to the Minister is whether he will now take the initiative and meet with the municipalities of Brandon and Cornwallis to help them resolve the particular problem that they now face, or is he going to allow them to flounder and not be able to resolve this matter and to allow those people, those many families, to be dispossessed without a place to live?

MR. SPEAKER: The Honourable Attorney-General.

HON. GERALD W.J. MERCIER (Osborne): Mr. Speaker, certainly if I or my department can provide any assistance to the Rural Municipality of Cornwallis or the City of Brandon with respect to this matter, I would be anxious to participate and assist them. Perhaps in the next few days we will receive some communication from them requesting assistance, but I think they are well aware of the provisions of The Municipal Act which certainly could allow another application for annexation of the 37 acres, rather than the larger area, or as I indicated in speaking to this matter this afternoon, now that the municipalities have got this close together, it is certainly not beyond comprehension to have the R.M. of Cornwallis agree to the use of the land which is within their boundaries for the purpose of a mobile home park and approve an application for zoning.

MR. SPEAKER: The Honourable Member for Brandon East.

MR. EVANS: Well, in view of the urgency of the matter, and I can advise the member that there are many, many people in the community that do consider this to be an emergency. The fact that we had a busload of people here appealing to us, I think, attests to that fact, Mr. Speaker. In view of the seriousness of the situation, would the Minister be prepared to bring in a bill now that is suitable to the government to help resolve this matter?

MR. SPEAKER: The Honourable Attorney-General.

MR. MERCIER: Mr. Speaker, if the honourable member is attempting to say that even if the bill had passed it was going to solve this emergency situation, is incorrect. We heard the problems, the dispute over ownership, we heard that the property had to be rezoned, had to be serviced, all of which was going to take a considerable length of time, so this was not going to be an immediate solution to this problem. It was going to take at least two or three months to resolve this matter.

MR. SPEAKER: The Honourable Member for Brandon East.

MR. EVANS: Mr. Speaker, I only wish the Minister of Municipal Affairs was at the last committee meeting where this was completely threshed over, and we had good advice from the Legislative Counsel. I would ask, Mr. Speaker, if the Honourable Minister would take it upon himself to discuss this matter with advisers in his department and the Legislative Counsel, because it can be dealt with immediately by a bill.

MR. SPEAKER: The Honourable Government House Leader.

HON. WARNER H. JORGENSEN (Morris): On a point of order, I have no objections to my honourable friend asking questions, but he is now debating a measure that has been passed in this House just recently, and as you indicated earlier, Sir, that's entirely out of order. If the member could ask a question without editorializing, he perhaps could be in order once in awhile.

MR. SPEAKER: The Honourable Member for Brandon East care to rephrase his question?

MR. EVANS: I'm always very pleased to accommodate my friend the Government House Leader. I indeed would like to be in order as much as I can, plus the guidance of his colleagues behind him. This is, Mr. Speaker, a very serious matter, so I repeat my question, would the Honourable Minister consult with the Legislative Counsel who gave us his sound advice on this matter, as well as staff in his own department of Municipal Affairs, to see whether there is a way to help overcome this particular dilemma, this particular urgent problem that is now being faced by the people in that community?

MR. SPEAKER: The Honourable Member for Transcona.

MR. WILSON PARASIUK: Thank you, Mr. Speaker. I have some questions to the Attorney-General arising out of some of his answers to my colleague, the Member for Selkirk, concerning beer being distributed to hotels. In the light of his answer that somehow the Manitoba Hotel Association had a bulk order in which they then distributed to their constituent members, can the Minister indicate whether there's been a change in policy whereby the Manitoba Liquor Control Commission is not the agency that determines who should get beer that is requested from hotels to it. Can the Minister indicate whether there's been a change in policy, or whether in fact the Manitoba Hotel Association has taken over some of the functions of the Manitoba Liquor Control Commission.

MR. SPEAKER: The Honourable Attorney-General.

MR. MERCIER: Mr. Speaker, as I indicated earlier, one of the problems the Liquor Commission faced in ordering American beer is that normally they only order about one truckload to last approximately two or three months. They did not want to get stuck with an oversupply of American beer in the event that the strike suddenly ended, so that people who ordered American beer were required to take immediate responsibility and to pay in advance. The Manitoba Hotel Association made an order on behalf of the members of their association, as I understand it, through the Liquor Control Commission, as did other drinking establishments throughout the province place orders.

MR. SPEAKER: The Honourable Member for Transcona.

MR. PARASIUK: A supplementary. Can the Minister undertake to find out whether in fact it's not the normal practice for all hotels when they place orders with the Manitoba Liquor Control Commission to in fact pay in advance, and therefore all have an equal claim to the beer. Therefore, can the Minister then check his answer in the light of the information that I'm quite sure he'll find out if he checks with the Manitoba Liquor Control Commission as to how it handles prepayment

for beer orders?

MR. SPEAKER: The Honourable Attorney-General.

MR. MERCIER: Strikes are not the usual practice, Mr. Speaker.

MR. SPEAKER: The Honourable Member for Transcona.

MR. PARASIUK: A supplementary, Mr. Speaker. Could the Minister explain that situation, in that we have a situation where there is a strike and where there are a number of lockouts as well, and therefore, does that mean that the Minister has indicated to the Manitoba Liquor Control Commission that it can change its normal policy and give preference to the Manitoba Hotel Association members, therefore by-passing a large number of small, independent hotels, for whatever reasons they have, have chosen not to become members of the Hotel Association. Can the Minister indicate whether he hasn't directed the Manitoba Liquor Control Commission to change his past policy in this respect?

MR. SPEAKER: The Honourable Attorney-General.

MR. MERCIER: Mr. Speaker, this matter is being handled by the Liquor Control Commission. I'm not aware of any change in practice. The difference is that the money has to be guaranteed when the order is made, not just under normal practice, when delivery is made.

MR. SPEAKER: The Honourable Member for Transcona with a fourth question.

MR. PARASIUK: Thank you, Mr. Speaker. Would the Minister please check into the procedures of the Manitoba Liquor Control Commission and report back to the House as to whether in fact it's not the normal practice for hotels to prepay their orders for beer when they order it from the Manitoba Liquor Control Commission. Would the Minister please undertake to determine whether that's the normal practice, because I believe it is.

MR. SPEAKER: The Honourable Attorney-General.3\$

MR. MERCIER: I certainly would, Mr. Speaker.

MR. SPEAKER: The Honourable Member for Selkirk.

MR. PAWLEY: Mr. Speaker, my question is to the First Minister. The First Minister the day before yesterday indicated in respect to questions which had been posed to him by the Member for St. George, that upon a perusal of the documents, the letter to the Village of Arborg, he was satisfied that there was nothing of an improper or irregular nature pertaining to those letters or documents. Could I ask if the First Minister would be prepared to table in the Legislature the letter which he forwarded or his office forwarded to the Village of Arborg pertaining to the Municipal Board hearing?

MR. SPEAKER: The Honourable First Minister.

HON. STERLING R. LYON, Premier (Charleswood): Mr. Speaker, I don't think there's any problem. I'll have to check the file on that to see, but I'm sure my honourable friend probably is sitting with a copy in his file already. I'll be happy to oblige him.

MR. SPEAKER: The Honourable Member for St. George.

MR. BILLIE URUSKI: Thank you, Mr. Speaker. Just to follow up on that question. I can assure the First Minister that I have not seen a copy of the correspondence, but by his statements yesterday in the House, which were relayed to me, is the Minister indicating that it is common practice of his office to make those kinds of requests of municipalities without being fully aware of the implications of such requests?

MR. SPEAKER: The Honourable First Minister.

MR. LYON: Mr. Speaker, I'm making or leaving no such implication whatsoever. I think the letter about which the Member for Selkirk has spoken will speak for itself. It's quite customary for any

Minister's office to relay information from time to time when constituents or people relate or come to a Minister's office with complaints and staff members handle it in quite the ordinary way. In my reading of the correspondence, it looked to me to be quite ordinary.

MR. SPEAKER: The Honourable Member for St. Johns.

MR. CHERNIACK: Mr. Speaker, I'd like to address a question to the Minister of Health, and ask him whether he's knowledgeable about a policy, or would check out a policy about which I was informed this afternoon, to the effect that geriatric patients in the St. Boniface Hospital and the Health Sciences Centre who have been awaiting transference to nursing homes, are now about to be transferred to the Selkirk Mental Institution to continue to wait for nursing home accommodation. Is the Minister aware of this kind of a policy or will he investigate whether or not it is correct?

MR. SPEAKER: The Honourable Minister of Health.

MR. SHERMAN: No, absolutely not, Mr. Speaker, I am not aware of that kind of policy, although there is a problem as the honourable member well knows in terms of active treatment beds that are occupied by psycho-geriatric cases in some of the major hospitals, and certainly some medical personnel in the City of Winnipeg have discussed among themselves and discussed with me the long-term viability of perhaps utilizing some of the unused space at the Selkirk Mental Hospital for that purpose. But the space would have to be put into shape for use, a decision would have to be made by the government and no such decision has even been contemplated or discussed.

MR. CHERNIACK: A supplementary then, Mr. Speaker, and I appreciate the answer that I have been given. Can the Minister assure us that no such action can be taken until after the government has arrived at a decision to carry out such a policy, and in that event it will make public that decision before any transfers are made?

MR. SHERMAN: Yes, I can, Mr. Speaker. I can't guarantee the honourable member that there haven't been instances of that kind that have inadvertently happened or taken place, and as a consequence I will take his question as advice and investigate it because there certainly has been no policy decision authorizing it, or sanctioning it.

MR. SPEAKER: The Honourable Member for Brandon East.

MR. EVANS: Thank you, Mr. Speaker. I would like to address a question to the Minister of Health and Social Development and ask the Minister whether he has been advised by his departmental officials or by the Manitoba Health Services Commission whether government spending restraints in the field of hospital care is causing certain major hospitals to attempt to economize in the use of medical material and medical equipment for the treatment of patients? Has the Minister been made aware of any cutback or reduction in the use of medical equipment or medical material in the treatment of patients.

MR. SHERMAN: No, Mr. Speaker, I haven't, and I would say to the Honourable Member for Brandon East that there are budgetary adjustments that are being made right now between the Health Services Commission and the various hospitals and health facilities in the province based on considerations that I mentioned in my Estimates, such as the switch over to the fiscal year, the deficits from last year and the fact that there were no cost increase allowances for the first three months of calendar 1978, all of which will result in increased funding for health facilities generally. But I haven't had specific complaints or grievances of the nature mentioned delivered to my desk.

MR. EVANS: A supplementary, Mr. Speaker. I thank the Honourable Minister for his answer and his concern. I wonder if he would care to take under advisement or look into the matter of the recycling of medical equipment, such as plastic tubes. I believe they are plastic, they are called swan-ganz tubes that are used for lung failure and heart failure in Intensive Care Units in the hospitals. I am wondering if he can look into the matter of whether such tubes for the patients who come into the Intensive Care Centres such as the Health Sciences Centre, whether they are being required to use recycled material.

MR. SHEAN: Well, I will look into it, Mr. Speaker. I would only say to the honourable member that with respect to certain types of equipment, there have been advisories given to me by medical personnel, by practitioners, that there are certain types of equipment that are reusable and that

represent an unnecessary expenditure when they are not sterilized and reused. As a consequence, some suggestions may have already been incorporated with respect to some units of this type in various hospitals. With respect to those particular tubes, I can't say I am familiar with the subject, but I will check it out.

MR. EVANS: Just one other supplementary then. I again thank the Minister for his answer, and ask him in this particular instance, if he could satisfy himself — this is a medical decision I suppose — but I wonder if he would care to satisfy himself as the Minister responsible for health delivery programs in this province, that in the recycling of these particular tubes, that the hospital authorities are keeping within the manufacturer's specification that they are not used more than five days, in which case, I understand, they become brittle and break and could lead to a catastrophe. The recycling process, the sterilization, and recycling process may make it more difficult for hospitals to ensure that the five-day limit is adhered to. Again I appreciate that this is a medical matter, but nevertheless in view of the fact, Mr. Speaker. . .

MR. SPEAKER: Order please. Can the honourable member confine his question to one subject matter at a time please.

MR. EVANS: Well, Mr. Speaker, my subject matter is the recycling of medical material and particularly these tubes that are used for emergency cases in Intensive Care Units, and particularly the Health Sciences Centre, and I wonder if the Minister could then inquire and ensure himself that in this process of recycling of medical equipment, that every precaution is taken to ensure that the material is not recycled to the point that it goes beyond the manufacturer's specification of safety limits, namely, five-day limit in this case?

MR. SPEAKER: The Honourable Minister of Health.

MR. SHERMAN: Mr. Speaker, it may be necessary and advisable for the honourable member to recycle his question, because somewhere in the intricacies of all the cycles and all the circles I think I have lost the point of the question, but, Mr. Speaker, I will consult with the Honourable Member for Brandon East and I will discuss the subject with him and carry it further outside the Chamber.

MR. SPEAKER: The Honourable Member for Elmwood.

MR. DOERN: Mr. Speaker, I would like to direct a question to the Minister of Health. Is it the government's policy to reduce the population of the Manitoba Home for the Retardates by the establishment or construction of group or community homes?

MR. SHERMAN: Yes, it is our long-term policy, Mr. Speaker.

MR. DOERN: Is the renovation of the East Grove Building or was it considered to be the number one priority at the Manitoba Home?

MR. SHERMAN: Yes, Mr. Speaker, in keeping with the old maxim, "Safety First".

MR. DOERN: Then could the Minister indicate what the next priority is at the Home, is it group homes or community homes, or are there other renovations planned?

MR. SHERMAN: It's neither either nor or, Mr. Speaker, it is both. But our priority at the present time is the safety of patients at the Manitoba School and as a consequence we are intending to move ahead with the renovation of East Grove, which permits transfer of patients from upper levels to the ground floor and makes exits much easier.

ORDERS OF THE DAY

ADJOURNED DEBATES ON SECOND READING

MR. SPEAKER: The Honourable Government House Leader.

MR. JORGENSON: Mr. Speaker, will you call Bill 58 please.

BILL NO. 58 — AN ACT TO AMEND THE EDUCATION DEPARTMENT ACT

MR. SPEAKER: Bill 58, on the proposed motion of the Honourable Minister of Education, second reading of the Department of Education Act, the Honourable Minister is in the process of closing debate.

MR. COSENS: Thank you, Mr. Speaker. In closing the debate on Bill 58 I would like to address a number of points that were raised in our previous session.

The commissions have been working in the educational system for years and over the past number of years the Department of Education and school authorities have co-operated in providing more opportunities for and services to handicapped students and this has necessitated specialists to assist in providing expertise in the various fields in which commissions usually work; namely as educational psychologists, reading clinicians, speech and hearing clinicians and school social workers.

These personnel are all directly related to the program of assisting special needs children. Many clinicians, Mr. Speaker, already hold valid and subsisting teaching certificates. However, this amendment will affect a small group — some 125 — who do not hold teaching certificates but have otherwise qualified under the regulation to obtain a clinician's certificate. Whether or not others will be certified in the future will depend on ever-changing needs of the school system.

One of the questions raised regarding the regulations currently in force, I would inform the members opposite that the regulations governing the certification of clinicians are under Manitoba Regulation 32-78 made under The Education Department Act, Clause (hh) Subsection 1 of Section 6, filed with the Registrar of Regulations March 17th, 1978.

The regulation categorizes four kinds of clinicians, Mr. Speaker, and sets out the minimum qualifications for certification. The powers of the Minister in this respect found under Clause (hh) of Subsection 1 of Section 6 of The Education Department Act. The Registrar of Regulations registered the regulation I have just mentioned but asked that it be clarified so that the Minister's powers would be specific in this respect.

I believe there was some concern as to the rights, benefits and obligations of certified clinicians under this amendment. In Subsection 6 of Section 6 of the bill it spells this out rather clearly saying a person certified as a clinician is entitled to all the rights, benefits and obligations of a teacher under the Education Department Act, The Public Schools Act, and The Teachers' Pensions Act, other than the right or obligation to teach pupils in a classroom.

The retroactive aspect necessary, Mr. Speaker, to clarify the specific power of the Minister in regard to the regulation that I mentioned before.

There was some concern voiced also as to the effects of this amendment to certified clinicians, those who are or those who will be, as far as sick leave and pension benefits are concerned. I would mention that those clinicians who are and who will be certified would have the same sick leave benefits as those provided under school board-teacher collective agreements and the teacher pension legislation would also apply to those who are and will be certified clinicians.

In summary, Mr. Speaker, Bill 58 would clarify the legislation regarding the certification of school clinicians.

QUESTION put, MOTION carried.

MR. SPEAKER: The Honourable Government House Leader.

MR. JORGENSEN: Will you call Bill No. 38, Mr. Speaker?

BILL NO. 38 — THE MARITAL PROPERTY ACT

MR. SPEAKER: The Honourable Member for Inkster.

MR. GREEN: Mr. Speaker, I first of all would like to apologize for the fact that this bill has stood in my name for a period of some two weeks. I did not expect that would happen and each time that the bill was called I had sort of hoped that somebody would address himself to the subject. I hope that people have not been precluded, or considered themselves precluded, from speaking on the issue because it was standing in my name. I had not been prepared to speak to it until the present time but did make a contribution on the companion bill, which was the family maintenance bill.

I want to indicate, Mr. Speaker, that the Attorney-General, who has just walked into the Chamber, did something very significant when he introduced and spoke on this bill. I want to first of all assure the Attorney-General that I am not trying to ridicule or in any way make fun in what I am about to say. Each of us have personal little compulsions and perhaps mine are worse than others, but we each have these little things and the Minister, in speaking to this bill, demonstrated one of his

little compulsions that perhaps he doesn't realize, because most people don't realize those kind of things that come automatically. For approximately 15 minutes, which is I think probably a good portion of the time in which he introduced the bill, the Minister did the following, Mr. Speaker.

The Minister has a habit of playing with an elastic. As a matter of fact, I noticed that he was playing with an elastic today and during the entire presentation of The Marital Property Act the Minister was working the elastic around in his fingers. As a matter of fact, Mr. Speaker, the Minister like — is it Linus who carries his blanket with him? The comic character, I believe it's Linus, who carries a blanket with him. — The Minister carries an elastic with him and it was particularly appropriate, Mr. Speaker, in the introduction of the bill, The Marital Property Act, especially as it relates to the bill that was passed last year by the New Democratic Party. Because although I referred to it as an elastic, Mr. Speaker, that is really a colloquialism. We all know that the proper designation is a rubber band but it's not very appropriate to refer to the characteristics of the bill as a rubber band, and the term "elastic" is so much more satisfactory, Mr. Speaker, in dealing with this bill that I thought that the Minister's particular habit is particularly appropriate for the bill that he has introduced, because in all of the discussions that have taken place with regard to this bill, Mr. Speaker, I think that the major submissions that have been made both by the representatives who spoke for the New Democratic Party and — I hope I am being fair — for the Minister himself, is that the present bill is intended to be and is much more elastic than the bill that was introduced by the New Democratic Party.

By much more elastic I mean that the essential feature of the bill, namely judicial discretion in considering the presumption of marital property, has been made in the minds, I believe, of the government and in the minds of members on this side of the House, much broader and more liable to a wide-ranging type of discretion than the feature of the previous bill.

Mr. Speaker, I want to start by indicating my position on the bill and the position which I believe is the position that is being taken by the Official Opposition generally. We are going to vote against this bill. We vote against the bill, Mr. Speaker, essentially, and the major reason for voting against it deals with the manner in which it is being introduced and which requires us, Mr. Speaker, in the body and in the principle of the bill, to vote against a better law because this bill contains the same objectionable and noxious clause that was contained in The Family Maintenance Bill, namely a clause repealing a better piece of legislation.

Now, Mr. Speaker, it is very difficult for the Minister to expect that despite the fact that this legislation may be an improvement over previous legislation, that is, prior to the legislation that was enacted in 1977, it may be — and I will deal with that a little bit more clearly later — it is definitely not an improvement over the legislation that was passed in 1977. That being the case, Mr. Speaker, the Minister is asking us to take a step backwards and I am by no means, and this Party is by no means, prepared to take that step.

Mr. Speaker, having said that, I also wish to make myself clear on some of the things that have been said about either of the two bills, and I say this, Mr. Speaker, because I am a little worried about some of the comments that have been made about the marriage relationship generally, and I am even more worried about some of the expectations that have been suggested both for the legislation that was previously enacted, and the legislation which is now enacted.

Now, Mr. Speaker, my own tendency in many many areas, and particularly a related area, the area that the Minister of Labour deals with, has been to suggest that the greater degree of third-party intervention, the greater degree of laws, the more difficult the relationship and the more, chances are, Mr. Speaker, that the relationship will not be satisfactorily dealt with between the parties.

Mr. Speaker, I want to indicate that my general feeling with regard to the marriage relationship and the notion that it can be improved by the enactment of laws and that it will result in less court decisions, or that there will be less problems, and that it should be legally set out, in my opinion will not be an improvement for the marriage relationship, but as a matter of fact, Mr. Speaker, will create problems for the marriage relationship.

Now, I don't wish to be misunderstood. I am in 100 percent agreement with the concept that the parties to a marriage, working together and creating property for themselves, no matter which one happens to be able to identify his particular work as resulting in one or other of the pieces of the property, that that property should belong to both parties and that there should be a presumption that it belongs to both parties and that that presumption should carry forward in all circumstances, Mr. Speaker, and it goes without saying that the most important circumstance, and the time when it comes up, is when the marriage relationship breaks down, which happens.

Now, Mr. Speaker, there has been much said. I think, in my opinion, in a way which again leads to false and what I consider to be dangerous expectations about marriage being an equal partnership. Mr. Speaker, the suggestion is that a partnership, a commercial partnership, which is the term that is applied, somehow works better than a marriage. I would think, Mr. Speaker, that many people who are in partnership would long for the opportunity of saying that a partnership should be like a marriage, not that marriage should be like a partnership, but that they would wish that the

relationship was as strong and worked as well as the marriage relationship because, Mr. Speaker, the notion that partners work out well and that the law with respect to partnership is so clear that everybody knows what they are getting, and doesn't result in disputes in the courts, is absolutely and positively wrong.

Mr. Speaker, I was a practising solicitor for the period 1955 to 1969, and four years as a student before then, and I'm doing it again now, and I will admit, Mr. Speaker, that there were more domestic cases than there were partnership cases, but, Mr. Speaker, there are so many more marriages than there are partnerships. The fact is that if one took the number of partnership breakdowns in relation to the number of partnerships and compared it to the number of marriage breakdowns in relation to the number of marriages, they would find that marriage works out much better than partnership, and that the marriage relationship with its relative absence of laws has produced a much more satisfactory relationship on the whole than has the commercial relationship between two partners. The problems that I have, Mr. Speaker, in dealing with this bill, deal with that question.

I would like, Mr. Speaker, to say something for marriage, something for marriage which has been left unsaid and which has been from time to time, Mr. Speaker, subjected to all kinds of attacks as if it is not one of the most solid institutions, without the interference of laws, without the interference of legislators, that we have in our society. I say, Mr. Speaker, that I am doing this on the basis that I realize, yes, there has to be some changes, although I am not by any means as certain that they are as compelling as some people make them because of the Murdoch case, which is an old case which said that property wasn't to be divided equally between the spouses. I can tell you, Mr. Speaker, that there are many cases that say exactly the opposite.

So that there should be no doubt about it, and because I think it is right and that the situation should not be capable of being the subject of argument, I agree that there had to be a change in the marital laws which took us some steps away from some of the features that are a problem and that relate to an attitude on the part of some men that their wives are their chattels and that the way that they can keep the marriage relations solid, is to keep the woman in economic domination. But, Mr. Speaker, I do not accept the fact that that is the general nature of society, that generally that is what occurs, and that marriage had to be reformed entirely and thoroughly as an institution in order to make it work, because, Mr. Speaker, what are we talking about in this bill?

Let me make it clear as to what I think we are talking about. I would suggest that the bill that was presented by the New Democratic Party and passed by this House was a better bill than the existing one, than the one that is now being presented. But, Mr. Speaker, I will say that as I understood it the bill wasn't nearly as good as I have heard some people say it was, and the new legislation is not nearly as bad as I hear some people say it is. It is not as good as the previous bill, but it isn't a disaster, Mr. Speaker. The disaster is the way the government has proceeded. If they wanted amendments to that previous bill, they could have let the law proceed normally, bring in the changes that they say were needed.

And what would those changes have been, Mr. Speaker? Again, as I understand it, the essential change in this bill is that there is a discretion on marital property, whereas there was almost no discretion — and I don't even know whether the word "almost" is a proper one — on family property under the old bill, and the discretion, the vesting is on separation rather than immediately, and I'm not sure as to the effects of that, because of the rights of third parties and the rights of creditors. There would have been a jurisprudence built around that.

And, thirdly, that the words of discretion, and I emphasize that, "the words of discretion" with regard to other property are much broader in the existing bill than they are in our bill. But the feature of 50-50 sharing being the presumption is equal in both and that is the essential feature and discretion with regard to a major part of the property in any event is there in both. I won't use the word "equal" because that might interfere with somebody's sensitivities, but it is there in both and nobody knows how that will work out until you get before the court. And if the courts use their discretion in a way that is feared by some and offensive to some, and that could have been done, I submit, under the last bill as well as under this bill, then there will continue to be needed changes in family law as it relates to those parts.

Now, Mr. Speaker, how much will this affect the marriage relationship? Well, I'm hoping, Mr. Speaker, that it will result in as little as possible interference by third parties. I'm hoping against hope because there seems to be an urgency for laws, an urgency for legislation and for what, Mr. Speaker? To deal with certain particular wrongs which can be looked after. Let's look at the situation that has developed under the laws as they exist, and there are still some. You know, there is the dower rights which are built into existing laws, there are maintenance rights which do have existing laws for them, but, Mr. Speaker, we're dealing with the property rights.

In my legal business, I handled a minimum of two land transactions per month, and I'm saying minimum because it was more and that would be 24 a year for a period of 15 years, that would be over 300 transactions, well over 300. Mr. Speaker, I never had a single transaction, not a single one where the husband and wife, when it was a married relationship, there wasn't a single one

in which I was directed to either divide the property between the two of them or to put it in one name or the other unless there was a taxation question involved — and I don't even remember one of that nature. I do remember that I transferred my own property on Cathedral Avenue to my wife, so she is the owner of that, but, Mr. Speaker, think of the significance without a law, without a judge, without a government, without lawyers, without committees, without coalition, without agitation, not a single transaction in which the property was not put in both names, so they shared not only equally, Mr. Speaker, because it goes much further than that, they shared not only equally, voluntarily, without our laws, but they undertook at the date of taking the property in that way, that if one died, the other would get not half but the whole property.

Mr. Speaker, that was the situation with regard to every working man who bought a house for him and his wife, or every working couple that bought a house, or every wife that bought a house for herself and her husband and there was almost never an argument about the personal property when they settled. But, Mr. Speaker, we have to realize what the average man is dealing with. The average man is not dealing with marital homes worth \$100,000 where they have to divide it, and decide which gets which and three cars, and a bank account. The average man who works for a living in the packinghouse, in the factories, in the steel mills, has got a house with a mortgage on it, very little in the bank, a car, possibly a beach cottage and his household furniture and equipment. And that property, Mr. Speaker, is divided, so far as the major share of it is, between himself and his wife, and the marriage institution, without laws, without the interference of judges, without compulsion has done that.

And, Mr. Speaker, what I worry about when I talk about this type of legislation, is, are we going to improve the relationship by having an abundance of law, and what I am trying to say is not that this law is not necessary, not at all, what I am saying is that the expectation as to what this law will do, and whether or not it will revolutionize the family and family law, Mr. Speaker, I hope not, I hope not because marriage be it imperfect, is one of the better institutions that we've got, and I don't know of any of the commercial institutions that we have whether it's joint stock companies, or partnerships, or commercial transactions, buy and sell arrangements, all of which are governed by laws and judges, I don't know that they work as well as the marriage relationship and I admit that the marriage relationship doesn't work perfectly. There are breakdowns, there are problems and this legislation is intended to deal with the problems and I hope that nobody expects that it is intended to deal with what I consider to be a pretty sound institution in our society.

And therefore, Mr. Speaker, when I talk about this legislation, I am obviously and purposely, not by accident, much less compelled by its importance than are other members on both sides of the House because there are some people on both sides of the House who consider this type of legislation and the direction of this legislation to be very compelling. I consider this legislation to be, and I hope that that's all it does, a piece of legislation that deals with a small number of people who have had serious problems in the marriage relationship. And the most serious problem, Mr. Speaker, is not touched because the Minister of Health is right, the worst problems with regard to family law are the enforcements of maintenance agreements. If the property is there there's going to be able to be a separation and if it is not absconded, which can happen in commercial situations as well, the division end is not going to be the most difficult end. The maintenance end is going to be the tough one.

Interestingly enough, Mr. Speaker, I was talking to a woman who is very much in the forefront of family law concerns, and when I told her that I did not believe in her concept of maintenance without fault, she said why not? I said, let's take an example situation, and this is one of the people who was very much involved in this law, let's take a situation — do you believe in the equality of the sexes? Of course she said yes. I said, then you believe that in some marriage relationships, which I believe too, the woman establishes a career and receives a paycheque, the husband will be the homemaker. He will look after the housekeeping; he will prepare dinners; he will bring up the children. Do you accept that type of relationship? And she said positively. I said, okay, one day you come home from work, your husband is in bed with his mistress and there is a breakup of the marriage — now I'm saying it properly, am I not — the husband is in bed with his mistress. I said, there is a breakup and they go off and live together. Do you say that you shall continue to send him the amount which you used to give him when he was living as your husband? She said, "He won't need it, because I'll kill him." That's what she said, Mr. Speaker, those were her words. —(Interjection)— She said, "I would," she is talking in the future.

Therefore, Mr. Speaker, what I am concerned with when we are discussing these laws — and this concern I expressed last year when we passed our other bill, I expressed it in the House when you were amending the law, and I say, Mr. Speaker, that these amendments that you are making are not satisfactory because they are not as good as the law as it stood before the amendments were made and you are asking us to repeal a bill and therefore, Mr. Speaker, I want to say that I have no difficulty in voting against the bill, and will vote against the bill, because it contains a clause that I repeal what I consider to be better legislation.

I, again, Mr. Speaker, want to indicate that those people who are suggesting that under either system, and I want to try to be fair, under the previous bill and under this bill, that we won't have need for lawyers, I rather suspect, Mr. Speaker, that both bills — and I'm not even going to try and judge which because I really don't think that there is that much difference — will equally increase the incomes and the practice of lawyers. Because for every action — we were taught this in physics, not in law — for every action there is an equal and opposite reaction, and when they had a law in Quebec which decided how property would be split up, in Quebec it was the normal thing to have a pre-marital contract. Mr. Speaker, under this bill or under the previous bill, if people have problems, if people are worried about what the law does to their marriage relationship and they will start asking questions, they can go to a lawyer and they can make a pre-marital contract, and they will. They will, under this bill, and under the previous bill.

Mr. Speaker, if one says that under the bill there is discretion and that will induce lawyers, there is discretion under this bill; there was discretion under the previous bill. As to how that discretion would be exercised, different people will make different predictions. I know, Mr. Speaker, that I have been actively involved in court cases, actual court cases — this is litigation where you get before the judge — that I was probably involved in such litigation as much as most litigation lawyers in the City of Winnipeg, and the case that I thought I was sure to win, I lost — sure to win, couldn't lose it, I lost. And the cases that I thought I didn't have a very good chance, from time to time I won. But the one that I was surest of, in all the practice of law that I practised, I never ever told a client that they would win except one client, and that client lost. I made it a practice that I would not tell them that they would win, but this one I did because I was so certain, and I lost.

So how the discretion is going to be exercised, Mr. Speaker, can be demonstrated by what happened with our laws with regard to picketing. We passed a law in which we said that the court will not enjoin in certain picketing and I kept my fingers crossed that that is what they would do. In fact, the picketing law worked out that way. But the other law with regard to injunctions not to restrain people not to work, the courts have used a discretion, not to really go against it, but to say that it didn't change the previous law.

So I am not certain as to what is going to happen. What I think we should be saying in this Legislature is not how we think that this bill is or is not going to be administered, but that we will watch what happens in court, and if the court starts making decisions which do not give genuine 50-50 sharing, we will set our sights now on seeing that that will be the objective of the Legislature, because, Mr. Speaker, those were the essential features of the bill. The essential features of the two bills, as I understood them, were:

One, there will be a presumption not easily dismissed, not easily done away with, that two people who are married to one another are taken to have earned together the property that has resulted from the time of their marriage. Everybody agrees with that, and if the judges start playing around with that, then I think that we have to set our sights to maintain that principle.

The second feature, Mr. Speaker, which I agree with, is that the reasons why a marriage broke down and the difficulties that they have had, the husband and wife have had together, will not be a feature of depriving the economic stability of one or other of the spouses if they live separate and apart from each other, that we would not try to penalize one because of something that has occurred during the marriage relationship because it is almost impossible, Mr. Speaker, and I think we have recognized that, to go back to first causes. That's why, in The Family Maintenance Act as we passed it, we put no stress at all on what happened during the marriage. We said that if, under the circumstances in which they are living apart, there are conditions which make it unreasonable for continued support, that that should be the feature that is looked at, not the reasons that they are apart. Because again, Mr. Speaker, trying to determine who did what and when, as a feature of providing maintenance, is a very difficult thing. Mr. Speaker, that is something that has been introduced by the Honourable Minister to a great extent in the Act that he has brought forward and in the most peculiar way, that it goes to amount of support, not to the question of whether one will or will not get support.

So, Mr. Speaker, in all of the years that we have been discussing this bill, I'm not going to say that there has been an attack on the marriage relationship, but I think that I can be fairly safe in saying that there has been not enough said, Mr. Speaker, for the benefits and the sound features of marriage. The reason that I am so driven to say it is that I have predicted and I have urged in many many other areas that we do not get any particular benefit by the passing of laws where those laws run entirely contrary to the kind of needed relationships that people have to make with one another, not because they are compelled to do so by law, but because it is desirable that they do so from the point of view of developing together, or of having a continued relationship of one kind or another, whether it be husband and wife, whether it be employer-employee, whether it be an employment practice, whether it be a bill of rights, which is, does one establish rights through bills or do they establish it through a continued effort on the part of society to create those rights?

this particular area, because it has been the subject of so much discussion, Mr. Speaker, I desire to, and I have, and I suppose that I have perhaps prevailed too long on the subject, but given the fact that there are so many other speeches made with regard to the laws of marriage, I would like, Mr. Speaker, to talk for some few moments, and I'll be through in one . . .

MR. SPEAKER: The honourable member has five minutes.

MR. GREEN: I'll be through in less than that, Mr. Speaker. I would like to talk for some moments, and I hope that the moments have not been wasted on honourable members. I can tell you that if they have, I'm not that worried because I feel that even for my own self I wanted to say these things. I want to look at how this relationship has produced something good without laws, without judges, without legislators, without being set out that they are governed by third parties. If people are desiring that marriage be an equal partnership, then may I warn them that the laws of partnership and that the existence of partnership has not been without its pitfalls. Marriage, too, has had its pitfalls, but given the number of marriages and the basis upon which they have worked, I would think that there is a great deal to be said, Mr. Speaker, for looking at marriage as an example as to the kind of thing that you can develop, not only between a husband and wife, but as to the rearing of children without laws or without at least a proliferation of laws, because in each of these cases there are laws.

There are laws that require a family to support their children. I wonder how many families support their children because the law requires them to do it, or whether the large majority of families don't even know that there is such a law and don't have to be reminded about it. The greatest number of families in our society support their children because there is a natural love affinity in the relationship as between the parents and the children. The only time that the law comes into it is if there is a real problem. When that problem exists, Mr. Speaker, let's make sure that we legislate for the area of the problem, and not legislate in such a way as to put in danger those good things about the institution which are largely prevalent.

MR. SPEAKER: The Honourable Member for Fort Rouge.

MR. AXWORTHY: Thank you, Mr. Speaker. There are two compelling reasons that I rise to speak on this bill tonight.

One is that I think it is important in this piece of legislation to point out to the members of the House that this is not legislation that can only be treated in terms of a partisan division of the one side versus the other. I think there has been a tendency, as I've listened to other comments, to say that this is a repeal of the NDP bill that was brought in last year, and this is the Tory bill. While I would give full credit to the previous government for bringing in the legislation we had before us last year, I think it is fair to say that the support and the encouragement for that legislation came from a variety of sources in the province, not confined simply to adherents to the New Democratic Party. I would want to say, Mr. Speaker, that in my own party, having gone through several policy conventions and having met with many of them, there are many advocates and supporters and, I think, people who have taken their rightful role of leadership in the province in promoting this notion, and people who don't have any political attachment at all but simply feel that in fact, I'm told, rumour has it, that there may even be some Conservatives who sort of have stronger feelings in support of some of these principles in the bill, although we haven't necessarily seen the signs of it in the legislation. But I won't deal in rumour, I will simply say, Mr. Speaker, that it is important to recognize that the sources of support and of concern in this area of legislation represent a variety of political beliefs, and a variety of attitudes, and they may fight to the tooth and nail on economic matters, but when it comes to the question of rewriting the laws on marriage there is a broader base support calling upon the encouragement from people from a variety of walks of life, not just political but economic as well.

I say that because I also place a somewhat different interpretation on the reasons for this legislation than does the Member for Inkster. Although many of the things he said I agree with, there are some interpretations which I would disagree with. I don't see these bills as being necessarily only confined to regulating a small area of the marriage relationship. I see these bills as part of a broader-based legislative agenda that we're dealing with in terms of the establishment of more equal rights for women in this country, whether it's in the area of employment, or marriage, or in the areas of education, that there has been a growing awareness, recognition, that for a long period of time there has been an inequality of rights. And it is important, certainly it comes down, in my belief, it is important to codify and legislate changes in those rights, that while the Member for Inkster said that we enjoy, in our informal relationships amongst people, many virtues and values, it is also equally true that the society has changed from one phase of its sensitivities to equal rights to another, they have codified that in legislation.

The Member for Inkster said, you know, there's a lot of people who never think twice about making sure that their children are well taken care of. The fact of the matter is, it was only thirty or forty years ago that this Legislature went through some horrendous fights on child labour laws, so that children didn't have to go to work at 12 years of age, and that those fights had to be fought, and they had to be codified, and they had to be legislated in order to protect those rights of children. Once the legislation is there, once it's in place, then it begins to determine and influence the kind of behaviour, so after a while it becomes an accepted, normal thing to do. And the legislation becomes less and less necessary because it becomes a norm and value of that community. But the legislation, if it's on the leading edge, if it is really right on the frontier of trying to establish new rights, must be passed in order to establish the standards and marks against which behaviour will be measured, and that's why legislation is important.

I agree, certainly, that in many cases there are a lot of marriages that don't need the legislation. But there are many that do. And we only have to look at the kind of settlements that have been given in our courts up to this point in time to realize the inequality that women, primarily, in the marriage relationship, have faced, there has not been equal sharing of assets. I think some rough studies have been shown, and I cannot testify to their accuracy, but if you begin to look at the breakdowns it may be they get 10 percent of the assets, or 15, or 20, which points out that there has been a basic fundamental condition of inequality in existence, and that if we were simply to allow the kind of normal evolutionary process to take place it may be many years from now, decades from now, before that balance is somewhat righted simply upon relying upon thousands of individual relationships to work out towards a greater equality of conduct and of situation.

Mr. Speaker, there are a lot of people in this society who aren't prepared to wait another hundred years, or another fifty years for that to take place. They have built up, I think a sufficient amount of support, and a sufficient amount of recognition on the part of different legislators, that some changes are required. So the question comes down, Mr. Speaker, which changes can give proper effect to that demand for equality? It appears to me, Mr. Speaker, that there are some serious inadequacies in the legislation before us that gives form and shape to that demand for greater equality and to ensure a guarantee of the rights that will exist in the marriage relationship.

The Attorney-General, as I've come to observe his performance and his attitude, I think is a very careful, cautious man, and likes to deal on the particulars of legislation. And in that respect, Mr. Speaker, I would like to respond in like kind if I might, in terms of the kind of position he has put forward to justify the legislation that he's introduced, and I think some of the mistakes and errors that perhaps he has made, all done with the hope, perhaps, Mr. Speaker, that as we proceed into other stages of the legislation, that there would be a softening towards making changes in it.

Perhaps the most and first critical question was, why did this government decide that they were going to change the notion of the immediate sharing of family assets, that they were going to eliminate the concept that marriage is a relationship amongst equals while the marriage is still extant, that you didn't have to wait for a breakdown or a separation in order to have that principle recognized and espoused? In that case the Attorney-General offered to this Legislature four reasons for saying why he, in fact, eliminated that particular concept of immediate sharing of family assets.

His first one, he says, no other province has gone to immediate sharing of assets. It seems to me, Mr. Speaker, a somewhat spurious reason just simply to say that because other provinces, other jurisdictions, haven't ventured as far as we have we shouldn't do the same. It's a pretty timid approach, I would say, particularly when you had had, already, a piece of legislation passed by this House which had taken the step, which already had broken and pushed the frontier back. Why, all of a sudden do we retreat from it. He didn't say, I don't think we should do it, he just said, no other province has done it. It is really kind of a psychology of the crowd, you know, I don't want to stand out from it. Somehow or other, as long as I'm part of a crowd, then no one is going to sort of pick holes at me. So Mr. Speaker, I can't quite buy the logic in that particular piece of reasoning. I think that a logician would say that that really is a poor piece of logical argument.

He then said that there are tax implications and problems. Well, that, Mr. Speaker, may give grounds for some pause because there is a technical reason for doing it, except, Mr. Speaker, that the Federal Government has already taken care of the technical reason in their Budget Speech, and then Bill C-56 in the House of Commons, they have already taken care of the problem. There goes reason No. 2, and perhaps, if I might, Mr. Speaker, just say that I had occasion to speak to the Minister of Finance this evening at a reception that I attended, and asked him about it, and he said, yes, according to the rules that we have, that problem is taken care. Bill C-56 has been passed; it takes care of the problems raised in the motion presented by the Attorney-General. Well, if there is no longer a technical reason, there goes reason No. 2 for why we shouldn't have immediate sharing.

There is then a question of creditor's rights. Well, Mr. Speaker, I don't want to get into the legalities

of that. There are sufficient lawyers in the room, I suppose, to argue that one out, except that it seems to me that the question of creditor's rights are taken care of under partnership arrangements, and anyway, why are we applying different standards to the marriage relationship than what we apply to partnership arrangements. It may be that the Attorney-General is going to have to explain that more directly, because it seems to me that we are again applying different standards if we are saying that there is a form of partnership, a form of legal sharing, then the whole question of creditor's rights is already taken care of precedent and by jurisprudence in this province, and there shouldn't be a problem with that.

Finally, and perhaps the most telling one, because I had heard it expressed by members of the Conservative Party last year in debate, they said that they thought this would result in undue interference in the marriage itself, in the lives of married couples. Here is the heavy-handed state crunching down and saying, we are going to tell you what to do with your property. Well, Mr. Speaker, I didn't read the legislation last year that way. I think that no one can deny that there is interference, but there is interference in all kinds of relationships. We have hundreds of bills in those code books which interfere in different ways. They set standards, they set guidelines, in the marriage relationship itself. We have all kinds of laws about how parents must treat their children, very strict laws, you must send your children to school, you must provide for certain welfare, we're telling a family how to deal with their children. Now, if you're going to follow the principle through, then I suppose the Minister of Health and Social Development is going to have a very busy year next year eliminating all kinds of laws from the statute books, if that's a principle. Let's just repeal all those laws that say what you're going to do about the Child Welfare Act, and the Education Act, and all the rest of them, which interfere in the way families sort of have to make decisions.

What we're simply saying in this case, and as I understood the legislation that was introduced and passed last year, the importance of it perhaps had more psychology and symbolism to it than real merit, but it did give effect to that basic concept of a guarantee of equal rights in the particular relationship that had to deal with marriage, as in others. It did indicate and presuppose the right to share. I think, under this legislation, you are also going to result in other problems, because this legislation, in no way says, for example, that one of the spouses can't dispose of that property because it's not equally shared while they're still in their marriage rights. They can dispose of it, they can sell it off and there is no recourse for the other partner to say boo about it. No protection in those areas. Well, Mr. Speaker, I don't see the protection. I don't believe there's a protection there. And I think that if the Minister reads his own legislation more carefully, all —(Interjection)— the Attorney-General has kindly offered to explain it to me. I hope that his explanation, the secondtime around, is better than it was the first time around, because it certainly didn't come through very clear at that point in time.

What I'm suggesting, Mr. Speaker, is that on the fundamental issue of the immediate sharing of assets the Attorney-General did not offer really any good cause or good argument why it should be changed. Therefore, Mr. Speaker, I would advocate that it be returned, it's as simple as that.

The other issue which is perhaps a more difficult one to deal with, but it again presents an observer or reader of this legislation with some difficulty, is on the question of discretion, because again there is a basic inconsistency. Limited discretion for family assets, wide open discretion for commercial assets. For the life of me, Mr. Speaker, I can't understand why the difference. I want to point out to the Minister, who was not a member of this House last year round, is that our Party, our caucus, argued in the last legislation for some discretion to be built into the bill. We argued for it, and I think when we met in Committee on statutory Regulations, spent many hours working with other members of that committee to work out proper wording in which a degree of discretion could be introduced into the bill when it wasn't there to begin with. And there was an element of discretion introduced into that bill for, I think, was it unusual and exceptional circumstances was the wording? Pardon me? —(Interjection)— On commercial assets. We did introduce a degree of limited discretion for the use of commercial assets.

I thought, Mr. Speaker, maybe it's a matter of, I guess you get certain proprietary rights, I guess maybe after having spent about 30 or 40 hours as a member of that committee, many long hours in those June months, working that particular problem over in the company of the present Minister of Health and Social Development and some other members of that committee, many hours were spent to hone that down to what we thought was a workable solution in the area of discretion. And to have it dismissed so cavalierly, so casually, to say, we know better, all of a sudden without much more argument, doesn't strike me as right, particularly when the Minister is prepared to accept the concept of limited discretion in family assets. Which means to say that somehow what the government is saying, that we believe in equal sharing on family assets on the car and the use, but we do not believe in equal sharing on commercial assets. That, I suppose, is what it really boils down to.

The Minister isn't prepared to acknowledge that, or say it, but that's really what it distills to,

is that equal sharing in this bill is confined to a very small, limited, group of assets called family assets, or the other area, it is not to be equal sharing at all. I think the proof of that assertion, Mr. Speaker, would be that in other jurisdictions which have introduced the notion of discretion, wide-open discretion as we have under Section 13(2) where there are some ten or eleven grounds from which a judge can make decisions as to the sharing — twelve, I'm sorry, twelve criteria that can be used. In jurisdictions which have used equal kinds of discretionary latitude there has not been equal sharing at all.

MR. AXWORTHY: New Zealand, one-third. The general record in the jurisdiction of New Zealand is that the settlements by the courts under these kinds of laws means that it's usually a two-third split for the prime owner of the property, which is usually the male, and one-third for the woman.

Therefore, Mr. Speaker, that's not equal at all. Now, the Minister in his discussions with some of the groups, and I think in answer, if I'm not mistaken, to the Member for Inkster, said, it will vary from case to case, is that not, when you were asked a question, which is a sheer acknowledgement that there's not going to be equal sharing. I mean, he said it himself, there's not going to be equal sharing. And the evidence from other jurisdictions only confirms that particular point of law, that I think there has been so many criteria, so many bases for varying the determination of assets. The concept that goes back to the fundamental issue raised in the Murdock case, is do both spouses, one of whom may be working for income and producing it, the other who may be at home helping to build up the assets that way, should there not be equal sharing, that has been eliminated or sadly mutilated by this particular piece of legislation. The principle itself has been changed. We now have, in effect, a split-level set of principles. Equal sharing on one level confined to those assets of the family, can we legitimately say, the cottage, the home and the car I guess are what we call family assets but when it comes to commercial assets it's a wide open roll of the dice. And Mr. Speaker, that's what you're going to get is a roll of dice because there is going to be a lot of varying opinions.

I would suggest, Mr. Speaker, that the end result will be a jurisprudence or a set of cases which will not have any harmony to them or symmetry to them but will be all over the ballpark. You will have kinds of decisions made for all kinds of different reasons and it will be much more difficult, and we will be much longer in the court establishing the basic rules and guidelines than we would have been under the previous legislation.

If the concern of this government, as they expressed it, was that they thought there was going to be a big mess in the courts, well, I suggest, Mr. Speaker, under this legislation the mess is still going to be there and it is going to be much longer to resolve. There are going to be many more cases covering a lot more criteria based upon a much wider latitude of decisions, and therefore it is going to be much more difficult to settle on what the basic rules should be.

In a sense, Mr. Speaker, it really is contradictory and I find that for a Minister who says he has taken pride in his craftsmanship, which hired all those high-powered lawyers to work this thing out, that there may have been craftsmanship in terms of its wording but I would say it's very amateurish in the way in which it deals with the principles that are inherent. That, Mr. Speaker, is probably the biggest problem with this bill.

The other surprising thing about it is how many of the other recommendations, if you go back, in terms of the analyses that have been done by the Manitoba Law Reform Commission, by the Legislative Committee that met after it, by the hearings last year and even by the Review Commission, the famous Houston group, how many of these recommendations were totally ignored. And it seems to me, Mr. Speaker, that all of a sudden someone got locked in a small room and I have a pretty close suspicion as to who was locked in with whom, I think he is sitting on the left-hand shoulder of the Attorney-General at the present moment. That's how this legislation got decided; that's how it was hammered out. It was based on the peculiar notions of equal rights that are shared by and probably uniquely held by the First Minister of this province. He is really the author of this legislation and I think it is the Attorney-General who is simply doing his dirty work.

So, Mr. Speaker, I think that that is the basic problem with the legislation. —(Interjections)—
Mr. Speaker, we will take friends from wherever we can get them. .\$.

So, Mr. Speaker, I would say that the legislation in Bill 38 is a strong disappointment to me personally because I felt that it doesn't live up to its advance billing. It is not a better piece of legislation. It in fact contains within it even further difficulties and inconsistencies than the legislation we had last year, which, as the Member for Inkster said, was not perfect but was reasonable. It was workable and it was going to work. I believe, Mr. Speaker, that this bill, it will work as well but it will work not to the same principles that we debated and passed in this House last year. It will work to a different set of principles and the reason is because there is a different writer calling the tune. There is a different author of this bill who has very different sets of principles and beliefs about what is meant by equal sharing and what is meant by equal rights and how you guarantee

them.

So I would say, Mr. Speaker, I, as well, will be voting against this bill because I don't believe it's an improvement and the Minister has not convinced me that it is an improvement. And I think, more fundamentally, I will be voting against it because in two fundamental areas it denies the principle that there should be an advancement of equal rights of women in this country and in this province, and that in particular that we have taken a substantial step backwards in trying to define those rights in the marriage relationship.

MR. SPEAKER: Are you ready for the question? The Honourable Member for St. Johns.

MR. CHERNIACK: Mr. Speaker, I hesitated to rise because I thought that there were members of the Conservative Party who would be prepared to speak on a bill which has the impact on so many people of Manitoba's society and who would be prepared to justify their backward step in this one year and less of their assumption of power in government, that they would have had the courage to stand up and justify the backward step that they are taking.

Mr. Speaker, the Attorney-General has the opportunity to look ahead and say, "Why, look at the progress we have made. Look, we have instituted, we have brought the principle of equal sharing into our legislation." He is a person who did not participate in all the meetings, all the hearings and all the discussions that lasted over a lengthy period of time, and for him this is new and this is progressive, but the majority of the members of his party, I believe, are knowledgeable of what happened last year and must recognize clearly the fact that what they are doing now is backward, is regressive and it is contrary to today's idea of the rights of people in a marriage.

Mr. Speaker, I have expressed my disappointment that other members have not spoken. That does not mean, of course, that they may not yet speak, and I expect that they may yet and I hope that they will. I think the Member for Assiniboia has indicated that it's a vain hope; I think that is what he is indicating in his quiet manner, that I need not expect to hear from other members of the Conservative caucus.

Well, Mr. Speaker, when I spoke on this bill last year, on the bill we had before us last year — on that one or its companion bill — I think I followed the Member for Fort Rouge and I think that I said then that I thought he had made one of the better speeches I had heard him make, and I complimented him on it, and I think that today he has repeated the high standard which he had set previously on this question, because truly, Mr. Speaker, this is not and should not be a partisan issue and it has become a partisan issue largely because of the difference of attitude and difference of approach.

Now, the Member for Fort Rouge suggested that the Attorney-General has succumbed to the shadow which at that moment was hovering over his left shoulder and intimated or implied that it was the First Minister that was influencing this bill before us. I have a feeling, Mr. Speaker, that the Member for Fort Rouge is wrong and that possibly we ought to compliment the Attorney-General for bringing in a much more progressive bill than would have been brought in had the First Minister had his say. And I say that somewhat advisedly. It was on this question that we prompted . . . I would like to put on the record that the Member for Fort Rouge concedes that I may be correct. Because, Mr. Speaker, the few occasions when the First Minister dealt with this question of marital property rights he was either cynical or he talked about breeding propensities of Conservatives, or he expressed the kinds of sentiments which I heard expressed by Kenny Houston when he appeared before the legislative committee, the Committee on Law Amendments. And to me it was somewhat surprising to read a bill which seemed to me to be an advance of that of the First Minister and of Ken Houston.

But I don't think that's really so, Mr. Speaker. We have had occasion to look at the other bills, the companion bills, and express some wonder as to the need that they felt it necessary to bring in new bills and repeal the old. We thought, well, they could have amended the old and carried out their point of view.

But, Mr. Speaker, reading the bills carefully, I think that one of their reasons for bringing in a new bill was that if they brought in amendments it would make so very apparent how regressive their approach is, how backward it is and how archaic it is, and that is the reason why they did not dare proclaim the old bill, the existing statute, and bring in their amendments but rather they tried to cover up what they were doing to this whole concept of equal sharing by bringing in a bill which I intend to indicate is very regressive.

Mr. Speaker, we have in this Chamber representative reminders of the makers of law. We have Solon represented; we have Moses represented, and when they brought in laws they brought in laws, codified laws that were not intended to take care of the vast majority of cases of their society. Indeed, at no time was it the common practice — and when I say that, I say it, I think, with some degree of certainty — was it the common practice to kill or to steal. It was necessary to indicate the laws by which human beings should govern themselves, to take care of those fewer people,

that minority which offended against the principles that society had adopted. Certainly if society believed in breaking the laws which Moses and Solon and others have codified, the laws would not have been accepted. It was only because the majority of people accepted principles and concepts and ideals that it was possible to enact laws that would affect the minority.

When we speak about the importance of the marriage relationship, we speak with a knowledge that it has proven to be a longlasting, worthwhile social relationship which redounded to the benefit of society and which helped to bring up people to reach and to attempt to obtain the highest ethical and moral standards. And this law before us today is not designed to change the way most people behave to each other but, as the Member for Fort Rouge said, it is important that we spell out what we believe should be the concept today for most marriages and we could not enact laws like this unless we believed that they were accepted by the majority of people.

Mr. Speaker, obviously the government of today does not believe that the law which is now on the statute books, and which was passed last year, represents the wish or the will of the majority of people. They don't believe it and therefore they are expressing what they think is the right way for people to govern their relationship in a marriage.

Mr. Speaker, it's so obvious that throughout our civilized society in this western world that the male has had the role of the bread winner and he dominated in the economic affairs of the family. It's so trite that to repeat it is almost ludicrous except that I believe that the Attorney-General's law, which he has brought before us today, spells out more clearly than ever the fact that they believe that that is so and should continue to be so. That they believe that the person who is the bread winner shall have the opportunity to retain the benefit of his earnings or savings, and I say his because in the most cases it is male dominated.

The Minister of Labour has just entered the Chamber, Mr. Speaker. The fact that she is here and that we are all happy to know that one woman has been elected out of 57 electoral divisions of this province, is a recognition of the fact that the male has dominated the society of today. —(Interjection)— And of course, the Member for Inkster says he would like to have elected one of our men in her place and that goes, but we would have liked to have elected a number of women in place of men that were elected opposite. But, Mr. Speaker, neither our party nor the Conservative Party, nor the Liberal Party, had a proper number of women running as candidates to spell out the importance of the role they play in society and in the family. I think that unless we recognize the importance of the role of the woman in the family, let alone in society, we are negating and we are holding back their opportunity to take a free and equal place both in the family group and in society. And that's why, I think, Mr. Speaker, that this legislation is important. It is not important for the vast majority of people, but, Mr. Speaker, I think it's vitally important for society as such and for the development of the role of women.

Mr. Speaker, isn't it shocking that we have to refer to the fact that it was Rodmond Roblin who fought off as long as he could the efforts of women to have a vote, and yet I believe that it was the government of Manitoba that was one of the first jurisdictions in Canada and was the first, that acceded —(Interjection)— The Liberal Party caucus has just informed me that it was Norquay, the Liberal, who brought in that legislation. Well, that's fine, whatever, Mr. Speaker.

The fact is, that it was over 50 years ago that women finally got the right to have the opportunity to express a preference. Mr. Speaker, last year women got a great deal of right in the recognition by the previous Legislature, of their role in the family and this bill before us, takes away and damages that concept.

I don't know whether Conservatives opposite would admit to that. I somehow doubt that they will admit to it, except, I think, some of them honestly believe that that is the case, they would not entrust to a woman the right to make decisions. Why, one of the members opposite, and when I say that, I mean as of last year, because he's not amongst us now, and he is one of the more straightforward, frank, honest people that I've met in this Legislature, said in committee last year, "Do you think I would consult my wife when it came to deciding whether or not to buy a farm implement? No way." Mr. Speaker, that is representative of the legislation before us.

But never mind the farm implement, Mr. Speaker, the legislation before us, does not involve the consultation of the spouse in a decision of whether or not to buy a refrigerator or whether or not to sell a refrigerator and replace it with a freezer or a washing machine because that is beyond their acceptance. They are saying, oh, we will not agree to equal sharing of family assets during the term of the marriage as a concept of law which people would have a right to assert. Oh, no, Mr. Speaker, only when the marriage breaks down would they be willing to recognize equal rights in the sharing of family assets —(Interjection)— You see, Mr. Speaker, the Minister without Portfolio, responsible for housing says we mind our own business when we're married. —(Interjection)— Mr. Speaker, the member who indicated earlier that I would not have a right to expect that anyone will speak from their side, has now made certain statements, and he said — he spoke volumes, he indeed spoke volumes from his seat. He said, "I don't want anybody interfering in my business," and he said, "My wife and I don't need anybody to help us in our affairs until we're

Mr. Speaker, I don't mean this, and I don't direct it at the Member for Sturgeon Creek. I would rather direct it to Tom Jones out in the elsewhere than this building, who would say to me, "Never you mind interfering between my wife and me, I will run the affair, I will own the asset and don't you dare interfere between my wife and me." I would like, Mr. Speaker, to have an opportunity to have a frank and honest discussion with the wife of Tom Jones. Mr. Speaker, I'd like to know whether the wife of Tom Jones feels that she has an opportunity to equal sharing and to an equal say in the management of family assets.

It's all very well, Mr. Speaker, for us to sit here and talk on behalf of the male animal. Mr. Speaker, when we attend the Law Amendments, and we will, and we have, we will hear from the women who are affected, women who are married and have a good marriage and women who have been married and have a broken marriage and we'll hear from them . . .

A MEMBER: Maybe Mrs. Jones.

MR. CHERNIACK: And maybe Mrs. Jones, and I hope Mrs. Tom Jones will come and speak to us and express her point of view and not fear the repercussions that may take place in the home when she has the courage to express herself.

Mr. Speaker, I'm glad that the Member for Sturgeon Creek is still participating in this debate. He says, "When they got married, they took the same vows." Mr. Speaker, he may not have been listening to me, it is not the people who are keeping their vows for whom this legislation is being proposed and enacted, it is for the people who are breaking their vows that this legislation is in. And as I said earlier, the law we have that thou shalt not kill, was not brought in for the people who will not be killing, it is brought in to ensure that those who may be about to kill will hesitate because there is a law against it.

Mr. Speaker, that applies also to the lady to whom the Member for Inkster spoke, who said, "I will kill my husband if I find him *in flagrante delicto*." Those are not his words. Mr. Speaker, the fact is that that woman may herself be in need of maintenance and the courts might well enforce it under the law we had a year ago and two years ago. —(Interjection)— Mr. Speaker, let me indicate to the Member for Sturgeon Creek who has just received the applause of his people who said, "Is the member giving me the floor," and rose to speak, that I volunteered and offered to give him and others the floor before I rose to speak, because I hoped that they would speak, I hoped that they would express themselves, and maybe now they will, and I hope they will, Mr. Speaker, because at least they owe it to their voters to express their points of view. I hope that they will do so, and I hope that the Member for Sturgeon Creek will do so because it is true, Mr. Speaker, that he does distract me when he grumbles and mumbles from his seat, but nevertheless, I feel it necessary to respond.

Mr. Speaker this legislation before us is not new legislation, it is an amendment of old legislation. It is an amendment of the statute book legislation passed last year and it makes important changes. It says we do not recognize immediate vesting of any asset during a marriage. It says that we will not recognize that vesting but if a person, a spouse, wants to assert equal rights over the ownership of a family asset, be it the home, be it the automobile that's used by the family, be it the summer home, be it the hunting lodge — which somebody overlooked, Mr. Speaker, when they brought in this bill — that that person has to be told if you want to assert your rights over it, go for a separation. Sue your husband, then you will get that right unless there's some extraordinary financial or other circumstance or the extraordinary nature or value of the property that it would be grossly unfair or unconscionable to split. So, if you want to say, "Let's keep that car", or "I don't want to sell that summer home, I want to keep the summer home for our grandchildren," do you know how they assert their right? They say if you don't do it, I'm going to have to separate from you. But since I don't want to separate from you — or worse, Mr. Speaker, since I don't dare take a chance of economic dominance by you, I dare not say to you, I have an equal right to decide that we shall or shall not sell that summer home. That's being denied them by this legislation. They're being told, you have no rights, you may plead, you may get down on your knees, you may cry, but, Mr. Speaker, you may not — I don't mean you, Mr. Speaker — I mean, Mr. Speaker, we have to say to that spouse you may not, or of course, your wife may not say, I refuse to do that.

Mr. Speaker, I must point out to the Member for Inkster who said that in all his practice — I think he said no case does he recall where a family home was not purchased as joint tenants — I have to say to him that in my opinion, in most cases, it was an accepted social and ritual obligation one to the other to share in the home. But I would go a step further and say that it may well have been influenced by The Dower Act, which said whether or not you maintain it in your own name, you can't sell it without your spouse's permission, you can't mortgage it without your spouse's permission and if you should die while you still own it, your spouse is going to have the right to live in it for the rest of the spouse's life. It may well be that the practical answer to the fact that The Dower Act already gave the spouse many rights is, let's have a joint tenancy. Mr. Speaker,

I know in my case many many times I would point out the advantage of joint tenancy not only in establishing the principle of equal rights as the fact that they would save legal expense in the event of the death of either of them, because transferring a property that was jointly owned was cheaper than going through an estate and going through all the complications and involving creditors and all the rest of an administration of an estate.

So, there are many reasons, but it's true, as the Member for Inkster said, in most cases, it was accepted as being only right and proper. But Mr. Speaker, I am speaking now in connection with very many people, but it is a minority, it is clearly a minority of people who are not being given that kind of equal right as between husband and wife, and therefore I deplore very much the retrogressive step of this government and this Attorney-General of saying, "We deny the equal vesting, the immediate vesting, that was granted and is on the statute books today; we are going backwards and we are saying 'no.'"

Mr. Speaker, the same, of course, applies to the right of survivorship; we deny to a person that that person has the right to acquire by survivorship, family assets on the death of the other spouse. We are saying, "You have certain rights under The Dower Act, you have certain rights under The Devolution of Estates Act if there is no will, but you do not have the automatic right of survivorship that would have gone and did go, under the Act that is now on the Statute Book." So, the Conservative Party is stepping back in that respect too.

Mr. Speaker, I even wonder that where there is joint use of the family asset set out in the Act, whether there is not a derogation of that principle by giving the right to the owner to dispose of that asset. In other words, as I read it, a wife may have equal rights to the use, the joint use, of what they call a family asset, but the person in whose name it is registered can still sell it, without consulting the spouse. What good is joint use, if joint use is only available for as long as the spouse who owns it permits it to happen? And that is the retrogressive step in this law proposed by the Attorney-General.

Mr. Speaker, there are certainly nuances in the bill in the changes that are made which we will discuss in Committee at some length because, Mr. Speaker, I assume that in spite of the concerted effort of members on this side, that this bill will pass, even though members opposite don't bother to speak in support of it.

For example, the present legislation speaks of a family asset being everything that is not a commercial asset, and this government has twisted around and said a commercial asset is everything that is not a family asset — these are nuances that we'll go into more specifically. I commented already I was surprised to see the hunting lodge as a family asset, and I wonder if that was intended.

But Mr. Speaker, let's talk about the discretion. In the present legislation that was passed last year, family assets were automatically owned equally if they were acquired during the marriage and not by way of a gift or inheritance or otherwise. This Act says family assets will be acquired as an equal right to them, on separation, and subject to the court being able to vary that ownership if the court is satisfied that a division of those assets in equal shares would be grossly unfair or unconscionable, having regard to any extraordinary, financial or other circumstances of the spouses, or the extraordinary nature and value of any of their assets.

As the Member for Fort Rouge mentioned, we spent long hours, Mr. Speaker, I'm sure you will remember, forging these words to bring about a concept which we accepted as being unusual and very rare for a court to view. Well, we used that wording for a commercial asset acquired during the marriage, other than by gift or inheritance. But the Attorney-General has brought in this same kind of wording to apply to family assets.

All right, we can expect that in most cases family assets will be shared equally because it is unlikely that a court will find in accordance with what I have just read. But now we come to commercial assets. Mr. Speaker, I would like you to hearken back to the presentation made by Ken Houston in Law Amendments Committee, and let me tell you that this bill is really what he suggested. What he suggested is all we need do is to put the presumption of equal sharing into The Law of Property Act — I thank the Member for Inkster for reminding me — just put in the presumption and leave everything else out, don't do anything else.

Mr. Speaker, that is what the Attorney-General has done. He has brought in the presumption and then he has done something else. What has he done, Mr. Speaker? He has said, "notwithstanding the rights under Section 12 to an equal division of the assets, a court, upon application of either of two spouses under Part III, may order that with respect to the commercial assets of the spouses, the division be made in such shares other than equal as the court may in the order direct the court is satisfied that a division of those assets of equal shares would be inequitable, having regard to any circumstances the court deems relevant." Any circumstances the court deems relevant. Mr. Speaker, I said in relation to The Maintenance Act, and I say it now, that this means in my interpretation that the court must listen to every bit of dirty linen, has to see, view, all the dirty linen that occurs between a family, all the vindictive attitudes by the two spouses who are now

scrapping, they are now fighting with each other, and whatever anyone wants to bring into court, the court must listen to it. The court is bound to hear everything, no matter how vicious, no matter how unreal, but the court must listen to it. And, it may make a division having regard to any circumstances including . . . Why the including, Mr. Speaker? Now the Attorney-General is saying to the court, "Hey, don't forget; in case you have overlooked some of the circumstances which you might consider relevant, we'll give you some more to look at," because otherwise it's not necessary. All these subsections are unnecessary if what the Attorney-General wants is for the court to use its discretion. But now he's saying further, "In case you overlooked some of these or in case the lawyers fighting about this have failed to bring something to your attention, let me remind you of some of them." What are they? "The unreasonable impoverishment by either spouse of the family assets." Now we're dealing with family assets. This is a distribution of commercial assets but the Attorney-General is bringing family assets back into the picture. "The amount of the debts and liabilities of each spouse." Now, what does that have to do with the principle of equal division of the commercial assets? "The debts and liabilities of each spouse and the circumstances in which they occurred, or any spousal agreement between the spouses." That's the only thing so far, Mr. Speaker, that would be something to take into account but they don't have to be told that.

"The length of time that the spouses have cohabited with each other during their marriage, the length of time that they have lived separate and apart from each other during their marriage." Remember, Mr. Speaker, in the present legislation we're dealing only with what has been acquired during the marriage, not before, not after, not a gift, not an inheritance. "The date of the acquisition of each asset." — and this to me is really interesting — "whether either spouse has assets to which this Act does not apply by reason of their having been acquired by way of gift or inheritance and the value of those assets."

Now, Mr. Speaker, it means to me that if there is a husband and wife, the husband has built up commercial assets during the term of the marriage with the assistance of the wife, either active or passive, either she's worked to help build them or she has maintained the family home, raised the children, done all that is considered good in a family relationship, but her father or her grandfather has left her an inheritance of some wealth, this Minister now says to the court, "Take into consideration the wealth which she inherited from her father or another person." It is almost an invitation to a testator to deny one of his beneficiaries in order to not be covered by this subsection. The member who didn't want to make a speech but is participating from his seat, known as Smiley to some, is now saying, "Or he, not she alone. Or he." I will deal with that.

Mr. Speaker, then, "The nature of the assets, the effect of the assumption by one spouse of any housekeeping, child care, or other domestic responsibilities and any other circumstances," — any other circumstances — "relating to the acquisition, disposition, preservation, maintenance, improvement, or use of any asset." He didn't leave out any way in which he could describe broader and wider discretion which would negate the Section 12. I'm almost inclined to say to the Minister that he put in this principle, this concept of equal sharing, as lip-service to the concept which he denied they were trying to destroy before this legislation was brought in and then decided to destroy it by this Section.

Mr. Speaker, there are a few clippings I have brought. One is by someone who has been known to some as being the sort of the alter ego of the Conservative Party, Mr. Graeme Haig, who wrote a letter to the press some time ago. It is headlined "Family Law Needs Calmer Deliberation." He says, "The inequities of the law respecting family breakup are well documented," — good for him — "but are no more inequitable than the blind, unfeeling imposition of a 50-50 regimen from which no relief from hardship is provided. Fairness," he says, "is not found in legislative or judicial absolutes." And this is what dictated the Conservative Party's approach. He said, "Some judicial discretion is essential," and he closes his letter by saying, "The deserving cause of women's rights," — oh, he is now . . . He and Rodmond Roblin, one the successor to the other in the leadership of the Conservative Party, says, "The deserving cause of women's rights is ill served by exaggeration, hyperbole or error. Let us pray, let us pray, that calmer and more careful deliberation will produce for all Manitobans the sound legislation which the subject matter deserves." Well, this is what we have after all that calm, deliberate legislation. The only thing I have to say is that as the Minister responsible for Housing applauds this, that of all people, I find him the least calm and the least deliberate in expressing his points of view.

But, Mr. Speaker, there are people who have other points of view. There is a letter signed by the co-chairs of the Manitoba Association of Women and the Law who speak of their concern that the Conservative legislation pays lip-service only to the principle of equality in marriage while providing ample room for the courts to circumvent equal sharing. And I quote from a letter written by some women who speak as a non-partisan group of concerned women in the Charleswood-Tuxedo-River Heights area who say that this legislation "negates our concept of human equality." And they say, "Many women feel deceived." Mr. Speaker, the word deceived is not new in this Legislature in terms of this legislation, indeed it was used by the spokesman on behalf of

the Council of Women in speaking of her conversation with the Minister of Finance before the election when he reported on the attitude, as he understood it, of the First Minister during the election time.

And the YWCA of Canada, Mr. Speaker, which wrote a letter saying, "The YWCA of Canada wishes to express its disappointment and concern to the Government of Manitoba as it appears that it intends to repeal the most progressive family law legislation in Canada and has substituted instead laws that do little to further equality in marriage."

Well, Mr. Speaker, I want to conclude with quoting some of a lengthy letter written by the Attorney-General.

A MEMBER: Read it fast.

MR. CHERNIACK: Mr. Speaker, some members find it difficult to listen to what someone has to say about family law. Let them not listen because their minds were closed to begin with, let them not hear because they didn't want to hear from the beginning, let them go back to their old concepts and pay attention only to their basic need to assert the rights of man.

Mr. Speaker, the Attorney-General has said — and I want to refer to the Member for Sturgeon Creek on that — he says, "Our government welcomes comments and criticisms about proposed legislation and policies because it feels that a free exchange of ideas would bring about better legislation for the people of Manitoba." We will try to hold him to his word, Mr. Speaker.

And he he speaks about a fair and just division of assets upon marital breakdown and he says, "... will allow female spouses to receive more than 50 percent of the assets where this is equitable, a situation which could not have occurred under previous legislation." And the member for Sturgeon Creeks says, "It cuts both ways. Say he instead of she." Whom are we fooling, Mr. Speaker? For whom do they speak, Mr. Speaker? They know, as all of us know, that the people for whom this legislation is necessary is the dependent spouse and do I have to tell these gentlemen who the dependent spouse is in most marriages, in the vast majority of marriages? It is the women and don't pretend that you are doing something good for women generally when you say, "Why, our legislation makes it possible for women to get even more than 50-50 sharing." Nonsense, Mr. Speaker. At least let's be honest about what we're saying and let's be honest in saying that we are still male-dominated, male-oriented and recognizing that it is the man who makes the decision and will continue to do so as long as the Conservatives are able to pass legislation of this nature.

MR. SPEAKER: Are you ready for the question? The Honourable Attorney-General will be closing debate.

MR. MERCIER: Mr. Speaker, the Honourable Member for St. Johns has once again questioned the need for a new bill as he did with The Family Maintenance Act. Mr. Speaker, as I explained with respect to The Family Maintenance Act, there was such a substantial number of amendments in that Act, although many of them, the majority of them in that Act were minor technical amendments, that we thought it would be much preferable for members of the Assembly and much easier for them to deal with this matter if indeed there was a new bill printed including all of the amendments and make it that much easier to deal with and that is the reason once again, Mr. Speaker, as there are obviously more substantial amendments with respect to this bill than there were with The Family Maintenance Bill it was our view that the bill is much more easier to deal with in this manner.

Mr. Speaker, the Honourable Member for St. Johns refers to the Progressive Conservative Party as being a male-dominated party or in favour of male domination. I would point out to him, Mr. Speaker, that we are indeed the only party in this House with a female member of the Legislative Assembly, and a Cabinet Minister at that, and I suggest to him, Mr. Speaker, that his party follow what he has said, and in the next election that they run a female candidate in a constituency in which she has at least a possibility of winning. It's very easy, Mr. Speaker, to run female candidates in constituencies where they have no possibility of winning. —(Interjection)—

Mr. Speaker, the Honourable Member for St. Johns has referred to the suggestions of Mr. Houston at the Law Amendments Committee, apparently at the last session of the Legislature, when he suggested a small amendment to The Law of Property Act, or it may in fact have been The Married Women's Property Act, but in either case, Mr. Speaker, we have of course gone much further in that, but I point out to him that's what they did in the Province of Saskatchewan with an NDP Government. Mr. Speaker; that's all they have in the Province of Saskatchewan is a small amendment to The Married Women's Property Act.

As an interim measure, Mr. Speaker, it's been in place for 3 or 4 years, 3 or 4 years, Mr. Speaker, and I am not aware of any proposals for any change in marital property reform legislation in that province, Mr. Speaker.

Mr. Speaker, the Member for St. Johns refers to the number of factors contained in Section 13(2). Mr. Speaker, if I had the time this evening, and I will take the time whether he likes it or not during the course of this debate, I can point out to him under each one of those factors situations in which equity requires that the female spouse receive more than 50 percent, and that's in fact what members opposite are in favour of. It would appear, Mr. Speaker, they are prepared to sell out the interests of women who are entitled to more than 50 percent for the sake of a rigid formula.

—(Interjection)—

Mr. Speaker, the Honourable Member for Fort Rouge referred to a nuer of reasons why I had said that we had removed the immediate sharing part of The Marital Property Act. He insinuated that the fact that no other province in Canada has implemented immediate sharing should be no reason why the Province of Manitoba should not initiate that. I point out to him now, Mr. Speaker, in the Province of British Columbia, which passed a bill last week, The Marital Property Sharing, there is no immediate sharing. There is none in Alberta, there is none in Saskatchewan, there is none in Ontario, there is none in New Brunswick. Mr. Speaker, I suggest there are very good reasons why that has not taken place.

I would suggest, Mr. Speaker, that what I would hope to do over the next short while is initiate, through the Deputy Ministers of the various provinces, a system of monitoring and reviewing the case law that does develop through the various provinces, because it does seem to me that in the long run this is a particular area where there should be uniform legislation across Canada, and I would hope, Mr. Speaker, that after a few years we can take some steps to initiate among all of the provinces, after there have been some case law developed and further reviews of legislation in other provinces, that hopefully in the next few years there might develop some uniform legislation throughout Canada. But at the present time, Mr. Speaker, there is not anywhere in Canada immediate sharing.

The Honourable Member for Fort Rouge said that tax problems were solved. Mr. Speaker, I suggest to him that they have not all been solved. The problem with respect to the principal place of residence under The Income Tax Act has not been resolved, although the Federal Government to their credit, to their credit, Mr. Speaker, have taken some steps in their amendments to The Income Tax Act to resolve some of the problems. The Family Law Review Committee pointed out the creditors problems, Mr. Speaker. The report in the Province of Alberta is also referred to them.

Also, Mr. Speaker, I have indicated quite clearly that it is the position of our government that we do not wish to interfere in the private lives of the citizens of this province to any undue degree. The real problem has always been, Mr. Speaker, the deficiency in the common law on marriage breakdown, not for married couples living together. This Act meets that problem that has been raised in the common law, Mr. Speaker, and resolves that matter.

There also is included some protections under the existing legislation, Mr. Speaker, with respect to excessive gifts, with respect to dissipation of assets, with respect to the use and enjoyment of assets. And the discretion section, under the division of commercial assets, also stipulates that one of the factors to be considered in a division of commercial assets is the impoverishment of family assets. There is also the protection of The Dower Act which requires the consent of the non-titleholding spouse to any disposition or mortgage or lease, or assignment or sale of the marital home.

And, Mr. Speaker, I point out to the Member for St. Johns, the remarks that the Member for Inkster, I am sure seemed to me to be indicating that certainly in his experience there really are very few, if any, problems with respect to the disposition of assets during marriage. It is the marriage breakdown situation where the problems result.

Mr. Speaker, the Member for Fort Rouge referred to the variations in discretion with respect to assets. I suggest, Mr. Speaker, that again in the Province of Ontario and the Province of Saskatchewan and the Province of Alberta and the Province of British Columbia, there is wide discretion in considering a variation of all of their assets. In Ontario they don't have a presumption of sharing of commercial assets, only of family assets. But there is a presumption, Mr. Speaker, in favour of equal sharing of family and commercial assets. I suggest that in the vast majority of cases there will be equal sharing. The meer referred to New Zealand legislation, Mr. Speaker, and I point out to him that there is no presumption of equal sharing in New Zealand that I am aware.

Mr. Speaker, I must say that I enjoyed the comments of the Member for Inkster and his stories about his law practice and various anecdotes. However, while he said that he was going to vote against the legislation because the NDP was better legislation, I don't believe that he gave one good reason for explaining that difference. He spoke in a general vein about the soundness of existing marriages in support for the many good marriages that do exist, and I am sure that we would all concur with him, but if anything, Mr. Speaker, he spoke against immediate sharing and he didn't offer any real reason that I recollect for explaining the differences in the legislation and the reasons

for which he opposed ours and favoured the legislation of the previous government.

Mr. Speaker, again I believe this legislation does recognize, through the presumption of equal sharing, the non-economic contribution of a spouse and solves the questions raised and the deficiencies in the law raised in the Murdoch case and subsequent cases, this is not a return to the inequitable situation that existed before this type of legislation being passed, this is a completely new change in the law. I suggest, Mr. Speaker, it's one that the majority of the judges in the Rathwell case, in the Supreme Court, I suggest almost asked for, and I have pointed that case out to a number of people, Mr. Speaker, because it's an indication that judges have recognized changes that have taken place in our society and the necessity for the change in this particular law.

Mr. Speaker, I wish to, just in concluding, refer to a recent case that was decided in the Supreme Court of Ontario, the case of Silverstein versus Silverstein, because it's an example, Mr. Speaker. In that case there was an interpretation of legislation which is different than ours, it only deals with a presumption of sharing of family assets, not commercial assets, but the judge in that particular case, Mr. Justice Galligan, made some interesting statements I think, Mr. Speaker, in referring to that case. He recognized, on Page 8 of the transcript of that decision, two principles. The first was that family assets were to be divided equally between the spouses unless it would be inequitable to do so for anyone or more of the statutory criteria. And the second principle, that there is now recognition that the spouse who assumes the major responsibility for child care and household management enables the other spouse to acquire property that may not be family assets.

I suggest, Mr. Speaker, in referring to some of the remarks of the learned Justice in this case, that this is an example of the approach that will be taken by judges in the future, that they will recognize the change in the law, that they will be progressive, and that they will recognize the presumption of equal sharing. He recognizes in this case that the assumption of the major share of the responsibilities for child care and household management had a material effect on Mr. Silverstein's ability to acquire property.

One particular section that I think is particularly important, Mr. Speaker, on Page 31, he said, "I am convinced that the legislature did not intend the court to be entitled to exercise any broad discretion to divide family assets in accordance with what an individual judge may think is fair and equitable in a particular case. The property law in this province is of vital importance to married persons, and in my view that law not only should be but is in fact now clear and precise. Should exercise his power to part from the rule of equal sharing only in clear cases where inequity would result."

Mr. Speaker, I think this is an indication clearly of the type of decisions that will be made in the future where the presumption of equal sharing will be clearly recognized, and will only be in clear cases of inequity resulting that there will be a variation, and many, many of those cases I suggest, Mr. Speaker, will be cases where women will receive more than 50 percent of the assets where they are entitled and of course, it will also work opposite. But the presumption that 50-50 sharing is always an equitable sharing is not correct, Mr. Speaker, and the basis of this legislation is that equity shall prevail over a rigid formula that will not always dispense equity.

MR. GREEN: Mr. Speaker, I wonder if the Honourable Attorney-General would permit me a question. In view of the fact that there has been great argument as to what is going to happen, would the Attorney-General object to an amendment to the statute in the words that he has just used as to what should be the case. I am trying to paraphrase his words that there is a departure from equal sharing only when great inequity . . .

MR. SPEAKER: Order please. Order please. May I suggest to the honourable member that questions can only be for clarification of statements made by the member. The Honourable Member for Inkster.

MR. GREEN: . . .the honourable member, whether he would agree with his own words being in the statute, and I am paraphrasing his words, that the equal sharing shall be the rule except when great inequity would result, or that he would object to those words.

MR. MERCIER: Mr. Speaker, I think I explained already, that in a case already decided which does not have the presumption of equal sharing of commercial assets, that that is the very interpretation that has been given to it.

QUESTION put, MOTION declared carried.

MR. GREEN: Yeas and Nays, Mr. Speaker.

MR. SPEAKER: Call in the members. Order please.

The question before the House is the proposed motion of the Honourable Attorney-General on Bill No. 38 — The Marital Property Act.

A STANDING VOTE was taken, the result being as follows:

YEAS: Messrs. Anderson, Banman, Blake, Brown, Cosens, Domino, Downey, Driedger, Einaron, Ferguson, Galbraith, Gourlay, Hyde, Johnston, Jorgenson, Kovnats, Lyon, MacMaster, McGill, McGregor, McKenzie, Mercier, Minaker, Orchard, Mrs. Price, Messrs. Ransom, Sherman, Steen, Wilson.

NAYS: Adam, Axworthy, Barrow, Bostrom, Boyce, Cherniack, Corrin, Desjardins, Evans, Fox, Green, Hanuschak, Jenkins, Malinowski, Miller, Parasiuk, Pawley, Uruski, Walding.

MR. CLERK: Yeas 29, Nays 19.

MR. SPEAKER: I declare the motion carried.
The Honourable Government House Leader.

BUSINESS OF THE HOUSE

MR. JORGENSON: Mr. Speaker, before the House adjourns, I would like to announce that we will be continuing in the Chamber tomorrow for the remaining bills on the Order Paper, and tomorrow night I should like to be able to go into Law Amendments on Bills 52, 30, 31, 42, 44, and 58. Those are the bills that were passed yesterday and today for second reading. On Friday night, Statutory Regulations and Orders will meet to consider Bills 38, 39, 40 and 41.

MR. SPEAKER: The Honourable Opposition House Leader.

MR. GREEN: Mr. Speaker, I'm concerned with considering bills at committee tomorrow, which have passed the second reading today, if we are to go clause by clause, because on that basis any person having any interest in the bill will have had one day's notice. I would think that if we made it available tomorrow but did not deal clause by clause with those which have passed today, then there's still another day to be at Law Amendments for anybody who may have missed the notice on today's hearing, because today it is a little bit difficult. I don't object to proceeding with the hearings on the bills that you have mentioned, provided that those that have been finished today will not be considered clause by clause, but they would be considered clause by clause at the next meeting of Law Amendments.

MR. JORGENSON: I certainly don't want to rush honourable members into clause by clause consideration, but nonetheless committee will meet tomorrow night and we will be hearing representations if there are representations to be heard. Where we go from there let's let the committee decide after the representations are heard, whether or not we want to continue clause by clause on some of the bills. There may be some of them that my honourable friends may wish to proceed with, and if there are others that they feel they want a little more time on, I'm sure that they can be accommodated.

MR. GREEN: I'm still not sure that the Honourable House Leader understood my objection. I'm not worried about being rushed into clause by clause consideration — that is not my fear. My problem is that, if we are engaged in a procedure of having bills outside of the House for the purpose of giving the public an opportunity to make representation, I do not consider that the bills passed today can properly be brought to the attention of the public for representations tomorrow. Therefore, all I'm saying is that those that passed today, we can hear representations if there are any, but if there are not, that we not proceed clause by clause with those bills, but give another day in case people make representations.

It's also been the custom for people to bring to the attention of the Clerk, that they wish to make representations, and it might not even be possible to get to them tomorrow. I'm sure that he will try, in case there are any people, but I think that it is short notice, that it probably won't even be in the newspapers that we are considering them clause by clause by tomorrow.

MR. JORGENSON: Mr. Speaker, I have no intention of unduly proceeding with legislation unless I'm certain that there is sufficient time for people to make representation if they choose, so perhaps

Wednesday, July 5, 1978

we can make that decision after the Clerk has indicated that it is our intention to proceed, and if there are representations to be made, fine, then we will proceed. If there are none, then perhaps we may have to wait, but in any case we will be proceeding with the Marital Property Bills on Friday night in Statutory Regulations and Orders, and I'm sure that those that will be appearing before there will be prepared.

Mr. Speaker, I move, seconded by the Minister of Consumer, Corporate and Internal Services, that the House do now adjourn.

MOTION presented and carried and the House adjourned until 10:00 o'clock tomorrow morning (Thursday).