



**Legislative Assembly of Manitoba**

**HEARINGS OF THE STANDING COMMITTEE**

**ON**

**LAW AMENDMENTS**

Chairman

Mr. J. Wally McKenzie  
Constituency of Roblin



**Monday, December 12, 1977, 8:00 p.m.**

## Law Amendments

Monday, December 12, 1977

Time: 8:00 p.m.

**CHAIRMAN, Mr. J. Wally McKenzie**

**MR. CHAIRMAN:** Bill No. 5. Mr. Parasiuk.

**MR. PARASIUK:** I just wanted to ask the Attorney-General whether in fact he felt his statements, as Attorney-General in the House, committed the government to bringing back legislation in the spring session because I have no reason to doubt the Attorney-General's word personally.

However, I do recognize that he is carrying a very heavy portfolio of four ministries, and I don't know whether in fact, come next June, he will be the Attorney-General because he is carrying three others. And I wonder if in fact his statements are the product of caucus or anything like that, so that I would have some assurance that he feels that his statements carry the weight of his Premier and the rest of the government with respect to coming into the spring session with some legislation.

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** Mr. Chairman, if it will help the Member for Transcona, I have discussed that with the Premier before making that commitment and he is in agreement.

**MR. CHAIRMAN:** 1(a)—pass. Mr. Cherniack.

**MR. CHERNIACK:** Thank you, Mr. Chairman. I have a few things in mind to raise with the Honourable, the Attorney-General.

I want to draw his attention what must be apparent to all members of the committee and especially the members of the Conservative Party, the new ones who have been, I think, as attentive as one could hope to see and members of the committee be — it seemed to me that they were listening very carefully . . .

**MR. CHAIRMAN:** Would you get the mike in front of you so that they can hear.

**MR. CHERNIACK:** . . . those words of wisdom. It seems to me that the new MLAs of the P.C. group were listening very intently to all that went on and the Attorney-General was here for much of it, also being new to hearing these delegations which for some of us is for the third time.

I want to draw to his attention or underscore the fact that there were a large number of representations of which a fairly significant number were lawyers; three groups of lawyers or three presentations were made on behalf of associations of lawyers; and they were pretty consistent in making an important distinction between the Act that we're dealing with in this section and the other Act saying that this Act is important. It is working well. You will recall words like "it's beautiful" and "the courts know how to handle it quickly" and "they're able to work with it," and each one, including one of the consultants to this new Review Committee, stated that they felt that it was important that the Maintenance Act be maintained.

You can say that the Women in the Law had a special interest. One might say, although I would not say, that Legal Aid was so much involved that they might not see beyond their own specific problems, but the Bar Association sub-committee on Family Law stated unequivocally — and I'll just repeat it — "With or without the amendment we think it essential," that's a strong word, "that this Act too would go forward as planned and come into force on November 14th, with or without amendment."

Now, Mr. Chairman, it's shocking to me to have heard all these representations and one lady I think came this morning and said she only learned of it last night, so we have to assume that since we had some three days of this, that lawyers who had clients suffering under the new Act, apprehensive about the new Act, concerned about its long-term damage, would have been here talking to us, and we heard one. Miss Halparin came today, and she's the only person — lawyer and non-lawyer — that we heard, pointing out inconsistencies. And to me she was pointing out a lot of things, lots were red herrings, lots were faulty, others had a basis in substance about which there are suggested amendments. Some of them were completely in contradiction of the principles of the Act. So I accept that Miss Halparin had something important to say.

But, Mr. Chairman, she represented herself and nameless others — and really nameless others to an extent that they were undesignated others — and here we are as a committee having heard three days of — I didn't count how many, let me suggest 28 presentations — one was in favour of suspension. And we all listened and I think we listened carefully. I cannot accept the fact — and I say so with a great deal of respect for my colleagues on the other side, for the Progressive Conservatives especially the new ones — to know that apparently they had asked — I must put this gently — apparently on their behalf an opinion was requested. A six page reply was sent and one of the members of the caucus said he had never heard of this letter, and if that's true that's really very odd. If a request was made of the Family Law Committee to give an opinion and if the caucus of the Conservative Party didn't review it, that's sad. But maybe that one member I spoke to wasn't at that meeting.

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But here we find all the representations, the Family Law group which consists of lawyers who are studying and have been for some years all the complexities of marital law and they're saying, "Please keep the law. Make changes, but keep the law." And who do we have on the other side? For the last three days we have Miss Halparin, a lawyer, she's pretty smart I think, she's not too experienced, she's had a year and a half, two years in practice but I don't discount the fact that she has ability — but she stood alone. And on the other side of it we have the Attorney-General who's made some general remarks and I pause because I don't know whom else to add on the side of the lawyer charged with the responsibility, to say that there is something damaging about keeping the law.

Now I recognize every legislature has not only the right but the responsibility to look at law and to make amendments, changes, improvements, backwards or forwards whichever they see fit, but to suspend a law in the face of all these people who have appeared and said, "Not only is it good compared with the old law," which you will recall as archaic as could be, "but that it's workable."

Did you see the letter we got today from the Social Workers, and what do they say? The same thing. "And we trust you will push for immediate institution of legislation which retains the principles of equalities cited above." Immediate institution of legislation, and against that, when I said the other day that there is no organized group that has come and said, "Hold back, hold that newly passed law." Mr. Sherman says, "Oh, yes, there is one organization," and that one is the Progressive Conservative Association.

Now I have to say bluntly — I said earlier that I wasn't sure that the Conservative caucus had seen this strong recommendation — and the Attorney-General has handled this entire bill as a gentleman and responded but I do fault him in one respect, and that is, he quoted a meeting of 500 or 600 lawyers who couldn't agree, there was confusion. There was no resolution; there was no vote; there was no consensus attempted to be arrived at, and the Attorney-General referred to that. But he had in his possession a letter from the Family Law Subsection of the Bar Association and he didn't tell us about it, and we didn't know. Now I don't know whether members of the Conservative Party knew, but we didn't know. We had to find out here, and he had it in his possession and they are the only and most senior organized group of lawyers.

We did hear what Telly Mercury had to say and as far as we could tell he had no authority to speak on behalf of anyone but himself, and here we have this other group that said so. We have had other groups. We've had the teachers. We've had — I can't think offhand there were so many — YWCA, we had groups of very interested persons saying, "Please don't change the law that has just been passed, it's better."

And I think, Mr. Chairman, and I don't want to prolong this, I hope we can get through today or tomorrow at the latest, that we ought to have some response. You know the Conservatives are certainly, as far as I know, not prevented from speaking up. And I always knew Law Amendments Committee as being that committee where we could relax enough to speak some truths without posture, without pose, but with feeling of sincerity.

Mr. Chairman, we have heard from very few people of the Conservative Party, but the indication to me is that they're all going to vote in favour of a bill which has no support of any kind, except Miss Halparin, and they are all going to vote I'm afraid, just follow the leader without talking about the dangers of this law. I am at this stage not too interested about what amendments will be brought at the spring session because I recognize that that is not only a probability but would be done.

But what's wrong with the law now as a working entity until you make the changes? We haven't heard from anyone other than Miss Halparin, who admitted that she was opposed to the law to begin with. And if you read, as I did today again, what she said last June, she clearly was opposed to the whole thing.

So, I would like to hope, Mr. Chairman, that before we deal further with this section that we'll get some statement from members of the Conservative caucus to indicate what they feel they're doing, because I remind them that some of the Legal Aid lawyers in particular said that they have clients who will be badly affected, adversely affected, because you are now repealing a law that has been in existence for some period of time. And there are people who have gone under the present law — which was passed last June — and who might be badly affected by the passage of this bill because you've changed the rules in midstream for them.

Here they had a separation. They've gone. They've got an interim order and now they've got to go the order confirmed and you are in the process of changing the game, the rules by which they play the game. And I've used that term wrongly. I shouldn't say "game". It's no game for people who are involved in marital responsibilities to each other, to be told, well, you're going into court under one set of rules and retroactively by command of the Conservative Party and without much debate or their part, is being changed.

So I can't help, Mr. Chairman, but challenge members of the government party to speak up and counter 27 people who appeared here and pleaded that the law be kept — 28 in favour and one against, is that it?

**A MEMBER:** Charles Lamont.

**MR. CHERNIACK:** Oh, Lamont. Lamont I wasn't sure about. On the Maintenance Act I don't think he had much to say. I think his concern was property. And I'm dealing with The Maintenance Act and I'm dealing with it specifically as Maintenance Act because there are other problems in The Property Act

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which I can understand. It's not as vital to the day-to-day arrangements as between people whose maintenance weekly payments are affected by what you are about to do.

**MR. CHAIRMAN:** Mr. Pawley.

**MR. PAWLEY:** Mr. Chairman, I would like to just add a few words to that expressed by my colleague. As mentioned before, the letter from the Subsection of the Bar Association urged that steps be taken by the government to clearly indicate what amendments it has in mind; to clearly indicate so that the profession would know; so the general public would know just what would be expected, what would occur.

They pointed out that if not there would be confusion, the very subject that the Bar Association warned against unfortunately is beginning to unfold. The Bar Association indicated it was essential that both pieces of legislation proceed or it said there would be confusion. Now that is unfortunately what is happening.

I notice in the release of November 8th, when it was announced that the Family Maintenance Act would be suspended, there was acknowledgement at that time that this would create problems for the courts. We heard the lawyers that gave presentations, even Miss Halparin acknowledged that she had difficulty advising her clients in view of the changes. Other lawyers that appeared before the committee indicated that there were four changes in law, which would take place within the space of one year, and pointed to the problems that they would have in being able to properly advise their clients as to their rights under the circumstances.

So I would like to plead with the government members to clearly spell out what changes are intended. And I don't want to burden the committee again at this point in reviewing the various principles of the bill, because the principles are more than just a referral to equal sharing. There are many principles in this legislation. And if the profession is to know, if the general public is to know what can be anticipated in the next few months as a result of difficulties that are bound to occur in advising of clients, then they must know with some precision exactly what the government has in mind.

I notice an editorial in the Winnipeg Tribune on November 2nd, urging that if it's only uncertainty and ambiguity that we're dealing with insofar as the Review Commission, then the terms of reference should be clearly stated. So there's no doubt that that's all we're dealing with insofar as the Board of Review is concerned, that it is only a question of clarity and removal of ambiguity; that we're not dealing with some of the essential principles of this legislation.

So, in summation, I would just urge that there be a clear statement of intention so that the profession and the public will know, and that that be indicated tonight by the Attorney-General so that we can remove the concern that I believe exists insofar as the direction, if the government knows what direction it's proceeding in insofar as this legislation is concerned.

**MR. CHAIRMAN:** Mr. Steen.

**MR. STEEN:** Mr. Chairman, I'd just like to comment on Mr. Cherniack's plea to the new members of the Legislature, particularly on the Conservative side of the ledger, where he says that some 28 presentations were made before this committee and that the vast majority were in favour of retaining the law. I might remind him, back in 1970 when the great Autopac debates were before this particular Legislature, that I am sure that the vast majority of the persons that appeared at that time were in favour of keeping automobile insurance in the hands of the private carriers, and maybe you as the government should change some of the regulations and some of the laws, and that your government just steamrolled right over the committee and brought in the regulations which you wished. I'm not saying that the Conservatives are going to steamroll in this legislation, they're just going to postpone for a matter of months to a year but it will come back in some form which I would hope will be acceptable to most Manitobans. So I think the shoe is on the other foot at this time.

**MR. CHAIRMAN:** 1(a). Mr. Parasiuk.

**MR. PARASIUK:** In the light of the comments made by Mr. Steen, I would like to just raise one question to it. The Conservatives have said that they are in agreement in principle with these two pieces of legislation, The Family Maintenance Act and The Marital Property Act. They have said that they are in agreement with it. I think that the Conservatives in 1970 said that they were not in agreement with the Autopac legislation. I don't think the analogy is the same at all. We have got a situation where the Conservatives have said, "We are in agreement in principle with this legislation. We find that there are some technical and drafting difficulties with it." What Mr. Cherniack is referring to specifically right now is The Family Maintenance Act and I have asked just about every lawyer that has come forward if in fact they have filed under the present Family Maintenance Act, and they have said, yes, and they have found that it is a workable Act. And that was the big concern with respect to both The Family Maintenance Act and The Marital Property Act. But those people who have come forward and are practising lawyers have indicated that they are using The Family Maintenance Act because it is in effect right now. What we are doing is not deferring some Act that might not come into force at some future date but we in fact are repealing an Act that is in existence right now. We aren't

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suspending that Act because that is the law right now, we will be repealing that Act. I think the analogy with the Autopac situation is entirely different because of the positions taken by the Conservative spokesmen to date with respect to the principles of these two pieces of legislation.

With respect to the specifics that we have received we have found that people who are practising have said that it works. On that basis, there doesn't seem to be any reason at all for repealing the present Family Maintenance Act.

**MR. CHAIRMAN:** Mr. Pawley.

**MR. PAWLEY:** Mr. Chairman, I just want to point out to Mr. Steen that in the 1969 election I can recall that public automobile insurance was a pretty central theme. It was an important item insofar as the platform of the New Democratic Party was concerned and I think that there was a commitment to the public at large in the 1969 campaign to proceed with public automobile insurance. I don't feel that the Conservative Party is burdened with any commitment that it made during the election campaign in September and October to suspend or to defer the legislation. I believe that the Conservative Party committed itself to a thorough review of the legislation which is fair enough. And we would have done the same thing. Our party would have reviewed the legislation, but no commitment to suspend or to defer the legislation.

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** Mr. Chairman, I can appreciate the concern of the members opposite who were very deeply involved in this particular legislation and in bringing it forward because there is no question that this is an area that required reform. I can appreciate the concern of those delegations who appeared before this committee, who've worked on it for so long and I think because they have worked on it so long — even though I have made this commitment on behalf of the government to bring back the amendments into the 1978 Legislature — they have worked so hard for it that they are very worried that it will not happen. They are not going to be satisfied until in fact they see the legislation in operation.

I think at the same time those members of the Bar who have expressed concern, they've expressed their opinion that the Act is workable, I think you have to appreciate that those orders are only interim orders although there may be some orders that are final by consent between the parties, but up until this stage, from the information given to the committee by lawyers who have appeared before us, the only orders that have been granted are interim orders. So they have in fact, to the best of my knowledge from the people who are here, not been through full hearings and not proceeded to final orders.

I think, Mr. Chairman, when we talk about the recommendations of the family law section, we have to remember too as an example that the previous government never relied entirely on the recommendations of the family law section because my understanding was, for example with respect to this one Act we are talking about, they recommended that fault be a factor in either the granting of the order or in the awarding of maintenance. I think the Member for Fort Garry who was very actively involved for the Progressive Conservative Party in the debate in the last session of the Legislature, indicated the other night in the Legislature that he felt a serious review of this particular area was necessary.

People who have appeared before the committee too, Mrs. Loewen in fact and Mrs. Browne, I think, who was with her, who are very active in reviewing legislation that is being developed in all other provinces, indicated for example that this is the only province in Canada where there is complete no-fault orders for separation or orders for maintenance. I think it is on that basis that the Member for Fort Garry expressed a concern that some further review, particularly of this aspect of this piece of legislation, is necessary before this Party will be satisfied to bring it into force and into effect.

So I say, Mr. Chairman, the recommendation of the family law section which, I must point out, was not requested by me — Mr. Haig was never requested by me, in fact, I think the letter indicated the request was made on October 18; the election occurred on October 11. The Cabinet was not named until October 24. In fact, members of the Cabinet were not informed until I think it was the Sunday previous, October 23. So to the best of my knowledge, there was no request by any member of the caucus to in fact have Mr. Haig request that report. I didn't receive that report, in fact, from Mr. Haig — who informed me in a letter that he had requested it as a member of the national executive of the Canadian Bar Association — did not receive it until November 14, after in fact we had made that decision.

Again I point out that just because they have made that recommendation it is not binding upon us, as the recommendations of the family law section were not binding upon the previous government.

**MR. CHAIRMAN:** 1(a). Mr. Green.

**MR. GREEN:** Mr. Chairman, first of all, let me express my pleasure that Mr. Mercier is repudiating Mr. Haig because I'm glad to know that the Conservative . . .

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**MR. HAIG:** I'm not repudiating . . .

**MR. GREEN:** Oh, you are not repudiating him, I'm sorry.

**MR. MERCIER:** Mr. Haig's advice and comments are always well received and welcome.

**MR. GREEN:** My pleasure at the repudiation has now been removed. Mr. Mercier is now approbating Mr. Haig which again causes me to know where the meaningful advice is coming from.

Mr. Chairman, I want to indicate to honourable members that in large part, and I hope my fellow colleagues will not be too chagrined with me, I agree with Mr. Mercier. If the New Democratic Party forms a government I can assure you that we will not govern by demonstration. Demonstration will not be the meaningful feature in a government decision. If the New Democratic Party forms a government with a program in mind which is well thought out, that that program will not be changed, although it can be modified, but the principle of the program will not be changed if there were 150 representations to a committee. Therefore, when Mr. Parasiuk says this is not analogous to the Autopac debate, I believe that this is directly analogous.

With regard to the Autopac debate, we were for the program; the Conservatives were against it and we voted on that basis. I believe that the analogy is perfect, that the Conservatives are against family law legislation, that we are for it and that the vote will be on that basis, Mr. Chairman, that that is what is occurring here, that all of the suggestions to the contrary are window dressing, that the only way of doing it comfortably is to suggest that there will be a suspension; that what the Conservatives intend to come back with is legislation which they can say, or will say, embodies two principles, but which will have such savings clauses in the legislation as will make the principles of no consequence whatsoever. That is what we can expect in the next session. That is why this bill is being suspended and the debate is exactly analogous that the Conservative Party — there's only one difference and that difference was brought out by Mr. Pawley — that really Autopac was a political issue.

Marital Law, we heard what type of political issue it was. We had a woman who is not a New Democrat, and I hope that she will be one of those who swings over, who said that she was deceived by the First Minister of the province, by the man known now as First Minister. —(Interjection)— I'm sorry, if I'm correct . . .

**MR. CHAIRMAN:** Point of privilege, Mr. Mercier.

**MR. MERCIER:** She did not name a member.

**MR. GREEN:** Oh, Mr. Speaker, it's true. She said she was deceived by the member who was running in Charleswood — by the Conservative member who was running in Charleswood — I will withdraw . . .

**MR. MERCIER:** No, she didn't say that.

**MR. GREEN:** Her member? I'm sorry, Mr. Speaker, I'm sorry.

**MR. CHAIRMAN:** Order. Order. Order. Let's get it straight. Speak to the Chair.

**MR. GREEN:** Mr. Chairman, I will say that she was deceived by her member. I had presumed and if I am incorrect I will quickly withdraw, that her member was the First Minister. If that's wrong, Mr. Chairman, then I let whoever deceived her live with it. She was deceived by a member of the Conservative Party, of the Cabinet. If that's not the First Minister, if you are protecting him, then blame whoever it was that deceived her. But somebody deceived her; that it wasn't an issue. Autopac was an issue.

But otherwise, and I have to tell my colleagues that howsoever they feel, I believe that this is directly analogous. That we came in with an automobile insurance program; that there were many representations against it; we believed it was right and we legislated.

These people are coming in with a program to undo marital law and the principles of marital law. There are representations against it. They still feel confident in their position, which they have the right to do, and they're going to vote for it in spite of the representations. The situation is exactly analogous. I would like it to be so clear that that is what is happening; that Mr. Mercier is correct; that it is exactly analogous; that one party is for the position, the other is against; that the representations have been heard. Certainly they have not been rudely treated as they were not with Autopac and if something would have come up which was consistent, as it was with Autopac, with the program which we were prepared to do, we would have done. That has not happened and we are now proceeding with a government program supported by the Conservative MLAs to undo marital law in the province of Manitoba, and let that be their position and let us vote on that position.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** I think Mr. Sherman wanted to speak. I'd rather defer.

**MR. CHAIRMAN:** I have Mr. Steen. I don't have Sherman on my list.

**MR. CHERNIACK:** I'll come back before you pass it.

**MR. STEEN:** Mr. Chairman, I will be very brief. I just wanted to make a correction. It wasn't Mr. Mercier, the Attorney-General, that drew the comparison between the debate that's been going on for the last three days, and Autopac, it was myself that did it.

**MR. CHAIRMAN:** Mr. Sherman.

**MR. SHERMAN:** Well, Mr. Chairman, I don't wish to precipitate debate and in fact I don't wish to address myself to the point at issue in the context of debate, because I don't wish to be repetitive. But I think that the request on the part of the opposition for some response, some statement from this side of the House, this side of the committee, the government side, is a legitimate one. The Attorney-General has made a response. I feel that it would not be proper or conscientious for those of us who served on the Committee on Statutory Regulations and Orders or earlier this year dealing with this particular legislation, to remain silent at this juncture. So I want to respond to the invitation of Mr. Cherniack, Mr. Pawley and Mr. Green and just say one or two things.

One, Sir, is that I reject out-of-hand on behalf of my government any suggestion of deception. I said I didn't want to be repetitive but I must state for the record once again, that the Conservative Party, while in opposition, made its position very clear to the people of Manitoba through the media as to where it stood on this legislation; requested time and again a continuing intersessional study so that legislation that was properly enforceable, properly reformist and properly applicable could be brought into the 1978 session of the Manitoba Legislature, notwithstanding the government of the day, whatever the government was, whether there was an election or whether there wasn't an election. In fact, I made my suggestion fully aware of the fact that it might be a fifth year of an NDP government; a fifth year of a current serving term; and I requested of the Attorney-General of the day, the Honourable Member for Selkirk, that a study of that kind be carried on between sessions so that the legislation could be perfected, or at least could be brought to a point where it was less imperfect, for the 1978 session.

So, I reject out-of-hand, any suggestion of deception. I think that there was some lack of information, perhaps, available on both sides of the argument to those supporting both sides, or either side, and I would say that the Conservatives and our supporters were misinformed and perhaps even, Sir, misled by the government of the day in terms of the tax implications of the legislation which the government of the day knew about through reports from their own tax consultant, and which were not introduced into the examination of the issue at the time. So, and I don't want to make an issue out of that, but I say through you, Mr. Chairman, to Mr. Green, I don't want to make an issue out of that, but when he raises the point of deception, I say to him that that may be a knife that cuts both ways. So let us not get into that quagmire. —(Interjection)— There was no deception.

The NDP was interested in bringing in legislation that it felt would serve it politically, and that's legitimate, that is legitimate. Those arguments that could be marshalled on a legitimate basis for raising objections to that legislation and making it difficult to sell politically were, I think, subordinated to some of the more glamorous support arguments that were marshalled by the government of the day to promote the legislation. The Conservative Party, the opposition of the day, had misgivings about the ramifications of the legislation, expressed them, said they wanted a much wider, deeper and lengthier review and was always consistent on that point.

Now, Sir, I think that that aspect has been stressed enough by me and I don't want to worry it to death. I want to switch to one other aspect and that is the assault and the offensive — and I use those terms in the best sense — that has been mounted by the Opposition against the present Attorney-General where this legislation is concerned.

If the Opposition today has any fight to pick, has any argument, has any campaign to wage, has any battle, has any offensive to launch, let them launch that offensive against me and against the Member for Rhineland and against the Member for Sturgeon Creek and against the Member for Birtle-Russell, who is now the Speaker of our assembly.

We are the ones who were on that Committee. We are the ones who went through that series of meetings and hearings. The Attorney-General who doesn't need me to defend him, who is much more able to defend himself than I am in any case, came into this situation the same as 17 members of this Legislature came into this situation, as a new member elected on October 11th, who was not involved in or exposed to the various debates that took place for seven months.

So let Mr. Green and Mr. Cherniack challenge me for my position on the legislation. And I've stated my position on the legislation. They know where I stand and they know where our caucus stood on it on the night of June 17th. They also know that we are prepared to do what we said we would do, conduct an intersessional study leading to the 1978 session of the Legislature to eliminate some of the imperfections in that legislation and make it equitable for women, for men and for children. That is our intention. The Attorney-General has given his word on that. The leader of the

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party, now the Premier of the province, has given his word on that. I have given my word on that. That's not good enough for the NDP. They intend to make a political issue out of this because it's got glamour; it's got political sex appeal. Let them make an issue out of it.

I suggest, Mr. Chairman, that the Conservative government is demonstrating considerable courage in following through on the commitment and the position that it took from November, 1976, to June 17th, 1977. It would be easy to buckle under to the kind of arguments, to the kind of pressure, to the kind of publicity-seeking, to the kind of grandstanding that has been maintained by members of the opposition throughout this debate in the past few weeks.

It would be easy to buckle under to that. But we said that we believe this legislation creates perplexity and confusion across the whole spectrum of Manitoba society. That has been demonstrated abundantly for us by various witnesses and delegations appearing before this committee and we are remaining true to that position that, because of the confusion and perplexity, a further review is necessary and that we will be back in the 1978 session with workable, equitable principle enshrining legislation.

Now, that isn't good enough for them but that's our position. That was our position in June. That was our position that was part of the package on which we were elected on October 11th. If the NDP doesn't believe that I suggest to you, Sir, that the majority of voters do believe it, and we will stand on faith in that judgment.

**MR. CHAIRMAN:** 1(a)—pass. Mr. Cherniack.

**MR. CHERNIACK:** Mr. Chairman, I appreciate Mr. Sherman's entering into this discussion and I don't expect him to interrupt me but he may, of course, because I do honour, you know, his participation and I do believe in his sincerity.

Having said that, however, I have to point out that if we have been hard on the Attorney-General it is only because he has been standing very much alone, naked and alone. He was assigned the job. He accepted the job. He tried his best with it, but you cannot hide behind the fact that he was new to this and then say you are attacking him. I don't think he was attacked personally except that I did question his not giving us the information he had about the Manitoba Family Subsection, although he gave a date of November 10th, which I still think preceded I'm sure — November 4th — did that precede his confirmation on second reading? I'm not sure. But that point I made and I think that is fair. I'm even shocked to hear that Mr. Haig, who I believe is a very important cog in the PC policy machine and who wrote a letter showing ignorance of the law to an important extent, should presume to get a brief for the caucus and not give it to the caucus, that's shocking. However, I don't apologize for the way we have dealt with the Attorney-General, but I don't think that it was so reprehensible.

Now, a few other things. The question of deception — I recall that Mrs. Goodwin was very upset and she said — and this is my recollection and the Chairman of course was listening, although others must have as well; but she said that she was concerned about the position of all three parties on this issue; that she checked it out; she knew the position of the NDP and of the Liberals. She was not sure of the Conservatives. She checked with her member for whom she had a great deal of respect and she didn't want to give his name, and she didn't want to give his name because she said he has done a lot and she respects him. She checked with him on the Conservative position. She wrote him a letter which I have never seen. He then told her, as I recall, that he had checked with his leader and he gave her the assurance which she then used to inform their membership — and she said 40,000 women of the Provincial Council of Women — informed them that all three parties are behind this Act. When one of the members, Mr. Axworthy, said, "Did you feel that you were misled?" his shocking answer was hesitation and then she said, "No, I think I was deceived." That is, as I recall, exactly the way she put it. I think we invited her to give us the letter and she was sorry. Already she had mentioned her member, who she admitted was a Cabinet Minister now, and whom she said she respected. So draw your own conclusions as to who deceived her. So that's the deception part.

As to the being misinformed and misled on the tax matter, I've been looking for . . . On June 24th, the tax consultant, Mr. Goodwin, wrote to the Attorney-General — which was a week after the legislation was passed — and he gave his opinion. And reading his opinion, I don't think he is saying this is terrible legislation. I don't think he is saying don't go ahead with it. I think he is saying there are certain problems and I have so far failed to find his statement before the Committee on June 14th, but my recollection is, and I stand behind it . . . Do you know when he spoke?

I'm anxious to find it because my recollection is that we said that we were bringing in an amendment which would provide that the impost of taxation — expected impost — should be taken into account by the judge in making the distribution as if it were a debt, and on that basis does he think we should be ahead or not? And my recollection is he said, "Go ahead". Now, if I find it, Mr. Chairman, I will certainly draw it to your attention because I'm not asking anybody to believe me, until I can support it.

Now, I want you to note, Mr. Chairman, and Mr. Sherman who spoke with sincerity said, "We want to make it perfect or less imperfect." And he leaves with me the impression that that is the problem as far as he is concerned. That it's the question of draftsmanship. And that is the impression that was first given to us until, from my standpoint, I saw the letter from the Attorney-General where he raises the question of fault as he did today, I now believe that the principle of fault is in tremendous jeopardy. —(Interjection)— Well, the principle of whether it's fault or no-fault. And that the



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Conservative caucus will come back whenever it does and is powered so to do, will come back and bring back into the Maintenance Act the principle of fault.

I believe that and the reason I believe it is that the Attorney-General has referred to it a couple of times. Mr. Sherman has pointed out that that's the one problem he had in his mind, and it was a serious one on principle. So I believe that that is the case and I would like to hear some protest that it's not correct. I'd love to hear that.

But then I go on and I would suggest that looking at the Maintenance Act there is very little in principle that can't be agreed to and yet nobody has agreed to it, except by implying that it's okay, we're just polishing to make it more perfect.

There is the responsibility of mutual support set out in the Act. There is the principle of information being given to the spouses while they're living together, of their financial affairs. There is a principle of separation orders without finding fault. There is a principle of spousal support to be based on need in accordance with the principles set out in the Act, without fault, and the judicial discretion to vary from the principle of support based on need is limited by the concepts set out in the Act, where there is a specific list of factors affecting order that the court should take into account.

And, Mr. Chairman, I point out to you that other than this question of fault, which I now think is in jeopardy, we have not yet heard any indication that these principles are accepted in any way or rejected in any way. All we've heard is protestations of desire to make more perfect this legislation.

So I again request members of the Conservative Party to indicate where they stand on these principles in this Act, and they have not yet responded as to what are the dangers inherent in not keeping it. That, they haven't really done.

**MR. CHAIRMAN:** 1(a)—pass.

Those in favour of the motion please signify in the usual manner.

**A COUNTED VOTE was taken, the result being as follows:**

Yeas 16; Nays 11.

**MR. GREEN:** Mr. Chairman, may I suggest that you . . . declare on the voice votes what you feel the vote will be, until the bill is reported, when we will ask you to count them.

**MR. CHAIRMAN:** Thank you, Mr. Green. 1(b)—pass; 2—pass; Part 2 of The Marital Property Act, Section 3—pass. Mr. Pawley.

**MR. PAWLEY:** I would like to just say a few words in connection with this portion.

One of the major reasons that has been advanced by the Attorney-General for deferring The Marital Property Act has been that in dealing with tax implications.

Now, we have heard during the Committee stage, I think some very constructive briefs in connection with tax implications and how they can be dealt with. If the tax question is as major a concern as the Attorney-General has indicated to him, and if he is of the view that time is too short in order to obtain an announcement from Ottawa — and yet I do think that from all that we've heard that announcement could have been forthcoming from Ottawa — we heard from the Advisory Council to the federal government this afternoon that it's their view from conversations they've had which they expect to be confirmed by letter, that the federal government is prepared to remove any tax implication difficulties by way of announcement with legislation to follow next spring.

But failing all that, Mr. Chairman, I wonder if the Attorney-General would at all be acceptable to the suggestion which has been made twice, I believe, during the hearings, I thought with considerable merit, that Part 2 — that part dealing with family assets from which the tax problems are related in the main — if the Attorney-General would be prepared to accept the suggestion that family asset, Part 2, that those assets fall in with all the other assets and that the division of those assets be deferred; that they be on the deferred basis rather than on an immediate sharing basis until such time as there has been the enactment of suitable legislation at the federal level.

In one swift stroke, it seems to me, the Attorney-General will be satisfying himself in connection with the tax question. And I can understand the Attorney-General's uneasiness in connection with the tax situation and yet I think this is a feasible and valid way of handling it, if that is the major area of the Attorney-General's concern. I would urge him to take that very step, to defer the family assets to the commercial in with all the other assets, and defer rather than immediate.

I would like to just have the Attorney-General's comments in that connection.

**MR. CHAIAN:** Mr. Mercier.

**MR. MERCIER:** Mr. Chairman, with respect to that point, the members of the Committee will recal when Mrs. Loewen of the National Council was here, or the Federal Advisory Committee, I think they call it. I tried to elicit from her any information she had with respect to the Ontario legislation which only has deferred sharing.

She indicated in response to my question that she was aware of some discussions with the federal government with respect to tax implications.

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Mr. Chairman, that is confirmation of the information I have, that even with deferred sharing there still are important tax implications. So that even if that were your only consideration — simply to do away with the immediate vesting of family assets and have everything in the way of deferred sharing — it would not resolve the tax implication problem.

**MR. CHAIRMAN:** Mr. Pawley.

**MR. PAWLEY:** I would like to ask the Attorney-General, Mrs. Loewen also indicated that the inter-departmental committee that was dealing with the tax issues had completed the work I believe she said a week and a half, two weeks ago, and that in fact they had been in communication with Ottawa in the last day or two and they were expecting confirmation that Ottawa was prepared to take positive steps. I think Ottawa is quite concerned that they not be held responsible for any delay in this connection. Ottawa does not want to assume responsibility for delaying this progressive legislation in Manitoba. I'm just wondering if the Attorney-General has been in further contact with Ottawa, because it seems to me there is one of two ways of handling it. One is to obtain an announcement from Ottawa, which I felt from what Mrs. Loewen and Mrs. Browne said, would be a real possibility if there was an initiative from Manitoba in that connection or, alternatively, to handle it by way of the deferred basis.

Now, if I could just return for a moment to Mr. Sherman, Mr. Sherman had said something about my holding back information. I want to tell Mr. Sherman that the information that was received from Mr. Goodwin arrived a number of days after the conclusion of the June sitting. It's true Mr. Goodwin had been hired and was working at professional capacity but that his report, I believe, arrived in the office of the Attorney-General on June 24th — I think the end of the session was June 17th.

Let me also point out that during the proceedings — and Mr. Spivak was very much involved in this area — there was discussion on the tax implication. In fact, I don't know whether Mr. Cherniack has found the pages but in fact I believe that an amendment was presented and introduced to the legislation to protect ourselves as against any possible tax implications, away back approximately June 10th, is it, Mr. Cherniack? So that we were conscious of a tax implication problem. But I had never any reason to fear that we didn't have the full support of the federal government in dealing with the tax situation.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** Thank you, Mr. Chairman. Firstly, in relation to Mr. Goodwin, I thank the Attorney-General for drawing my attention that he appeared before the Committee on June 2nd, and there he refers to the fact, I quote from Page 289, "I wanted to address a few comments on a specific item which was raised last night by Mr. Spivak and by Mr. Cherniack, and that is the question of a deduction of tax liabilities and the calculation of values of assets an apparently simple calculations of values of the assets to be considered in the accounting", I'm sorry I misread that. "An apparently simple . . ."

**MR. CHAIRMAN:** Order, Mr. Cherniack. I hope the committee will come to order and listen to the remarks of the honourable member. Carry on, Mr. Cherniack.

**MR. CHERNIACK:** Thank you. He said, "An apparently simple solution is illustrative of the sort of concerns and problems that will arise." He then pointed out some problems that he sees that would arise, even with the amendment that we were then proposing. And on Page 390, Mr. Chairman, I asked him what was his advice of what to do and he said he didn't know, except to negotiate with the federal government. And I said, "But failing any better advice from you, I'd be inclined to go ahead with what we discussed yesterday and net it out. Would you agree that that is the thing to do to create a rough form of equity?"

Mr. Goodwin: "Well, I think one always searches for perfection, Sir. Perhaps that would have to be done, yes."

I think that's important. Here Mr. Goodwin, the tax expert who says one searches for perfection, as Mr. Sherman said earlier this evening, but then he says "Perhaps that would have to be done, yes."

Mr. Chairman, I said I would report on it if I found it and I appreciate the opportunity to do it. I want to remind Mr. Sherman that he was in here for a short time during the presentation, I think it was of Ms. Prystupa, I think. And he asked her why she felt lack of confidence that the government would come back next session with a legislation that would be acceptable — I think someone used the expression "they'd like it very much". And she said, "Because we have not had answers to our questions." And Mr. Sherman said something about what are they, and she said, "I asked the Attorney-General specific questions." And Mr. Sherman, I believe said, "You will get your answers."

**MR. CHAIRMAN:** Mr. Sherman.

**MR. SHERMAN:** I believe, Mr. Chairman, that Mr. Cherniack is essentially accurate in relating the circumstances, I believe I said we will attempt to answer those questions for you.

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**MR. CHERNIACK:** Thank you. I appreciate Mr. Sherman's correction.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** Mr. Chairman, I got the questions from Ms. Prystupa at that time and I have them right here, and I propose to pose them and see if there's an answer. These are her questions. I have others.

Will retroactivity be retained? Well, that's what made her nervous; she didn't get an answer.

**MR. SHERMAN:** Well, is Mr. Cherniack asking these question-by-question for an answer from me?

**MR. CHERNIACK:** I'm quite prepared to, Mr. Sherman.

**MR. CHAIRMAN:** Let's get some understanding now. Is the question just back and forth, or do you do it through the Chair?

**MEMBERS:** Oh, through the Chair.

**MR. CHAIRMAN:** Fine, thank you. Mr. Sherman.

**MR. CHERNIACK:** Well, no, let me put the question. Mr. Chairman, will retroactivity be retained?

**MR. SHEAN:** Is Mr. Cherniack asking that question of me through the Chair?

**MR. CHERNIACK:** No, I'm asking it of the government representative, whoever speaks for government.

**MR. SHERMAN:** Well, Mr. Chairman, my response to that and I'm not suggesting that I have been designated to speak for government, but my response to that would be that if — and I'm sure all the other questions that Mr. Cherniack is about to pose and that Mrs. Prystupa posed — are obviously the rationale for the *raison d'être* for the Review Committee. Why else would there be a Review Committee if we did not want to examine a number of aspects of the legislation, plus the application of the legislation.

**MR. CHAIAN:** Mr. Cherniack.

**MR. CHERNIACK:** Thank you, Mr. Chairman. Mr. Sherman is now making it appear as if the earlier claims that it was badly drawn and must be redrawn, that there are imperfections that need to be corrected, were the reasons. Now, I'm gathering . . .

**MR. SHERMAN:** Not at all.

**MR. CHERNIACK:** Wait a minute. That the questions that I am in the process of asking will be answered by saying, "We're looking at them", which justifies not only Ms. Prystupa but every other person that says . . .

**MR. SHERMAN:** Not at all.

**MR. CHERNIACK:** . . . we question, and justifies Mr. Green's earlier comments of saying the whole bag has been opened up again or Pandora's box has been opened up again. Everything is up again for reconsideration.

**MR. SHERMAN:** Not at all, Mr. Chairman, because Mr. Cherniack knows precisely where I stand. I have stated my position. He knows where I stand.

**MR. CHAIRMAN:** 3—pass?

**MR. CHERNIACK:** No, no, Mr. Chairman, I'm sorry. I quote from a Manitoba news service dated November 10th, 1977, and my experience is that when these news information bulletins are released they are first checked and initialled by the minister responsible or someone authorized on his behalf.

"Mr. Mercier emphasized that the intent and principle of 'this significant legislation' would remain the same. The review would deal with ways in which the uncertainty and ambiguity of the present Act could be eliminated."

So now we have discovered that when it comes to retroactivity we can't get an answer on whether or not it will be retained.

The next question she posed: "Will unilateral opting out be disallowed?" I pose that question, Mr. Chairman.

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**MR. MERCIER:** It will be reviewed.

**MR. CHAIRMAN:** Well, Mr. Cherniack, if you don't get an answer, I can't help you.

**MR. CHERNIACK:** No, I got an answer. I got an answer and let's put it on record. The Attorney-General said, "It will be reviewed."

The next question then, Mr. Chairman, and I direct to you: Bill any form of faulting principle be introduced? "WAnd I pause. Now the answer is non-existent. Ms. Prystupa was told there would be an effort made to give her answers; she's not getting that.

Next question she asks: "Will the three-person committee be specifically instructed to study the regime operative in California and Washington, and recommended by the Berger Commission of B.C. with a view to making it operative in Manitoba at some time in the future?"

**MR. MERCIER:** No.

**MR. CHERNIACK:** Now the answer on the record, the Attorney-General says, "No, they will not be instructed to study the regime."

And the fourth question that Ms. Prystupa had: "What specific measures do you intend to introduce to ensure enforcement of maintenance orders?"

**MR. MERCIER:** Mr. Chairman, on that question, I indicated on second reading that that whole aspect of enforcement of maintenance orders will be reviewed as it was planned to be reviewed under the previous government.

**MR. CHAIRMAN:** Mr. Pawley.

**MR. PAWLEY:** Could I just in clarification, is the Attorney-General then announcing his intent to form the Task Force, that the previous government had committed itself to do. We intended — as the Attorney-General knows — to form a Task Force which would be made up of those that were particularly interested in the enforcement and maintenance orders and premarital counselling, and what not. That's the way we had intended to explore further these various questions. And when the Attorney-General indicated that he would be handling it as the previous government had intended to handle it, I was wondering if that had been his intention.

**MR. MERCIER:** Mr. Chairman, I thank Mr. Pawley for his comments and what I had meant to indicate was that the enforcement of maintenance orders will be reviewed. But I wouldn't commit at this time that it would be reviewed in the same manner that was proposed by the previous government.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** Mr. Chairman, there has been enough talked about tax implications to give me the concern and to make me believe that unless the federal government passes some legislation to deal with this tax problem that vesting, sharing of both immediate and deferred will not take place. And that's a very important statement that I just made, but it makes me feel that that is the case because there has been so much said about the problems. And as I had occasion to discuss with Mr. Goodwin on June 2nd — and that's the only time I ever discussed this with him — was that we were attempting to net out the asset, taking into account the tax implication, and he said, Well, failing successful negotiation with the federal government, he thinks that what we have done will have to do. That's as of June 2nd.

I now want to ask the government whether after six months of wisdom whether it is prepared now to say that failing the federal legislation that it thinks it needs, does that jeopardize, seriously, the expectation of vesting, sharing of equal assets, which is ostensibly the one principle they have accepted?

**MR. MERCIER:** Mr. Chairman, I think we would share Mr. Pawley's enthusiasm that the federal government will bring about the necessary amendments to the Income Tax Act to ensure that no one will be penalized tax-wise because of marital property reform legislation.

**MR. CHAIRMAN:** A point of order, Mr. Jenkins.

**MR. JENKINS:** I wish the Attorney-General would speak into the microphone because it is very difficult for us to hear what he says. He's a very soft-spoken person, but I have difficulty hearing what he is saying.

**MR. CHAIRMAN:** I thank you, Mr. Jenkins. Mr. Mercier.

**MR. MERCIER:** What I said Mr. Chairman, is that we share Mr. Pawley's optimism that the Federal

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Government will make the necessary changes to the Income Tax Act in order that we can bring this legislation into effect in 1978. Otherwise, the question is hypothetical.

**MR. CHERNIACK:** Well, Mr. Chairman, Mr. Pawley's optimism did not distract him from passing a law which affected Manitobans and which took into account the possibility that there would not be that kind of legislation, and now I have to say that Mr. Mercier's response to my question leaves me with a lingering doubt that if his optimism is faulty and ends in disappointment—(Interjection)—No, Mr. Mercier shares Mr. Pawley's optimism. I can play with words fairly well, but I know that this was a play. Mr. Mercier shares the optimism and I say that optimism is wrongly directed and there is disappointment. I am forced to the assumption, I infer from what Mr. Mercier said that this law may drop down, fail completely, unless the Federal Government passes tax legislation, and I believe that that is the correct interpretation of what he said. If I am wrong I wish he would correct me so that we would all know what is the possibility.

**MR. CHAIRMAN:** 3—pass.

**MR. CHERNIACK:** You will note that Mr. Mercier nor any other member of the Conservative Party has responded, but if Mr. Spivak is going to I will certainly defer.

**MR. SPIVAK:** Well, Mr. Chairman, I just want to note that it is unnecessary for anybody on the government side to accept an inference on the part of the Opposition as being a correct deduction of what really has happened.

**MR. CHERNIACK:** Mr. Chairman, I very much appreciate Mr. Spivak's learned account of what is or is not necessary. I point out to him, Mr. Chairman, that when we were in Second Reading, when we go into Third Reading, we each state our positions. Any assumptions we make cannot be responded to. We have a right to make assumptions. In this Committee, in the whole structure of Law Amendments Committee, I don't have to tell Mr. Spivak with his great experience, but if he doesn't mind I'll tell some of his colleagues, the opportunity of Law Amendments is to have this kind of frank, honest, sincere exchange, so that questions are asked and responded to. I say that a failure to respond creates in the mind of the questioner a doubt or an assumption which he can voice and if he is honest he voices it in the presence of that person to whom he directed the question, rather than go outside and mumble about him. I have stated the assumption to which I have come, voiced by Mr. Mercier, he has not responded, he has colleagues on his side, growing in great numbers, and if they want to rise to his defence or express their own opinion they have the opportunity to.

**MR. CHAIRMAN:** Section 3. Mr. Mercier.

**MR. MERCIER:** Mr. Chairman, I can only add that in the event those income tax amendments did not occur, I can't imagine frankly the Federal Government not making them when every province in Canada is looking forward to them, and particularly being in an election year, as was the previous government that passed the legislation.

**MR. CHAIRMAN:** Section 3—pass.

**MR. MERCIER:** I was going to add, Sir, that in the event the legislation does not occur at the federal level, I would hope and here I can only hope, that we could draft the legislation in a manner which would minimize the tax impact. But it is hypothetical and we will have to deal with that situation when it arises.

**MR. CHERNIACK:** Mr. Chairman, that response is very important to me because it is a statement. We thought we minimized it to the best extent possible. If Mr. Mercier can unilaterally without federal co-operation minimize it further then by all means that is good. Therefore I wonder that he did not take up the suggestion by Mrs. Goodwin that an amendment be made to postpone the impact of this to give them a chance to minimize it if they can't get federal support. I have come to the conclusion, Mr. Chairman, I'm really not taking this too far along.

The next question that I would want to ask is: Is the principle of the sharing of commercial assets on separation on an equal basis accepted?

**MR. CHAIAN:** Mr. Mercier.

**MR. MERCIER:** Mr. Chairman, again the previous government did not, or the Member for St. Johns is attempting to imply that they suggested that they pass an equal 50-50 sharing, they did not do that. There is some discretion and some delegations have commented on that and that whole aspect will be reviewed.

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**MR. CHERNIACK:** Well, Mr. Chairman, I thank the Attorney-General for the answer, because he has pointed out what Mr. Graeme Haig didn't know, and that is that there is discretion in the Act, and Haig and I think some other members of the Conservative Party thought there wasn't any. Well, now that we know that there is discretion may I ask if there is the intention to broaden the discretion to bring it all the way back to the laws that we had on marital property a year ago, because that is absolute discretion.

**MR. CHAIRMAN:** Section 3—pass.

**MR. CHERNIACK:** Mr. Chairman, therefore I would just like to note that there was ample opportunity to reply to my question, but the only reply we heard was from the Premier saying "Pass". My final question, Mr. Chairman, and that is, does the Conservative Party agree that variations to the principle of equal sharing shall be either by mutual consent or by order of the Courts as defined in the present Act?

**MR. CHAIRMAN:** Section 3—pass.

**MR. CHERNIACK:** Mr. Chairman, may we just put on the record that there was an opportunity to reply and the only reply we heard was the Premier saying, "Pass" in the background.

**A MEMBER:** And he's not a member of the Committee.

**MR. CHERNIACK:** Well, I don't deny him the right to say, "Pass", that's the best contribution he's made around here in days.

**MR. CHAIRMAN:** Section 3—pass; Section 4—pass; Section 5—pass; Section 6—pass; 2(1)—pass.

**MR. CHERNIACK:** Just a minute, just a minute, what do you mean 2(1)?

**A MEMBER:** 19.2(1).

**MR. CHERNIACK:** 19.2(1). No, no, Mr. Chairman, you said 2(1), but I see you meant 19(2)(1).

**MR. CHAIRMAN:** 19(2)(1)—pass; 19(2)(2)—pass; 6—pass; 7—pass. Mr. Cherniack.

**MR. CHERNIACK:** I would like to ask, I guess it's the Legislative counsel on this, this transitional section as I interpret it would mean that when there has been an interim order made under The Family Maintenance Act and the matter comes before the Court under the Wives' and Children's Maintenance Act, then the party asking for relief comes back under the Wives' and Children's Maintenance Act, where a husband may commit adultery without attracting an order of separation or — I don't know whether I should be addressing the Premier or the Legislative counsel. Under the Wives' and Children's Maintenance Act a husband may commit adultery and not be bound to make payments for his wife, and a wife may commit adultery and lose the right that she has otherwise acquired for support. Am I correct in saying that that is the law we are going back to, and under Section 7 that person will suddenly find herself under that other law that I have just described. — (Interjection)— I am not sure, I would like an answer.

**MR. TALLIN:** Yes, if the application would be dealt with in accordance with the Wives' and Children's Maintenance Act and the requirements of proof under that Act, not under the requirements of proof under the Family Maintenance Act.

**MR. CHERNIACK:** So, Mr. Chairman, the Legislative counsel, I address myself to the Legislative counsel, it means that if a separation took place after May 6th and an application was made under the Family Maintenance Act where there was no-fault that had to be proven and parties went on the basis that there was no need to prove fault either way, they are by the process of this legislation that we are dealing with now, Section 7, suddenly put in the position where fault becomes a factor . . .

**MR. TALLIN:** Yes.

**MR. CHERNIACK:** . . . and as a result a person who ordered his life or her life under the law as they knew it, that is the Family Maintenance Act, may suddenly find that they have lost their rights and even jeopardized their position. Is that a fair assumption?

**MR. TALLIN:** That's just as it was under The Family Maintenance Act transitional provision, Mr. Cherniack, though.

**MR. CHERNIACK:** How do you mean?

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**MR. TALLIN:** Well, the actions that had been started under The Wives' and Children's Maintenance Act, and for which there may have been defences on the basis of cause, were changed and were to be continued under The Family Maintenance Act, in which case you took away defences that people had.

**MR. CHERNIACK:** Yes, you took away defences that the Legislature thought were not valid, but here you are reimposing defences which no one on the Conservative side has said are valid, and I am glad you draw that to my attention, Mr. Tallin, because it now means to me that by passing Section 7, the Conservative Party is saying that they believe — and this is the important principle of repealing the present Act and bringing in the old — is that they believe that it shall be possible that a wife who obtains an order against a husband because he has beat her, because he is a habitual drunkard, because he is guilty of persistent cruelty, and she gets an order for maintenance and then commits an act of adultery, she loses all her rights. And that is what this government is now bringing back as the law of the land. At the same token, they are bringing back the law which says to a wife whose husband committed adultery and cannot prove any other fault that she cannot on the basis of his adultery go the Court under the Wives' and Children's Maintenance Act and get an order. Is that correct, Mr. Tallin?

**MR. TALLIN:** With respect, I am not familiar enough with all the law to be able to agree with you 100 percent on everything you said, but generally speaking that is true, yes.

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** Mr. Chairman, we have heard so often the situation where supposedly a husband will commit adultery and not be subject to an order under The Wives' and Children's Maintenance Act, but it should be noted, Mr. Chairman, that adultery committed by a husband can be considered to be cruelty under The Wives' and Children's Maintenance Act — and the Member for St. Johns is nodding his head — and that adultery by the husband is a ground for divorce under The Divorce Act, which entitles the wife to maintenance and all the other ancillary rights, and that even in the situation posed by the Member for St. Johns, where the husband is a drunkard and has been guilty of assault and persistent cruelty, etc., and the wife commits one isolated act of adultery, in a divorce action the Court still has the discretion to award the wife maintenance. —(Interjection)— Not under the Wives' and Children's Maintenance Act, but I am suggesting that in a divorce action the court still has that discretion.

**MR. CHERNIACK:** But if she can't prove adultery.

**MR. MERCIER:** So it's not fair, Sir, to suggest that, particularly a wife's right, is completely done away with with the reintroduction for a temporary period, of the Wives' and Children's Maintenance Act.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** Mr. Mercier just forces me to come back and talk about the law that is being brought into effect by the Conservative group. What he brought out points out this situation, and it happens, and that is a wife may prove her husband guilty of persistent cruelty, habitual drunkenness, assault, failure to refuse and desertion. Now on that basis she goes into Court and she gets an order for separation and support. She is then caught in an isolated act of adultery and she loses her right to maintenance, under your law gentlemen, and she cannot sue her husband for divorce, because he did all those terrible things and the grounds for divorce are not there. So that what Mr. Mercier describes as a possibility is, if she can prove that her husband too was guilty of adultery and then goes to Court on that basis, fair — that's fine. But otherwise, she has to wait for three years for the ground of separation for three years to give her the right to go the divorce Court. Is that wrong, Mr. Mercier. I mean do I describe it wrongly?

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** I believe so, Mr. Chairman, because those same grounds that she used for an order for separation in Family Court she could use in an application and a petition for divorce under The Divorce Act.

**MR. CHERNIACK:** Without the three years?

**MR. MERCIER:** She could reintroduce the same grounds that she used for an order for separation in divorce Court, and that Court having discretion, even though she committed one isolated act of adultery, could still award her maintenance. Now I am not suggesting and I don't want it to be indicated on behalf of the government, Mr. Chairman, that we feel that The Wives' and Children's Maintenance Act is not in need of reform. Mr. Green appeared to indicate that earlier in his

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comments, and we believe that reform is required and that reform will be completed in about six months' time.

**MR. CHAIRMAN:** Section 7—pass; Section 8—pass; Preamble—pass; Title— pass; Bill be reported—pass.

All those in favour of the motion signify in the usual manner. Those opposed to the motion signify in the usual manner.

**A COUNTED VOTE was taken, the results being as follows: Yeas 14; Nays 11.**

**MR. CHAIRMAN:** Bill be reported. Committee rise.