

PRELIMINARY
UNEDITED
TRANSCRIPT

HOUSE OF ASSEMBLY
FOR THE PERIOD:
10:00 a.m. - 1:00 p.m.
FRIDAY, MAY 11, 1979

The House met at 10:00 A.M.

Mr. Speaker in the Chair.

MR. SPEAKER (MR. OTTENHEIMER): Order, please!

I am very pleased to welcome to the House of Assembly a delegation of distinguished visitors from the People's Republic of China. The leader of the delegation is Mr. Zhai Zhenrui, who is head of the department of Science and Technology at the National Bureau of Oceanography in Beijing. The delegation is in Canada for approximately a month and have already visited Halifax and Ottawa. They are particularly interested in matters related to marine science and technology and during their visit to St. John's will be visiting various sights arranged by C-Core, the Department of Engineering at Memorial University, and the Marine Sciences Laboratory. I know hon. members join me in welcoming to the House of Assembly distinguished visitors from the People's Republic of China.

SOME HON. MEMBERS: Hear,hear!

MR. SPEAKER (OTTENHEIMER): Before proceeding to the routine orders and calling Statements by Ministers, I would like the Deputy Speaker to take the Chair which will enable him to give his ruling in a matter which was reserved by him for a decision yesterday.

MR. SPEAKER (MR. CROSS): Order, please!

I am now in a position this morning to give a ruling on the point of privilege that was raised yesterday in the hon. House. The point that is in question here is not whether or not the materials referred to by the hon. member for LaPoile (Mr. Neary) can be tabled, but whether they were able to be tabled at the time that they were. A member must first be recognized by the Chair before they can speak in debate, propose a motion or make an amendment, and the same rule would follow in the tabling of documents. The hon. member for LaPoile had not been recognized by the Chair when he tabled

MR. SPEAKER (Cross): the documents. Therefore, his tabling of the materials was out of order and will be returned to him.

MR. SPEAKER (Otteneheimer): Order, please!

STATEMENTS BY MINISTERS:

MR. SPEAKER: The hon. Minister of Tourism, (FORESTRY)

MR. MORGAN: Mr. Speaker, this week really marks the beginning of our forest fire season across the Province and at this time I want to inform the House of the department's plans to cope with any potential forest fire situation which might present itself in our Province this coming season. This year there will be a total of 119 men utilizing 106 pumps, 30 trucks, 5 helicopters, 7 Canso water bombers, and 1 Otter float plane. This equipment will be ready to cope with any fire situation in the Province and will be employed throughout the regions of the Province. In the Eastern region we will have 6 ranger stations with a staff of 30. In the Central region 6 ranger stations again with a staff of 38. In the Western region 6 stations with a staff of 26. And in the Labrador region 3 stations with a staff of 25.

We are expecting to have the full complement of the fire fighting staff in place some time in the next few days and there is some flexibility involved as well with this equipment. Even with our water bomber fleet we have 3 assigned to the Central region and 1 in each of the Eastern and Western regions, and 2 in Labrador, but they are flexible to move from different parts of the Province in accordance with the demands of each region if required.

While I am confident that the department can deal with any outbreaks of forest fires this coming season, I am concerned over the fact that the initial indications are that water tables are low this year, in fact very low for this time of the year, throughout the Province. So unless we have a very wet period from here on in, from now until the middle of June it looks like a potentially dangerous fire season. We have a potentially dangerous fire season approaching

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MR. MORGAN:

us. So I would urge everyone, Mr. Speaker, travelling in or near the woods to be careful with fire as fire prevention is the best weapon against forest fires.

Mr. Speaker, in giving this information to the House I would also like to say that this is National Forestry Week in Canada and today, in recognition of that

Mr. Morgan:

and the work being carried out by the Newfoundland and Labrador Forest Protection Association we are making available to all members of the House, and in fact members of the press gallery as well, a black spruce tree seedling, and these seedlings will be available in the lobby of the Confederation Building after the closing of the House today and I am hoping that all will avail of them for your own benefit. Thank you.

AN HON. MEMBER: Without budworms.

MR. MORGAN: Without budworms.

MR. SPEAKER (MR. OTTENHEIMER): The hon. member for Windsor-Buchans.

MR. FLIGHT: Mr. Speaker, for this side I want to say to the hon. minister we are happy that he believes that the Province is in a position to combat any forest fires or anything else that we might run into. Of course, it does bring up the question, Mr. Speaker, or it brings up the proposition that we had better work towards a quick solution with the pilots of the Canso water bombers. The situation now, Sir, as we understand it, is that these people who fly our water bombers that the situation has not been settled. I am not saying that they will take the same attitude as other members of the Public Service take, or other public unions take, that is, to withdraw their services when they are most needed. I think it is important, Sir, if the minister would see to it, that there is a solution with the water bombers because that is our one hope in the event that we get outbreaks in the forest of the type we have had over the past years and therefore all the more urgency Mr. Speaker, that that dispute be settled and that the people in Newfoundland who depend on the forestry would know that we have a firefighting force there, the Cansoes are ready to go, and the decision not subject to something they might think Treasury Board is withholding and that kind of thing.

Mr. Speaker, the water tables that the minister mentioned: the fear that there may be a water shortage and a dry season is well-founded. The biggest watershed in Newfoundland today, the

Mr. Flight: Red Indian Lake watershed, at this point in time, although the company is trying its best it could not get that reservoir full. The runoff is complete, and Price (Nfld.) is now drawing down, in order to maintain their operation, is drawing down the level of the reservoir, even though it never got full to the point that it should have or the point that it would have under normal circumstances.

There is an interesting situation here, Mr. Speaker; I remember taking part in a debate here a couple of years ago where we gave a previous Minister of Forestry the right to declare the woods of this Province off limits, to declare a national fire emergency, to have the right to close down the access roads and that kind of thing. Now, Mr. Speaker, that minister never, never exercised that right, although the paper companies have gone on the way they have gone on for years and years, and at any one time on five minutes notice the paper companies decide to say, "This road is closed to

MR. FLIGHT:

the general public," that road is closed to the general public and they do it by way of saying "fire hazard," and that is not sitting well, Mr. Speaker, with the people of this Province. And there are a lot of people in this House -

MR. SPEAKER: (Mr. Ottenheimer)

Order, please! I must point

out to the hon. gentleman that the rules only permit him to make some comments or to ask for explanations but not for him to get into debate.

MR. FLIGHT:

Thank you, Mr. Speaker. I

consider, Mr. Speaker, that the statement the minister made telling us what he and the Province plan to do, the state of readiness that we are in to combat forest fires, the fact that the minister has the right, and never exercised it, to close down roads in the event of a high fire hazard seems to me to be germane to that particular statement the minister just made. I want to say to the minister that in future maybe he should exercise the right. We are so concerned that we appear to be criticizing the various paper companies in the Province. And it is a fact that the general public perceives the paper companies as using a high fire hazard as an excuse to close down a road or to close off access to the woods in the event of a high fire hazard period. I would suggest that the minister would exercise the right the House gave him and at least it would take away the flack from the paper companies and the legislation we passed would serve some purpose.

Mr. Speaker, we are

happy that the minister feels that the Province is well protected in as far as the forest fire hazard is concerned.

MR. SPEAKER: (Mr. Ottenheimer)

Hon. Minister of

Fisheries.

MR. W. CARTER:

Mr. Speaker, I would

MR. W. CARTER: like to bring to the attention of the House the situation with regard to the management of our Province's offshore cod stocks which in our view poses a great threat to the fishing industry of the Province. Now this matter of course has received some publicity in recent days in the various news media. Mr. Speaker, when the current Law of the Sea Conference was commenced some years ago, this Province took the position that in order for Canada to protect our cod and caplin stocks upon which this Province's fishermen depend, it would because of biological reasons be necessary for Canada to extend its jurisdiction not merely to the 200 mile limit but to the edge of the continental margin. This position was put forcefully to the federal government in Ottawa on a number of occasions.

Indeed, Mr. Speaker, the official position of the Government of Canada when the Law of the Sea Conference began was that coastal states with wide continental margin such as Canada should be given fishing management jurisdiction beyond 200 miles on the basis that otherwise stocks which existed perdominately within the 200 miles but incidently went outside of the 200 mile limit would be subject to unregulated fishing during that part of their migratory pattern which is spent outside of the 200 mile limit.

Later on in the Law of the Sea discussions in Geneva, Mr. Speaker, Canada, over this Province's strenuous objections, retreated from its original demand and settled for a simple 200 mile limit.

MR. W. CARTER:

At that time, this Province was assured that Canada's control over fish within 200 miles would provide this country with sufficient bargaining power to assure that countries fishing outside the 200 mile limit would adhere to our standards of management and conservation. We were assured that if countries did not adhere to such standards, a range of measures would be applied to such nations such as denial of licences and/or quotas inside our 200 mile zone and the denial of access to our ports for supply purposes. Consequently, Mr. Speaker, with great reluctance, this Province acceded to Ottawa's change of policy to reduce Canada's claim to a simple 200 mile limit.

Now, Mr. Speaker, our worst fears have come to pass. It has come to my attention that certain members of NAFO, which is the North Atlantic Fisheries Organization, have engaged in indiscriminate fishing outside our zone so as to put in jeopardy the cod stocks upon which our offshore trawler fleet have traditionally depended. Moreover, Mr. Speaker, I am also informed that such countries have entered into joint ventures in Central American countries not party to NAFO to use flags of convenience vessels to circumvent the conventions quota system. Moreover, Mr. Speaker, these same countries do not permit onboard inspections of their vessels when fishing outside the 200 mile zone, but still within our continental margin, to insure that the conservation agreements agreed to in NAFO are adhered to.

The upshot of all this, Mr. Speaker, is that I am well informed that during 1980, the cod quota for the 3NO cod stocks on the Grand Banks - and that is, of course, the Southeast tip of the Grand Banks - will have to be reduced to near zero. What, Mr. Speaker, is Ottawa's reaction to this disaster? Not, Mr. Speaker, to clamp down on the indiscriminate fishing of stocks outside the 200 miles. Ottawa's reaction is to try to pay off these violaters of basic fisheries management principles and to trade away

MR. W. CARTER: a portion of our Northern cod stocks in hopes that this will persuade these countries to use conservation measures.

Mr. Speaker, the Northern cod stocks are the birthright of all our Northeast and Labrador fishermen and should not be traded off by Ottawa in order to accomplish objectives on the Grand Banks for which there are other strategies possible. Every ton of offshore cod traded to these foreign countries, Mr. Speaker, will come directly out of the inshore trap or the middle distant gill net. This government is unreservedly opposed to such a course of action.

MR. W. CARTER: Therefore, Mr. Speaker, I ask that this hon. House, without debate on the matter, give its unanimous consent to the following resolution: "Whereas indiscriminate foreign fishing has taken place on the continental margin off the Province of Newfoundland and Labrador but outside the 200-mile limit which threatens, amongst others, the cod stocks in the 3NO region of the Grand Banks upon which the Newfoundland offshore trawler fleet depends; And whereas the Government of Canada is proposing to stop such overfishing by trading off cod quotas on the Northern cod stock inside the 200-mile limit; And whereas such a tradeoff would adversely affect the inshore fishermen of this Province; And whereas the Government of Canada originally planned to exercise fishery jurisdiction over the entire continental margin adjacent to this Province; Be it therefore resolved that: one, the Government of Canada should not trade off the Northern cod stocks to solve fishery management problems on the Grand Banks; two, that the Government of Canada forthwith extend its fisheries management jurisdiction to the limit of its continental margin irrespective of distance from shore; three, that the Government of Canada instruct all nations fishing on its continental margin outside 200-miles that failure to comply with the expanded fisheries management zone will result in arrest and confiscation of fishing vessels, catches and gear, the revocation of all licences and quotas within the 200 mile limit; and the denial of access to any port in Canada for resupply purposes."

SOME HON. MEMBERS: Hear, hear.

MR. SPEAKER: (Ottenheimer) Before recognizing the hon. the member, I would welcome to the House of Assembly, on behalf of all hon. members, twelve grade ten and eleven students from Cottrell's Cove Academy accompanied by one of their teachers, Mr. Bob Gilles. And I want all hon. members to join me in welcoming these students to the Legislature.

SOME HON. MEMBERS: Hear, hear.

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MR. SPEAKER: (Ottenheimer)

Hon. member for Trinity - Bay de Verde.

MR. F. ROWE:

Mr. Speaker, first of all I would like to thank the minister for passing me along a copy of the ministerial statement just before he read it to the House of Assembly.

Sir, first of all I would like to say that there is much in the minister's statements which we, on this side of the House, agree with

MR. F. ROWE: and we feel that this is a very, very serious matter. I am sure the minister would agree or otherwise he would not have made this ministerial statement this morning. I note, Sir, that the minister states in the ministerial statement right in the first paragraph that many representations have been made to Ottawa. As I have called upon the minister in the past I would like to do so again, for him to table the instances and the examples of the consultations that he has had with the officials in Ottawa regarding this matter. Just simply stating it does not provide me with any great proof that the minister or his officials have indeed made any great representation to Ottawa in this regard.

Sir, another observation from page two there, looking at the need for patrolling and proper surveillance of the 200-mile limit and possibly outside of the 200-mile limit, I would like to resurrect the suggestion made a year or so ago that I think the Canadian Navy should be brought into the whole matter of the proper surveillance and patrolling of the fisheries jurisdiction of this nation of Canada. Sir, I find the fact that there is indiscriminate fishing outside our zone, placing our cod stocks in jeopardy, that some countries have entered into joint ventures in Central American countries that are not party to NAFO to use a flag of convenience to vessels to circumvent the conventions under the quota system, I find that frightening, Sir, I find it deplorable and I find it very astounding, and therefore I think this is another reason why we should use every bit of energy, every resource available, namely the Navy of this Nation, to patrol and have surveillance over the fisheries zone.

Sir, one thing that I do not necessarily take issue with but I question the minister - Is the minister listening? Where has the minister gone?

MR. W. ROWE: He made his statement now, boy.
He is finished with it.

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MR. NEARY:

He made his politics now and he is going to go and hide away.

MR. F. ROWE:

Mr. Speaker, on page three the minister refers to the fact that Ottawa's reaction is to pay back these violators of the basic fisheries management principles, to trade away a portion of the Northern cod stocks in the hopes that this will persuade these countries

MR. F. ROWE:

to use conservation measures. Now, Sir, I have heard no official release from Ottawa to that effect. There have been some speculative stories in a newspaper. I hope the minister is not basing this statement on what he reads in the newspapers, I hope there is something a little more substantive than that. I have read speculative stories that there is a trade off, "If you guys will stop fishing off the tips of the Grand Banks, you can go up and fish off the Northern cod stocks." I am totally against that, Sir, and I do not think for one minute that the Government of Canada is in agreement. Probably a bunch of bureaucrats sitting in some office up in Ottawa agree with it -

MR. W.N. ROWE: There was no statement made on it.

MR. F. ROWE: - but there is no statement, no official policy statement made by any Minister of the Crown to my knowledge to that effect. Therefore I question that observation by the minister, and if there is or has been or there will be a statement to that effect, Sir, I will fight it -

MR. MORGAN: (Inaudible).

MR. F. ROWE: Talking about cod, Sir!

MR. MORGAN: Shameful!

MR. F. ROWE: Mr. Speaker, I will fight it as strenuously and as energetically as I would hope the minister would do.

Now, Sir, one last observation. The minister has agreed with me, Sir, just a few moments ago that this is an extremely serious matter, a very urgent matter. There is no way, Sir, that we can go along with these resolutions however much we agree with them -

MR. W.N. ROWE: With some of them.

MR. F. ROWE: - with some of them. We certainly do not want to agree with all of the observations but we agree with much of what is in the statement. But there is no way, Sir, we will let this matter go without debate. And I give notice, Sir, that at the appropriate time under Standing Order 23(a) I will ask leave of the House to debate this important matter.

MR. F. ROWE: Sir, I would like to get the minister's point of view on these matters. It is too simplistic, Sir, for the minister to get up on a Friday morning before the weekend to make the weekend news, to make a nice, fancy ministerial statement. I questioned some of the facts, one of which is the accusation that Ottawa is engaged in a trade-off. I have not heard any official statement to that effect.

So, Sir, now there are certain parts of this statement that we agree with. I would like, and I would hope the minister will go along and agree with me on this - this is important. As a matter of fact, I would like the minister to move that we debate these resolutions because it is a matter of urgent public importance. It is the livelihood of hundreds of thousands of Newfoundlanders in the boats and on the shore and I think, Sir, a simple ministerial statement is just too simplistic a way in which to handle this. Thank you, Mr. Speaker.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER (MR. OTTENHEIMER): The hon. Minister of Fisheries,

MR. W. CARTER: Could I,

Mr. W. Carter: first of all, the hon. member's comments, or at least the doubts expressed; am I allowed to reply?

MR. MORGAN: Sure you can reply.

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER (MR. OTTENHEIMER): Order, please! I must point out that if anybody has a point of order they will have to make it.

MR. NEARY: A point of order, Mr. Speaker.

MR. SPEAKER: The hon. member for LaPoile.

MR. NEARY: If the hon. gentleman, Sir, is now going to enter into the realm of debate then we would ask for the same privilege on this side of the House as the hon. gentleman is having. If he is merely going to answer a few questions, that is fine.

MR. SPEAKER: Order, please! Order, please.

Certainly the hon. gentleman only said five or six words; it would be impossible for me to say that he has entered into the realm of debate. As the hon. member to my right is allowed to make some comment and ask for explanations, the hon. minister is allowed to make a brief reply or to give those explanations. Nobody is allowed to enter into to debate.

The hon. Minister of Fisheries.

MR. W. CARTER: Mr. Speaker, with reference to the doubts expressed by the hon. member concerning the urgency of this matter or, in fact, the credibility of the comments contained in the statement with respect to the trade off, I can assure him that that is very much in the minds of the people in Ottawa, and I suspect in the absence of some firm opposition from this Province that that arrangement will take place.

Mr. Speaker, this is an urgent matter as I pointed out in my statement. In fact, I think that this resolution should be communicated to the authorities in Ottawa no later than within an hour from now -

SOME HON. MEMBERS: Hear, hear!

MR. W. CARTER: - because a decision will be made soon. So I will be communicating this position, Mr. Speaker, to the authorities as being the official position of the Government of the Province and our party, and if the hon. members wish to debate it I can give notice of a resolution later on today or Monday -

AN HON. MEMBER: Sure.

MR. W. CARTER: - and give us a chance to debate it. But this will be the position put forward to Ottawa from the Newfoundland Government as being the position with respect to the impending problem with respect to the Grand Bank cod stocks.

MR. NEARY: We are agreeable for a debate. We can have it now.

MR. W. CARTER: Okay. Fine.

PRESENTING PETITIONS

MR. SPEAKER (MR. OTTENHEIMER): The hon. member for the Bay of Islands.

MR. WOODROW: Mr. Speaker, this is the third in a series of petitions that I am presenting and have presented from the residents of the Bay of Islands, or the taxpayers, I should say, opposing the increase rates in hydro.

I would like first of all to read the prayer of the petition:

MR. WOODROW:

"We, the undersigned residents of the communities of Cox's Cove, McIver's, Gillams, Meadows, Summerside and Irishtown in the electoral district of Bay of Islands, do hereby petition our provincial government to disallow any increase proposed by Newfoundland Hydro in 1978-1979. An increase granted due to the increase in the cost of fuel can be justified due to the fact that we are charged each month on our hydro bill for the fuel used by Newfoundland Hydro. This rate fluctuates each month depending on the amount of fuel used."

Now, Mr. Speaker, in making some comments on the petition, I would like to state first of all that this represents 2,261 taxpayers from the district of Bay of Islands. And I would like first of all to say that I should congratulate the people of the Bay of Islands district because they really know what is going on in Newfoundland. Practically everybody now has put his name to this petition. And another comment on it, Mr. Speaker: I would like to say that I am really a little bit surprised that we have not received more petitions on this particular matter in this hon. House. Also, I would like to quote from The Evening Telegram, Tuesday, May 1, 1979, because I really think this puts, perhaps, a little bit of light at the end of the tunnel. It was a question from the hon. the Leader of the Opposition. You will recall he asked a question of the hon. the Premier, and this is the quote that comes from

The Evening Telegram: "Opposition Leader Bill Rowe had raised a matter by asking Peckford whether reports that Newfoundland Hydro will seek a 10 per cent increase in electricity rates this Summer are true. Peckford reiterated the government is now in the process of preparing its Budget and is determining just what its policy will be in terms of electrical rates." I think, Mr. Speaker, this is very encouraging, because I read from this quote that the government are conscious of what is going on.

Now, in the meantime, Mr. Speaker,

I feel that all hon. members -

SOME HON. MEMBERS:

Oh, oh!

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MR. WOODROW:

I know what they are making
comments about, Mr. Speaker. I thought I heard 'ten thousand dollars'
or something.

SOME HON. MEMBERS:

Oh, oh!

MR. WOODROW:

Mr. Speaker, this makes me wonder
really how serious members are.

MR. WOODROW: I am speaking on behalf of the Province of Newfoundland and Labrador. I thought the hon. members on the opposite side would really be in favour of this but they take it as a joke.

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER: (Mr. Ottenheimer) Order, order!

MR. WOODROW: In any case, to continue, Mr. Speaker. What really concerns me, Mr. Speaker, as I have said before and as practically everybody knows in Newfoundland and Labrador, the problem arises primarily from the cost of crude oil which has gone from fifty cents a barrel roughly speaking ten years ago to sixteen dollars a barrel now in this present year. And number two, also, Mr. Speaker, there has been an increase in the use or in the consumption of the crude oil due of course to the number of people using electricity over the past ten years and also the capital cost of building things like the Hinds Lake and the other things that are proposed for electricity and, of course, the interest.

And I would like to end up, Mr. Speaker, by saying if a hearing takes place with a public utilities board - I do not know whether it will or not - but if a hearing takes place I would humbly ask the Cabinet to consider giving a subsidy so the people in the Province of Newfoundland and Labrador will not have to suffer too much because of the increased rates of electricity. I now table the petition, Mr. Speaker, and refer it to the department concerned.

Thank you, Mr. Speaker.

MR. SPEAKER: Hon. Leader of the Opposition.

MR. W. ROWE: Mr. Speaker, I would like to associate myself with the remarks of the hon. member for Bay of Islands (Mr. Woodrow) and once more, Sir, he is doing yeoman service on behalf of his constituents in presenting this petition, a petition which has sentiments which are shared by ninety-nine point nine per cent of the people of this Province.

MR. W. ROWE: Perhaps everybody outside the government itself shares the feelings, the ideas and the sentiments expressed in that petition. Our people, Mr. Speaker, cannot suffer any more increases in the cost of electricity. As Your Honour is aware, back some years ago when Newfoundland Light and Power Company and Newfoundland Hydro Commission, as it then was, used to encourage the people of this Province to get involved in electricity, electrical heating, they used to encourage people to burn more and more electricity on the premise, I suppose, that the more electricity that was burned the cheaper per kilowatt hour it would be in terms of capital costs. Well, Sir, that kind of a policy by Newfoundland and Labrador Power Commission, as it then was, and the Newfoundland Light and Power Company has exploded in the faces of Newfoundland Hydro and the provincial government. We now have a situation where individuals are having to cut back on other basic necessities of life in order to keep their homes warm. The hon. member knows that as well as I do, going around his own district particularly in rural Newfoundland. We have a situation where school boards were encouraged to put electrical heating in their schools. The massive heating required in gymnasiums and gymatoria and school classrooms and so on in some of our larger schools on the premise that it would be the cheapest way and the most efficient way to heat these school buildings. Now we have school boards, some of which, Sir, are close to insolvency. I am not saying it is all caused by this, but certainly a contributing factor to the cost of maintenance by school boards and the fact that they cannot bear the cost of maintenance, do not have the income, is the fact that they were encouraged to get into this mode of heating some years ago.

Mr. Speaker, every now and then when we suggest that there be a freeze put on electrical rate increases for domestic usage in this Province, you get the Premier or some other minister saying, "Sure, it will all have to

MR. W. ROWE: all the people of the Province taking on the financial burden of keeping down further electrical rate increases in the Province, Sir, what you are doing in effect is spreading the burden among those who are more able to pay. That is the concept, that is the Liberal concept which happens to fly in the face of the Tory concept often uttered by members on the other side of the House. That is what we recommend, Mr. Speaker, that is what we would put into effect, and that is that the government representing all the people keep down the cost of electricity in this Province so that those who are less able to pay, those who do not have the income, do not have the wherewithal do not find themselves saddled with these increasing costs of electricity which eats into food, clothing, shelter, drugs, medication and so on like that, other basic necessities of life.

So, Mr. Speaker, I have no hesitation in supporting the hon. member's petition. It is a good petition. I would suspect, Sir, that we will see before this session is over many more such petitions. And I would say, Mr. Speaker, that this issue is looming to be the biggest issue facing this Province in the next six months or a year, one of the most important issue and the largest issue facing the government, and the government should do something about it. There should be a freeze put on electrical rate increases until such time as we know where we stand with the Lower Churchill and the Upper Churchill and what we are going to do, whether we are going to get that electricity here to the Island part of the Province as well as the Labrador portion, whether it can be used for domestic purposes, what the cost is going to be. Let us put a freeze until we know where we are and keep down the rising cost of this very basic necessity of life, Mr. Speaker. I support whole-heartedly the member's petition.

MR. SPEAKER (Ottenheimer): The hon. member for St. John's North, and then the hon. member to my right.

MR. J. CARTER: Mr. Speaker, I also rise to support this petition made by my colleague from the Bay of Islands (Mr. Woodrow), but I would like to make the following points in supporting it: There can be

MR. J. CARTER: no doubt that Newfoundland Hydro will be forced over the next few years to increase its rates because its costs themselves are going to increase. We could debate for a long time how much their rates should increase on the basis of their proven cost increases. But the problem I see, Mr. Speaker, is that although Newfoundland Hydro sets its rates it does not sell directly to domestic consumers in Newfoundland. It does sell directly to some rural people still using diesel power, but the large majority of domestic users receive their power from the Newfoundland Light and Power Company. The Newfoundland Light and Power Company in order to increase its rates again has to apply to the Public Utilities Board. And the Public Utilities Board may or may not grant them that increase, or it may grant them a partial increase. But what the Public Utilities Board will not do and cannot do apparently is set the rate structure. And in my view it is the rate structure that is the real villain. For instance, the small domestic user pays the highest per kilowatt rate and if you look at your electric bill each time you get it you will see the first 100 kilowatt hours are, and my figures are not correct but my comparisons are, your first 100 kilowatt hours are set at five cents a kilowatt, your next 200 are four cents a kilowatt, your next 300 are three cents a kilowatt and the remainder is set at two point five kilowatts.

So you have to be a moderately heavy user to get into the cheapest rate. Now a heavy user of electricity presumably is someone who has a little more of this world's goods and can well afford to pay a little more, whereas the small domestic user is paying the very highest rate and cannot afford to. We could end up with the following absurd situation, that food could cost more to cook than to buy, and if these rate increases which are percentage increases are granted over the years, and some increases will have to be granted because we are all caught in an inflationary situation, then

MR. J. CARTER: it is the small user that is going to be penalized, the small, poor, domestic user. And yet at the same time, Mr. Speaker, there are many technological developments that allow us to enjoy the benefits of electricity while saving power. For instance, the more expensive microwave ovens, they are a little more expensive but they only use about a third of the power. Fluorescent lights use something like half of the power for the same amount of light. They are a little more expensive to install.

 So I say turn the rate structure upside down; let the heavy users pay the highest per

MR. J. CARTER:

kilowatt charge - they are the people who can afford to put in electrical fixtures that will save themselves money - and give the people at the lower end of the scale the benefit of the cheaper rates. And I think this would be the thing to do. Now, I do not think this House has the power to do it, but I think it should seek the power to do it and that would be serving all of the customers all across Newfoundland.

MR. SPEAKER: (Otteneimer) Hon. member for LaPoile.

MR. S. NEARY: Mr. Speaker, I support the petitions, Sir, presented on behalf of 2,200 residents of Bay of Islands who are protesting any further increases in electricity rates in this Province. I want to congratulate the hon. gentleman who presented the petition. And I want to say this, Sir, to the hon. member in all sincerity, that with the policy that the hon. gentleman outlined in presenting his petition, I believe, Sir, it is an insult to have that gentleman as a special representative of the Premier in the Western part of this Province. He should be in the Cabinet. A man of his conscience and his sincerity, Sir, and his compassion -

MR. W.N. ROWE: Hear, hear.

MR. S. NEARY: - for people should be in the Cabinet because that is where he should be expressing his view.

MR. W.N. ROWE: Developing policy.

MR. S. NEARY: Developing policy for the administration.

Obviously they need somebody in the Cabinet to develop policy.

Now, Mr. Speaker, in supporting the petition, I want to touch on a point that was raised by the member for St. John's North (Mr. J. Carter) in connection with Newfoundland Light and Power Company. I believe, Sir, it is about time that the administration stated-in this House or outside the House, it does not make any difference - their views towards provincialising or

MR. S. NEARY: nationalising Newfoundland Light and Power Company. Your Honour will recall that the Government of this Province - Newfoundland Hydro, which is an agency of the Government, a creature of this Government, Newfoundland and Labrador Hydro Corporation is not a law to itself. It answers to this House through the Minister of Mines and Energy (Mr. C. Doody) is responsible to the Government. So you might say it is the Government who produces the hydro power in this Province. Ninety per cent of the hydro power in this Province is produced by Newfoundland Hydro which is saying the same as the Government produces the power. And when we made that decision to produce the hydro power in the Province we allowed a middleman, Newfoundland Light and Power Company, to distribute the power. And that is where the profits are made, in the distribution of the power.

We were told recently, Mr. Chairman, by the controversy that is going on between the IBEW union and the Newfoundland Light and Power Company that the majority of the shares of Newfoundland Light and Power Company are owned by people outside this Province, and their profits were never as great, never as high as they are at the present time. And I believe that we should give serious consideration to eliminating the middleman, which is part of the reason for the escalation in the cost of electricity in this Province, eliminate the middleman and let Newfoundland Hydro take it over, which should have been done in the first place. I do not understand, Mr. Speaker, I could never understand, and I have asked the former former Premier on numerous occasions why we did not go all the way and, along with producing the power, distribute the power to the consumers, and I have never been able to get a straight answer. I have a feeling I know the reason, but it should have been done. When we nationalized the production of the electricity, we should have taken over the distribution of the electricity.

Now, Mr. Speaker, let nobody,

MR. S. NEARY: in this House or outside this House, be fooled by making a statement that it is the regulatory body that decides whether there is going to be increases in rates or not. That is not true. All the regulatory body does, Sir, is hold hearings and rubber stamp the application which then goes on to the Cabinet down on the eighth floor of Confederation Building, and it is the Government and the Cabinet who decides whether Newfoundland Hydro gets its increase in rates or not.

MR. J. CARTER: They can not change the rates though.

MR. S. NEARY: Who can not change the rates?

Government can do anything.

MR. J. CARTER: If it gets the legislation through.

It has to seek that power.

MR. S. NEARY: Government, Mr. Speaker, Government can do anything. Government can put a freeze on, as my hon. friend has called for. And any Government that I have anything to do with in the future -

MR. J. CARTER: Not without legislative authority.

MR. S. NEARY: Mr. Speaker, the Government has the power to put the freeze on now.

MR. J. CARTER: Not the freeze; to change the rate structure.

MR. S. NEARY: The Government can change the rate structure, yes, Mr. Speaker. When Newfoundland Hydro applies to the regulatory body, which is the Board of Commissioners of Public Utilities, and they make a recommendation that has to be made to Cabinet, and it is Cabinet that decides whether or not the increase is going to go ahead or disallowed.

MR. J. CARTER: I am not talking about that. I am talking about the structure of rates.

MR. S. NEARY: If I was the hon. gentleman, Sir, I would go and play with my microwave ovens

MR. S. NEARY:

and my flourescent lights that he seems to know so much about that the ordinary people we are talking about know nothing about, the people that we are trying to protect. And I would submit, Sir, that it is high time that a statement of policy was made. It would be cruel, Mr. Speaker, cruel indeed to wait until there is an election called before you hear a statement on whether or not something is going to be done about electricity rates in this Province. My hon. friend was wondering why there are not more petitions; We have had thousands upon thousands of signatures on petitions in this House! The House has been petitioned more than anything in this world on electricity rates in the last three or four or five years. Why, I think I am after bringing in 75,000 names myself. People are discouraged, that is why they do not, because they figure: it is useless and a waste of time to present a petition in this House about electricity rates. And the foolish statement that the hon. gentleman read from the newspaper, that, well, we are looking at it, maybe we will do something about it, That is an election dodge.

MR. W.N. ROWE: He is earning his \$10,000.

MR. S. NEARY: He is earning his \$10,000. That is an election statement, Sir, and as I say it will be cruel if the government waits for the eve of an election before they make a move on this matter.

MR. SPEAKER: The hon. member for Conception Bay South.

MR. J. NOLAN: Mr. Speaker, I rise very briefly to support the prayer of the petition as submitted by my hon. friend opposite. The hon. the Premier, who is not here today, has stated that it is a great social problem. And as my friend mentioned, I jsut forget the exact number of names we have already tabled in the last four years, but there are thousands and thousands of names. It is probably the most serious social problem that is facing the people of the Province today.

MR. J. NOLAN: As for the references by the hon. the member for St. John's North (Mr. J. Carter) to the Newfoundland Light and Power, I believe the Leader of the Opposition has appeared on various occasions before the Public Utilities Board either for the telephone company or Newfoundland Light and Power on behalf of the Federation of Municipalities, if I am not mistaken.

So, there are a number of questions I would like to pose. First of all, why is it necessary, as my friend to my left mentioned, to have the Newfoundland Light and Power there in the first place? How many provinces in Canada have such a corporate middleman at the moment?

MR. J. CARTER: How much would it cost to buy them out?

MR. J. NOLAN: Well, that is something I am going to address myself to. But, I mean, I did not hear my hon. friend opposite jump up and down when they were going to expropriate BRINCO, and you are now paying over \$20 million a year in interest which this Province cannot afford. So if we are going to talk apples let us stick with the facts, and the fact is we should be looking at the possibility and the feasibility of nationalizing, and I am not on a socialistic binge at all, Newfoundland Light and Power.

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER (MR. OTTENHEIMER): Order, please!

MR. J. NOLAN: Does my hon. friend disagree with it.

MR. J. CARTER: No, Sir (inaudible).

MR. J. NOLAN: Well, I mean at least let us find out. Maybe it is completely impractical, but at least let us put the cards on the table and find out.

MR. J. CARTER: You found out a couple of years ago.

MR. J. NOLAN: Found out what?

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER (MR. OTTENHEIMER):

Order, please! Order, please!

The hon. member for Conception Bay South.

MR. J. NOLAN:

As I understand it, if you were appearing before the Public Utilities Board the Newfoundland Light and Power must have sufficient funds to keep their plant going. That means if in the next year or two they decide to spend a small fortune in developing their services one way or another it is building up their capital assets, is it not? And when the day comes down the road they are going to be able to get more money out of the Public Treasury anyway because someone, some enlightened body one of those days is going to make that move whether my friend opposite agrees with me or not. It is as sure as night follows day it is going to happen.

Now, why is it, if they found it necessary to do so in Nova Scotia, in New Brunswick, I believe, Ontario does not have the corporate middle man and so many other Provinces in Canada, why is it necessary here? My hon. friend opposite says that we cannot afford it. But the perception amongst the public is, and this is the unfortunate part about it, that those who are involved in a corporate entity such as the Newfoundland Light and Power, with 86 per cent of the shares owned outside of

Mr. Nolan: this Province, that they have more muscle, more strength, more influence with the policy makers in this Province than all of the voters. Now why is that? And this is the question you have to address yourself to.

MR. HICKEY: Yet when we bought the BRINCO shares you objected to it.

MR. NOLAN: I certainly did because I thought it was the wrong thing to do at the time, plus the fact I was not in the House at the time.

SOME HON. MEMBERS: Oh, oh!

MR. NOLAN: Pardon?

MR. MORGAN: (Inaudible) Stephenville (inaudible).

MR. NEARY: What free enterprise?

SOME HON. MEMBERS: Oh, oh!

MR. NOLAN: Free enterprise. You have not had real free enterprise since the 17th. Century.

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER (MR. OTTENHEIMER): Order, please! Order!

MR. NOLAN: Anyway, Mr. Speaker, for those who want to raise superfluous arguments and so on, fine, it is not going to gain them any points. The gut issue is that it is hurting people out there. And rather than jabs and name-calling and so on, they would like to hear people in this House ask some questions, take a look at anything. Maybe the suggestion I make is completely wrong so therefore get the facts, get the information, lay it before the people in the House and say, "Here is why we cannot do it." But you will not get away any more with sloughing it off. If every other province in Canada practically has found it necessary to remove the middleman, we have to answer the question, why have we not taken that position here? And it is not enough to try to skirt the issue, because it will not wash.

I suppose the prayer of the petition, as I have in so many other cases here in this House, because I know what it is doing to people in this Province—and I am not the only one; and my friends.

Mr. Nolan: opposite, all of them or most of them certainly know. But we have to take a good hard look at it one way or the other. There are too many airy-fairy schemes, and it is not enough to make some kind of an election promise, "we are going to subsidize a portion of the rates" and this, that, and the other, because people are wise enough now to know that once the election is over we are going to have a change of tune as we had in 1975.

SOME HON. MEMBERS: Hear, hear!

MR. NOLAN: So I support the prayer of the petition, Mr. Speaker. And I am saddened by the contempt that some people obviously feel about any suggestion that might seem to help some people who cannot defend themselves in this Province.

SOME HON. MEMBERS: Hear, hear!

ANSWERS TO QUESTIONS FOR WHICH NOTICE HAS BEEN GIVEN

MR. SPEAKER (MR. OTTENHEIMER): The hon. Minister of Transportation and Communications.

MR. BRETT: Mr. Speaker, I have the answer to several questions, I do not know the dates in which they were asked, but the first one I have the question was asked by the hon. member for the Strait of Belle Isle (Mr. Roberts) with respect to the access road from Main Brook on the Northern Peninsula to Northern Peninsula Highway. There is an access from that community but it sort of comes South and goes out the coast, and I guess it is necessary to build a new access which will go North and connect to St. Anthony. If this access were built it would provide quicker accessibility to the services in St. Anthony. It is a very costly project, so I advised the hon. member yesterday or the day before this will be included in the next shopping list to Ottawa.

The hon. member for Trinity-Bay de Verde (Mr. F. Rowe) asked a question of me yesterday or the day before as to whether or not we had any plans to move - it is not the depot, actually, it is a unit in Old Perlican. Now what has happened there, as has happened in other

Mr. Brett: places around the Province, the town is sort of growing around the unit, and there is an environmental problem. Inevitably when you have graders, trucks, cars, what have you, then you have grease and oil and salt. So it is becoming a serious environmental problem there, and it is our intention to move the unit, not necessarily out of the area, but out of the -

AN HON. MEMBER: (Inaudible).

MR. BRETT: Well that is a decision that will be made by the department and not by the hon. member.

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER (MR. OTTENHEIMER): Order, please! Order, please!

MR. BRETT: However it is the intention -

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER: Order, please! Order, please!

MR. BRETT: It is the intention of the department to move the unit out of the town, but not away from the area.

There was another question asked by the hon. member for Port au Port (Mr. Hodder) yesterday with respect to what we refer to as the Felix Cove By-pass. And the hon. member was quite correct in saying that it is a very, very dangerous situation. The road goes along the shoreline adjacent to the cliff and it is being eroded by the salt water. I was not aware of the fact yesterday but we are about to call tenders to correct that situation. The road will be moved inland, I think the estimated cost is approximately \$120,000 and as soon as we can get tenders out we hope to do something with that.

MR. NEARY: What about (Inaudible).

MR. BRETT: The hon. member for Burgeo-LaPoile asked a number of questions a few days ago, I did not have the answers then.

MR. NEARY: A point of order, Mr. Speaker.

MR. SPEAKER: A point of order.

MR. NEARY: Mr. Speaker, the hon. gentleman, Sir, just addressed me as the hon. member for Burgeo-LaPoile. There is no such district, Sir.

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Mr. Neary: I would suggest if the hon. gentleman is going to refer to the district that he get his facts straight.

MR. MARSHALL: That is not a point of order, Mr. Speaker. I think the hon. member was probably thinking of the similarity between the two.

MR. MARSHALL: people representing the district.

MR. SPEAKER: (Mr. Ottenheimer) I imagine the hon. minister will probably correct the situation and I will not need to reserve decision on it.

MR. BRETT: There were several questions. I think I indicated at the time that the ones to do with the negotiations with the pilots should be addressed to the President of Treasury Board (Mr. N. Windsor), but there were some other questions - How many pilots and co-pilots and how many planes? Actually, there are nine planes - or seven, and I feel kind of foolish because I realize the hon. member knows the answers to these questions before he asks them. But we do have seven water bombers and then there is the Cessna and, of course, the King Air. We have a requirement for eight water bomber crews. We have hired seven so far; the eighth is hired on stand-by more or less, but that eighth person has not been hired to date. There was another question with respect to making the water bomber crews permanent employees. I think it is fair to say that we have thought about this, but to date we have not made a decision to do that. I have no doubt that the water bomber pilots themselves would probably like to be permanent employees, but, as I indicated, we have not decided to do that as yet.

The hon. member questioned me about training programmes. We do have training programmes for pilots. They are conducted at the Air Services Division for all pilots engaged in the water bomber operations. This year's programme began on April 2nd with four crews with a second course underway on April 24th for the balance of the crews. The programme is composed of ground school lectures, demonstrations on hydraulic and electrical systems, emergency procedures, weather and environmental data, methods of fire fighting, etc. Each pilot also receives flight familiarization and proficiency checks in air, land and water operations including scooping and dropping water. Air time is five hours or more per pilot depending on the qualifications.

MR. BRETT: And I think the last question is difficult because there were several questions asked, but I think if you summarize the whole thing it was the same question asked four or five different ways. I think the last one the hon. member asked was Is there a training programme to train new pilots and co-pilots for the water bomber fleet? And I guess that question is pretty well answered in the previous one.

ORAL QUESTIONS

MR. SPEAKER: (Mr. Ottenheimer) The hon. the Leader of the Opposition.

MR. W. N. ROWE: Mr. Speaker, I would like to direct one or two questions to the hon. President of the Treasury Board (Mr. N. Windsor), concerning the state of labour negotiations, negotiations with various public servants or people who come under the Treasury Board where negotiations take place.

Mr. Speaker, the general impression around now is that there are a great number of public servants who are practically on the brink of walking out on strike and so on. Would the hon. President of the Treasury Board indicate to the House what groups are presently in a state of negotiation with the Treasury Board? For example, the nurses, the police, vocational training school instructors, teachers, pilots or maybe others - those are some that spring to mind right off the bat. Mr. Speaker, would he indicate which ones are in a state of negotiations, which ones concerning which negotiations have come to a halt, a dead standstill, and the general status of these various groups of government employees or quasi-government employees as far as negotiations are concerned?

MR. SPEAKER: The hon. President of Treasury Board.

MR. N. WINDSOR: Mr. Speaker, there are a number of them - the hon. gentleman has mentioned several. The police - as the hon. gentleman knows, we are in negotiations with them. Negotiations have not entirely broken off. We are expecting some further meetings with them and we have indicated to them that we are willing to sit down and negotiate further once they are. The nurses, as indicated in the media, have rejected our latest offer by vote. It is not a strike vote

MR. N. WINDSOR: by any means, it is just a vote on the offer that we have placed before them. I have had a request from the president of their association for a meeting with me and other members of the board and we propose probably to meet with them on Monday or Tuesday of next week just to hear what they have to say.

The teachers are presently taking a vote of sorts on the latest offer that we have made to them. We expect, perhaps, an indication of their position on that sometime today.

The vocational school instructors' meetings are proposed, I understand, early next week. Again, negotiations are still ongoing with them.

And hospital support staff, again, are meeting with the aid of conciliation officer, and negotiations are ongoing.

MR. W. N. ROWE: Mr. Speaker, a supplementary.

MR. SPEAKER: (Mr. Ottenheimer) A supplementary.

MR. W. N. ROWE: Would the hon. minister indicate which groups of the ones we have mentioned are presently without a contract, the contracts have expired? Which groups are presently in the process of negotiation, concerning which the contracts are actually expired and they are operating under no contract?

MR. NEARY: Quite a long list.

MR. SPEAKER (Otteneimer): The hon. President of the Treasury Board,

MR. N. WINDSOR: I am not entirely sure which ones. I know the nurses' contract I think is expired and I think the police as well. I am not entirely sure which ones are not expired and which ones are about to expire.

MR. W. ROWE: A supplementary, Mr. Speaker.

MR. SPEAKER: A supplementary.

MR. W. ROWE: Mr. Speaker, would the hon. minister indicate which if any of these groups are now in a position to actually take a strike vote? In other words, if they were to vote on a strike and there was a positive vote they could in fact be out on strike within the statutory time?

MR. SPEAKER: The hon. President of the Treasury Board.

MR. W. ROWE: He does not seem to be very clear, does he?

MR. N. WINDSOR: I am not sure that any of them are really in a position to go on strike. The police obviously could. Of course, they have binding arbitration; they do not have the right to strike. The nurses have not taken a strike vote yet. So really none of them have taken a strike vote.

MR. W. ROWE: How many are in a position to?

MR. N. WINDSOR: They may take a strike vote. They can take one whenever they want.

MR. NEARY: The pilots have taken a strike vote.

MR. N. WINDSOR: The pilots have. Yes.

MR. NEARY: And the vocational school instructors have taken a strike vote. How many more? I mean, how many more do you want us to name? Ask me the question, I will tell you the answer.

MR. W. ROWE: Mr. Speaker, on a supplementary, Sir.

MR. SPEAKER: A supplementary.

MR. W. ROWE: Mr. Speaker, we are talking about a very important issue here where massive numbers of the Public Service may in fact be out on strike, or have a walk out which will have a great effect,

MR. W. ROWE: a terrible effect on the Province. The hon. minister does not seem to be too clear on the status of what is going on. I understood that there were a number who were in a position to take a strike vote. I would like to have that information. Does the minister know, or would the minister do this if he does not know - I am surprised he does not, that he is not on top of it on an hour to hour or minute to minute basis - but would he undertake to give the House an up to date statement by way of a ministerial statement or an answer to a question, you know, when the Question Period is called by His Honour whether the minister, the President of the Treasury Board, would give us an up to date statement as to the present status, where we stand with the various groups who are presently negotiating or have finished negotiations with the Treasury Board?

MR. NEARY: Hear, hear!

MR. SPEAKER (Ottenthalmer): As I have indicated, Mr. Speaker, I do not think any of these groups have finished negotiations. We are still in the negotiating process with them. Any of them that have the services of a conciliator are in a position to break off negotiations and take a strike vote. There are, I think, seven, eight, perhaps nine different bargaining units at the moment that might be in that position.

MR. W. ROWE: A final supplementary, Sir.

MR. SPEAKER: The hon. Leader of the Opposition.

MR. W. ROWE: This one leads out of the questioning of the hon. Treasury Board President but I would like to direct it to the Minister of Justice because it does have an effect on the labour situation in the Province, Has the minister asked questions of the Chief or the officers of the Newfoundland Constabulary, or has the department instituted an investigation itself to determine whether there is any substance to the allegations made by the Police Brotherhood that there are officers, you know, Chief or Deputy Chief or Assistant Deputy or somebody in that capacity, going around with a little black

MR. W. ROWE: notebook, sort of spying on the men and taking down names, or taking down comments and so on? Is there anything to that or has the minister not done anything about that as far as investigating it is concerned?

MR. SPEAKER (Ottenheimer): The hon. Minister of Justice.

MR. HICKMAN: I enquired about it and there is nothing to it.

MR. SPEAKER: The hon. member for LaPoile, followed by the hon. gentlemen for Fogo, Windsor-Buchans, and other hon. gentlemen as time permits.

MR. NEARY: Mr. Speaker, my question is for the Minister of Public Works and Services, Sir. Would the hon. gentleman state the policy of the government of his department regarding parking in the downtown parking garage for Public Service employees who are moving into Atlantic Place?

MR. SPEAKER: The hon. Minister of Public Works and Services.

MR. YOUNG: Yes, Mr. Speaker, the policy is that we are providing - there are only thirty parking lots provided down there and they will be used by the senior staff, more or less. Like the policy taken by the federal government, we will not be providing any parking space downtown to the employees.

MR. NEARY: A supplementary question, Mr. Speaker.

MR. SPEAKER: A supplementary.

MR. NEARY: Mr. Speaker, would the hon. gentleman care to indicate to the House who the exceptions to the rule are? The hon. gentleman said there are thirty parking lots purchased by his department.

MR. MORGAN: He told you, the senior staff.

MR. NEARY: The senior staff, I want to know who they are in each department. When the hon. gentleman refers to senior staff, who does he mean? A Deputy Minister, an Assistant Deputy Minister, an Executive Assistant, a Secretary - who are these people who will get these free parking permits?

MR. MARSHALL: A point of order, Mr. Speaker.

MR. SPEAKER: (Mr. Ottenheimer) A point of order has come up.

MR. MARSHALL: On a point of order, I do not want to interfere. The hon. minister may want to answer. But this the type of question, I suggest to Your Honour, that is of detail that would not reasonably be expected to be within the ken of a minister on the spur of the moment. It should properly put on the Order Paper. The Question Period is for urgent matters and matters that do not require a large amount of detail. Now to ask the hon. minister off the cuff to give the names of thirty people or thirty positions who will have parking places does not seem to come within the realm of either urgency or a question that can receive a concise and appropriate answer.

MR. W. ROWE: To the point of order, Mr. Speaker.

MR. SPEAKER: The hon. Leader of the Opposition.

MR. W. ROWE: I am surprised to see the hon. House Leader treat his colleague with such contempt. Surely he is the one to decide whether he needs to take notice of the question or not. As I understood my colleague's question, Mr. Speaker, it was not even requiring the detailed information which the Government House Leader has now alleged he is asking. He is asking for the positions. He is asking how far down in the list of seniority these free parking permits will go? He started off with Deputy Minister, Assistant Deputy - Does it go down to the Director level? Are Executive Assistants of ministers included? That is not detail, Sir. That is a matter of -

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER: Order, please!

MR. W. ROWE: If the hon. minister does not have that kind of information at his finger tips, how far down the seniority list free parking permits are going to be allowed, Mr. Speaker, then I would submit the minister is not in control of his department.

MR. SPEAKER: (Mr. Ottenheimer) Before the hon. minister replies, with respect to the point of order, it can be argued obviously that this is a matter of detail, it could be argued that an hon. member could put it on the Order Paper, but obviously hon. ministers have choice with respect to how they handle questions, so I will leave it to the hon. minister.

MR. YOUNG: There are thirty parking lots provided down there for all the departments. I think at the present time there will be no special permits. They will be down probably to the ADMs and also for the mail cars and service cars.

MR. NEARY: A supplementary, Mr. Speaker.

MR. SPEAKER: A supplementary.

MR. NEARY: What about Executive Assistants? Will they receive a free parking permit in the parking garage?

MR. SPEAKER: The hon. minister.

MR. YOUNG: Mr. Speaker, as far as I know, no lower than the ADMs.

MR. NEARY: A supplementary.

MR. SPEAKER: A supplementary.

MR. NEARY: Would the hon. gentleman indicate who decides who gets the parking permits? Is it the minister or some other official in the Department of Public Works and Services? Who makes that decision of who will receive these special permits, free parking at the parking garage?

MR. YOUNG: There are no special permits, Mr. Speaker. It was passed by Order in Council and that is who will receive the parking lots.

MR. NEARY:
supplementary, Sir.

Mr. Speaker, a

MR. SPEAKER: (Mr. Ottenheimer)

A final supplementary.

MR. NEARY:
gentleman who is it that makes the decisions: to assign these free parking permits? Is it the minister or is it some other official in the department? Does the responsibility of passing out these free permits rest solely with the minister?

I am asking the hon.

MR. SPEAKER:

The hon. minister.

MR. YOUNG:

Mr. Speaker, there is no one passing out little special permits. There is no Executive Assistant has any special permits. There are several more departments to go down there and in all probability some of the staff that have moved down there are using the parking lots now.

Mr. Speaker, there

MR. NEARY:

Mr. Speaker,

A supplementary,

MR. SPEAKER:

that that would be the final supplementary. The hon. member may be able to get back to it later on.

I did point out

MR. NEARY:

did not understand my question apparently.

The hon. gentleman

MR. SPEAKER:

Before recognizing the hon. member for Fogo, I would welcome to the House three groups of students. There are nineteen Grade 11 students from St. Augustine's High in Trinity accompanied by their teacher, Mr. Roland Pickett, seventeen Grade 11 students from Lester Pearson Memorial High in Wesleyville accompanied by their teacher, Mr. Morgan Hill, and three Grade 11 students from Lumsden Central High School accompanied by their teacher, Mr. Fred Melendy. All hon. members, I know, join me in welcoming these students and their teachers to the House of Assembly.

SOME HON. MEMBERS:

Hear, hear!

MR. SPEAKER: (Mr. Ottenheimer)

The hon. the member for Fogo.

CAPT. E. WINSOR:

Mr. Speaker, I would like to direct a question to the hon. the Minister of Fisheries (Mr. W. Carter).

I am sure the minister is aware that there is a very important meeting taking place at Musgrave Harbour by the herring fishermen of that area. Has the minister received any correspondence from those fishermen? Does the minister intend to attend, or what action has the minister taken in this regard?

MR. SPEAKER:

The hon. the Minister of Fisheries.

MR. W. CARTER:

Mr. Speaker, I have received a telegram from the fishermen of the Musgrave Harbour area, signed by, I think, a chap, Harvey Moulard, who is the chairman/spokesman for the group.

With respect to the herring quotas in that part of the Province, we have wired the appropriate authorities in Ottawa whose responsibility is, of course, to allocate quotas of herring and to do what has to be done in that respect, asking them to reconsider the situation in the Musgrave Harbour area. And I can tell the House now that we are very sympathetic to the position put forward by the group. We have some very strong reservations as to the wisdom of closing off the herring fishery at this point in time, so we are doing what we can to assist them with their problem.

CAPT. E. WINSOR:

A supplementary, Mr. Speaker.

MR. SPEAKER:

A supplementary, the hon. the member for Fogo.

CAPT. E. WINSOR:

I am sure the minister is also aware that those fishermen, or quite a few of them, have gone to great expense preparing for the herring fishery.

MR. W. CARTER:

Oh, yes (inaudible).

CAPT. E. WINSOR:

Unfortunately, just as they got ready to put their gear in the water, the ice came in. Consequently, they could not get their gear in water to carry on the fishery.

CAPT. E. WINSOR: Would the minister consider some compensation for loss of earnings to those fishermen? They are faced with a very grave problem of not being able to fish and a great debt.

MR. SPEAKER: (Mr. Ottenheimer) The hon. minister.

MR. W. CARTER: Mr. Speaker, with great respect to the fishermen in the area - but I think the hon. member cannot be serious in making that kind of a statement - the laws that are prohibiting the fishermen now from catching herring and from pursuing their livelihood are laws that are enclosed by the federal government over which I have absolutely no control whatever. If the herring fishermen, Mr. Speaker, today are forced to remove their nets from the water, it is not by virtue of a law that is being imposed by the Province, it is not a provincial responsibility. It is a law that is being imposed by the federal government, it is their responsibility. And surely, if there is going to be compensation - and I am not denying the fact that maybe compensation is justified - but surely it is the federal government, the people who are making it impossible for these people to earn a livelihood from the herring fishery, who are responsible for providing compensation, and not the Province.

CAPT. E. WINSOR: A supplementary, Mr. Speaker.

MR. SPEAKER: A final supplementary, the hon. the member for Fogo.

CAPT. E. WINSOR: Mr. Speaker, in view of what the fishermen have said, that they will ignore the regulation and tomorrow morning they will put their nets in the water, what action would the minister take then to defend those fishermen? Would he stand by the fishermen or would he again refer to Ottawa? It is a very serious problem. I am sure the minister is conscious of it that the fishermen are looking to our provincial Minister of Fisheries to come to their aid.

MR. SPEAKER: The hon. minister.

MR. W. CARTER: Mr. Speaker, I have a lot of sympathy for the problem of the fishermen in that area and I have expressed that

MR. W. CARTER: to them both by telephone and by telegram, but surely the member would not suggest that a minister of the Crown encourage people to break the law or to condone violation of the law. And as sympathetic as I am to their cause, I certainly cannot condone that line of action. I think it is the sort of thing that has to be talked over with Ottawa and hopefully negotiated to their satisfaction. But I can understand their plight and if I were a fisherman, I am sure I would probably feel the same way. As a private citizen I would probably give the hon. member a different answer, but as a minister of the Crown then I cannot possibly condone breaking of laws whether they are provincial or federal laws.

MR. F. ROWE: Mr. Speaker, a supplementary.

MR. SPEAKER: (Mr. Ottenheimer) A supplementary, the hon. the member for Trinity - Bay de Verde.

MR. F. ROWE: Could the minister indicate in the case of the closing down of the herring fishery in the two areas that we are talking about, whether the same type of indiscriminate fishing of the herring has taken place in those areas as is the case on the Grand Banks with the cod?

MR. SPEAKER: The hon. minister.

MR. W. CARTER: It is an entirely different situation, Mr. Speaker. The resolution that I had hoped to get through the House this morning had to do with

MR. W. CARTER: the indiscriminate fishing of cod by foreign countries beyond our 200 mile limit. I am not aware of any such fishing taking place with respect to the herring stocks. I am not sure that there has been any indiscriminate fishing of herring in that area. I know there is a lot of concern being expressed by Ottawa with respect to the health of the stock, the condition, the size of the stock, but I do not think it is fair to compare the situation in Musgrave Harbour, as far as herring is concerned, with the situation beyond the 200 mile limit.

MR. F. ROWE: Supplementary, Mr. Speaker.

MR. SPEAKER: (Ottenheimer) Supplementary, hon. member for Trinity - Bay de Verde.

MR. F. ROWE: Mr. Speaker, is the minister aware of the fact or has he received any complaints from the people in the areas mentioned of indiscriminate trawler fishing interfering with the longliner and inshore fishermen in these particular areas?

MR. SPEAKER: Hon. Minister of Fisheries.

MR. W. CARTER: Mr. Speaker, I took that complaint to Ottawa less than a year ago, made a formal request, in person, to the minister and to his officials, followed up with telegrams and letters suggesting - and I can table these if you want to see them. It is no problem. It is on public record my views in that respect. I went to Ottawa last year expressly for that purpose to beg the minister almost to impose some kind of a buffer zone to keep out trawlers and larger vessels and to leave the inshore fishing grounds for the small boats who do not have the mobility of the larger fleets. I am happy to say, Mr. Speaker, that the minister in Ottawa has, to some extent, recognized the problem and is now, I think, in the process of imposing regulations whereby larger ships will be forbidden to fish within the inshore fishing areas. I do not think he has gone far enough but I think it is a good start.

MR. F. ROWE:

Mr. Speaker.

MR. SPEAKER: (Ottenheimer)

Final supplementary, hon. member

for Trinity - Bay de Verde.

MR. F. ROWE:

Mr. Speaker, this is a very serious

situation as the minister well realizes. Does the minister agree to set up a non-partisan delegation or committee with representatives from both sides of this House to go to Ottawa and make the strongest possible representation on behalf of the fishermen of this Province to establish these windows or boxes or what have you that the fishermen have for the purpose of longliner fisheries and to establish a twelve mile headland to headland zone instead of just a twelve mile off the land zone before we have a fish war between the Atlantic Provinces on the East Coast of Canada because the culprits, in this case and in many cases, are trawlers, not just Newfoundland trawlers, but trawlers from the other Provinces on the East Coast of Canada?

AN HON. MEMBER:

And also our own trawlers.

MR. F. ROWE:

And also our own. That is what I

said, also our own trawlers. And I think the only satisfactory way of getting around this, Sir, and I ask the minister would he agree to have a non-partisan committee, a small committee made up of both sides of the House, go to Ottawa and make this case as strongly as possible to these federal bureaucrats up there to establish that twelve mile headland to headland limit outside of which the trawlers must stay and also establish these fishing boxes, windows and zones to protect the inshore and longliner fishermen?

MR. SPEAKER:

Hon. Minister of Fisheries.

MR. W. CARTER:

If Ottawa needs further proof

that buffer zones are necessary in this Province than what we have already provided - and when I say 'we' I mean the people of Newfoundland. The fishermen, through their union, have taken a strong position with respect to the need for protection for the

MR. W. CARTER inshore fishery. We, the Government of the Province, have taken a strong position with respect to the need for buffer zones or some kind of protection for the inshore fishermen. I believe this House of Assembly is on record as supporting that kind of a proposition. Pretty well every interested group in the Province, the fish trades, the union, the Government, the people have made requests to Ottawa begging to have some kind of action taken by them to protect the inshore fishermen. Now, if they need any further evidence of the need for such action, well then I am not sure that a committee from this House will have any meaningful

MR. W. CARTER: effect on them. The fact of the matter is, Mr. Speaker, that as Minister of Fisheries, part of the government that is elected to govern the Province, I have taken the representation of the fishermen to Ottawa with that request and I am not sure that the kind of a committee recommended by my friend will have any meaningful effect. But surely everything that can be done has been done. And maybe it is rather ironic, Mr. Speaker, that the hon. member is now expressing concern in offering to be part of a non-partisan committee to go to Ottawa to fight for the rights of the inshore fishermen when only an hour ago he refused to give unanimous consent to a resolution that would have that effect.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER (Ottenheimer): Order, please! Order, please! Order, please! Order, please!

The hon. member for Windsor-Buchans.

MR. FLIGHT: Mr. Speaker, my question is for the Minister of Municipal Affairs. With regards to his waste disposal programme that he announced for St. John's to the effect that the Province will spend \$3.2 million, the Province would fund totally, is the minister prepared to give the Grand Falls - Windsor - Bishop's Falls area the same consideration? In view of the fact that they have been asking the Province to fund an incinerator or garbage disposal method in the Central Newfoundland area where right now the town of Windsor is running out of dumping space, the town of Bishop's Falls is running out of dumping space, they do not have the funds available, will the same programme apply to the Windsor - Grand Falls - Bishop's Falls area?

MR. SPEAKER: The hon. Minister of Municipal Affairs.

MR. N. WINDSOR: Mr. Speaker, I am well aware of the situation in Grand Falls. I have been out there and met with all three councils and we have discussed the solid waste disposal problems that they are presently having. The type of incinerators that we are putting

MR. N. WINDSOR: in the St. John's area in fact would be quite ideal for Grand Falls - Windsor - Bishop's Falls on a regional basis. This is the sort of thing we are promoting and we are certainly considering it, What the cost sharing of it will be I am not in a position to say at the moment but it is the sort of incinerator that we are considering for that area.

MR. FLIGHT: A supplementary.

MR. SPEAKER (Ottenthalmer): Mr. Speaker, the minister referred to what the cost sharing arrangement would be, My question is, why will there be any consideration for cost sharing arrangements in the Windsor area if the government is prepared to totally fund, with no cost sharing, to foot the bill? The statement here says that the Province will pay for the facility. Then why would there be a cost sharing arrangement with Windsor if the Province is prepared to fund, totally, the St. John's dumping facilities?

MR. SPEAKER: Mr. Speaker, as I have indicated, we are looking at that thing, we will be discussing it with the councils out there again. The cost sharing formula could be one hundred per cent, zero. You know.

MR. FLIGHT: A supplementary, Mr. Speaker.

MR. SPEAKER: A supplementary.

MR. FLIGHT: Mr. Speaker, the town of Windsor and the town of Bishop's Falls is running out of dumping facilities. As a matter of fact, there are only months left and they will have to look at finding new sites at an immense capital cost and the only sites available will be in the area that will have the effect of further polluting the Exploits River. So the situation in Grand Falls, Central Newfoundland is just as serious as the situation in the St. John's area. And, Mr. Speaker, the only reason that they are not gone to incineration or gone to other government sites, is the inability to fund the programme.

Now I want to hear the minister justify how he is going to force the town of Windsor and Bishop's Falls to go

MR. FLIGHT: into the expense of land filled dumps and the rest while at the same time he is prepared to totally fund the incineration plants in St. John's. Is the minister prepared and when will the towns concerned hear that the Department of Municipal Affairs is prepared to fund totally, under the same programme they are funding the St. John's incineration programme, an incineration programme for Central Newfoundland, particularly Windsor and Bishop's Falls.

MR. SPEAKER (Ottenheimer): The hon. Minister of Municipal Affairs.

MR. N. WINDSOR: Mr. Speaker, I cannot be hearing myself very well. I do not recall saying that I was going to force Grand Falls, Bishop's Falls and Windsor to pay anything. What I said to the hon. gentleman -

MR. FLIGHT: (Inaudible).

MR. SPEAKER: Order, please!

MR. N. WINDSOR: - is that we will be discussing it with them and we will do whatever we feel is appropriate.

MR. SPEAKER: The hon. member for Bellevue.

MR. CALLAN: Mr. Speaker, my question is also for the Minister of Municipal Affairs. My question, Mr. Speaker, has to do with the minister's department and the former Winter Capital Works Programme that has been a subject of controversy in recent days and recent weeks in particular. In answering a question a couple of days ago from another member on this side, Mr. Speaker, the minister said "Debentures have now been issued by the Department of Municipal Affairs and Housing on behalf of the federal government, all that we are requesting as a department is that these debentures be signed and returned to the federal government."

Mr. Callan: The department does not accept any responsibility for repayment. Since I am not allowed under the rules to ask the minister for a legal opinion, let me ask the minister what right does the Department of Municipal Affairs and Housing have to refuse the revenue grant to a municipality when, you know, the money is owed to Ottawa the minister says. What right?

MR. NEARY: It is cruel, and it is illegal.

MR. SPEAKER (MR. OTTENHEIMER): The hon. Minister for Municipal Affairs and Housing.

MR. N. WINDSOR: Mr. Speaker, under The Municipal Affairs and Housing Act we have the right to do whatever we feel is appropriate in order to ensure that the financial -

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER: Order, please! Order!

MR. N. WINDSOR: Does the hon. gentleman want the answer, Mr. Speaker?

AN HON. MEMBER: Oh, oh!

MR. N. WINDSOR: You know, we have the authority to do what we feel is appropriate in order to manage the affairs of the Province and the department and the finances and so forth. The legal authority he is talking about to the responsibility of the Province, I understood it is quite clear in the agreement with Ottawa that was signed in 1973 that the Province would not be responsible for repayment or be required to ensure or guarantee repayment of these amounts by the municipalities. The agreement was very clear on that point.

MR. CALLAN: A supplementary.

MR. SPEAKER: A supplementary.

MR. CALLAN: Mr. Speaker, in further answering the question a couple of days ago the minister said in smaller municipalities where their budget may be in the order of \$25,000 to \$30,000 a year, obviously this amount could not be handled by that municipality. But he says, in certain isolated cases where the municipality approached us and said,

Mr. Callan: "We cannot pay it. Will you assist us? We did provide some special grants."

Let me ask the minister would he lay upon the Table of the House the names of these municipalities that were helped? And is the town of Sunnyside among these communities?

MR. SPEAKER (MR. OTTENHEIMER): The hon. Minister of Municipal Affairs and Housing.

MR. N. WINDSOR: No, Mr. Speaker, the town of Sunnyside was not among it simply because they would not sign the debenture. But we will offer to them to pay the first year's installment, the 1978 one. And when I met with them in my office a couple of weeks ago, I made it very clear to the delegation that came here that once they signed the debenture the revenue grant would be released immediately and we would also pay the 1978 installment on the debenture, since they were not in a position, and further we would even consider 1979, although we made no commitment on that regard.

MR. CALLAN: A supplementary, Mr. Speaker.

MR. SPEAKER: A supplementary.

MR. CALLAN: Mr. Speaker, most of these grants, as I understand it, I know the two in the district of Bellevue in Chance Cove and Sunnyside, for example, the Winter works grants or whatever, they appear now to be loans and not grants, they were used to build municipal buildings. Is it not the responsibility of the Department of Municipal Affairs and Housing, the Provincial Government to provide municipal buildings for a municipal government? Why does the minister expect that it is the responsibility of the federal government just because it was done by the federal government, you know? Why does not the minister say we will pay the bill, they built municipal buildings, we will pay the bill. Because today is the last day, I am sure the minister is aware—or is he?—that today garbage will be collected in Sunnyside for the last time, perhaps, under a municipal government. Next week their lights will be cut off because they cannot pay their bills.

MR. NEARY: Do you mean the street lights?

MR. CALLAN: Why does not the minister say, we will pay the bill and then we will try to collect from Ottawa, because we have nothing to gain but we have a lot to lose. If the people down there who form the Council of Sunnyside, if they decide tonight to resign en masse then, of course, the local government is gone and the minister is left with a municipal building and no municipal government. Why does not the minister say, We will forget the whole thing. We will give you back your revenue grant, we will pay the bill to Ottawa, and then we will try and collect from Ottawa. Would the minister consider that?

MR. SPEAKER (MR. OTTENHEIMER): The hon. Minister of Municipal Affairs and Housing.

MR. N. WINDSOR: Mr. Speaker, you know, I am amazed at the comments of the hon. gentleman who aspires, I assume, to be part of the government of this Province of Newfoundland and Labrador, that he would have such an irresponsible attitude towards the financing of this Province. You know, how do you think that the Department of Municipal Affairs and Housing could absorb all of this money? This is a programme -

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER : Order, please! Order!

MR. N. WINDSOR: - of \$12 million that was provided by Ottawa -

MR. FLIGHT: (Inaudible) incinerators and (inaudible).

MR. N. WINDSOR: - \$12 million plus interest. The interest on that is probably another \$4 million or \$5 million. Seventeen million you are asking us to absorb because of a programme that was initiated by the federal government, loans that were given by the federal government, and you are saying the Province should pay it back? It would have been just as well for us to give grants in the first place. We do not give grants or any financial assistance of that nature for a municipal building. I think the people of the community have a responsibility, themselves if they want to have a municipal building or a fire hall. We do provide loans. We do assist them in any way we can, but we have no programme of grants and the Province could not possibly afford it.

May 11, 1979

Tape 1254

PK - 4

ORDERS OF THE DAY

MR. SPEAKER (MR. OTTENHEIMER): The hon. member for Trinity-
Bay de Verde.

MR. F. ROWE: Under Standing Order 23 (a) I
ask leave to make a motion for the adjournment of the House for the
purpose of discussing a definite matter of urgent public importance,
Sir. Sir and the motion is as follows:

WHEREAS the protection of the cod stocks and

MR. F. ROWE:

the extension of Canada's fisheries jurisdiction to the edge of the continental margin is of extreme importance and; WHEREAS different regions have been closed to the herring fisheries in this Province; BE IT THEREFORE RESOLVED that the hon. House debate immediately these two important issues for the purpose of receiving the observations and knowledge of all hon. members, particularly those representing fishing districts, in order that the people in Ottawa, namely the federal bureaucrats, will hear loudly, clearly and forcibly the real -

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER (MR. OTTENHELMER): Order, please!

MR. F. ROWE: - and legitimate reasons for reversing certain decisions already made and those intended affecting the livelihood of these fishermen and those people on shore who work in the fish plants in the Province of Newfoundland and Labrador." Now, Sir, since this almost identical to the ministerial statement and his resolution, I would expect the minister to second this motion. And have a fallfledged debate on it so that it can be driven home quite forcibly to Ottawa, the nature and the importance of this particular resolution. But just in case, the minister, Sir, does not second it I think I had better protect myself and say that it will be seconded by my colleague for Pogo (Capt. Winsor).

MR. SPEAKER: Order, please!

It appears to me that - bearing in mind the words of the hon. gentleman to my right and the hon. gentleman to my left previously - that hon. members if they wish to -

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER: Order, please!

- debate a certain matter the procedure should be to ask for unanimous consent. Standing Order 23 is a very technical and precise Standing Order, Hon members can

MR. SPEAKER (Ottenheimer): by unanimous consent, now commence to debate any subject they wish to. But 23 is a very technical Standing Order and I think it would put our precedence in doubt for me to now say that this comes under Standing Order 23. Also, Standing Order 23 only permits the debate of one motion and that is that the House adjourn. It is an artificial, if one wishes, motion which cannot be amended and when the discussion comes to an end it is voted affirmatively or negatively and the only result is that one adjourns. It cannot be amended so there is no way of putting another motion into it. So what I am pointing out is if hon. gentlemen wish to debate matters with respect to the fisheries as have been discussed then it would be, I suggest, by unanimous consent not by Standing Order 23.

CAPT. WINSOR: By leave, Mr. Speaker.

MR. MARSHALL: Mr. Speaker.

MR. SPEAKER: The hon. House Leader.

MR. MARSHALL: I would like to just address a brief word to the proposal by the hon. member for Trinity-Bay de Verde (Mr. F. Rowe) -

MR. S. NEARY: A point of order, Mr. Speaker.

MR. SPEAKER: A point of order.

MR. S. NEARY: Mr. Speaker, the hon. gentleman, Sir, if he stands in his place now is challenging Your Honour's ruling.

MR. W. N. ROWE: Is he debating? Is it a point of order?

MR. S. NEARY: The matter is closed, Mr. Speaker, the matter is closed.

MR. SPEAKER: Order, please!

As I understand the situation I put forward the proposition that it would be by unanimous consent that the House would debate this matter, and I presume now the Government House Leader is going to state whether there is consent or not or what the government's position is.

MR. MARSHALL: Yes, Your Honour, that is exactly what I was going to do, Your Honour, anticipated me. Now, the situation is that this is a motion brought up by the Minister of Fisheries (Mr. W. Carter) this morning. The Minister of Fisheries asked for the unanimous consent for this resolution to go off forthwith as an endorsement and stamped by all members of the House. The Minister of Fisheries has said it has gone through anyway now and it is on its way to Ottawa as the position of the government. So consequently, it is not really a matter of urgency of debate at the present time because the hon. gentleman there opposite did not choose to join with us at the time and joined with something that obviously does not require debate.

MR. SPEAKER: Order, please!

As I understand it now there is not unanimous consent to debate this subject matter.

MR. MARSHALL: Because it has already been done, Mr. Speaker.

MR. W.N. ROWE: Mr. Speaker, if I may speak.

MR. SPEAKER: (MR. OTTENHEIMER): The hon. Leader of the Opposition.

MR. W.N. ROWE: Mr. Speaker, I do not know under what right the hon. House Leader made his speech but I would assume that I would be given the same opportunity to speak for thirty or forty seconds. I am not rising on a point of order,

I would say, Mr. Speaker, there is not unanimous consent to debate -

MR. MARSHALL: A point of order, Mr. Speaker.

MR. SPEAKER: A point of order.

MR. MARSHALL: I was replying to the hon. member for Trinity - Bay de Verde (Mr. F. Rowe). The House was asked specifically

MR. MARSHALL: as to the position of the government. The government has given its position. Now the hon. the House Leader has no right himself to enter into a debate on my words.

MR. W. ROWE: To the point of order, Mr. Speaker.

MR. SPEAKER: (Mr. Ottenheimer) To the point of order.

MR. W. ROWE: I rise to respond to the hon. House Leader's point of order now. I withdraw my request to have a word or two to say on what he had to say. To the point of order, Sir, let me say this; if the hon. minister or the House, the government does not agree with this particular resolution then we would gladly consent on this side, if the hon. minister is sincere in what he wants to do, we would gladly consent to a debate for the remainder of the morning. -it is only an hour or so, on his resolution. Let us have a debate on it. The fact that it might have been sent off by telex or telegram, Mr. Speaker, is irrelevant. Let us debate it now. Let us have a fullfledged debate and get the feeling of very knowledgeable members on both sides of the House. I would submit, Sir, that all wisdom is not cornered in that side of the House. Let us have a fullfledged debate on his resolution and let us talk it over and let us send off a resolution of the House, if need be, which may or may not be unanimous but which can be sent off to the minister and the bureaucrats in Ottawa. If he is sincere about it let him move his motion, Sir, and we will give unanimous consent as far as we are able to to debate his resolution, his motion without notice.

MR. NEARY: Hear, hear!

MR. SPEAKER: There is no unanimous consent. Order 13 has been called. The adjourned debate -

MR. F. ROWE: A point of order,

MR. SPEAKER: A point of order.

MR. F. ROWE: A point of order,

Mr. Speaker. I was waiting for Your Honour's ruling on the original

MR. F. ROWE: question and again
on the point of order and this is why I rise on this point of
order.

Sir, when I was asking
the House for leave or moving the motion under Standing Order 23(a) -
I do not know if Your Honour heard it or not, Sir, but he must
have heard the hon. House Leader opposite make certain remarks
about me and the nature of the resolution. The Minister of Fisheries
(Mr. W. Carter) Sir, said that in moving that motion I was playing
games and playing politics. And the hon. the House Leader opposite,
Sir,

MR. MORGAN: Is that not a shame?

MR. SPEAKER: (Mr. Ottenheimer) Order, please!

MR. F. ROWE: I wish the big square
mouth, Sir, would just keep it closed for a change.

MR. SPEAKER: Order, please!

MR. F. ROWE: The hon. the House
Leader, Sir, said that I had refused unanimous consent. Sir, that
is not true.

MR. SPEAKER: Order, please! We
are now in a situation where some experience tells me that we
could go for an hour. If an hon. member alleged that another
hon. member is playing politics that is not unparliamentary. That
has been alleged back and forth, so that is not unparliamentary.
Actually we are now in a position, I think, where the situation
is quite clear - I do not see that there is any bona fide point of order.
I do not wish for hon. members' sake and the House's sake to get
into protracted debate and what can well lead to acrimony - I think
the situation is quite clear now and that is that the Order of the
Day No. 13 has been called, the adjourned debate on Bill 15.

The hon. minister.

SOME HON. MEMBERS:

Hear, hear!

MR. MAYNARD: Mr. Speaker, it is very unfortunate that the time left to me is only in the order of two minutes, as I understand it, to close the debate on this bill because I would certainly like to take a much longer period of time. However, since it is not available to me I can only re-emphasize again, Mr. Speaker, that the sale of the facility at Stephenville and the bill that is before the House now, the important one -

MR. NEARY: A point of order.

MR. SPEAKER (Mr. Ottenheimer): A point of order.

MR. NEARY: Mr. Speaker, the hon. minister just made a statement, Sir, that could reflect upon Your Honour and the proceedings of this House in the fact that he only has a few minutes left. I am sure the hon. minister with his experience must realize that this bill has to go into Committee of the Whole yet when the hon. gentleman will have more time if he so desires.

MR. MAYNARD: I am talking about second reading
'Stupid', sit down!

MR. NEARY: So, Mr. Speaker, I would suggest that you straighten out the minister, Sir, on the rules of the House, that he will have more time if he so desires when we go into Committee of the Whole. I will have more time, every member of the House will have more time.

MR. SPEAKER: Order, please! There is no point of order and I must point out to hon. members that points of order should only be used where there is some evidence to suggest that order has been broken.

MR. SPEAKER: (Mr. Ottenheimer) The hon. minister.

MR. MAYNARD: Mr. Speaker, all I have the opportunity to do on the Second Reading portion of the bill is to say that it does give me a great deal of pleasure to move Second Reading at this time.

SOME HON. MEMBERS: Hear, hear!

On motion, a bill, "An Act To Provide For The Ratification Of The Sale Of The Stephenville Linerboard Mill And Its Conversion To a Newsprint Mill," read a second time, ordered referred to a committee of the Whole House, on tomorrow. (Bill No. 15)

MR. W. MARSHALL: Order 27.

Motion, second reading of a bill,
"An Act To Reform The Law Respecting The Property Of Married Persons,"
(Bill No. 33).

MR. SPEAKER: (Mr. Ottenheimer) The hon. the Minister of Justice.

SOME HON. MEMBERS: Hear, hear!

MR. HICKMAN: Mr. Speaker, I find myself in a position today in rising to move second reading of a bill to reform the law respecting the property of married persons, in a position where one has to reflect on the law reforms that we have seen enacted in this Legislature in the last three or four years. I think it is significant to note that amongst my colleagues in the other provinces and the uniform law commissioners, that they rank this administration as one of the leaders in law reform in this period of law development in Canada.

Having said that, Mr. Speaker, I have no hesitancy in saying that the matrimonial property bill which is presently before the House is one of the most significant pieces of law reform that this Province has seen in many years indeed. It is a piece of legislation that recognizes that marriage must be an equal partnership, not simply in appearance, but in law. This change of philosophy in the law has been evolving over the past few years.

MR. HICKMAN:

Indeed, it may not be a tribute to legislators in the areas where the common law prevails that no move was made at all anywhere in the common law jurisdiction, not just in Canada, until really within the last decade. And in Canada it first came to the attention of legislators and law reform commissions in the decision of the Supreme Court of Canada in the case of Rideout versus Rideout. And hon. gentlemen will recall that the law, as enunciated by the highest court in the land at that time, imposed an obligation upon one party to the marriage, namely, the wife in that case, that was absolutely impossible for her to discharge. This was a case where there had been a dissolution of marriage. The husband and wife lived on a farm which was registered in the husband's name and at the time of the dissolution of marriage, even though the wife had toiled long and hard for many, many years and made contributions that may not have been financial in the sense of actually investing money, she had invested time and energy in that operation, she was precluded from a share in the matrimonial asset.

We had in this Province taken some steps to apprise ourselves of the problems that one would find in bringing in legislation which would constitute a very massive reform in the family law.

This bill,

MR. T. HICKMAN:

I believe, when passed by this Legislature will mean that we have, in the last four or five years, implemented all of the major recommendations in the report on family law prepared by Dr. Raymond Gushue, a very learned gentleman, a legal scholar and a former President of Memorial University of Newfoundland.

It was his appointment and the subsequent work carried out by him that put us in a position, at least, where we saw many of the problems that could arise and also, what is more important, many of the inequities that had to be eradicated. And I think it is significant to note that one of the two researchers for the Gushue Commission was Mrs. Mary Noonan, LLB, now a senior solicitor with the Department of Justice, who together with Miss Margaret Cameron, LLB, another solicitor with the Department of Justice, have done more work, I suspect, in reviewing the law and in assisting me, as well as putting me in a position in turn to enunciate the principles of this bill to my colleagues who so readily and quickly and enthusiastically support it.

These two lawyers, I say without any fear of contradiction, are the most knowledgeable people in their profession in this Province today on family law. I know the tremendous amount of work they have done during the past year, year and a half. They were aided in their work by a law student - I think she is at Queens now in her final year - last Summer and the year before, from St. John's, Miss Janet Henley, who compiled and assessed the very large reaction that we received throughout Newfoundland from my invitation to Newfoundlanders to let us know how they felt about reform in matrimonial property law.

Another lawyer who worked with the Gushue Report but has not been directly involved in this

MR. T. HICKMAN: particular piece of legislation, but is very knowledgeable in the field of family law, is Mr. David Day, a St. John's lawyer, and I note the approbation from Mr. Day in yesterday's St. John's Evening Telegram.

Mr. Speaker, hon. gentlemen will recall that about a year or eighteen months ago I publicly invited the people of Newfoundland to let me have any representations they wished to make with respect to changes in matrimonial property law in this Province. The response was quite good from organizations. The Status of Women's Council of St. John's, the Status of Women's Council of Newfoundland, the Status of Women's Council of Corner Brook, their branches, I think it was NAPE, a dozen organizations or more came in with very good briefs, diversified views to some extent. But then the thought crossed our minds that it is sometimes easy to get the submissions of organized groups, but we want to be certain that these groups are articulating the views of the vast majority of Newfoundlanders and a lot of individuals are, sometimes, reticent. We had some individual submissions too from taxpayers throughout the Province, but a lot are reluctant to, sometimes, come forth and let their views be known, or some of the issues which are quite complicated in law may deter them from getting involved in that kind of dialogue,

MR. HICKMAN: so we then, through the press and through return mailing advertisements in the press, set forth a series of questions and simply said if you want to put your name on it you can and if you do not it makes no difference, but we would like you to complete the questionnaire which set forth the various issues. And there the response was quite encouraging and a response that indicated the prudence of giving all Newfoundlanders the opportunity, if they so desired, to let us know their views.

Now, Mr. Speaker, firstly this bill, the main thrust of this bill, is to reform the law with respect to matrimonial property and in particular recognize the equal position of spouses as individuals within a marriage. There are several systems that have been tried in various jurisdictions. There is the deferred sharing system of property that some reform commissions recommended. There is the community of interest approach which other jurisdictions have tried but I think have found to be unworkable. This bill contains certain principles of the deferred sharing system of property but goes a step further than any similar legislation in Canada with respect to the matrimonial property home. There it says, 'Beyond all reasonable doubt that the matrimonial home shall be owned jointly by husband and wife.'

Now, Mr. Speaker, I was detracted somewhat, detracted myself somewhat in my opening remarks, when I said that it is significant that because of the problems that sometimes arise in this kind of essential law reform that it is only within the past few years that legislatures have turned their attention to trying to bring laws as related to marriage within the twentieth century. The simple fact is that from 1882, when the Married Woman's Property Act of England was passed, up until the last three or four years - maybe ten years at the most, but I guess it is ten years since the Gushue Commission started looking at it and some

MR. HICKMAN: law reform commissions—
but really until about ten years ago legislators and parliamentarians in the common law jurisdictions would sit back and indeed boast that the Married Woman's Property Act of England, which was adopted by the common law jurisdictions, was one of the best pieces of legislation in vogue at that time and that we should be content to live with it. But under that system and under the law, Mr. Speaker, as it relates in Newfoundland today, the person in whom title is registered is deemed to be the owner of that property. And there are procedures, we have the Family Relief Act and other legislation whereby one can try and get into the courts and try and establish certain claims to ownership - one spouse can as against another - but the significant thing is that the courts in the past in dealing with these cases, in trying to determine the ownership principles had to deal with the law in the same manner as they would deal with disputes between two strangers rather than a dispute between two partners to a marriage.

There is a doctrine of law which hon. and learned gentlemen are aware of called the Presumption of Advancement which presumes that if a husband registered a property in his wife's name that he intended to make a gift. There was a provision whereby this presumption could be rebutted if the court could be satisfied that the gift was not intended, but rather a trust was being created. And the same thing applied in reverse and, in a sense, that may have been discrimination against the husband. That same presumption of advancement could have some serious effect with respect to gifts given in trust by, say, a father to a son prior to a father's remarrying. There is an amendment which will eliminate, and I think it is necessary to bring this act fully into focus and fully into play, the presumption of advancement. This bill, Mr. Speaker, recognizes a very

Mr. Hickman: fundamental principle. It recognizes that in the traditional family, where one spouse contributes financially and the other contributes in caring for children and as a homemaker, that the person so contributing in the care of the children and as a homemaker must be placed in a position at law - and that is generally the wife, probably always the wife - where she has equal interest in the matrimonial home.

But the law as it stands today in jurisdictions where legislation has not been brought in recently to change it, and the law as enunciated by the Supreme Court of Canada, ignores the contribution of the homemaker and the fact that the homemaker, which is also very relevant, in order to maintain the home and in order to raise the children has been required in many instances to give up the opportunity of making a financial contribution to the matrimonial home because she was not in a position where she could go out and become gainfully employed and thereby be in a position to make that kind of contribution.

Mr. Speaker, there have been, again, attempts by our courts to balance some of the inequities of the separate property system by the use of maintenance orders and lump sum provisions under The Divorce Act. However, in my opinion, Mr. Speaker, this is not adequate for two reasons: firstly, maintenance payments do not recognize a right to a share of property; and secondly, persons should not be required to rely on the ingenuity of a judge to obtain something which should be his or hers by right.

As I said, Mr. Speaker, and I think it is important that in approaching this bill we be aware of the various alternatives that have been looked at, some adopted, some rejected, and all of them in various jurisdictions have been adopted to some degree, because it is a part of the approach that one has to use in ensuring that this bill, which does go further than the others in other jurisdictions, is indeed the kind of exciting law reform that I feel it is. In some jurisdictions,

Mr. Hickman: early in the game, they tried to approach it by way of the community of property option. The community of property system was in the beginning suggested by some law reform commissions as a solution to the problems created by separate property and at one time it was thought to reflect the concept of marriage as an equal partnership.

But, Mr. Speaker, although there are variations from jurisdiction to jurisdiction, in general what is provided under the community of property system is that whatever property spouses acquire after marriage becomes community property in which each spouse has an equal interest from the date of acquisition, and that when the marriage was terminated the community property is all in the pot, you payoff the community debts, divide the rest of the property between the spouses.

But traditionally the community property has been managed by the husband. This is a tradition which is not acceptable today, and if the community property system were to be adopted there would have to be some changes certainly to put it into the category of joint management.

Mr. Speaker, the community of property system was found to be wanting in certain areas, in certain jurisdictions, and I think it is significant to note for the record

MR. HICKMAN: that under the civil law, which is in force in the Province of Quebec and in areas of Europe and jurisdictions where the Code Napoleon is in force, that there had been that community property concept right from the days of the implementation of the Code Napoleon. Consequently our sister Province of Quebec has always operated under the community of property system until quite recently and they have now found in Quebec that that community of property system is not a satisfactory approach and they now have legislation either before their House of Assembly, or they have already brought it in, bringing in a far less restrictive system.

The next area, Mr. Speaker, an approach which has been used by some jurisdictions is what is called the deferred sharing approach. The deferred sharing approach is a scheme which maintains separate property during the subsistence of the marriage and on termination brings the property into a community. Under deferred sharing, on dissolution of the marriage the assets and liabilities of each spouse are determined and the spouse with the greater share makes a payment to the one with the smaller share. The division is not a physical one but the spouse who has acquired less has a personal claim in debt against the spouse who has acquired more. And like community property, business property is usually included, and certain properties are excluded from that to be shared.

There are some advantages to this system. It has the advantage of preserving the separate property concept and consequently it allows the property to be used and treated and mortgaged and whatever else from time to time without the consent of both spouses.

In the jurisdictions, and Ontario is one of these jurisdictions, where they have brought in the deferred sharing system, they have had to confer a certain amount of discretion to allow judges to make orders that would vary the equal ownership of all the property. And what we are trying to do and whilst the courts

MR. HICKMAN: will have certain responsibilities and certain discretions, what we are trying to do in this bill is to eliminate as much of the confrontation and uncertainty and the kind of approach that is based on the adversary system, if we can do it at all. And I might, as an aside, say that that approach is the same fundamental approach that is contained in the Unified Family Court law reform that was brought before this House two years ago. And while I think of it, before I forget it, may I advise this hon. House that on June 18, 1979, which will be a very significant date in the evolution of law reform in this Province, the Unified Family Court Act will become law, the Unified Family Court as a pilot project, cost shared between both the Government of Canada and the Government of Newfoundland, I might add on an initiative from the Government of Newfoundland. We can take some pride that we did not

MR. HICKMAN: have to wait for all the other provinces in the case of Unified Family Court to move. We were, I think, the first to bring this concept to the Attorneys Generals' Conferences and to the Government of Canada, and ourselves, together with Ontario and Manitoba, have embarked upon this pilot project in specified areas. The Unified Family Court will be a three-year pilot project for metropolitan St. John's and Bell Island, and if it works - and there is no hesitancy in my mind that with the excellent staff who have been hired, the marriage counsellors, the psychologists, the psychiatrists, the marriage - the word has escaped me now - the advisors, under the leadership of Mr. Justice Ralph Fagan of that court, that the Unified Family Court pilot project will be determined at the end of three years to be something that must continue, and hopefully then it will become a permanent province-wide operation and a branch of our Trial Division of the Supreme Court. But in any event, that comes in on June 18th. And why I mention that now, Mr. Speaker, is that the whole thrust of that Unified Family Court, as is the thrust and concept and principle contained in the Act that we are presently debating, is wherever possible to avoid the adversary approach to the resolution of marital problems and marital difficulties.

Now, Mr. Speaker, this bill is different from the legislation, I am told, in any other Canadian jurisdiction in one vital area, and that is the co-ownership of a matrimonial home. What this bill does is that in effect it says we take some of the deferred sharing approach with respect to some of the assets, but because the matrimonial home occupies a special position in family property relations, we feel that this family asset has to be dealt with separately. The matrimonial home is the shelter and focal point for the family and it often is the single valuable asset of a marriage. Implicit in the concept of co-ownership of the matrimonial home is the philosophy that a non-owner spouse, usually the wife, contributes equally to the home.

Under the legislation that is presently being debated, each spouse will have a right to a one-half

MR. HICKMAN: interest in the matrimonial home irrespective of the manner in which title to the home is taken or when it was acquired. And under this principle in this Act, neither spouse can sell or mortgage the home without the consent of the other. If one party attempts to dispose of the matrimonial home without the knowledge of the other, the court is empowered to prevent or set aside a transaction or make an order that one half of the proceeds be paid to the non-consenting spouse.

Also - and these are some of the technical problems that I am sure the hon. the Leader of the Opposition appreciates, which are going through his mind as a practicing lawyer - What do you do in the case where you cannot find one of the spouses? - he or she has disappeared. You know, these are the things you try to cover in legislation if you can. But there is a provision where a spouse unreasonably withholds consent, say the house is falling down and there is an opportunity for sale, and one spouse says, 'I cannot afford to keep up the house, it is better for both of us to sell it, go into an apartment or buy a smaller house,' or do any number of things - there, or in the case of the inability to find the other spouse, there is provision to make application

MR. HICKMAN: to court, and if the court feels that the consent is being unreasonably withheld then the court has the power to order the sale or alternatively dictate the manner in which one would have to advertise to ensure - I guess something like a divorce proceeding where the petitioner cannot find the respondent.

The other things of significance with respect to the co-ownership provisions of the matrimonial home is that both spouses have an equal right to occupy it, and this, Mr. Speaker, is a right which is especially important in certain cases where there are children in a marriage.

It is also significant, Mr. Speaker, that under this concept, this approach to the matrimonial home being equally divided gives the spouses a right which accrues immediately on marriage and does not arise upon the termination of the marriage. The Act also confers upon the courts, Mr. Speaker, an opportunity for the jurisdiction and the right upon application to order that where there has been a break-up of the marriage, separation, or dissolution of the marriage, that rather than have the home sold immediately, the court may order one spouse to have the exclusive possession for whatever period the judge deems appropriate. And that is significant because you may have, and there have been many cases where a marriage has broken down, where there has been divorce and the wife is given custody of the children, if she is deprived of the family home during the time of dependency of these children, even though there may be alimony awards, which again must be based on the earning capacity of the husband, alimony awards will be insufficient to enable the mother to adequately and properly care for the children and house the children, shelter the children in the manner to which they had been accustomed before the marriage break-up. And I am sure that no hon. gentleman present would object to that provision because whilst this Act deals with matrimonial property, and whilst we have other legislation such

MR. HICKMAN: as the Divorce Act, support and maintenance provisions under the Child Welfare Act which provides support for the children, we should never lose sight of the fact that generally speaking, I guess always, the dependent children are the innocent victims to a breakdown in a marriage and there must be vested in the courts some judicial discretion with respect to the disposition of the matrimonial property where the best interests of the children in particular would dictate that this be done.

Now, Mr. Speaker, having reviewed as best I can the various options that are open in approaching this major law reform, and the various options that have been adopted in whole or in part in various jurisdictions, we have, as I indicated earlier, as a government decided and felt as is indicated in the legislation that there is no good reason why we cannot have the best of both worlds, at least to some extent. Certain principles in the bill fall under the category of deferred sharing in matrimonial property. The act provides that all assets except business assets that have been acquired following the marriage shall be deemed

MR. A. HICKMAN: upon the dissolution of marriage as to be jointly owned by the two spouses and then shared. That is what I mean by the deferred sharing principle.

But examination of the bill will indicate that there are certain exceptions which have been contained in the bill such as gifts, inheritances, trusts or settlements received by either spouse from third parties. I can see no reason in the world, and there will be no justifiable reason in equity or in law or in common sense, where if a father or mother decided to bequeath to their married son or their married daughter monies or assets - that is outside the matrimonial home now; I must keep reminding this House that no matter how the matrimonial home is acquired it is jointly owned - but these other gifts and inheritances should not be part of the deferred sharing principle in the event of dissolution of marriage. The same applies to personal effects, the clothing, decorations, and family heirlooms, personal injury awards, property acquired before the marriage, except matrimonial homes, and again, property acquired after separation because that too is a problem in the multitude of problems that one had to think of and cover in preparing this legislation, that you have many instances where couples separate and there is always the hope - indeed the thrust of the federal divorce law, the act passed by Parliament a few years ago imposes an obligation upon our courts to try and reconcile marriage differences if they can. The Unified Family Court goes even further than that, that principle of unified family court, the non-adversary approach. But you do have situations where separations occur and there may be no thought to a final dissolution of the marriage. But a party, after they have separated acquires some additional properties; again, that is one of the exclusions.

MR. T.A. HICKMAN: By adopting this system this would mean, Mr. Speaker, that for the average family in Newfoundland on the dissolution of marriage, the assets of each spouse, other than these exceptions which already includes the family home, but other things like furniture, cars, boats would be valued, the debts owing by each would be deducted from the assets, the spouse with the greater net worth would then make a payment to the other spouse.

The business assets, Mr. Speaker, was another principle, another approach that we had to deal with separately and one which we felt should not fall into the category of automatic sharing. It is contained in the act and in the principle of the act in such a manner that the courts have a jurisdiction, a judicial discretion in deciding on the disposition of business assets in the event of a dissolution of marriage. The court will have the right under this bill, if it comes to the conclusion that the disposition in equal shares of the business asset is grossly unjust or unconscionable, having regard to any extraordinary financial or other circumstances of the spouse, or the extraordinary nature or value of any of the assets, to alter the formula for distribution of the business assets.

Courts ask legislatures from time to time when conferring discretion upon them to try and give an indication as to some of the principles which they should apply in exercising their judicial discretion. And we have tried, Mr. Speaker, as best we can in this act to set forth some of these guidelines which the courts will have to apply in exercising their judicial discretion with respect to the disposition of these assets. And again, I must repeat this has nothing to do with the matrimonial property home.

MR. A. HICKMAN: But some of the principles that a court in applying and exercising its judicial discretion will have to exercise and take into consideration are, (1) the income, the earning capacity and the property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; (2) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; (3) the standard of living enjoyed by the family before the breakdown of the marriage; (4) the age of each party to the marriage

MR. T. A. HICKMAN: and the duration of the marriage, any physical or mental disability of either of the parties to the marriage; (5) the contributions made by each of the parties to the welfare of the children including any contribution made by looking after the home or caring for the family; (6) in the case of proceedings for divorce or nullity of marriage, the value to either of the party to the marriage of any benefit, for example, a pension, which by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring; (7) that there has been the unreasonable impoverishment or dissipation of his or her assets by one of the spouses; and (8) the length of time that each spouse lived separate and apart from each other during marriage; (9) the date of acquisition of each asset.

These are certain guidelines that must be taken into account by a judge in exercising his or her judicial discretion.

One thing that I want to draw to the attention of hon. gentlemen present - I can tell by the large number in the House that this most exciting piece of law reform it has not grabbed the imagination of elected representatives - but one factor which I think is very relevant in looking at the guidelines for judicial discretion is that there is nothing in there which gives a court, in exercising such judicial discretion, the right to look upon and assess marital misconduct. It is not the responsibility nor is it the capacity of any, in my opinion, Parliament to pass a law to enforce moral conduct by withholding property rights. We may try in some manner, at least, the Parliament of Canada may try, through the Criminal Code and other legislation, to legislate on morality but I would hope that all hon. members will agree that we should not try by legislation to enforce moral conduct by making a provision to withhold property rights from one of the spouses.

MR. HICKMAN: And the second thing which is equally as important, that if marital misconduct were to be a factor, it would be necessary to have long, involved court hearings examining the history of the marriage before a decision could be made, and that is something that would not be desirable and it would not be proper, in my opinion, or in the best interest of the marriage compact.

Mr. Speaker, the question may be asked, and I am sure it will be asked, as to other legislation that is presently in existence. What about the Intestate Succession Act? That is an Act, in my opinion, that has got to be and hopefully will be amended during this session of the Legislature. Under the present Intestate Succession Act a wife, with no children, upon the death of her husband receives the first \$30,000 of the estate and one half of the interest remaining. A wife with one child shares the property equally with that child and a wife with more than one child receives one-third and the remaining two-thirds is divided equally amongst the children. Where there are children concerned I would find it difficult to find any fault with the Intestate Succession Act. But it is Government's intention to amend that Act, or at least offer to the Legislature a bill to amend the Act, which in the case of the widow, without any children, in case of an intestacy the entire estate goes to the widow. I am sure that the hon. Leader of the Opposition (Mr. W. Rowe), in his practice of law, has seen cases where a person dies leaving only a widow, dies intestate leaving only a widow and some nieces or nephews -

MR. W. N. ROWE: Living in Boston.

MR. HICKMAN: - in Boston-and Boston seems to be the favourite spot, I suppose it is because forty or fifty years ago that is where there was a great trek to Boston by Newfoundlanders -

Mr. Hickman: find themselves entitled to money. I have seen the family home, which was really the only asset, have to be sold in order to find sufficient funds to pay the share of people who did not even know that their dear departed uncle existed. That has to be changed, and it is going to be changed.

There is also another piece of legislation on our Statute Books which is used fairly frequently and that is The Family Relief Act where a testator, where a husband, for instance, makes a will leaving nothing to his spouse.

MR. NEARY: No pity for (inaudible).

MR. HICKMAN: I wish there were. But in any event I am being harrassed by some of the spouses who seem to have a very keen interest, Mr. Speaker, in the disposition of the matrimonial property.

But we do have cases, many cases, where a husband has tried to disinherit his wife. Now he cannot do it if he is alive, he cannot walk away and leave his wife a charge of the state because the family maintenance provisions of various provincial statutes will intervene. So there is a piece of legislation which allows a widow, say, to make application under The Family Relief Act, and there again the test is the need of the family.

But these are principles that are somewhat removed from the principles of this bill that are presently before us now, Mr. Speaker, because there you are looking at a question of need. And the principles contained in The Matrimonial Property Act has nothing to do with need, it is a matter of right, certainly insofar as the matrimonial property home is concerned.

There is a provision also in this bill, Mr. Speaker, that if upon the death of a spouse the surviving partner feels that it is in his best interest, or wants to do it, or her best interest or some reason, to go under The Intestate Succession Act or under the provisions of the testator's will, that they have the option to elect to go that route.

Mr. Hickman: Mr. Speaker, there is another provision in this Act which is a matter of some interest, certainly it is relevant to the principle of the bill, and that is that any persons, any married persons can contract themselves outside the provisions of the Act if they want to arrive at some other system of property ownership or by entering into a marriage contract prior to the marriage. And I think, Mr. Speaker, that it is relevant that 92 per cent of those who responded to the newspaper invitations and answers to questionnaires, that 92 per cent of those responding believe that couples should have the right to exempt themselves from the scope of this Act or, alternatively, enter into a marriage contract which deals with some of the assets in different ways from what the legislation provides.

There is another provision in the Act, Mr. Speaker, and that is a provision dealing with common-law union. Again we have the advantage of the experience in other jurisdictions.

MR. HICKMAN: In the Province of Ontario when they introduced their first bill, they simply said their act shall apply to all common-law unions the same as if they were married. Lo, and behold, the Attorney General, the hon. Roy McMurtry, found himself faced with a very large group of demonstrators outside his office and outside of Queen's Park and the legislature led by some very close friends of his he told me -

MR. W. N. ROWE: By his wife maybe.

MR. HICKMAN: No, not his wife. He has a very fine wife and a very fine family but in any event - saying very simply, 'We do not want this. If we wanted to be protected, if we wanted to have joint ownership of property, whether it be under the deferred sharing or otherwise, we would get married.' In many instances maybe they cannot get married because they are not divorced. 'We will look after our own interests; please do not legislate to protect us; we do not need the protection; we are mature people and if we wanted it we would ask for it. We do not want it.' They had to withdraw the bill.

This bill does not provide that blanket coverage to common-law unions as was set forth in the Ontario bill. But on the other hand, Mr. Speaker, we do have an obligation as legislators to recognize an obligation to protect people or give people the right to seek protection who are living in common-law union. I have seen some dreadful, dreadful cases in this Province of hardship because of the lack of protection, the lack of any legal liability to children of common-law unions. I can recall one case very vividly in the fifties where I was acting for the families of three men who were killed coming back from work in an automobile accident and it was clear that the third party was one hundred per cent liable, and there was adequate insurance. Two actions were taken by the mother as next friend of her children and in her capacity as the widow of the deceased. And for these days - I have forgotten the amounts

MR. HICKMAN: now; it would only be a small amount today-but at that time they were fairly large awards. I was having great difficulty with the third lady getting instructions to issue a writ and I kept pointing out to her that under Lord Campbell's Act it had to be taken within a year. I had sent her the forms that had to be signed whereby she consents that an action be taken in her name as next friend of her minor children. Then I finally got the truth. She eventually wrote me and said, "I do not want any action taken." I could not understand this because judgements had been given in the other cases. She had been living common-law all her life. These were the days before the Supreme Court of Newfoundland had divorce jurisdiction; this was the time you could only get a divorce by spending \$10,000 and going to the Senate. This lady's husband had disappeared on her when Argentinia Naval Base opened. He had gone to Argentinia to work, she knew he was still living somewhere in Western Canada or in the States. She had been living in this community with this man all her life, raised a fine family and they were living very happily. The people in the community were not aware that they were living common-law. She did not want this to become public knowledge and the other thing is that when I found it out I had to tell her that she did not have a case anyway. To me that was a gross, gross injustice. It would be equally unjust if we were to preclude people who are living common-law from agreeing to bring themselves within the scope of his act if they desire to do so. I am sure that there are many people living in that state of

MR. HICKMAN: union for many good and valid reasons, where there has been as much contribution by that common-law wife or spouse or whatever the word is, I have never been able to - there is no such a phrase, I know, as common-law marriage but it is a commonly used one. I do not quite know how you describe the party to that common-law union - but where she has made a contribution to the matrimonial home, has made a contribution to the raising of the family, has made a contribution to the success of her partner and to the education of her children to the same extent as if they had indeed been married. If I go back to that case that I referred to that I was involved in in the fifties, what a just thing it would have been if some years before that these two people had been able to bring themselves under a piece of legislation like this so that that woman and her family would not suddenly find themselves a charge on the state, with the wife without any propriety rights of the property.

Mr. Speaker, I repeat that this permissive legislation, which I think is long, long overdue, and legislation which is not designed to - as I say, this kind of legislation should not place us in a position of moralists where we judge on or legislate on the morality of people's conduct, nor can it be interpreted as promoting or condoning or aiding and abetting common-law unions. What it is doing, Mr. Speaker, is recognizing the existence of a fact that has been with us for a long, long time, and it would be rather idiotic to suspect that it will not be with us in the future, and that being the case then in my opinion, and I hope in the opinion of this Legislature, parties to that kind of an arrangement should, if they so desire, have the right by contract or agreement to bring themselves within the provisions and scope of this act.

One thing I am not sure I emphasized and said in dealing with these marriage contracts and so-called domestic contracts, that couples cannot contract themselves out of

MR. HICKMAN: their rights to the matrimonial home. By marriage contracts they can deal with their relationship insofar as it involves other assets and other provisions in parts of this act.

Now, Mr. Speaker, this bill is not going to be without some difficulties, Not difficulties for the people covered under the act, not difficulties, in my opinion, for the married couples, not difficulties in that sense at all; it is going to cause difficulties to the legal profession. It is going to make the searching of titles more onerous. It is going to mean that there will be a further obligation on the searching of titles because any lawyer now acting for a purchaser, or indeed acting for a vendor, will also have to enquire into the marriage status of the vendor or the purchaser. And if the person is married, then to make sure that the other spouse joins in the conveyance or joins in the mortgage-and I see nothing wrong with that. I see nothing wrong with the principle that if a husband decides for whatever reason that he must mortgage the family home, the matrimonial home in order to provide himself with funds for good reasons, reasons that may be in the best interest of his family, reasons that may enable him to expand on his business -

MR. HICKMAN: that when he is dealing with that matrimonial property home, the wife be given the opportunity to say aye or nay to that particular proposal, that the wife be given the opportunity to say whether she is prepared, along with her husband, to risk that last piece of security, in many instances, the matrimonial home, by mortgaging it. If she has no objection, she will not hesitate in signing the mortgage. If she does not like it, the husband will have to find financial accommodation in some other method.

SOME HON. MEMBERS: Oh, oh!

MR. HICKMAN: There will be that kind of wondering out loud, head shaking, tut-tutting at the kind of problems that may be involved in searching titles. You know, it is not an insurmountable one. Any lawyer with any experience, I am sure, can find an affidavit that would satisfy the discharge of that responsibility to be signed by a person saying, 'I am not married', or whatever. You could pick little pieces in the principle, and people will argue, 'You cannot go ahead with this because look at the inequity it might raise in a case.' You can always think of these little cases.

A man has one major asset, the family home, that he has built, acquired, paid for, worked for over a period of, we will say, twenty years. And then he decides to marry and he marries a lady who for one reason or another, either property she inherited from a former husband or property she has worked for and bought, she decides that the matrimonial home - and she has all kinds of property, she has houses galore - she decides that the matrimonial home will be the one that her husband owns. There you have a situation where, should there be a dissolution of marriage, or death, half of that home goes to the wife, whereas her properties are not subjected to that distribution of the marriage assets. Now, sure, there will be that kind of problem existing from time to time. You may have a situation - there was one brought to my attention where you have, we will say, a child of the marriage who is forty or fifty years of age, who has worked hard with her father - her mother is dead - and looked after the family home, and suddenly, the father decides to remarry and then the matrimonial

MR. HICKMAN: home is owned by the father and his wife; the father dies and the daughter finds herself in a situation where there may be some inequities.

And these will arise, but the question one has to ask, Mr. Speaker, is whether or not the principle of this bill, the principle of this law reform, is sufficiently urgent, sufficiently important, to make it incumbent upon us to proceed with it now rather than be deterred by some problems that may or may not arise in isolated cases in the future.

This legislation, also, Mr. Speaker, will be commented upon because of its retroactivity, the retroactive nature of the bill. People who are married in Newfoundland today entered into the vows of marriage, entered into the so-called contract of marriage, the vows of marriage under existing laws, and now the law is changing. The wife, who had no interest in the matrimonial home in the past because it was registered solely and exclusively in her husband's name, suddenly by an Act of this Legislature, finds that she now has

Mr. Hickman: a 50 per cent ownership in the house. And I say that is good. It is the only way we can treat it. We may have some lending institutions coming along and saying, We made loans to the husband and we took from him a mortgage as security on a matrimonial home that was his and his only, and now we find that the husband, the mortgagor only has a half interest in his property.

These are not really problems of substance. These, in my opinion, are not reasons for us to refuse to provide what is in effect retroactive application in this legislation, because if it is going to work there has to be a cut-off time somewhere.

By experience we have learned from the comments of the courts, we have had two or three cases in this Province, I am told, I know of two within the last two or three years, where the judges have expressed the view that their disposition, the courts disposition of the assets of the marriage upon divorce or the breakdown of the marriage would have been somewhat different if the law had allowed them so to do.

So, Mr. Speaker, I cannot think of any way to accomplish what this bill sets out to accomplish without making provision, or at least giving it in effect some retroactive implications, retroactive in the sense that married people in this Province will now find that their rights have improved, that they have acquired rights that were not present or available or in their minds at the time that they entered upon the vows of marriage.

I think it is significant as well, Mr. Speaker, that we have had a great deal of input from people in this Province, and I pay tribute particularly to the organizations such as The Status Of Women Council who did not simply take this bill or accept the invitation to make submissions and say, as is often the case, we simply want to make everything equal. They did a tremendous amount of research. They are very, very knowledgeable in the problems that have been faced by other jurisdictions as a result of their legislation.

Mr. Hickman: Our research has indicated that one of the best pieces of legislation so far enacted by a province is the one that came in, I think, it was the last one, maybe that is why - not the last one, the second last one that was brought in by the Government of Manitoba, and recently passed. There have been two. The previous government brought in an Act which they had not proclaimed, and that was the subject matter, I believe, of some controversy during the election. And as a result, when the new government came in they repealed that Act and brought in a new one, which I am told is a fairly good piece of legislation.

I do not want to be critical of other jurisdictions, but I am also told that one of the more recent Acts which does not even deal with the issues, and it was one that was brought in about a year ago on the eve of a certain contest in the Province of Nova Scotia, I believe that Act is about to be repealed. But we have had the benefit of input from these people. We have had the benefit of comments from people such as Mr. David Day, and I commend to hon. gentlemen his comments as contained in yesterday's issue of The St. John's Evening Telegram entitled, "Many People May Be Affected By Matrimonial Property Act." Indeed I think I will table that, Mr. Speaker, so if any hon. gentleman wants a copy he can then get a copy of it from the Table.

But I do, in closing, again, Mr. Speaker, want to repeat my opening statement that I have

MR. HICKMAN: nothing but gratitude to Mrs. Mary Noonan and Miss Margaret Cameron, two very knowledgeable lawyers in the field of family law, for the tremendous amount of work that they have done in the last three years - two years in particular - in not only reviewing existing legislation and in trying to isolate the consequential problems that may arise in other areas of the law, but who did such a splendid job of communicating with organizations such as the Status of Women Council and others and keeping them fully appraised of the significance and the effect of this proposed legislation.

Mr. Speaker, I think I have covered all the principal points in this bill. I have no hesitancy in saying that this is the most major piece of law reform to come before this Legislature, certainly since we have become a Canadian province, and probably before.

MR. W. MARSHALL: The bill is the most major.

MR. HICKMAN: Is that good?

MR. W. MARSHALL: Bad grammar.

MR. HICKMAN: It is bad grammar. Most major is not - I have been corrected. But I cannot think of a more significant piece of law reform legislation.

AN HON. MEMBER: (Inaudible).

MR. HICKMAN: Then, to correct my grammar, it is the most significant piece of law reform legislation to come before this Legislature since we have become a Canadian province. And it is designed to keep the family unit together and at the same time, provide adequate protection for both spouses, and particularly the spouse who has been ignored so long over the years and left so unprotected, namely, the wife.

I was about to sit down, but, Mr. Speaker, I want to review my notes again over the weekend to insure that I have covered the various principles in this bill that are significant and I will take the liberty of adjourning the debate although I do not anticipate having anything more to say. Thank you, Mr. Speaker.

May 11, 1979

Tape 1271

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SOME HON. MEMBERS:

Hear, hear!

MR. W. MARSHALL:

Mr. Speaker, I move that the House at its rising do adjourn until tomorrow, Monday at 3:00 P.M. and that this House do now adjourn.

On motion, the House at its rising adjourned until tomorrow, Monday, May 14, 1979 at 3:00 P.M.