

PRELIMINARY

UNEDITED

TRANSCRIPT

HOUSE OF ASSEMBLY

FOR THE PERIOD:

3:00 p.m. - 6:00 p.m.

TUESDAY, NOVEMBER 20, 1979

The House met at 3:00 P.M.

Mr. Speaker in the Chair.

MR. SPEAKER (Simms): Order, please!

First of all I would like to recognize and welcome to his first sitting, the new member for St. Mary's-The Capes (Mr. D. Hancock) who was sworn in earlier today.

SOME HON. MEMBERS: Hear, hear!

MR. NEARY: That is only the beginning, Mr. Speaker.

MR. SPEAKER: Order, please! With respect to the amendment made yesterday by the hon. member for the Strait of Belle Isle (Mr. Roberts), I ruled yesterday that the amendment is in order and that the question of whether or not it was debatable would be deferred to today's sitting. I am now prepared to rule that the amendment is debatable.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER: Reference is made to Hansard, June 27, 1978 and Hansard, May 2, 1975 in which precedents have been set. I would like to carry on and point out to all hon. members that after an amendment has been moved and seconded, the question on the amendment is proposed and any member who speaks after that question has been proposed speaks to it and not to the main question.

Standing Orders 47 to 53 apply, and in particular Standing Order 49 (1) provides a thirty minute time limit for each member. Standing Order 36, for the benefit and information of hon. members, sets out how the motion is to be put. The question is put by the Speaker, "Shall the words proposed to be left out stand apart of the question?" If this is resolved in the affirmative then the amendment is disposed of. If it is resolved in the negative, then the further question is put by the Speaker, "Shall the words proposed to be inserted by the amendment be there inserted?" There is no further debate at that point in time and the decision as to what happens to the amendment is then made.

One final point I should make is that when

MR. SPEAKER (Simms): the amendment has been disposed of and the main question has been proposed, we revert back to the main question, any member may speak who has not already spoken on the main question, whether or not he spoke on the amendment.

The mover and seconder of the amendment, if they have spoken to the main question, cannot speak to it again. In other words, a member who has spoken only on an amendment is entitled to speak on the main motion after the amendment is disposed of.

ORAL QUESTIONS:

MR. SPEAKER: The hon. member for St. Mary's-The Capes.

SOME HON. MEMBERS: Hear, hear!

MR. HANCOCK: Thank you, Mr. Speaker. I have a question I would like to address to the Premier of the Province. I guess it is just as well to start at the top and work your way down. In the recent by-election, the hon. Premier visited our district, first in a four-wheel drive, and I guess the road conditions were so bad he came back the second time in a helicopter about which there is still a lot of talk in our district. Our district, Sir, consists of about 200 miles of roads. A little better than one third is unpaved and, in the last few days of the campaign, the Premier came to my district and promised better road conditions. My questions to him, Sir, is when can we expect better road conditions? Even payment, is that too much to ask for?

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER: (Simms) The hon. the Premier.

PREMIER PECKFORD: Mr. Speaker, as a matter of fact I did visit the great district of St. Mary's-The Capes to which the hon. member refers. I did not leave the district of St. Mary's-The Capes and come back in a helicopter. I travelled every inch of road in the district of St. Mary's-The Capes in a four-wheel drive and car. I did not leave after that point and come back in a helicopter. As a matter of fact, I had the helicopter come to St. Mary's-The Capes after I had driven over every inch of road in St. Mary's-The Capes. There has been a lot of improvements made on road conditions in the district of St. Mary's-The Capes over the last five or six years.

SOME HON. MEMBERS: Hear, hear!

PREMIER PECKFORD: As a matter of fact, Mr. Speaker, I think that if one wrote down the districts in the Province, St. Mary's-The Capes have gotten more money for road reconstruction and paving than any other district in the Province of Newfoundland and Labrador.

SOME HON. MEMBERS: Hear, hear!

PREMIER PECKFORD: Pursuant to that, Mr. Speaker, to be specific \$17 million has been spent on road reconstruction and paving in St. Mary's-The Capes.

SOME HON. MEMBERS: Hear, hear!

PREMIER PECKFORD: I can go on, Mr. Speaker, to directly answer the hon. member's question and indicate that we will continue to give high priority to the roads in St. Mary's - The Capes, as we will to all districts in the Province because it is this government's intention to insure that road reconstruction and pavement continues, in the Strait of Bell Isle, in St. Mary's-The Capes, on the Burin Peninsula, in Burgeo and Bonavista South, all over this Province, more so than ever before in the past.

SOME HON. MEMBERS: Hear, hear!

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER: (Simms) Order, please! A supplementary.

The hon. member for St. Mary's - The Capes.

MR. HANCOCK: Thank you, Mr. Speaker.

There has been a lot of money spent on roads in my district and in every other district, I am sure, but I am sure a large majority of that money was federal money and came through the past administration in Ottawa and not who is up there now.

SOME HON. MEMBERS: Hear, hear!

MR. HANCOCK: Liberal money, Sir. Liberal money.

MR. SPEAKER: Order, please! If the hon. member has a question?

SOME HON. MEMBERS: Oh, oh!

MR. HANCOCK: There has been very little done in the last eight years, Sir, very little in that area. Is the Minister of Transportation and Communications (Mr. Brett) aware of the road conditions in our area and if so what does he plan to do about it in the future? Shall we look forward to better conditions? Answer the question.

MR. SPEAKER: The hon. the Premier.

PREMIER PECKFORD: Mr. Speaker, let me reiterate what I said earlier. I know the hon. member is a new member. He might not be aware - I would direct him to the Budget of the Government of

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PREMIER PECKFORD:

Newfoundland for the last five or six or seven years, to the Public Accounts of the Province, and he will see there tangible proof, concrete, substantial proof that every nickle of money that went into the road reconstruction and paving in St. Mary's-The Capes came from this government in St. John's.

SOME HON. MEMBERS:

Hear, hear!

PREMIER PECKFORD: We are very proud, Mr. Speaker, that we have been able to provide 100 per cent of the money in St. Mary's - The Capes. We are very proud of the fact and we can assure the hon. member that we will continue to improve road conditions in St. Mary's - The Capes as we will all over the Province over the next three or four years. The massive amount of money that is to be spent, Mr. Speaker, in the next three or four years on road reconstruction and paving in this Province will boggle the mind of the hon. member.

SOME HON. MEMBERS: Hear, hear.

MR. SPEAKER: (Mr. Simms) The hon. member for LaPoile, followed by the hon. member for Grand Bank.

MR. S. NEARY: Mr. Speaker, I would like to direct a question to the hon. the Premier, Sir, in connection with the government's policy adopted some time ago of subsidizing fish plants to enable these plants to enter into an agreement with the Newfoundland Fishman Food and Allied Workers union. I understand, Sir, just to give the House some background, that the last agreement that was signed was signed as a result of the government giving either outright grants or subsidies to the fish plants so that they could meet the commitments that they had made to the union. Would the hon. gentleman indicate what part of Newfoundland and Labrador that policy applies to?

MR. SPEAKER: The hon. the Premier.

PREMIER PECKFORD: Mr. Speaker, the hon. member for LaPoile gave me notice just before the House convened here while we were sitting down waiting for the House to open, and I indicated to the hon. member I would take the question that he proposed to ask under advisement and to find out. The hon. member apparently believes that there is some discrimination in his district in the Southwest corner of the Province as it relates to fish plant workers or fish plant operators and therefore I will take the matter under advisement and have a full answer for the hon. member tomorrow.

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

MR. SPEAKER: (Mr. Simms) A supplementary, the hon. member for LaPoile.

MR. S. NEARY: Mr. Speaker, would the hon. gentleman indicate the cost to the taxpayers of these grants that were given to fish plants and I understand the grants or subsidies, whatever you want to call them, applied only to fish plants up as far as Burgeo and all the plants on the Southwest corner of the Province were left out for some reason or other even though they all have to negotiate union contracts. Would the hon. gentleman indicate what the cost, if he has any idea, what the cost to the Public Treasury was of subsidizing or giving grants to these fish plants so they could sign a contract with the union?

MR. SPEAKER: The hon. the Premier.

PREMIER PECKFORD: Mr. Speaker, I do not know off the top of my head what the cost was but I will get the information this afternoon and tomorrow morning and inform the hon. member and this hon. House of it tomorrow and give the reasons why the agreement specifically excluded, if in fact it did, the area to which the hon. member refers.

MR. S. NEARY: A final supplementary, Mr. Speaker.

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

MR. S. NEARY: Mr. Speaker, the hon. gentleman has received a letter, the hon. Premier, from Billard's Fishery Limited of Margaree who are in the same boat as the other fish plants that I am talking about who are now faced with a pay out of \$55,000. The hon. gentleman has received communications from the owner of that plant, Mr. Billard. Will the hon. gentleman indicate if now, in view of the fact that this plant may have to close down and other plants in that area, small plants may have to close down because they were not treated the same, they were discriminated against as compared to the big fish plants in Newfoundland like Fisheries Products, would the hon. gentleman indicate whether he will look into the possibility of subsidizing or giving the same grant equal treatment to the plants on the Southwest corner of the Province?

MR. SPEAKER (SIMMS):

The hon. the Premier.

PREMIER PECKFORD:

Mr. Speaker, I think it is unfair to indicate at this point in time because the hon. member has failed to substantiate saying that we have been discriminatory in our actions as it relates to supporting large fish plants as opposed to small fish plants. But I can assure the hon. members, and I can assure this House and the fish operator in Margaree, as I can all fish operators around the Province, that we will be fair and reasonable in how we approach the whole question of subsidization if, in fact, that is indeed a part of the collective agreement.

MR. S. NEARY:

And I will get the answer tomorrow?

PREMIER PECKFORD:

And you will get the answer tomorrow on that.

MR. SPEAKER:

The hon. member for Grand Bank.

MR. L. THOMS:

Mr. Speaker, it is with a great deal of fear and trepidation, awe and respect that I stand to ask the question here in the seat previously held by the member-elect for Burin - St. George's (Mr. R. Simmons). However, I would like to ask the President of the Council a question. Chief Browne of the Royal Newfoundland Constabulary has been reported as saying that he thinks what is commonly known the Lock-up here in St. John's is satisfactory. He is also reported to have said some time ago that his advice as to the conditions - if you did not like the conditions of the Lockup on Water Street in St. John's, then the best remedy was to stay out of jail. Now, Mr. Speaker, I am quite familiar with the Lockup here in St. John's -

SOME HON. MEMBERS:

Oh, oh!

MR. L. THOMS:

- in my capacity as a lawyer only. Unless things have changed radically within the last few months, that place is really unfit for to hold a person temporarily, if at all, Mr. Speaker, I would like to ask the President of the Council (Mr. Marshall) if there are any plans by the government to relocate the Lockup and give it new premises? because I do not think the premises can be renovated or anything to do any good where it is right now. It is right out of the Middle Ages!

MR. SPEAKER: (SIMMS)

The hon. President of the Council.

MR. W. MARSHALL:

Mr. Speaker, jails are unpleasant places anyway, but I concur with what the hon. member for Grand Bank (Mr. Thors) has indicated that as far as the jail here in St. John's is concerned that it is old, it is in need of renovation, shall we say, and I can only say that that, with a lot of other buildings that we have in this Province, are buildings that the government would like to see renovated or altered. And we have a long-term hopes of being able to realize this desire and that as far as his specific question with respect to the cells at the Lockup are concerned it is a matter that is of some concern to the government in conjunction, as many other places are of concern, and it is a part of the ongoing programme of the government to refurbish and hopefully as soon as the financial constraints allow it and permit it we shall be doing everything that we possibly can, not only with the cells but with respect to other buildings that have become obsolete, unfortunately, over the years.

MR. SPEAKER (Simms): The hon. member for Grand Bank.

MR. THOMS: Thank you, Mr. Speaker. Well, in reality, of course, it is the whole courthouse complex down there is a deterrent to the proper administration of justice in the Province and I wonder if the President of the Council could tell me whether or not there are any plans in the near or distant future to have a new courthouse in St. John's?

MR. SPEAKER: The hon. President of the Council.

MR. MARSHALL: Of course, Mr. Speaker, we all have plans for better facilities in the future. I can say that the government has moved, particularly in the Department of Justice, in recent years. As we all know, a new building for the Royal Newfoundland Constabulary has been constructed here in St. John's. There are extensions to the Penitentiary. The courthouse has certain inadequacies, as many as other buildings, and I can only reiterate my last answer to the hon. member, that we hope to be able - I would not say replace it, because that is one of the finer buildings in the Province architecturally and it certainly has an historic significance, but, as I say we are considering it. We have already made I think giant inroads in recent years into the refurbishing of buildings of the Department of Justice and we certainly will keep that in mind when we establish priorities from time to time.

MR. NEARY: A supplementary, Mr. Speaker.

MR. SPEAKER: The hon. member for Torngat Mountains, unless you wish to yield.

MR. WARREN: I yield for the supplementary.

MR. SPEAKER: The hon. member for LaPoile on a supplementary.

MR. NEARY: Along the same line of questioning that my hon. friend directed towards the President of the Council, Sir, and I will make it brief, I will ask a double-barreled question, and I thank my hon. friend for letting me ask the supplementary because it is very important.

MR. NEARY: Would the President of the Council indicate if there is overcrowding at the Penitentiary and if now the stories we hear about are correct, that people who are sentenced are serving their sentences on weekends and on holidays and in the evening and so forth and sometimes one day a week? You almost have to book a reservation to get into Her Majesty's Penitentiary. And correct that when you go down there, some of these people, the preferred customers, if you want to put it that way, inmates, they can go down and they have a trailer down there, they can sleep in the trailer, have coloured television and bring along a flask? Is that the kind of way now that the people who are sentenced by the courts in this Province are being treated by the Justice Department?

MR. SPEAKER (Simms): The hon. President of the Council.

MR. MARSHALL: I hardly, I do not think, I hardly need answer the latter question. I do not think it is voiced seriously. With respect to the Penitentiary, as the population increases so - I hope not in direct proportion, but so do the inmates of the penitentiary over the years been increasing from time to time. And, as I say, there are extentions to the Penitentiary, and renovations that are in the course of being effected at the present time. Now with respect to the observation that the hon. member made concerning persons booking in time on the weekend, that has no relationship to the accommodations. In this day of social justice, and the parole workers, and social concerns and remedial types of punishment for people, it is provided under the Criminal Code of Canada

Mr. Marshall:

that in certain offences that sentences may be served on weekends at various times to enable the person to become rehabilitated much more appropriately. And that is the reason why people come in and out of the Penitentiary, not because of lack of space. And the few occasions where there might be some lack of space, this is being done with a degree--

MR. NEARY: (Inaudible).

MR. MARSHALL: - of planning. But that happens very, very rarely, and in most cases where these sentences are served intermitently it is because of the Criminal Code with the view to rehabilitating a person brought in a situation.

MR. NEARY: That is sheer nonsense!

MR. SPEAKER (SIMMS): The hon. member for Torngat Mountains.

MR. NEARY: (Inaudible).

MR. SPEAKER: Order, please! The hon. member for Torngat Mountains.

MR. WARREN: Mr. Speaker, my question is for the Minister of Transportation and Communications (Mr. Brett), As the minister is aware that the Department of Public Works, federally, have closed off their heat for the sand pit in Happy Valley-Goose Bay, and this is the sand that is used for major roads in that area. In light of this fact, and the Town Council do not want to have salt shipped into the area, has the minister been in contact with the Federal authorities to see if the heat can be turned on to this sand pit, in view of the fact that winter has already set in in that area of Newfoundland and Labrador?

MR. SPEAKER: The hon. member for Transportation and Communications.

MR. BRETT: Yes, Mr. Speaker, we have been in touch with the Federal Government, and I understand the Federal member is also trying to do what he can there. Salt would be of no use anyway because of the temperature. But if we cannot heat the sand, we will just have to

Mr. Brett: do the best we can with, you know, what is there. But we have been in touch with the Federal Government, we are still negotiating with them.

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

MR. F. ROWE: Mr. Speaker, in the absence of the Minister of Fisheries (Mr. Goudie), I would like to address the question to the Premier, and the question is based on the assumption that the Premier is aware of the fact that there has been a freeze placed on the Small Crafts Harbours Division of the Department of Fisheries and Oceans, and also I understand they have been ordered not to support Canada Works projects for the purpose of building harbour facilities and fishing facilities in the various communities throughout the Province. So there has been a complete freeze on the Small Craft Harbours Division with respect to monies available, and approval of, and support of Canada Works project. Assuming that the Premier is aware of this, Sir, I wonder if the Premier could indicate to the House what actions his government has taken with respect to freeing up some funds by contacting our fish and chip friends in Ottawa, namely, the Minister of Fisheries, Mr. McGrath, and Finance, Mr. Crosbie?

MR. SPEAKER: The hon. the Premier.

PREMIER PECKFORD: I thank the hon. member for his question. It is a very timely question indeed. When I spoke to the Prime Minister a week and a half ago, I did raise that issue with him, that we thought that it would be very wise money spent if some of the Small Crafts Harbours money could be freed up to support and complement applications now in for very worthwhile public works and fisheries projects. And so I did make representation to the

PREMIER PECKFORD:

Prime Minister directly. Considering that I should do something in writing this morning after talking on the phone over the last number of days with a number of ministers in Ottawa, I have wired the minister, Mr. Atkey, I have wired Mr. Crosbie, the Minister of Finance, and I have wired the Minister of Fisheries and Oceans, Mr. McGrath, on the matter supporting the concept of additional money to Small Craft Harbours to specifically support projects now in the mill from Canada Works.

AN HON. MEMBER:

Hear, hear.

MR. F. ROWE:

A supplementary, Mr. Speaker.

MR. SPEAKER: (Simms)

A supplementary, the hon. member for

Trinity - Bay de Verde.

MR. F. ROWE:

Thank you, Mr. Speaker. I thank the Premier for his answer. I have been meeting with officials of the Small Craft Harbours Division within the period that the Premier was talking about, and up to that particular point in time there have been no memos or directives issued from Ottawa to obviously infuse more capital into that particular division of the Department of Fisheries and Oceans. Could the Premier indicate approximately what time he is expecting to receive an answer with respect to getting additional funds for the Small Craft Harbours Division? Also, could he indicate to the House the degree or the amount of money, some estimate of the amount of money that is being requested because I think they have only been receiving something in the order of \$3 million to \$5 million over the past number of years which has been maintained at that level for those number of years? And my conversations with the officials indicate that the need is in the order of \$10 million, \$15 million to \$20 million. When and how much?

MR. SPEAKER:

The hon. the Premier.

PREMIER PECKFORD:

Well, that covers a long range, \$10 million to \$15 million to \$20 million; you know, you double your figure and parameters so the hon. member's question is difficult to

PREMIER PECKFORD: answer in that regard because he makes sure he has got himself covered in the sense that he goes from \$10 million to \$20 million in one fell swoop and in one breath.

When, Mr. Speaker -

MR. F. ROWE: A point of order, Mr. Speaker.

MR. SPEAKER: (Mr. Simms) A point of order, the hon. member for Trinity - Bay de Verde.

MR. F. ROWE I am not trying to misrepresent the information that has been given to me by officials of the Small Craft Harbours Division. I simply stated that over the past number of years \$5 million has been made available to Small Craft Harbours Division and the estimate is that the need is in the order of \$10 million to \$15 million. I did not say that was what was forthcoming.

MR. SPEAKER: Order, please! I would rule that this is not a point of order but perhaps more in the line of a difference of opinion between two hon. members.

The hon. the Premier may continue.

PREMIER PECKFORD: Thank you, Mr. Speaker. I do not mean to make light of the situation with the hon. member. The need, I suppose, when one gets down to need and how you define need, it could all the way to \$100 million when one looks at the number of applications people would like to put in for much needed projects around the Province for wharfs and for fishing facilities. So, you know, it is hard to put any reasonable parameters on it.

When, Mr. Speaker; we anticipate an answer within seven to ten days, ten days on the outside, to the whole question of funding to assist in these Canada Works projects, the range of funding, I do not know. That is a matter that Fisheries and Oceans will have to decide with their finance

PREMIER PECKFORD: people in Ottawa. I do not know what the thing is, I would hope that it is at least at the level that it has been in other years and hopefully there is some improvement in that level, and that is about all I can say. I know that initiatives are underway in Ottawa now, this week, to try to free up additional funds for this very worthwhile purpose. I recognize, acknowledge, appreciate, understand and am sensitive to the fact that there might be \$15 million, \$20 million or \$30 million worth of need, if we can, as I say, get somewhere above what has been the level in other years I think we would be doing fairly well and our support is 110 per cent behind them.

AN HON. MEMBER: What is the figure?

PREMIER PECKFORD: I do not know what the figure is. I am looking at somewhere above what it has been in other years.

MR. SPEAKER: (SIMMS) The hon. member for LaPoile, followed by the hon. member for St. Barbe.

MR. S. NEARY: Mr. Speaker, my question is for the Minister of Finance, Sir, would the hon. gentleman tell the House what is behind this crackdown on the cabarets and the bistros and the night clubs and the taverns and the restaurants in the Province? What is behind all of this?

MR. SPEAKER: The hon. Minister of Finance.

DR. J. COLLINS: Mr. Speaker, I presume the hon. member is referring to a notification that went out from the Liquor Licensing Board to the various lounges and bars and so on, establishments licensed to purvey alcoholic liquids, that the provisions in the Liquor Licensing Act in terms of extensions to the hours during which business may be carried on will now be brought into force as stated in the Act. The Act does state that the boards may, on special occasions such as banquets and so on and so forth, extend these hours, and the notification merely stated that the provisions in the Act now will be carried out strictly according to the Act.

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

MR. SPEAKER: A final supplementary, the hon. member for LaPoile, followed by the hon. member for St. Barbe.

MR. S. NEARY:

Mr. Speaker, the hon. gentleman did not answer my question. I asked the hon. gentleman what was behind it. Was there an abuse of the privilege of getting extensions? Is it a morality move on the part of the government, this crackdown? Or was the law being broken? Because the hon. gentleman is fully aware that the Newfoundland Liquor Corporation have cracked down on extensions, even for special occasions, that they said there would be no more extensions once the extensions that are out now run out. What will be the implications of this? Will it create any unemployment as here on the air? What will be the implications and why was this drastic crackdown all of a sudden so necessary? What was behind it?

MR. SPEAKER: (SIMMS)

The hon. Minister of Finance.

DR. J. COLLINS:

Mr. Speaker, firstly, the hon. member asked would it have any effect on unemployment. I greatly doubt that. The number of extensions

DR. COLLINS: given to lounges and bars was quite a small number. Quite a small percentage of the total numbers did ask for and did receive extensions. I think it was less than five per cent. There are something over 600 lounges and bars in the Province and something less than five per cent, I believe, did on any regular basis ask for extensions. So I do not think it will have any significant impact in terms of employment. Despite that, there had in actual fact in recent times, for whatever reason, there has been an increase. The percentage of lounges and bars requesting extensions was considerably smaller than that up until recently, it was something in the order of one per cent. Relatively recent there had been a bit of an increase up to something of the order of five per cent, and the Board just felt it had to look at the situation and in doing so it felt that the rate of requests was getting rather excessive so it had to bring to the attention of the owners and operators of these lounges that it would carry out the provisions of the act according to how they were written.

MR. SPEAKER: (Simms) The hon. member for St. Barbe.

MR. BENNETT: Mr. Speaker, my question is directed to the hon. Minister of Municipal Affairs and Housing.

In view of all the excitement that was created before June 18th with regards to the Provincial Home Ownership Assistance Programme, I would like to ask the hon. minister how many applications has been received by his department, how many dollars has actually been approved to go out, or how many dollars have actually gone out on this programme?

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

MR. WINDSOR: Mr. Speaker, I can advise the hon. House that we have had in excess of 1,200 requests for information on this programme and as a result have mailed out to persons in the Province

MR. WINDSOR: applications, application forms to these 1,200 people and the information relating to the programme. As a result of that, well in excess of 300, I think somewhere in the order of 350 or 375 applications have actually been received. We anticipate that some seventy per cent of these will actually translate themselves into approved applications. In other words, perhaps some thirty per cent of those received will not for one reason or another be eligible for this funding. I can also advise that just this week we issued the first cheque, which means that the first person who began to build his home after the August 1st. deadline has actually completed his home to at least sixty-five per cent, has taken occupancy and has received his funding. I would also like to point out to the hon. House that the programme has been extremely well received and on the basis of our analysis appears to be extremely effective particularly in the rural areas and we are

MR. WINDSOR: looking at revising or upgrading the programme as we anticipated, in fact, when we put the programme in place that we would need to look at it again for next year as it relates to urban areas.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER (Simms): The hon. member for St. Barbe.

MR. BENNETT: The hon. minister just about answered - apparently, I understand, Mr. Minister, there has only been one approval -

MR. WINDSOR: (Inaudible).

MR. BENNETT: Did you say one?

MR. WINDSOR: One cheque issued.

MR. BENNETT: One cheque issued.

MR. WINDSOR: (Inaudible).

MR. BENNETT: Yes, I see.

MR. NEARY: Does the hon. gentleman have any money to pay out?

MR. SPEAKER: Order, please! Is that the question from the hon. member?

MR. BENNETT: I do understand the -

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER: Order, please!
The hon. member has the floor.

MR. WARREN: I understand there are to be amendments made, Mr. Minister, for this. Are there not to be amendments made so that it can be more readily contributed to the people who want to get into new homes? I understand there are to be amendments made to this programme?

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

MR. WINDSOR: If I could, Mr. Speaker, first of all clarify the first point the hon. gentleman made, there has only been one cheque issued. There have been almost 300 applications which are either approved or

MR. WINDSOR: are in the process of being approved and which we anticipate will actually receive approval. How many actually have been approved and notifications sent out, I am afraid I do not have the exact figure. But there is only one person who has actually completed his home to a level that he can move in and receive his funding.

MR. NEARY: A great programme, one cheque issued.

MR. WINDSOR: The question also that the hon. gentleman asked in his original one that I did not address, how much funding has actually been committed, I do not have an exact figure but we have every indication that we will in fact use up all of the funding that was allocated for this year. All the funds that were allocated in the budget for this year for this programme will be taken up, something in the order of \$500,000.

And as it relates to the amendments for next year, I did not say there would be amendments, I said that in conjunction with our five year review, a review for the five year plan of the Department of Housing, which are plans which all departments are doing, we are analyzing the programme to see where it has been effective, where there may be weaknesses and where improvements may in fact be needed for next year and, if necessary, we will make proposals to Cabinet for amendment to the programme for next year.

MR. SPEAKER (Simms): A final question, the hon. member for Bonavista North.

MR. STIRLING: Thank you, Mr. Speaker. A question for the Premier in his capacity I guess as pinch hitting Fisheries Minister. About two weeks ago I brought to the attention of the Premier some points that were raised by a member of the Fisheries Loan Board. Specifically they had to do with (1) political interference, (2) the number of applications in front of the board, and the lack of meetings of the board. Would the Premier care to comment on those three points?

MR. SPEAKER:

The hon. the Premier.

PREMIER PECKFORD:

Mr. Speaker, as I have indicated on a number of occasions, the whole Fisheries Loan Board operation is under review by government at the present moment. As to the question of political interference,

Premier Peckford:

there might be members on the Board, staff of the Board who allege such activity, you know, and they are at liberty so to allege. I am interested in seeing that the Board operate efficiently and effectively, and having it reviewed totally to ensure that it does. There have been a number of Board meetings in the last week and a half or so, and, I think, at least two Board meetings, and the staff of the Loan Board are working very hard, some of the people who are in the field to do inspections on small bounties, small boats. I think there are 800 applications in and they are trying to finish off all inspections by November 30. There has been about \$13 million expended to date. And all applications that have been approved for whatever part of fishing gear or boat have been honoured so that that work can go on. All the shipyards in the Province have been assured that the work that they have at the present moment will be completed, that all of that money will be forthcoming. And the review, the total review, will be finished by November 30, and a policy statement by government will be made early after that date.

So the Board has met. The question of political interference, if some member of the Board would care to make that clear to me or to some member of government so that we can investigate it, I would be only too happy. I have indicated that in the past I would welcome somebody to come forward with that information. So the whole thing is under review and we are ensuring that all approvals that have been made are being honoured - \$5 million last year, \$13 million this year - and now we are reviewing to see what kind of support is necessary between the 1st. of December and March the 31 to ensure that the fishermen who have ongoing commitments can get on with the business of getting their boats built or additional gear put in place.

There is some problem dealing with fishermen, for example, or in the most critical area where they have approval from the Federal Government for some Federal subsidy on a new boat and are awaiting approval of loans from the Fisheries Loan Board. They are very critical. So we have to prioritize the problems that we have

Premier Peckford: there when you are talking about hundreds and hundreds of applications for boats, well over one thousand applications on that score, and hundreds and hundreds of applications for other things like motors and other gear. So, you know, we are well aware of that situation. It has been fully reviewed. And I can assure the hon. member that we are trying to prioritize the problems in order of their need, and hopefully be in a position early in December to make a substantial announcement on how we see the Fisheries Loan Board proceeding between the 1st. of December and March 31, 1980.

MR. SPEAKER (SIMMS): Order, please! The time for Oral Questions has expired.

I would like to, on behalf of all hon. members, welcome to the gallery today the President of the Newfoundland Pharmaceutical Association, Mr. Brian Healey.

SOME HON. MEMBERS: Hear, hear!

ANSWERS TO QUESTIONS FOR WHICH NOTICE HAS BEEN GIVEN

MR. SPEAKER: The hon. Minister of Lands and Forest.

MR. MORGAN: Mr. Speaker, a couple of days ago in reply to a question placed orally in the House by the member for LaPoile (Mr. Neary) in connection with the spray programme and matacil left on hand, the information I could not give him then, was what amount of matacil and the value of it? Mr. Speaker, I can now inform the House that there are 706 barrels of matacil presently on hand in the Province. The approximate value is a half a million dollars, \$500,000. We have been in contact with the Provinces of New Brunswick and Nova Scotia and Quebec. So our potential buyers, we have written them, and we have also been in contact by telephone, and in meetings, to outline that this matacil is for sale, and to date there has been no buyer, at least no buyer indicating at this time they want to buy now. But there is a potential buyer for the matacil between now and the next spray programme of 1980.

ORDERS OF THE DAY

MR. MARSHALL:

Order 2 - Committee of the Whole.

MR. SPEAKER (SIMMS):

Order 2 - Committee of the Whole on
a bill, "An Act To Reform The Law Respecting The Property Of Married
Persons, (Bill No. 1).

On motion that the House resolve itself
into a Committee of the Whole House, Mr. Speaker left the Chair.

COMMITTEE OF THE WHOLE ON SAID BILLS

MR. CHAIRMAN: (Mr. Baird)

Order, please!

A bill, "An Act To Reform The Law
Respecting The Property Of Married Persons". (No. 1)

On motion, clause (1) through clause

(15) carried.

MR. CHAIRMAN:

Shall clause (16) carry?

MR. T. RIDEOUT:

Mr. Chairman, on clause (16).

MR. CHAIRMAN:

The hon. member for Baie Verte - White
Bay.

MR. T. RIDEOUT:

The Minister of Justice (Mr. Ottenheimer)
is not here, Mr. Chairman, but I do believe, if I remember the debate
properly, that there was some discussion in the debate on the principle of
this bill with regard to a time element.

MR. W. MARSHALL:

I can answer that.

MR. T. RIDEOUT:

Okay, the President of the Council says
he can answer it so I will sit down and allow him to answer.

MR. CHAIRMAN:

The President of the Council.

MR. W. MARSHALL:

Well, Mr. Chairman, that point was brought
up by the hon. member for the Strait of Belle Isle (Mr. E. Roberts) and
he spoke on it very forcibly at the time. The hon. Minister of Justice
responded at the time that the matter is being considered now. In the
present situation the limitation period that would apply would be a
limitation period that is already provided under the general statutes
of this Province. For example, if it related to real property, the
limitation period of time would be a twenty year period; if it related
to personal property then the limitation of actions personal would apply.

Now, at the present time, the policy
of the government is that it is going to leave it at the present. This
bill does not come into effect until six months from - I think it is
June 30th, is it not.

MR. HON. MEMBER:

July 1st.

MR. W. MARSHALL: July 1st, yes, it does not come into effect until July 1st. The observations that were taken, as happens from time to time, or observations are required to be weighed and the government is weighing them, and I can inform the Committee and the hon. member as I have already informed, by the way, the hon. member for the Strait of Belle Isle in private, that government will consider these matters and the Department of Justice will be formulating opinions on it which can take a little while. And if it is necessary to make an amendment we will be bringing in an amendment in the second session of this Assembly which will come into effect, if it is necessary, before July 1st. But it will only be with respect to the limitation if we find it necessary.

The point that was raised by the hon. member for the Strait of Belle Isle requires a certain amount of research and this relates, the members of the Committee may not recall, to the limitation period in which time for actions can be taken. and we want to afford enough time to do research so that we just do not make an amendment in Committee and jump into something that we will regret afterwards.

MR. RIDEOUT:

Mr. Chairman.

MR. CHAIRMAN: (Mr. Baird)

The hon. member for Baie Verte - White Bay.

MR. RIDEOUT:

Mr. Chairman, I thank the hon. President

of the Council for his answer and in that part of the question I assume we were talking about outer limitations like the twenty year business and the other one. What I also have a concern about is downward limitations. I have had questions posed to me, for example, by constituents along the line - you know, I am not trained in legalese so forgive me if I am a bit awkward explaining it but along the line of how close - for example, a much older man marries a younger woman and they are married four or five years and he dies or whatever, is there going to be a limitation on the downward end as well as on the other end? There are a lot of people asking questions about that, you know, whether all the property and assets and so on that he has built up as a single person, is there going to be a limitation before the other spouse is entitled to a full 50 per

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MR. T. RIDEOUT: cent of the share? It is a difficult question. I had difficulty addressing it when constituents asked about it but it is a legitimate concern of a certain segment of our society and I suppose it is fair to say that they deserve

MR. RIDEOUT:

some kind of answer in terms of what the government's intentions are.

MR. CHAIRMAN: (Baird) The hon. President of the Council.

MR. MARSHALL: Mr. Chairman, we have considered that and we do not really think that the observation of there being a downward limit is really a valid observation for this reason: If, in the example that the hon. member gave, there is a marriage between an elderly person and a younger person it is always possible, and I think that this has not been really addressed by people who tend to from time to time criticize this act, it has not really been, I think, as widely known as it certainly should, that it is competent for people to enter into a contract contracting out completely from the provisions of this act if they so desire, if this is their choice in all of its aspects and that is the position, really, that the government is taking. Now, when you come down to the measure of the number of years a person is married, whether they had to be married one year or two years or three years to take the benefit of this act, I am not quite sure myself - as a matter of fact, I do not really think that the observation is valid but just let us say that there is some validity to it, the next question one has to ask is where does one draw the line? Whether it is going to be six months, one year, two years, three years or four years? It is a most difficult premise. It would work, we feel, rank injustices in many cases where, for instance, somebody, say, is married for three months and then the unfortunate situation where one of the spouses gets accidentally killed, you get that particular situation, why should they not have the benefit and obligations under the act itself? So this is the problem which we meet even if one assumes there is validity to the objection but as far as the government is concerned it is a matter of policy, it is going to keep the act as it is because otherwise it would destroy, really, the basic principle of the act itself.

MR. STIRLING:

Mr. Chairman.

MR. CHAIRMAN: (Baird)

The hon. member for Bonavista North.

MR. STIRLING:

Related to that same question, Mr. Chairman, and if my colleague and I seem to be unprepared it is because we understood that we were going to be back - it was a problem in communications, information did not get through that we were going to be into this.

I have had a number of people ask that same question and the answer that the President of the Council gave tends to bring up a more fundamental problem. I have no doubt, no doubt whatsoever that every member of this House with his spouse or her spouse will arrange a marriage contract that does what that couple wants to do. There is no question in my mind about that, that they will arrange a marriage contract that will do what they want to do. The people that I think we are trying to protect with the act are people who do not even know, unless we send out from this House of Assembly a registered letter to every married couple in the Province, saying enclosed is the copy of your marriage agreement and you better put this in a safe place because it is now in effect and it is binding unless you want to draw up your own agreement. If you want to draw up your own agreement you can get out of this. And the people that we have a great concern for is the average Newfoundlander who does not really pay very much attention to what happens in this weird and wonderful city of St. John's, feeling that he can go about minding his own business and looking after his own family and really does not understand that this House of Assembly can impose on him and his wife an agreement whether they want it or not. The point that has been brought up is that people just cannot understand that there is no period, no cooling off period. The Minister of Consumer Affairs and Environment, (Mrs Newhook) I am sure, is very proud of legislation which we now have in Newfoundland going back a few years where somebody makes a purchase and there is a cooling off period, a period of ten days where you can make up your mind whether you want

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MR. STIRLING:

it or not and you can cancel an order.

Many people are concerned that in this particular situation you can have those unfortunate examples.

MR. STIRLING: Bearing in mind that we only have, according to the member for Stephenville (Mr. Stagg), a very small percentage of divorces, we are only talking about one or two per cent, we are only talking about the exceptions really that get hurt, bearing in mind that situation, are we not really setting this up? And I know it is a question of policy, but I wonder should not the policy be reconsidered for the very points my colleague has brought up, that there should be some period, that somebody should not be obliged to enter into a contract automatically as this does; you automatically enter into a contract with a marriage and you can have either a wealthy widow with a young man taking advantage of it, or the reverse of that, a young lady taking advantage of a wealthy widower. Maybe right out of a death, in a moment of - in his weakest moment they end up married. Under this act, as I understand it, as long as they live a day in that matrimonial home they can decide to split up the next day or the day after, or the week after, or the month after and automatically the newcomer to that arrangement has an interest of fifty per cent in the matrimonial home. Maybe I am not understanding it correctly? Maybe the President of the Council would like to correct that impression, if that is not the correct impression.

MR. CHAIRMAN (Baird): The President of the Council.

MR. MARSHALL: I do not derogate from the substance of what the non-member says but I think that a lot of people when they talk about marriage itself say that there should be this certain period of time before people enter into the matrimonial state.

Now, the matrimonial state that we talk about, some people might emphasize the last word on it, unfortunately, on some occasions but the matrimonial state is really, you know, apart from this act, results in certain contractual - it already has a contractual aspect and a contractual relationship. Under the present law the man is responsible for the support of his wife and, you know, there are various

MR. MARSHALL: incidents that I am sure the hon. member is aware of.

Now, the hon. member when he first spoke he said he thought that most people would arrange a contract. With respect I say this would only really be necessary in the event that a man wished to leave his property to some person other than his wife. If a man, and in this day and age we have to say a spouse, is going to leave everything to his or her counterpart this act, as a matter of fact, would assist that person in his intention. Because the act, in effect, would make half of the matrimonial assets, as defined in the act, the property of the wife or the husband and to that extent these assets would not be included in probate when the estate is submitted to probate. So in that particular instance there is a benefit because there is a saving on probate costs to the extent of the value.

They can make a contract and they need to make a contract if their property is going to be left other than outright to the wife. Now, I understand and I appreciate what the hon. member says and we all know what is going to happen, that no matter what law you make, it is going to be very difficult for everybody to be apprized of the law, to know what the law is. Government is aware of this. Before the Matrimonial Property Act was brought before this House for the first time, about eighteen months prior to this, there was a great deal of information disseminated by the government and various organizations. The intention was publicized, various organizations were asked for their comments and we received, as usual, from some but not from others. Since that period of time, between its original introduction in this House last March and the present time, six months have passed. It has been a matter of a great deal of public debate and one would think, as a result of that, that the public would be, perhaps, more aware of this legislation than perhaps other types of legislation. Having said all that, I agree with what the hon. member says. There are going to be a large number of people who do not know their rights, particularly

MR. W. MARSHALL: perhaps be to a greater degree in the smaller communities. Government now intends to embark, within the next six months, on an information programme with respect to the Act and its consequences. And I should also think that it would be valuable. I think the government will address itself to the situation that the incidences of this Act can be avoided if two people wish to by a simplistic document. Some people have unkindly referred to this Act as a bonanza for the lawyers and they envisage very complicated complex contracts that have to be drafted in order to avoid the incidents of this Act, not so! Really, I mean, it can just be a plain piece of paper signed by two people, once the husband and wife both sign the paper, just simple words that they do not want the Act to apply. So all of this will be effected over the period of time, we hope to make a - we will make a more direct effort than otherwise, than in other instances, to assure that the provisions of this Act are brought to public attention. But without being too much off the cuff with the thing, the hon. member will also appreciate the old adage that you can bring a horse to the water but you cannot make him drink. All that we can do is, really, all the government can do is to see that the public is informed as fully as it can within its own abilities to so inform it, and this is what we will do.

MR. CHAIRMAN: (BAIRD) The hon. member for Grand Bank.

MR. L. THOMS: Is not the problem that we are discussing now, the problem of the person getting married and then one of the spouses leaving within a short period of time, is that not already taken into consideration in the Act and certainly if not entirely so, partially so in that under section 20, I believe it is, -

AN HON. MEMBER: Section 19.

MR. L. THOMS: - section 19 of the Act states that, "On the divorce, separation, death etcetera then one of the spouses can make an application to the court for a division of the matrimonial assets". Then under section 20, the Act gives the judge the guidelines, really, for deciding on the division of the matrimonial assets. One of the guidelines in the Act is, in fact, the duration of the marriage so that presumably, a judge in a particular case where somebody is married - like I knew a person one time who was married for seventeen days and he separated and got a divorce seventeen years later. But in a situation such as that

MR. L. THOMS: where it is quite obvious to a judge that somebody is out to maybe make a dollar on a marriage, somebody who might be a gold digger, under that particular section then the court can actually - I guess they could make a division of one hundred to nothing or ninety-nine to one because the Act does not automatically give a fifty/fifty split. It gives discretion to the court, to the judge to award an unequal split. I think the only thing that we were objecting to in that particular section I have been referring to is the use of the words 'grossly unjust or unconscionable', we wanted to have it 'reasonable' which I would still like to see happen because the words 'grossly unjust' are certainly open to - what one judge may consider grossly unjust, another judge might accept as perfectly fair. But I think that the problem that we are discussing right now is taken care of under section 20 of the Act.

MR. CHAIRMAN (BAIRD): The hon. President of the Council.

MR. W. MARSHALL: Mr. Chairman, I thank the hon. member for Grand Bank (Mr. Thoms) for his assistance it is indeed - there is a discretion under the Act for the judge to meet these particular situations but as I was indicating to the other hon. members - what I was saying is it would be most unwise to put in any limitation because that makes certain basic assumptions and premises that will not apply in specific cases. So this is one way in which the concerns of hon. members can be met. If the duration of the marriages is very short and that there are grounds for it, there is a discretion there to operate. As in all cases where you make changes, particularly when you make far-reaching and beneficial changes such as this, it is a matter of weighing the changes as to what is good for the general and what is good for the specific. And I will say with respect to this Bill, that we, as I say, we value the comments that were made in second reading and are now made in committee, but we have weighed all these matters and

Mr. Marshall: we really feel , you know, that it would be unwise to put in and neither is it necessary, in our view, to put in that somebody, in order to get the benefit and/or to incur the obligations under this Act they must be married for x number period of time.

MR. CHAIRMAN (BARID): The hon. member for Bonavista North.

MR. STIRLING: Mr. Chairman, dealing with Clause 16, I have had a few questions from people looking for some clarification on just what is intended to be covered in matrimonial assets? It may be a very simple question with a very simple answer. A person's bank account, is that included in a matrimonial asset if he opened the bank account after he was married? - during the marriage?

MR. CHAIRMAN: The hon. President of the Council.

MR. MARSHALL: You know, the matrimonial assets are described as all real and personal property acquired by either or both spouses during the marriage with the exception of, and it gives gifts, and inheritance, personal injury awards, personal effects, business assets. Now, if the bank account was used, of course, for the purpose and it formed part of the business assets, then, as I am sure the hon. member would realize then in that event it would not. Property exempted under a marriage contract or separation; family heirloom, real and personal property acquired after separation. So if there is a bank account there, and the bank account is in the name of one spouse, and it has been used for the purpose of the marriage, it constitutes a matrimonial asset.

But now the right to it, as the hon. member will appreciate, is different than the right to the matrimonial home. The matrimonial home is treated like a joint bank account, which I know the hon. member is familiar with. So in other words, there is a division of it, you know, each party has a right to it immediately on, you know, before any separation. With respect to the bank account and the matrimonial assets, this occurs after - whatever the section is there - separation, death, and divorce, and what have you. In other words, it is deferred.

MR. CHAIRMAN: The hon. member for Bonavista North.

MR. STIRLING: Mr. Chairman, presumably it becomes effective on the separation or the death, what have you?

MR. MARSHALL: Right.

MR. STIRLING: Mr. Chairman, take in the case of the fishermen, for example, let us say, first of all, a full-time fishermen who has a boat, is that considered a business asset or a matrimonial asset?

MR. CHAIRMAN (BAIRD): The hon. President of the Council.

MR. MARSHALL: It would depend, Mr. Chairman, on what he used the boat for. If the boat were used for the purpose of fishing, I would say, it would be a part of his business assets. I would say that in most cases, you know, obviously, if a fisherman has a boat, his gear and equipment and that it would be part of his business assets.

MR. CHAIRMAN: The hon. member for Bonavista North.

MR. STIRLING: Mr. Chairman, I wonder, because as the President of the Council, the last answer he gave me was very definite, and in this answer he says, "I would say", I wonder if we should not spell that out a little more because most fishermen who are fishing do not consider themselves businessmen, and they do not consider their business assets.

MR. CHAIRMAN: The hon. President of the Council.

MR. MARSHALL: You know, if the hon. member would permit me, I mean, my private life, I ply a certain trade but one does not wish to be put on the skillet, as it were, so you get used to saying, 'it would appear, and I would say, and what have you! But if the hon. member wishes it more definitely, I will say, if he will accept this as the Holy Writ, yes, Sir, that is the actual situation.

MR. CHAIRMAN: The hon. member for Bonavista North.

MR. STIRLING: Mr. Chairman, dealing with that same fisherman let us suppose he gets a part-time job in the Premier's office, and he is still a part-time fisherman, and he just goes out to catch an occasional cod, sort of a recreational pursuit with that fishing boat, is that now a business asset or is it a matrimonial asset?

MR. MARSHALL: It depends on what he uses it for, Mr. Chairman.
I mean, if he uses it for fishing and he derives an income from it -
now business assets are described here - see, it is rather difficult
giving these off-the-cuff opinions. As a matter of fact, it is
really difficult giving them, too, without fee -

MR. STIRLING: That is the part that hurts the most.

MR. MARSHALL: That is the part that really hurts the most,
yes. But there is a definition here, Mr. Chairman, of business assets
and these are assets used in the course - 'Business asset means property
primarily used or held for in connection with a commercial business
investment or other income for profit producing purposes', it is 16 (1).
So, you know, if the boat is primarily used for the purpose of fishing
it would form to be a business asset.

MR. CHAIRMAN: The hon. member for Bonavista North.

MR. STIRLING: Mr. Chairman, these questions, of course,
are real questions. I mean I am not making these up.

MR. MARSHALL: I know. I realize that.

MR. STIRLING: These are questions that the average Newfoundlander
is trying

MR. STIRLING: to sort out in saying whether or not he agrees with the agreement that the government is going to bring in force for him. Let us take that same incident; this is a fisherman who used to be a fisherman, still considers himself a fisherman who now has a retail store and he only uses his boat occasionally, when the fish are running, to go out and jig a fish. He does not sell it, he brings it in for his own use, in that instance, is a fishing boat then a matrimonial asset?

MR. CHAIRMAN: The President of the Council.

MR. MARSHALL: Well, again, Mr. Chairman, I do not want to appear to be begging the question. I realize that the hon. member's questions are certainly very serious and very well intended and they are certainly welcomed. The fact of the matter is, it will have to be determined. You will have some borderline situations, and it will have to be determined as to whether or not it is primarily used for commercial purposes. I mean, if he goes out jigging cod once a month and he takes his wife for a ride in the boat three times a month, I would say primarily it is used for the matrimonial purposes. But there will be certain - the difficulty in making laws, the hon. member will understand, is that it is difficult to make hard and fast, iron-clad rules which apply in every situation. There has to be somewhat of a borderline area and in order to make the law apply adequately and properly and appropriately in all cases there has to be a discretion, and in the instance that the hon. gentleman is bringing up it depends upon, to an extent a discretion, but a judgement, depending on applying the general law to the particular fact so that if there is a dispute there is a guide here to be followed and it will be in the opinion, of course, of the person, i.e., the judge in the case, if it is a back to the wall situation, to determine it.

MR. STIRLING: Mr. Chairman, somebody who has a tent-trailer type thing, or a trailer which he uses not for business purposes, is that trailer or Summer home, for example, supposing he puts it up on stilts, a Summer home is part of the matrimonial assets?

MR. MARSHALL: Part of the matrimonial assets.

MR. STIRLING: Thank you.

On motion, clauses (17) through to (20),
carried.

MR. CHAIRMAN: (Baird) The hon. member from Grand Bank.

MR. THOMS: Mr. Chairman, this is the section that I referred to earlier and my friend from the Straits of Belle Isle (Mr. Roberts) also referred to when he spoke on this bill, where Clause (20) states that the court may make a division of matrimonial assets that is not equal, where the court is satisfied that a division of these assets in equal share could be grossly unjust or unconscionable. Now, sometime in the very near future - certainly after July 1st - this is going to have to be interpreted by a court, and what interpretation they are going to put on grossly unjust, I do not know and I doubt if there is a lawyer in this House at the moment who can guess what the court would call grossly unjust or unconscionable. My friend from the Straits of Belle Isle suggested that this particular section should be amended to read "would be unreasonable taking into account any of the following factors", but the use of the words 'grossly unjust' - in reading the Municipal Act I read where they are referring to gross misconduct. These words certainly will come back to haunt us, and I really do not see any reason now why the government would not agree to changing that to have it read 'unreasonable' rather than 'grossly unjust'. 'Grossly unjust', you know, makes me think of something entirely different from that which would be unreasonable, and I can only see this particular clause being improved by amending it to read 'unreasonable' rather than 'grossly unjust' or 'unconscionable'.

MR. MARSHALL: Well, Mr. Chairman, you know, that is the hon. member's opinion -

MR. CHAIRMAN: The President of the Council.

MR. MARSHALL: - and certainly I respect his opinion, but it is not one with which we share. This was brought up in debate

MR. W. MARSHALL: in second reading and what, in effect, this would do in our opinion, and this is a matter of policy of the government. I am just telling the committee this so that the House and the committee can be quite assured that the government has weighed these matters and weighed them all very carefully before bringing them before the House.

What this, in effect, would do is by deleting the words 'grossly unjust' or 'grossly', the word 'grossly' so that it reads just 'unjust' or 'unconscionable' would be to extend more so than we would like, than we think it should be, the discretion of the courts in this matter. We look upon this, really, as being primarily relating to the economic aspects of marriage itself and not so much as to the other aspects of marriage. And we very strongly feel, unless there is really, really good reason, unless it, in other words, should be grossly unjust or unconscionable that there should be an equal division of the assets, other things being equal.

Now, I know the hon. gentleman, and as I say, I value what he says and respect his observations that he makes but at the same time I know that he will realize what I am saying is that government has considered it and government has, as a matter of policy for reasons I have given, decided not to lead in any amendment at this time on clause (20).

MR. L. STIRLING: Mr. Chairman, I do not know if it applies to -

MR. CHAIRMAN: (Mr. Baird) The hon. member for Bonavista North.

MR. L. STIRLING: clause (20) or to (18), (19), (20). Maybe the President of the Council, with a little indulgence, would agree. I am not sure if it applies specifically to (20) but it is in the area of (18), (19) and (20).

I made a point and it was supported by other of our speakers, dealing with this clause it sort of says. "As soon as a petition for divorce is filed, a marriage is annulled or the spouses have separated". In other words, on any of those acts it immediately then has to go to court and I made the point in second reading and I

MR. L. STIRLING: would like to ask the President of the Council now if he has had a chance to give any consideration to it since then, of establishing some mechanism to handle this other than the courts which I understand right now are years behind. I said months but then I was corrected by my colleague from Grand Bank (Mr. L. Thoms) to say years. And if this is not already going to overload an overloaded court and it has not only the effect on incidents arising out of this act because every time there is any of those things that happen that will cause a division of the spoils, immediately it has to go to court. Now, it seems to me that that has two effects if we use the normal court system. Unless we establish an additional court or additional mechanisms or additional commissions or some other means of handling it not only does it have an effect of further torturing people who are trying to settle their lives again after a break up of a marriage but it has the effect of already adding a burden and therefore throwing out the other court processes into further turmoil. So, that instead of being just being a year behind, we may end up two and three years behind and the whole process, no matter how good the intention of the legislation, the whole process may founder.

I wonder if the President of the Council, in considering this question of policy, has given any thought to providing a speedy mechanism to handle this problem?

MR. CHAIRMAN: (Mr. Baird) The hon. President of the Council.

MR. W. MARSHALL: These, Mr. Chairman, are very real concerns the hon. member voiced, I do not suppose there is a great deal we can do in the bill, you know, with respect to this matter. I mean, the problems with the courts and the dockets of the courts being filled not only in this area of law but in other areas of law, is a matter of great, great concern to not only this government, I think governments everywhere, because the courts all over North America have had this problem. But I can say that government has already moved in the area, really, of family law in which a lot of these questions will come up in creating the Unified Family Court. Now, this was where the Unified Family Court was established, a Supreme Court judge was

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MR. W. MARSHALL:

appointed to it, there is a recognition
that matters that come from them are not just judicial matters but they
are

MR. W. MARSHALL: social matters and sociologists and psychologists and guidance counsellors and what have you are assigned to that court. We are monitoring that court, particularly, very carefully to determine its success and we have high hopes that it will prove to be a very successful venture that can be expanded in the rest of the Province. In short, then I can say that this government has already recently moved in that direction in the establishment of the Unified Family Court. But I would agree with the hon. member that it is a matter of some concern that unfortunately where disputes occur, you know, divorces or what have you - it is unfortunate, indeed, that they arise in the first place. But the only appropriate place we have found in order to effectively deal with them is through the courts. All we can do is hope to set up a mechanism to make the courts more expeditious and this we are in the process of doing.

MR. CHAIRMAN (BAIRD): The hon. member for Bonavista North.

MR. L. STIRLING: I take it that there may be some further progress on that before the Bill actually takes effect in July 1980?

MR. CHAIRMAN: The hon. President of the Council.

MR. W. MARSHALL: Mr. Chairman, I think it would be wrong for me to give that particular impression. The impression I want to give is that generally speaking we are concerned with being charged with the administration of Justice in the Province, with the slowness of the court, it is not necessarily the fault of the courts either, there are all sorts of circumstances involved in it. But I would not be able to say that by the time it comes in on July 1st, I do not know whether this Bill - the hon. member indicates that this Bill would have an effect of further clogging up the courts, or the enactment of this Bill would cause further delays. I do not really think so, I think it is outside the ambit of this Bill itself, because all this Bill does, it just sets down certain criteria which a judge will have to implement and changes the previous criteria in determining the distribution of the property assets between the parties. If there is a dispute right now the court still has to determine, in default of an agreement, how the assets are to be distributed.

MR. W. MARSHALL: And I do not think, as I say, that this will affect that to any great degree it just sets down a different criteria. However, we are concerned, as I say, with the administration of Justice because Justice delayed is Justice denied, and we are working at all times to the end of improving the system.

On motion, Clause 20 carried.

MR. L. STIRLING: How do we indicate a vote against

Clause 20 particularly on the point of the question of policy?

Mr. Chairman, I am just looking for direction.

MR. CHAIRMAN: (BAIFD) The hon. member for Bonavista North.

MR. L. STIRLING: It seems that we do have a real difference of policy in this particular one that my colleague, the member for Grand Bank (Mr. Thoms) brings up about the definition of 'grossly unjust' versus 'reasonable'. So I, for one, feel like I have to vote against that clause.

MR. W. MARSHALL: Mr. Chairman, if I may just indicate.

MR. CHAIRMAN: The hon. President of the Council.

MR. W. MARSHALL: The rules of the House have been changed as the hon. member, I know, knows and there can be a division on it if you wish, but I suggest that the hon. member's objection to it and the fact that he is voting against it has been recorded by virtue of the fact that his comments a moment ago and the fact they will appear in Hansard

MR. CHAIRMAN: I wish to advise hon. member, the division will be noted in the Minutes.

On motion, Clauses 21 to 23 carried.

MR. CHAIRMAN: The hon. member for Bonavista North.

MR. L. STIRLING: Mr. Chairman, on Clause 24 I think this is where the Minister of Education (Ms. Verge) in the discussion on second reading indicated that the judge could make provision that one spouse pay to the other spouse such amount as set out in the order to provide for the division of the property. Not being a lawyer, Mr. Chairman, I do not make the distinction between passing legislation and providing the means to solve the problem. And it would seem to me that we should not pass the legislation until we have the means to solve the problem. But now just getting as to sort of what happens the next step.

MR. STIRLING: suppose it goes to court and we have a situation where one of the partners is going to be responsible for the children and stays in the home. Do I take it from this part in the answer that the Minister of Education (Ms. Verge) gave me, that the court will decide whether or not the house is to be sold after hearing all the evidence? If it is not going to be sold it may make provision for somebody, say for example in this case, the wife with the children that stay in the home, make provision that she would have somehow to pay her husband, who is now left and out of the house, to pay him in the normal course of events, unless she convinces the judge otherwise, in the normal course of events, there would have to be some provision for her to, in effect, buy out his interest or pay off his share. Is that the effect of this section?

MR. CHAIRMAN: (Baird) The hon. President of the Council.

MR. MARSHALL: Mr. Chairman, that is a possible effect but it is not a necessary effect. The way the section reads is that the court may, and I would say it would be very, very rarely indeed. The purpose of the section itself is to give the rights of ownership, really, in the event—I would say in most cases—to the mother and children, particularly when there are young children. So it says it may or it may not if circumstances do not indicate. It may order that there be compensation paid. I can only conceive of this being done if the person having custody of the children is in a better economic position, shall we say, than the other tenant of the property. The point of the matter is, it may, it is permissive, but it is not mandatory.

MR. CHAIRMAN: Hon. member for Bonavista North.

MR. STIRLING: Mr. Chairman, under this section of the act I am trying to apply the concept on the government policy. As I understand the government policy is to say—let us take most divorce proceedings in Newfoundland, the ones that I

MR. STIRLING: am aware of, the wife usually ends up with the children and they stay in the home. Is it the intent of the government, and the government policy, in that situation, if they do not take any other proceedings, that the wife and children in the home have a half interest in the home, or the wife has a half interest in the home, and the husband that leaves retains his half interest, and they have to settle that somehow? They can either settle it through court, or they are going to have to settle it somehow. But the husband retains a half interest in the home.

MR. MARSHALL: That is right, yes.

MR. CHAIRMAN: Hon. President of the Council.

MR. MARSHALL: That is right, Mr. Chairman.

There are other provisions in the act itself, subject to- was it section (20)?- Subject to the discretion of the court itself in respect of aggravated circumstances to change that distribution. This is the intention of the government. It recognizes the fact that it is a fifty-fifty division, and even though one is out of the house that person will have a half interest in the house, subject to the act and the ability to apply for a change in that division.

MR. CHAIRMAN: Hon. member for Bonavista North.

MR. STIRLING: Mr. Chairman, do I take it then in the normal course, on separation, if there is any kind of dispute that it ends up going back to court? That is the logical sequence, that it ends up going back to court, and the court then has to hear all the evidence and decide whether or not this should follow. That wife cannot sell that home then with the children. This fellow, although she thought she was rid of him, he still has a fifty percent interest in her property and that could be twenty years down the road, he would still have that fifty percent interest.

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MR. CHAIRMAN:

Hon. President of the Council.

MR. MARSHALL:

There is a provision farther on. The house can be sold or-paragraph (C) of that same section gives the court the power to order a sale, or the partition of the property, which I would assume that the court could do at the same time it was considering the other matters.

On motion Clause 25 through to Clause 26 carried.

MR. CHAIRMAN:

Shall Clause 27 carry?

MR. STIRLING:

Mr. Chairman.

MR. CHAIRMAN:

The hon. member for Bonavista North.

MR. STIRLING:

Thank you very much, Mr. Chairman.

MR. STIRLING: This, I take it, is where we are getting into the area now that you were talking about earlier - a fisherman's boat, if he is using it for fishing, is a business asset and, presumably - now, does that mean that he would have to go to the court to - let us suppose a fisherman and his wife split up. Maybe he has only been married six months, they split up at the end of six months. Then what happens - he says, "Okay, that is it, you are out", and she said, "Well, I own half of this" - she then has to take him to court, presumably, and then a court must decide which are business assets and which are personal assets. Is that right?

MR. CHAIRMAN: (Baird) The hon. the President of the Council.

MR. MARSHALL: Mr. Chairman, you know, if the parties cannot come to an agreement, one or the other would be entitled to bring the matter to court for adjudication.

MR. CHAIRMAN: The hon. member for Torngat Mountains.

MR. WARREN: Mr. Chairman, further on that question, taking the question in the context that my colleague asked; if a fisherman has a boat -

MR. MARSHALL: I am sorry, the hon. member.

MR. WARREN: I am sorry, you are talking to the Minister of Finance so I will start again.

If a fisherman has a boat and he is only married for six months or a year and that boat is outstanding from the Fisheries Loan Board or from a bank or such thing, does that mean that this liability is also shared by the lady, by both parties?

MR. MARSHALL: Yes, yes, because it would be shared -

MR. CHAIRMAN: The hon. the President of the Council.

MR. MARSHALL: - to the extent, Mr. Chairman, that any interest in the boat would be subject to this paramount lien to the Fisheries Loan Board or the bank or what have you. As a matter of fact, I would assume that certainly in the future all financial institutions will have both the husband and the wife sign any papers where loans are involved.

MR. WARREN:

The Loan Board is going to be broke

then.

On motion, Clauses (27) through to (31),

carried.

MR. CHAIRMAN: (Baird)

Shall Clause (32) carry?

Hon. member for Baie Verte-White Bay.

MR. RIDEOUT:

Mr. Chairman, I have to say at the

beginning that with all the provisions in this bill, I guess that it is Clause (32) that causes me the most problems from a very personal point of view, and I am talking about the cohabitation clause that Clause (32) deals with. If I understand the act correctly - and the President of the Council (Mr. Marshall) feel free to correct me if I am wrong - when the act comes into force, those of us who are married and those who will get married any time thereafter, after July 1st, will come under the provisions of this act. There is, however, a provision for any of us, provided there is mutual agreement between both spouses, to contract out of the provisions of this Matrimonial Property Act. However, we do, unless we choose to contract out, become subject to all the provisions of this particular bill. Now, Clause (32), dealing with cohabitation agreements - and I realize it is a very difficult area to do anything about - I am not small-minded in the situation at all and I realize the dilemma that the government has to face - we have to face reality and what is reality we have to try to do something about it - but Clause (32), in direct contrast to the situation that I just stated as it applies to all of us through who are married and to those who will get married after the bill comes into force, Clause (32) provides for a contracting in for those people who are cohabitating, those people who are living together, in other words, in a common-law arrangement. The bill provides for those people to contract in, to come into, to become part of the act. We would have to contract out, we are into it anyway. We have no choice, according to the law of this land, that we become subject to the provisions of this act, and if we want to change that then the only choice is to contract

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MR. RIDEOUT:

out. Those people who are cohabitating,
living common-law, have a far greater choice, I would submit to the
minister, than

MR. RIDEOUT: the person who is married, they can contract in or if not they can continue to cohabit, to live together, even though they may acquire assets during their cohabitation, they will not be subject to the provisions of this law unless they agree to contract into it and become subject to the agreements thereto. I find that offensive in principle, although I say that realizing the very serious practical considerations that the government must face in bringing in an act of this kind. But I do, I have to say in conscience, I find it very offensive in principle, that people who are cohabitating will have that kind of choice. Now, I do not know if there is any practical way around it or not. I am open to suggestions and I am just sharing the concern that I have to the minister and I would like to hear his views on it. I do not know if there is any other practical way around the matter or not. I do not if it is practical to say that it applies to all couples whether they are married or whether they are cohabitating. It seems to me that this cohabitation clause, No. (32), gives a very unfair advantage to those people who see fit not to marry for whatever reason, whether it is a legal reason or some other reason, it gives those people a very unfair advantage compared to the rest of us in our society. And it seems to me, also, that an argument can be made that clause (32) actually encourages people to cohabit, to live common-law rather than get married. I think a very hard argument could be made that that is exactly what it does. And if people are afraid to come under, for whatever reason, to come under, to get married and, therefore, become part of what this bill provides, then there is a very easy solution, if you are not bothered in conscience or in any other way, and that is to agree to live common-law and then you do not have to go in unless you agree to go in, if both of you agree to do it. So as I say to the Minister, I realize the practical dilemma that the government faces in this kind of situation but I find it very offensive in principle and certainly I, for one,

MR. PIDEOUT: in speaking for myself, in my own conscience could not support clause (32).

MR. SPEAKER: Hon. member for LaPoile.

MR. NEARY: I am not going to argue, Sir, the morals of this particular clause I will leave that to the minister and to the government. But my hon. colleague who just spoke, Sir, has a very valid point. As I indicated during second reading of this bill the government, in order to correct an injustice in our society, brought in a law that intrudes in the lives of every married and unmarried couple in this province. What the government should have done, as my hon. friend just indicated, was brought in a law enabling people who wanted to enter into contracts to enter into contracts. What they should have done, really, for the married couples in this province is what they are doing for the unmarried couples. That is what the government should have done, where people, if they wanted to, could enter into agreements instead of forcing the law on every married couple in this province which, in my opinion, is the greatest intrusion into people's personal lives, I suppose, that we have ever seen on the North American continent. I would not be a bit surprised but the whole bill is unconstitutional and if it was ever tested in the courts, certainly might even be contrary to the British North America Act. In the meantime Mr. Speaker, I believe the, and I know I am not allowed to argue the principle of the bill now, but I believe what the government should have done and what they should do now, is to reconsider this matter and give everybody the same privilege as they are giving the people who are shackled up.

SOME HON. MEMBER: Inaudible.

MR. NEARY: I have nothing against shack-ups, I will leave that to the government. But there is, as my hon. colleague indicates, there is a tendency here for people to feel that they would be better off by shackling up because then you can

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MR. NFARY:

either enter into an
agreement or not enter into an agreement. But if you are legitimately
married, then you have no choice, you have to accept this law whether
you like it or not

MR. S. NEARY: and that is where this law is causing an awful lot of concern across this Province today. I have talked to an awful lot of people and they are very concerned about the fact that the government is dictating to them and telling them what to do and intruding in their personal and private lives. It is a matter that should be left up to the individuals themselves. It is an admission of failure, really, in our society and the government is trying to correct an injustice to deal with the horror stories that were pointed out by the Minister of Education (Ms. Verge), the real godmother of this bill. Then the government, in trying to do that, brought in a law for everybody. There is too much regimentation today, there is too much intruding in people's personal lives and it is about time it stopped. And this is the worst example of all. My hon. friend is 100 per cent correct, Mr. Chairman, that what the government should have done was given everybody the same privilege, treat everybody alike.

AN HON. MEMBER: (Inaudible) the law is (inaudible).

MR. S. NEARY: Pardon.

AN HON. MEMBER: (Inaudible) the law is (inaudible).

MR. S. NEARY: Well, there should be less laws, there should be less stepping in the people's lives, there should be less regimentation. The next thing the government will be regulating the number of times you are allowed to go to the bathroom a day. That will be the next thing we will get.

So, Sir, I agree with my hon. friend in that it is a matter that should concern everybody in this Province. Mr. Chairman, I will have to vote against this clause not because I am against shack-ups, that is not the point at all, Sir, not because I am against people living common-law but I think it is outright discrimination against the people who are legitimately married in this Province, that they should have the same privilege, they should be able to opt in if they want to enter into an agreement, they should be able to do it but it should not be forced on them by a dictatorial government.

MR. L. THOMAS: Mr. Chairman.

MR. CHAIRMAN: (Mr. Baird) The hon. member for Grand Bank.

MR. L. THOMS: I would like to just have a few words in connection with this particular section basically, I guess, to back up what the members for Baie Verte and LaPoile have said.

I do not believe that any clause, and I do believe that this particular clause in this particular act, no clause should penalize two people for being married and that is what this clause is basically doing, it is penalizing two people for being married simply because the act applies to two people who have married but it does not apply to two people who are not married. Now, tell me what is the difference between an injustice that is perpetrated on one spouse or the other who are married and an injustice that is perpetrated on a man and a woman who are not married? What the act does and what this particular act does is penalize two people for being married because they are forced to come under the act. If they do not come under the act then-if they do not want to come under the act they have the privilege of opting out - a contracting out. But how many people in Lawn, St. Lawrence, Grand Bank, Fortune, Grand Beach, how many married people are even going to think about contracting out of this particular legislation? And in spite of an education programme, whatever might be carried out, how many people in this Province are going to contract out of this or even know that legislation is in existence for that matter?

I would like to repeat that this particular section should, in some way or other, be rephrased, redrafted, something done with it so that the married couples are not penalized. And this is what this particular section does, it penalizes two people for being married by forcing them to come under this particular act where you can cohabit and not have one good - for two people cohabiting anywhere in this Province this act has no force affect, none whatsoever. They can completely ignore it, they are not subject to it. But it does affect every married person. So this particular section is unfair in that respect.

MR. CHAIRMAN: The hon. member for Torngat Mountains.

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MR. G. WARREN:

Mr. Chairman, I have to agree with my three colleagues who just spoke. Section (32), I believe, is way out of wack for this Province. You know, I can just imagine

MR. WARREN:

tomorrow morning the headlines of all the daily papers, on all the radio stations throughout this fair Province of ours, straight through Labrador down as far as Nain right on to St. Mary's-The Capes, saying the government is encouraging shacking up, the government is encouraging cohabitation and this is exactly what it is doing. Our government, the government of this Province is basically encouraging people not to get married, basically encouraging them to live together regardless. I believe, Mr. Chairman, this section of this act definitely should be deleted. And how many people, young people, whether they are fifteen, eighteen, thirty-five or forty, how many people in this Province if they really hear what is being said, will they really know what this government is up to? You know, it is absolutely ridiculous for the government to even think about it. You are encouraging cohabitation in Canada's tenth province.

Mr. Chairman, the Minister of the Privy Council said that there would be literature going out to all areas of the Province. I am just wondering if this bill as it is now will be going out to the people or will this bill be refined to show all the goods parts in it. Now, there are parts of this bill that are good and I agree with parts of this bill. But when this newsletter, or whatever you are going to send out to the individual people around this Province goes out, are you going to have on the first page of that newsletter, shacking up is allowed? Mr. Chairman, it is a very dangerous precedent that this government is setting and it is setting it, new. What is happening is we will find the balconies being filled to find out what is going on. I call upon the media of this Province to let the people know exactly what is entailed in this bill because as far as I am concerned section (32) definitely should be deleted and deleted immediately.

MR. THOMS:

Mr. Chairman.

MR. CHAIRMAN:

The hon. member for Grand Bank.

MR. THOMS:

Mr. Chairman, I want to make it quite clear to the government that I am not advocating that this particular clause be deleted. What I would like to see is have the act apply to married

MR. THOMS:

couples and to couples who are cohabiting, make it fair to both. And then, if two people who are living together what to contract out of the act they can contract out of the act just the same as married people can contract out of the act. Make the act applicable to people who are living common-law as well as people who are married, then the act applies equally to both, both of them can contract out if they want to. I am not saying not to have this particular section in there. I think we all have to face up to the fact that not every two people living together are married. In this day and age not every two people living together are a man and woman let alone being married. So again, if I may repeat, what I would like to see, is have the act apply the same to people who cohabiting as to married people.

MR. CHAIRMAN: The hon. President of the Council.

MR. MARSHALL: Mr. Chairman, I do have a little bit of difficulty on the observations made by all hon. gentlemen in Committee because they voted for the bill in principle as they were going to be for it. The hon. member for Baie Verte-White Bay (Mr. Rideout) talks about it giving an unfair advantage to people who are living common-law. The hon. member for LaPoile (Mr. Neary) talks about it being an intrusion on the rights of people. Even the hon. member for Grand Bank (Mr. Thoms), I was surprised, said that this clause penalizes.

MR. MARSHALL: people who are married. So, if this clause penalizes people who were married, it means that the people who are not married are in a better position after the passage of this act than the people who are, in fact, married, so it means that the hon. gentlemen opposite really do not think that this bill is of the substance of which it actually is, that it is really one that is worthy for support. On the one hand, when it comes up before the House, they say they support it wholeheartedly, but from the hon. gentlemen's comments here at this particular time, their comments are entirely inconsistent. They lead one to believe that they are not for it and let the word get out then that the Liberal Opposition, obviously, since four out of four who spoke were against it, are officially against this bill. Now, Mr. Chairman -

SOME HON. MEMBERS: Oh, oh!

MR. CHAIRMAN: (Baird) Order, please!

MR. MARSHALL: - to make - to say, Mr. Chairman,

AN HON. MEMBER: (Inaudible).

MR. MARSHALL: Okay, the hon. gentleman wants it to apply equally. Now, at the one stage of the game, before when this bill came up before this House - this is before the big election, Mr. Chairman - there were words in here, "a man and a woman who are cohabiting and not married to one another may enter into agreement to be known as a cohabitation agreement, as if they were married", and there was a great hue and cry then at the time that, you know, how scandalous it was to bring in a bill that recognizes cohabitation agreements as if the people were married, and we agreed at the time it was really just a slip of the draftsman's pen so we deleted those words. Now, the hon. gentleman wants the act to apply to everyone. Well, this government is not prepared to do so, because to do so would be to truly recognizing common-law marriages, and this government, as a matter of policy, is not prepared, you know - we recognize common-law marriages exist - that is a matter for the people concerned - but we are not prepared to accord to common-law marriages the same privileges and rights and

MR. MARSHALL: and duties, for that matter, because they do not undertake duties as are accorded under the law. So, Mr. Chairman, that is the position now in this particular instance - the unfair advantage we say - we do not think it so. The fact of the matter is that people do, as a matter of their own choice, live common-law. If they live common-law, they can enter into this agreement to get the economic benefits of this act, and this is all this act is concerned about in the institution of marriage is to confer economic benefits, absolutely nothing else.

Now, one of the hon. members mentioned the fact that this was, as I say, an intrusion on persons' lives. Why can we not leave it up to the people? Why can the married people not make agreements? Why can they not be accorded the same privilege as people who cohabit together without the benefit of marriage? Why does this act not apply only in those instances of marriage where they both agree? And the reason for it is quite simple, Mr. Chairman. One of the principle reasons why this particular act lends itself to one's approval is the fact that if you leave it up to a large number of people, what will happen is that - and in most cases it is the husband deserts, leaves his wife and children without any visible means of support whatsoever, takes the house and sells it out from under them, puts the wife and children on Social Assistance. The wife and children have to depend on government taxes. We have to pay for them. What this bill, in effect, does is say to that - that is why we do not leave it up to the people - we leave it up to most people. Sure, most people are responsible and look after their families, look after their wives after they become widows, but there are a certain number of people, unfortunately, in this world who do not, and there are lots of people or a certain number of people; shall we say, so that I do not get quoted out of context, but there are too many people in this Province today who have left their families on Social Assistance where the state has to pay for the family and go off

MR. MARSHALL:

on their merry way, taking all of the assets of the marriage, earning large amounts of money and not contributing. I am not saying that this bill remedies all that, because I firmly believe that there have to be tightened up the procedures in this province for the enforcement of maintenance rights, but when we talk about leaving it up to the people, certainly we leave it up. We have left it up, Mr. Chairman, to about 95 per cent of the people who are responsible and look after their families. But in the case of the 5 per cent that do not, and in the interest of the families themselves, we say there will be a division of the matrimonial assets and we make no apologies for this. We think that this is a good piece of law. We indicated in the election campaign and when it was brought before the House. The only thing that I am quite astounded with, Mr. Chairman, is that it came before this House and the official Opposition said that they supported it. Now, lo and behold, if one wishes to dissect what they say and listen to what they say, you can see on the lips of every one of them that in effect they really do not support it as indicated by their observations with respect to this clause no. 32.

SOME HON. MEMBERS: Hear, hear!

MR. MARSHALL: A shame on them and a pox on their house.

MR. CHAIRMAN: The hon. member for Baie Verte-White Bay.

MR. RIDEOUT: Mr. Chairman, it has often been said, I suppose, that in order to defend the best way to do it is to attack. And certainly the hon. President of the Council tried to live that principle that time. Because there is nothing further from the truth, and I will not, as a member who stood in this House and supported the principle of this bill, I will not stand by and have one other member of this House twist and turn words to the effect that I am now against the bill. I am not against the bill. I am for the principle of this bill 100 per cent. I voted for the principle of this bill 100 per cent. But just because I have an objection to a clause - and it matters not to the hon. gentleman whether the objection is based on conscience or not - he

MR. RIDEOUT:

has got to stand up in his place and take my objection to that clause and turn it into a political football, whether it is based on conscience or not, and say that the Opposition is against the bill. Mr. Chairman, what a display by the government House Leader. That is the kind of co-operation that will get speedy passage of legislation in this Legislature. That is the kind of display of co-operation from the government House Leader that will get things done in an amicable fashion. That is the kind of display by the government House Leader that he says drops the decorum of this House, that gets people's backs up. I happen to object to that on two grounds. I explained one ground is that I think it gives unfair advantage to those who are cohabitating. And secondly, I have a conscientious objection to it. And as one member of this House, I think I have a right to make that objection and I have a right to make that without the hon. gentleman, the President of the Council, taking those words and attempting to turn it into a political football by saying that the Opposition is against the principle of this bill. What a diversionary tactic by the hon. member!

Now I want to say also -

MR. MARSHALL:

Say that to the people in (inaudible).

MR. RIDEOUT:

I want to say also - I will go back through it again since it is apparent that - I do not know if it is the same problem every day or not-but it is apparent that the hon. gentlemen do not want to let it sink in. And I will go back through it once more. Those of us who are married have no choice but come under the principle under this bill. I have no objection to that, none whatsoever, I voted for it.

MR. STAGG:

Quiet down.

MR. RIDEOUT:

I have no objection to it. I wish the hon. gentleman for Stephenville could be quiet because he says nothing when he stands up. So when he is sitting down he may as well be quiet.

Now, Mr. Chairman, I had no choice but come under the provisions of this bill. I had no quarrel with that whatsoever. If I want to get out from under the provisions of the bill, the husband

MR. RIDEOUT:

and the wife have to agree to opt out. If one objects, you cannot get out. You are in there, that is it. I have no quarrel with that. But when it comes to this cohabitation clause, if both people agree they can go in, they can make an agreement to opt into it, to be covered by the provisions of the bill. However, one person can keep them outside by not agreeing to make that agreement to opt in, whereas on the other hand the only way I can get out from under it is both of us agree. Now if that is not an unfair advantage, if that is not contributing to those people who know they are not going to get an agreement anyway, if that is not contributing to encouraging cohabitation in this Province, then I ask the hon. gentleman what is it? And I object on that ground and that gives me a conscientious ground to object also.

MR. MARSHALL: Would the hon. member permit a question?

MR. RIDEOUT: Yes, I will permit a question.

MR. MARSHALL: If the hon. gentleman is using words like it 'does not permit me to get out from under it,' what is the hon. gentleman saying but that he does not want the bill to apply to him and he does not like the bill?

MR. RIDEOUT: Mr. Chairman, again he goes back to the stupid nonsense -

MR. CHAIRMAN (Baird): The hon. member for Baie Verte-White Bay.

MR. RIDEOUT: - by using me as an example. I could use the hon. gentleman. I could use John Doe. I could use any member in the House as an example. The member knows I am using me as an example. Can the member get it through his head that I voted for this bill in second reading? Can you get that through your head?

MR. MARSHALL: So now you are speaking against it.

MR. RIDEOUT: I am speaking against Clause 32 for two reasons. And for the hon. gentleman to get up and try to twist that around in the way that only he can attempt to do and to make a political football out of it then I would say it is very unfortunate especially when it comes from the Government House Leader.

November 20, 1979

Tape No. 1221

IB-4

MR. NEARY:

Mr. Chairman.

MR. CHAIRMAN (Mr. Baird):

The hon. member for LaPoile.

MR. NEARY:

Only the Government House Leader, Sir,

could twist words

MR. S. NEARY:

that were uttered on this side of the House like the hon. gentleman did in his devious, usual fashion in this House.

What we are saying, Mr. Chairman, is this, is that this bill is loaded against married people in this Province and gives the people who are cohabitating preferential treatment. That is what this clause says and that is what we are pointing out to the House and to the people of this Province, if it ever gets reported. I know, Mr. Chairman, there are hon. gentlemen sitting on the government benches who would like to say something about this clause and about this bill, and why they have not stood in their places and said the things that they say to us privately and in the corridors of Confederation Building and the corridors of this House is beyond me. The member -

MR. W. MARSHALL: Name him.

MR. S. NEARY: No, I will not name him, that would not be fair, but I notice by the -

AN HON. MEMBER: The member for Harbour Main.

MR. S. NEARY: - papers that the hon. member for Harbour Main - Bell Island (Mr. Doyle) has concerned himself about abortion, has climbed aboard the bandwagon of abortion and is circulating a petition on that particular matter. But where does the hon. gentleman stand on this bill that encourages shack-ups? Oh, the hon. gentleman can grin all he wants and the hon. Minister of Education can shake her head all she wants; the hon. Minister of Education managed to persuade the government and talk the government into bringing in a law in this Province affecting the lives of every married couple in this Province, and then gave people who are living common law the preferential treatment because they can opt in whereas the married couples have no choice, they cannot opt in, they can opt out but not opt in. And what is so funny about that? If that is not an intrusion of peoples civil liberties and their rights, I do not know what is. You could not get a more classic example of the

MR. S. NEARY: government stepping into the bedrooms of this Province. Even Pierre Elliott Trudeau told the nation that government should not enter into the bedrooms of this country.

AN HON. MEMBER: (Inaudible)

MR. S. NEARY: It is very funny, Sir, it is very funny indeed. The ramifications and the implications of this bill, Sir, as I indicated during second reading, are enormous, Mr. Chairman, and here we are trying to point out to the government one of the big weaknesses in the bills. And when we said in the beginning we supported the principle of this bill, every member that stood, I believe, in his place on this side of the House said, "We agree with the principle of correcting this injustice". And all these horror stories that the Minister of Education (Ms. Verge) was using in order to justify making a law for every married couple in this Province, we said, "Yes, we subscribe to that principle". But -

AN HON. MEMBER: We voted for it.

MR. S. NEARY: - and we voted for it to a man. But we also said, at least I said and I think I heard my hon. friend the member who speaks for justice on this side of the House say that we pointed out to the government there were weaknesses in the bill and there should be amendments. I believe I heard that more than once from this side of the House. But our plea fell on deaf ears and that is why we are making such an issue now out of this particular clause to try to beat some sense into the government to change this dictatorial piece of legislation so that everybody would be treated equally, so that married couples, if they want to, can opt in and not be forced to opt out and get involved in high legal fees and changing wills and all the other ramifications and implications of the bill. That is what we are trying to point out to the government.

Mr. Chairman, I do not know if it is in order to move an amendment, I will think about it when one of my colleagues rises in his place to speak after me, but I believe we should amend this clause if we are going to treat everybody equally, to say that this clause will not only apply to people who are not married

MR. S. NEARY: but will apply to people who are married all other provisions of the bill will be waived, if they want to opt in they can. Then I would say we would be getting somewhere in this House.

The hon. gentleman sits over there with a little silly grin on his face, he thinks it is awfully, awfully funny. The hon. gentleman thinks that one of his buddies who goes down and serves a sentence for a white-collar crime and brings down his flask every weekend, that is funny too.

AN HON. MEMBER: Name names.

MR. S. NEARY: Yes, I could name names.

AN HON. MEMBER: Yes, go ahead and name names.

MR. S. NEARY: Yes, Charbonneau Associates, that should ring a bell with this hon. House. We would like to be able to find out what happened to the trust fund that is down in the Royal Trust Building in one of the lawyers' offices down there.

MR. S. NEARY: Mr. Chairman, in the process of trying to get an amendment and point out the weakness in this particular Clause, the Government House Leader (Mr. Marshall) has seen fit to twist our words. Nothing sets the devil in us more on this side of the House, Sir, than to see the devious mind of the minister as he tries to twist and turn and squirm. We are on solid ground here and I would like to hear what the Minister of Consumer Affairs, how the hon. lady feels about this particular Bill. And I would like to hear from members on backbenches on the Government side of the House to find out how they feel about it. It is, Sir, a very substantial piece of legislation and a drastic intrusion into people's lives. Governments have gone too far in my opinion in regulating people's lives, in telling people what they should do and what they should not do, gone too far altogether. And, as I said, in trying to correct an injustice involving some people whose marriage goes on the rocks and they become socially and economically marooned, in order to try - and that I would say is only about one per cent of the population - in order to correct that injustice we find ourselves faced with a law, a piece of legislation, a law forcing everybody to do something and allowing those who are not married to enter into an agreement if they want to.

Let me make it clear, Sir, what I am for: I am for correcting this injustice, I am all for it. I am all for bringing in a piece of enabling legislation, I am all for making it the law of the land that people can enter into an agreement if they see fit. But I am against shoving something down people's throats that they do not want and this is a classic example of the kind of legislation the people of this Province do not want.

MR. CHAIFMAN (BAIRD): The hon. member for Grand Bank.

MR. L. THOMS: Mr. Chairman, I certainly cannot let this moment pass without taking exception to the hon. the President of the Council. (Mr. Marshall) who completely twisted and turned around what I had to say in connection with this particular Clause. It was an attempt to divert this House from what we were actually saying about the particular Clause.

MR. L. THOMS:

Mr. Chairman, the President of the Council (Mr. Marshall), after carrying on this diversion, completely failed to answer the question that I had posed when I spoke in connection with this particular Clause. And I would like to hear what the Minister of Education (Ms. Verge) has to say about this particular Clause. She is the one who probably had more input and knows more about this particular Bill than anybody else in the House. I would like to hear what she has to say about it and I see no reason why she cannot get on her feet and let us hear views on this particular Clause. My comment, and the minister was not in the House at the time, was that this particular section - I resent the President of the Council standing up and saying, 'Oh, you voted for the Bill'. I voted for the Bill in principle, now if he wants to put a different definition, different interpretation on what approval in principle means or passing of a Bill in principle, that is fine. I am still for the Bill, there is no question about that. But if the President of the Council, everytime somebody gets up on this side of the House is going to stand up and any time anybody gets up and questions a particular Clause, well, this is what we are doing, Clause by Clause -

AN HON. MEMBER:

Third reading.

MR. L. THOMS:

Third reading. So that if we question a particular Clause, that does not mean we are against the Bill; we are trying to improve the Bill, that is all. That is all we have ever said from the start and that is all we want to do now, improve the Bill.

Now, what I said was this; I said that this particular section in my way of thinking, and I could be wrong, I am not omnipotent. I could be wrong but this particular section of the Bill penalizes married couples by giving unmarried couples an unfair advantage. When this Act comes into force, then all married couples in the Province will be covered,

MR. THOMS: but if the act will only cover those who are cohabiting together, if they so desire to come within the ambit of the act, they have to consciously make a deliberate effort, go out, enter into a cohabitation agreement, and then a cohabitation agreement may adopt the provisions of this act and such adoption of this act applies to the man and the woman. They have to opt into the act. A married couple is under the obligation to opt out of the act, and all I am saying is why not just change this particular clause so that it covers the two people who are living together common-law as well as the married couple? Then they are all in the same boat because, as I said in my earlier remarks, there can be just as much an injustice for the common-law spouse to kick the other common-law spouse out of the house as it is for a married person to kick the other married person out of the house. It is just as much of an injustice.

AN HON. MEMBER: What about (inaudible).

MR. THOMS: Well, you made the -

MR. NEARY: The hon. member knows all about that.

AN HON. MEMBER: You are equating marriage with cohabitation.

MR. THOMS: I am sorry, what is that?

AN HON. MEMBER: You are equating marriage with cohabitation, is that it?

MR. THOMS: No, I am not. I am not equating it at all. I am just saying do not put a married couple in an unfair position compared to unmarried couples, that is all I am saying. I am recognizing that common-law situations exist, we all know that. We are not denying that - they do. What I am saying is that let them come within the ambit of this act. Now, the hon. the President of the Council (Mr. Marshall) did not answer that particular question at all. He went off on a tangent all his own to try to make the Opposition appear to be against the whole bill. Now there are other sections of this act I am going to question before this day is over. There are other sections of the act I am going to question. Does that mean that I am against the act? And that is what the President of the Council tried to convey.

MR. THOMS: It was a complete diversion because he refused to answer some of the questions that we are putting to him in connection with this matter.

MR. NEARY: He is very politic and he is trying to be part of it.

MR. CHAIRMAN: (Baird) Hon. Minister of Education.

SOME HON. MEMBERS: Hear, hear!

MS. VERGE: Mr. Chairman, I would like to take strong exception to the remarks of the hon. member for Lapoile (Mr. Neary). In my view, he is intentionally distorting the contents of this bill, in particular the provisions of Section (32) for cheap, political advantage. This is a trick which he pulled last Spring during the debate of the predecessor bill, and out of one side of his mouth during this debate -

MR. NEARY: Point of order.

MR. CHAIRMAN: Point of order.

MR. NEARY: Mr. Chairman, point of order?

MR. CHAIRMAN: Point of order, the member for Lapoile.

MR. NEARY: The hon. minister, being a new member of the House, Sir, would not be expected to understand or to know the rules of this hon. House, but one of the principles of this House is that you cannot question the motives of another hon. gentleman, and the hon. minister just said that I in my remarks, Sir, used my remarks for cheap, political gain. Mr. Chairman, that is attributing motives to an hon. member of this House, and I would ask Your Honour - I do not want to have the hon. gentleman - the hon. minister, punished, but I believe that Your Honour should point out to the hon. minister that this is unparliamentary and will only do nothing but lower the decorum of this House.

SOME HON. MEMBERS: Hear, hear!

MR. CHAIRMAN: The hon. the President of the Council.

MR. MARSHALL: On that point of order, Mr. Chairman, I do not think there is any need to dwell to any great length on it, but it is obvious that the hon. member is making a point of order just for the sake of it. The hon. minister was not questioning the motives, the hon. minister was just indicating what her impression and what her perception and what she feels is the perception of a lot of people as to the hon. gentleman's -

SOME HON. MEMBERS: Oh, oh!

MR. MARSHALL: - as to the hon. gentleman's addressing himself to this act.

SOME HON. MEMBERS: Hear, hear!

MR. CHAIRMAN: (Baird) Beauchesne, page 105, December 2, 1960, 'cheap, political way' is not parliamentary procedures. I would suggest that maybe the hon. member rephrase that section.

MR. NEARY: No, Mr. Chairman, Point of order, Mr. Chairman. The hon. minister

MR. NEARY:

has to retract it. If it is unparliamentary, Your Honour has ruled it is unparliamentary, the hon. gentleman has to retract. I do not need an apology, all I need is a retraction.

MR. MARSHALL: Mr. Chairman.

MR. CHAIRMAN (BAIRD): Point of order, the hon. President of the Council.

MR. MARSHALL: Your Honour has made a ruling and Your Honour makes the ruling. Your Honour does not take directions from anybody on any side of the House. Your Honour has read Beauchesne and made address to the hon. minister, and the hon. minister is entitled now to get up and carry out the wishes of Your Honour. And the hon. gentleman opposite is completely out of order getting up and trying to give directions to Your Honour. The hon. gentleman from time to time forgets that the tenor of this House is changed and the way the House is operating was changed in 1971 so it would be different than it was when he was over on this side of the House.

MS. VERGE: Mr. Chairman, with your permission I will continue.

SOME HON. MEMBERS: Oh, oh!

MR. CHAIRMAN: Order, please!

Under Beauchesne 105 I would say the words 'cheap political way' be withdrawn.

MS. VERGE: Very well, Mr. Chairman, I withdraw those words and I will continue by commenting on the criticisms directed by the hon. member for LaPoile (Mr. Neary) with respect to section 32 of this bill which have the effect of undermining the basic principles underlying the bill.

First the hon. member stated that this law reform will encourage couples in our Province to 'shack up,' to quote him. I would take strong exception to this. The effect of section 32 is simply to allow couples who are cohabiting to enter into a written contract ordering their property rights. Under the existing law, a couple living common law may achieve this same end by drawing up a written contract

MS. VERGE:

in the same way that two people doing business together may achieve this, in the same way that a brother and sister may do this. This bill makes no comment on the morality of a common law relationship and in no way encourages or discourages people from living together in that way.

The hon. member talked about undue regulation of people's lives, about interference in the bedrooms of the nation. The hon. member may not be aware but we now have a law dealing with matrimonial property which is imposed on people when they get married. People may not know about the law, but nevertheless it is a fact. This is a law which evolved in England from feudal times until the 19th century in an era when married women did not even have the right to own property. Married women were regarded like infants and lunatics as being incapable of owning property. That aspect of the law was changed by legislation in the 1880's when married women for the first time were given the capacity to own property. That is where the evolution of matrimonial property law in Newfoundland stopped. I would submit that the present state of the law, which was developed in a commercial context without any regard for the special needs of the family, of husbands, wives and children, is something which constitutes an undue interference in the lives of the families of this Province. It is imposed on them when they get married whether they want it or not, whether they know about it or not. And in most cases couples who get married do not know about it. They never find out about it until some problem arises.

So this bill does not constitute any greater interference than the present law and I would submit this bill simply improves the law and makes it conform to the expectations and the needs of most of the families in this Province.

MS. VERGE:

A third point made by the hon. member for LaPoile (Mr. Neary) is that this is an item of law reform which is being shoved down the throats of the people of the Province. Now, as I mentioned before, I do not think there has ever been a measure of reform in this Province which has received so much public discussion and for which so much opportunity for public input was provided. The former Minister of Justice went as far as to publish advertisements in newspapers throughout the Province, in the winter of 1978, inviting public comment on a number of questions relating to matrimonial property law reform. Questionnaires were circulated in Corner Brook and St. John's, among other places, which gave people an easy, convenient way of sending in, to the Minister of Justice, their views. In fact, over a thousand submissions were received from the ordinary people of the Province by the Minister of Justice. Also, many organizations in the Province, including churches, made submissions, formal and informal, to the Minister of Justice. In the City of Corner Brook, the Inter-faith Community and Family Center, which represents all the churches, all the major denominations in Corner Brook, organized a community dialogue, an all-day affair at which people expert in the law spoke, which was attended by some fifty representatives of local organizations, church groups, service clubs, as well as members of the public who were interested. At the end of that day people's views were summarized and were sent to the Minister of Justice. Other groups in the Province, which made formal submissions to the minister, include The Status Of Women Council, The Newfoundland Association Of Social Workers, The Newfoundland Association of Public Employees.

MR. NEARY:

Mr. Chairman on a point of order.

MR. CHAIRMAN: (Baird)

LaPoile.

MR. NEARY: Just as a matter of curiosity. I notice the hon. minister has a mike. The hon. minister is not taping the recordings of this House, I hope.

AN HON. MEMBER: Ha, ha;

MR. NEARY: Well, the hon. member can laugh all he wants, but that is not permitted, as Your Honour knows. So I would just like to know if what the hon. minister or any other member is saying is being taped.

MR. CHAIRMAN: (Baird) The Hon. Minister of Education. The member for LaPoile was asking the question as to whether this was being taped. As an officer of the House, there is no taping allowed nor done in the House. That is an extension of a microphone that we are aware of.

The hon. Minister of Education.

MS. VERGE: Yes, Mr. Chairman, thank you. To continue, I was trying to refute the point made earlier by the hon. member for LaPoile—that this bill is being shoved down the throats of the people of the Province—by reviewing just how much public input there has been on this bill, and just what careful steps were taken by the former Minister of Justice to see that everyone who was concerned had a chance to send in their views. I was just going through a list of organizations in the Province who made formal submissions to the former minister calling for this kind of law reform. These groups include: The Status of Women Councils, The Womens Institute, The Newfoundland Association of Social Workers, The Newfoundland Association of Public Employees, which have several thousand members throughout the Province, as well as, I mentioned before, the some 1,000 individual submissions from the common people of the Province throughout the Province. The former Minister of Justice went

MS. VERGE: further than this. In the summer of 1978 he conducted a public opinion sample, through people skilled in this at the university, to determine that the vast majority of the people of this Province want this kind of law reform.

Next I will deal with the remarks of the hon. member for Grand Bank (Mr. Thoms), who said that section (32) favours couples living common-law because they are not automatically subject to the provisions of the act, they, to bring themselves within the provisions of the act have to contract in whereas married couples, as a general rule, come within the ambit of the act merely having the option to opt out.

MS VERGE: His remarks seemed to be premised on the feeling that the provisions of the act are not what most married people want. And I would submit that clearly, the vast majority of married people in this Province - husbands, wives and children - want, they expect, they assume when they get married that these kinds of of sharing provisions will govern their marriage. When most people get married they go through a Christian marriage ceremony. They expect of their marriage a relationship based on mutual trust and respect and sharing of properties. What they get - instead under the present law is a system of matrimonial property developed in a commercial context where the crucial rules involve tracing income.

The main questions asked to determine property rights now are, who paid for which asset with whose money? The special nature of a marital relationship, the contribution made to a marriage in the form of household management, in the form of child care, is totally irrelevant.

A few cases have gone to the Supreme Court of Newfoundland. The court, being bound by the Murdock case of the Supreme Court of Canada, had to make decisions which, even in the opinion of the Justices making them, were unfair by ordinary standards. And in the most recent case which I referred to when I spoke earlier, Mr. Justice Noel Goodridge of the Trial Division of our Supreme Court called on the Legislature to reform the law to give the court power to deal with property rights in a way which would yield just results.

So to conclude, this piece of law reform is what the vast majority of families, of married couples in this Province, expect, what they assume when they get married, what they want and what they need. It compliments the Christian concept of the family; it, in cases of crisis through death, separation or divorce, will eliminate red tape, will eliminate legal fees, and, most important of all, it will eliminate harsh and unjust results which have a detrimental effect on spouses and also on children.

SOME HON. MEMBERS:

Hear, hear!

MR. CHAIRMAN: (Baird) The hon. the member for Bonavista North.

MR. STIRLING: Mr. Chairman, I am very pleased to see that the minister has returned to her seat. Earlier, I asked a few questions that I would have liked to have had the minister comment on, and in her remarks she - I did not speak on Clause 32, but she certainly covered the whole range. And concluding her remarks, I would like to get her views on two or three suggestions that we made because they are very pertinent to her last remarks.

I was told by the President of the Council (Mr. Marshall) that the first step on separation is to take it to the courts. The courts are now overloaded. I would like to ask the minister if she does not agree that some special provision should be made for us to be able to arrange for the speedy moving of this kind of problem through the courts, with a separate or additional number of courts or judges so that it does not get lost in the two year wait? Would the minister agree that that is necessary?

MR. NEARY: Mr. Chairman.

MR. CHAIRMAN: The hon. the member for LaPoile.

MR. NEARY: Before the hon. minister answers that question, Sir, I would like to have a few words.

AN HON. MEMBER: Now we will hear it!

MR. NEARY: Yes, now we will hear it. Because I just heard a few things that I could hardly believe, uttered from the lips of the minister who is responsible for this bill (Ms Verge). The last thing that the hon. minister said before she took her seat was that what we were trying to do was to give the courts power to deal with cases of injustice.

MR. S. NEARY: But is that what we are doing in this Act, Mr. Chairman, is that what we are doing? Are we incurrecting the injustices or are we making a law for every married couple in this Province?

The hon. gentleman obviously is not familiar with the concept of this Bill and the ramifications and the implications of it. Quoting Justice Noel, the hon. minister said, "Justice Noel pointed to the Legislature -

AN HON. MEMBER: Justice Goodridge.

MR. S. NEARY: Justice Goodridge pointed to the Legislature and said, 'Oh, I wish the Legislature would give us the power to deal with these matters involving separation and divorce'. Well, we could have done that, Mr. Chairman, we could have done it. If that is all the judges of the Supreme Court wanted we could have done it without making a law affecting the lives of every married couple in this Province. We could have given Judge Goodridge exactly what he wanted. And then the hon. gentleman is being very hypocritical about the whole matter and the hon. minister said, 'Marriages are entered into on the principle of mutual trust and respect', but now we are going to remove that mutual trust and respect that people have for one another. We are going to remove that! We are going to pass a law in this Province that says to married people, 'You have no choice'. In a Province where we have great pride in the fact that Newfoundland society is based on the family tradition of mutual trust and respect, we consider ourselves to be a very independent and proud people, and the problem that we are trying to correct has only arisen in recent years since we introduced divorce courts in this Province with a minority people, not the majority. We are making a law here affecting the majority of people of Newfoundland and Labrador when all we are trying to get at is a sort of a cancer in our society involving about less than probably one per cent of the population. So, Mr. Chairman, to answer the hon. minister, if we wanted to give Judge Goodridge, whom the hon. minister has quoted now two or three times, I am sure Judge Goodridge if he could come in this House and speak for himself would tell the minister, 'I did not mean for you to go this far to make a law for every married couple in this Province'. Correct!

MR. S. NEARY:

Do you not have the legislative draftsmen, do you not have the imagination and the intelligence to correct this injustice without cramming a law down the throats of the people of this Province? Nine chances out of ten they do not understand, and if they did understand it they would not want it, including the female who the hon. gentleman claims she is crusading their cause. 1,000 ordinary citizens out of 560,000, the hon. minister tells us, sent in letters or forms or something or other of support -

AN HON. MEMBER:

(Inaudible).

MR. S. NEARY:

Sent in letters of support for this kind of legislation. Well, I would like to see the letters of support, I would like to see how they were solicited and I would like to see what was in these letters. Why are they not laid on the table of the House as back up for this legislation? And why are not the other letters of support that the hon. minister spoke about it, why are they not brought in and tabled in the House so we can see them? Mr. Chairman,

MR. NEARY: I am afraid if we have to vote for this clause and vote for this bill on the basis of the godmother of it, then it would not get much support in this hon. House. The hon. minister said, "Well, it is like" - the cohabitation situation - "it is like a brother and sister entering into a contract." I could hardly believe it - like a brother and sister entering into a contract! This bill has nothing to do with brothers and sisters, unless my hon. friend from Stephenville (Mr. Stagg), who seems to know all about these matters, could enlighten us, and the hon. member for St. John's North (Mr. J. Carter) might be able to enlighten us on this particular matter. Like brothers and sisters! People who shack up, people who live common-law, now are compared to brothers and sisters. They can enter into an agreement, but the married couples, people who are legitimately married, are forced to obey this law. Mr. Chairman, if that is not an intrusion-into people's lives I do not know what is. As I said earlier, I doubt if it is constitutional. If it is ever challenged, I doubt very much if it would stand the test of the British North America Act.

MR. STIRLING: They have a constitutional expert over there.

MR. NEARY: Well, who is the constitutional expert?

AN HON. MEMBER: The member for Mt. Scio (Mr. J. Carter).

MR. NEARY: The member for Mt. Scio.

Mr. Chairman, I do not know, I am still contemplating an amendment to this clause whereby the rest of the act would be scrapped and just bring in a law, make it the law of this land, that married couples and non-married couples alike can enter into contracts if they so desire, and that should satisfy Judge Goodridge, that is all he wants. I do not understand. I asked my colleague, my learned friend here, the legal expert - and he did not even charge me for the advice - what family law, what matrimonial property laws the hon. minister was talking about when she gave us her lecture into what happened in England in 1880, I think it was, the feudal days when females were give the vote, what law? Could the hon. minister be a little more specific? We never heard about it on this side of the House. The hon. minister said this is an improve-

MR. NEARY: ment to present law. Well, give us something we can relate to. Tell us what the law is. My hon. friend does not know what it is. I do not know of anybody else. knows, if the hon. member for Baie Verte (Mr. Rideout) knows about it, but give us a clue so that we can take a look at it. Maybe we will just go overboard and we will get up and say, well, we are sorry, Mr. Government and Mr. Minister, but we did not know this law existed -

AN HON. MEMBER: Mr. Goodridge.

MR. NEARY: - and Judge Goodridge and everybody else who are so concerned about the Legislature passing laws affecting the lives of everybody in the Province when we are trying to correct an injustice that only applies to a small group of people.

So, Mr. Chairman, with these few remarks, I look forward to the hon. minister giving us some further enlightenment. The President of the Council (Mr. Marshall) certainly did not contribute very much to the debate on this clause. All he did was make a few nasty and snide remarks and then set a bad example for the hon. minister who had to withdraw, the first time, I believe, the hon. minister had to withdraw a statement that was unparliamentary in the House, but you have to learn. The hon. minister, like everybody else, has to learn.

AN HON. MEMBER: (Inaudible).

MR. NEARY: No, Mr. Chairman, that is the sort of thing that -

AN HON. MEMBER: (Inaudible).

MR. NEARY: That is right. But anyway, Mr. Chairman, I hope that the hon. minister will now be able to tell us. I am particularly interested in finding out what law it is the hon. minister is talking about. The Minister of Justice (Mr. Ottenheimer) is not in his seat, I could ask the Minister of Justice to advise the House. I do not know if the hon. minister is a lawyer or not, but certainly if the hon. minister is a lawyer, tell me what law she is talking about, if we can get a copy of it, if it is in the statutes of this Province. My

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MR. NEARY: hon. friend does not know anything
about it. Does the hon. the President of the Council know about it?

MR. MARSHALL: (Inaudible).

MR. NEARY: Pardon?

MR. MARSHALL: (Inaudible).

MR. NEARY: I know the hon. minister knows
everything

MR. S. NEARY: I know the hon. minister knows everything. He knows more sometimes than he should know. He thinks he knows everything.

MR. T. RIDEOUT: He knows everything except how to
(Inaudible)

MR. S. NEARY: That is right and we got a bit of good advice for the hon. President of the Council when the time comes. But I look forward - I presume my hon. friend now, our spokesman on justice, would like to have a few words. So if the minister, the President of the Council would just restrain himself, let my hon. colleague get up, fire out a few more questions and perhaps they all can be answered the same time and we will save the House some time. So I will yield now, Mr. Chairman, and let my hon. colleague have the floor.

MR. CHAIRMAN: (Mr. Baird) The hon. member for Grand Bank.

MR. L. THOMS: Actually, the only reason I want to get back up again is because the Minister of Education (Ms. Verge), in her remarks, proceeded to say, "Now, I am going to answer the statements or the questions or whatever made by the hon. member for Grand Bank". And then proceeded to tell me something about two people who got married and everything was fine and dandy, cosy, no problems, a blissful marriage and something to do with my statements being on a false premise and the false premise being that this act did not apply to that sort of situation.

But, Mr. Chairman, basically, what I have asked the President of the Council and tried to get from the Minister of Education is an answer to the question of why two people who are living together and who are not married are given preference under this act? That is the question that I am asking. But the President of the Council, in his diversion, of course, did not answer the question. The Minister of Education, in her diversion,

MR. L. THOMS: probably learning from the President of the Council, did not answer that question either. I would like to see this particular clause apply to both married and unmarried couples who are living together.

AN HON. MEMBER: Hear, hear.

MR. L. THOMS: Make it fair, that is all I am asking, because, as I said before, you can have just as much as of an injustice, the two people who are living together when one kicks the other one out, that is just as much an injustice as where two people married and one kicks the other person out.

Also, in a common law situation, I would not mind the Minister of Education, I believe you could have the Murdock case all over again. As I understand the Murdock case, it was where a woman had a great deal of input into the business, a great deal of input but no financial input into the business and that is the problem. If there had been a financial input then the case would have been decided differently. Now, in a common law situation you could have exactly the same thing. You could have a woman or a man, they live together for twenty years, she can be going in every day doing the books for the company, doing whatever, or working behind the counter in a grocery store or what have you, having no financial input into the business but still in all having a great deal of input in the way of labour. Now, in that situation the court would again come out with a Murdock decision because this couple are not within the act. The court would say that that person had no financial input into the business, that they do not come within this act, therefore there is no remedy for the woman.

MR. S. NEARY: So it does not apply.

MR. L. THOMS: That is right. So you can have, you can still have a case -

AN HON. MEMBER: You are using the wrong example.

MR. L. THOMS: - afterwards of the Murdock case but this time involving a man and a woman who are not married and they do

MR. L. THOMS: not come within the act, and if they do not opt to come within the act, they do not contract within the act then the act does not apply.

So, basically, the question I am asking is why not change this particular clause to bring both married and unmarried couples who are living together under the act? I would like to have an answer to that particular question.

MR. STAGG: (Inaudible).

MR. THOMS: If the member for Stephenville does not realize that this

MR. THOMS:

is happening today, then he is as gullible as I think he is, he is just as gullible as I think he is because there are people living common law today. I am not making it any more - I am not condoning it - I am not making it any more legal or illegal than it is. It exists. The government, you are recognizing this under Clause 32. Do not look at me and say that I am condoning shack-ups which is exactly your words. This is what the act -

MR. ROBERTS: The government is the one who is bringing in the bill, we are not bringing in the bill.

MR. THOMS: - this particular act is actually recognizing, something that exists. And I congratulate and praise the government for recognizing that. As I said before earlier it is a sad commentary on our way of life when the government, when this act has to recognize, give statutory recognition to a marriage in this Province.

I would just simply, before I was diverted by that member for Stephenville, like I say, I would just like an answer to why this particular clause is like it is.

MR. CHAIRMAN (MR. BAIRD): The hon. Minister of Education.

MS. VERGE: Mr. Chairman, I would like to deal with points raised by the members for Bonavista North (Mr. Stirling), LaPoile (Mr. Neary) and Grand Bank (Mr. Thoms) starting with the question raised by the hon. member for Bonavista North (Mr. Stirling) about the need for improving the courts. It may well be that there is a need for improving the efficiency of our courts which deal with family law matters, for adding to the number of judges, for increasing court personnel. However, that is a completely separate matter. This bill will result in clarifying the law in many areas and, I would submit, will decrease the time spent in court on divorce matters because in dealing with divorces judges will no longer have to use artificial contrivances to correct the inequities in matrimonial property law through making lump sum maintenance awards. At any rate, there is no

MS. VERGE:

reason to think that that amount of litigation in family matters is going to increase.

Next, the hon. member for LaPoile (Mr. Neary) repeated what he has been saying ad nauseam starting last May, that this act somehow constitutes unwarranted interference with the lives of the majority of families in the Province when instead all that is needed is reform to correct the comparatively few instances of injustice. This reform will modernize the law, will bring it into conformity with the expectations of married people and will simply improve a law which now exists and which now affects rights between married people in relation to their property. As I have said before as well, we already have matrimonial property law which affects every single married person in the Province. After this bill comes into force we will still have matrimonial property law which affects every single married person in this Province, the difference being that the new law will be more just, it will be what most people wanted in the first place, what most people thought they were getting when they got married and went to church and went through the marriage ceremony, so that it will be better for the vast majority of families who will never have any special problem while at the same time correcting the many injustices which resulted under the present law.

The law now says - this is the law which stopped its development in the 1880's, the law was largely made by the courts -

AN HON. MEMBER: Common law (inaudible).

MS. VERGE: Yes. Most of the present law is common law. It was developed by judges. One part of the law which was made through legislation is the Married Women's Property Act which was passed in Newfoundland in the 1880's which gave married women in Newfoundland for the first time the capacity to own property as

women

MS VERGE: if they were single women, as if they were regular people. What this largely common law says is that ownership of property is determined by the same rules as are applied to property disputes among business people, among strangers, among brothers and sisters. The crucial test is, who paid for the property? Where did the money come from? It gives absolutely no attention to the special nature of the family, to the contribution made to the family in the form of household management, in the form of child care; it gives no consideration at all to the needs of children. There are a couple of exceptions to this general rule - it is mine if I paid for it with my own money - one exception being a title document which specifies that ownership is in the name of not only the person who paid for the property but also in the name of another person. So, for example, in a case where a matrimonial home was purchased through income earned by the husband alone, the husband may have the title document, the Crown Grant, the Deed of Conveyance, the Bill of Sale put in both his name and the wife's name. However, because most people do not know what is going on when they go to their lawyer or their Justice of the Peace to have their deed made out, they usually do not have too much input into how the deed is drawn. And the practice which prevailed in Newfoundland, almost exclusively until about ten years ago, is that all these title documents were put in the husband's name alone. It was not a matter of discrimination, nobody even gave it a second thought, it was just the way things were done. It is not true today. Most couples going to a lawyer today are informed by their lawyer of the different options and, when informed, almost without exception couples choose to have their matrimonial home put in both their names as joint tenants. This act will achieve that end and will cover all those married people in our Province - my parents, most other peoples parents whose title documents for their matrimonial homes were drawn a long time ago and which are registered in the husband's name alone. So this law will improve the situation for those older

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MS VERGE:

married couples who want this result but through ignorance ended up having ownership in the husband's name alone. The other exception to the general rule is the case of a trust, which is a fairly complicated legal device where it could be found, for example, that property though put in the name of one spouse alone was done so with the intention that it be shared. Mr. Justice Goodridge, who I will again quote, in that same decision commented on the difficulty of establishing a trust. It is a very intricate area of the law, in which there is a fair bit of uncertainty. This piece of law reform will clear of all that doubt and uncertainty and should serve to eliminate needless litigation on this point. So the present law, the law which apparently the hon. member for Grand Bank (Mr. Thoms) would like to be the general rule, is one where the main consideration, in fact, usually the only consideration is: Who paid for which asset with whose money? Where did the money come from? It pays absolutely no attention to the partnership nature of a marriage, to the contribution made in the form of labour, nor does it pay any attention to the needs of children. Now the hon. member for Grand Bank seemed to contradict himself. In the beginning he was advocating having section 32 apply to all people, to both married people and to couples cohabiting, which would essentially be maintaining the status quo. By making that statement, he essentially ^{refutes} the basic principles which underlie the bill. Then, he went on to point out the

MS VERGE:

injustices which could result in the cases of couples cohabiting. By application of Section 32, he pointed out that a Murdock result could happen in the case of a couple cohabiting for, say, twenty years. So there is obvious inconsistency in his views on this Section 32. On the one hand, the hon. the member for Grand Bank (Mr. Thoms) made the statement that Section 32, which provides that the general rule is the prevailing common law with an option being given of contracting into this law reform, that that provision should govern married couples as well as those living common law. That, I maintain, is an essential refuting of the whole concept of this bill. Then he went on to point out -

MR. THOMS:

That is what I cannot understand.

Why is it that it refutes the concept of the bill?

MS VERGE:

The whole concept of the bill is to change the common law to provide that the general rule which will govern marriages is a system of sharing, where automatically, as a matter of general rule, the matrimonial home will be owned equally as joint tenants, where upon death or separation, a court application may be made to get equal division of the matrimonial assets and to get, upon proof of contribution to the acquisition, maintenance or improvement of business assets, a proportionate sharing of business assets. That is the whole concept of the act, to provide for sharing as a general rule to recognize that marriage constitutes a partnership of equals.

To say that Section 32 should govern married couples is to say that the general rule should be the present common law and that only by way of exception, by way of special contract, should those reform provisions govern a marriage.

Then the hon. the member for Grand Bank went on to point out that that Section 32, as it now reads, which governs couples cohabiting, can yield the Murdock result where the contribution, for example, of a wife in the acquisition of a matrimonial home and farm in the form of labour is given no value and where with no proof of any

MS VERGE: financial input, she is denied any ownership right in that property which she worked so hard over a number of years to acquire, to improve and to manage.

So to conclude, I will repeat myself by saying that this Matrimonial Property Act is what most married people in this Province want, what they expected when they got married in the first place, and what will best protect them in cases of hardship through death or through separation or divorce.

MR. NEARY: Mr. Chairman.

MR. CHAIRMAN: (Baird) The hon. the member for LaPoile.

MR. NEARY: The hon. minister just let out a mouthful, Sir. The hon. minister said, "This bill is what most married couples in this Province want." On what basis does the hon. minister make that kind of a statement, make a categorical statement, the hon. minister, who is so persuasive and so convincing, on what basis does the hon. minister make a statement like that when, in actual fact, there is no evidence before the House or before the Committee to show that that is what, indeed, the majority of married people in this Province wanted? I doubt very much, Mr. Chairman, if it is what the majority of the members of this House want. There is no logic or no rhyme or reason, no common sense at all in the minister's argument. And we find it very difficult to follow the logic in the minister's argument in support of this bill. What the hon. minister is saying, if we follow the hon. minister's line of reasoning, follow the hon. minister's logic, what the hon. minister is saying is this,

MR. NEARY: as far as I can see, that in Canada the Government of Canada brought in divorce laws, brought in the divorce law in Canada, the Canadian Government, but the Government of Canada did not say, "Now everybody has to get divorced". The Government of Canada brought in a divorce law and those who wanted to take advantage of it were free to do so. This law, Mr. -

MR. MARSHALL: On a point of order, Mr. Chairman.

MR. CHAIRMAN: (Baird) The President of the Council.

MR. MARSHALL: I think I am going to move the Committee rise anyway in a moment, if the hon. member would, but we have been, I know, for some period of time debating the principle of the bill, and I know that people have been debating it from both sides of the House. But, Your Honour, we are really in Committee now and we are considering that particular clause, number - I have lost the number of it now - number (20) -

AN HON. MEMBER: Second reading is not over yet.

MR. MARSHALL: - number (32) - we have gotten farther than, you know, I thought we did, and that relates to the cohabitation agreement. Really, what we are now doing is debating the principle of the bill, you know.

MR. NEARY: On that point of order, Mr. Chairman, what I am saying, Sir, has a direct bearing on Clause (32). I know it irritates and aggravates the hon. minister but that not because the hon. gentleman gets up on a point of order, Mr. Chairman, that everybody has to be out of order because the hon. gentleman said so. I am perfectly in order, I am relating what I am saying to Clause (32) if the hon. minister would just have the patience to wait until I get around to it.

MR. CHAIRMAN: To the point of order, we are discussing the general principle of the bill, and the general principle has been passed and right now we are discussing Section (32).

MR. NEARY: I thank Your Honour for his ruling and it is just precisely what I said. We are debating Section (32).

SOME HON. MEMBERS: Hear, hear!

MR. NEARY: When I was so rudely interrupted by the President of the Council (Mr. Marshall), Sir, I was relating the Divorce Act in Canada to this particular clause of the Matrimonial Property Act in this Province. Now what I was trying to point out to the minister who, as I say, is the godmother of this bill, that when they brought in the divorce laws in Canada they did not make it compulsory for everybody to get a divorce. When they brought in the abortion laws, they did not make it compulsory for everybody to get an abortion. But we are bringing in a bill here that makes it compulsory for everybody, but everybody, to come under the umbrella of this law, and that is the difference.

AN HON. MEMBER: Except for those -

MR. NEARY: Except for those who are shackled up. They get the preferential treatment. It should be just the reverse.

MR. MARSHALL: Would the hon. gentleman would like to rise the Committee?

MR. NEARY: Mr. Chairman, I move the Committee rise, report no progress and ask leave not to sit again.

SOME HON. MEMBERS: Hear, hear!

On motion, that the Committee rise report progress and ask leave to sit again, Mr. Speaker returned to the Chair.

MR. SPEAKER(Simms): It is agreed to call it six o'clock?

SOME HON. MEMBERS: Agreed.

MR. SPEAKER: Agreed.

The hon. the member for Humber West.

MR. CHAIRMAN(Baird): Mr. Speaker, the Committee of the Whole have considered the matters to them referred, and has directed me to report progress and ask leave to sit again.

On motion, report received and adopted, Committee ordered to sit again on tomorrow.

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MR. SPEAKER: The hon. the President of the Council.

MR. MARSHALL: Mr. Speaker, I move that the House at its rising do adjourn until tomorrow, Wednesday, at 3:00 p.m. and that this House do now adjourn.

MR. SPEAKER: It is moved and second that this House do now adjourn.

MR. F. ROWE: Before we adjourn, Mr. Speaker, since tomorrow is Private Member's day, I would if the President of the Council (Mr. Marshall) could indicate what business will be brought before the House on Thursday. Will we be continuing with the Municipalities Act?

MR. MARSHALL: We will continue with the Committee of the Whole on this bill until the bill is past Committee of the Whole and then we will get back into the Municipalities Act.

On motion the House at its rising adjourned until tomorrow, Wednesday, at three o'clock.