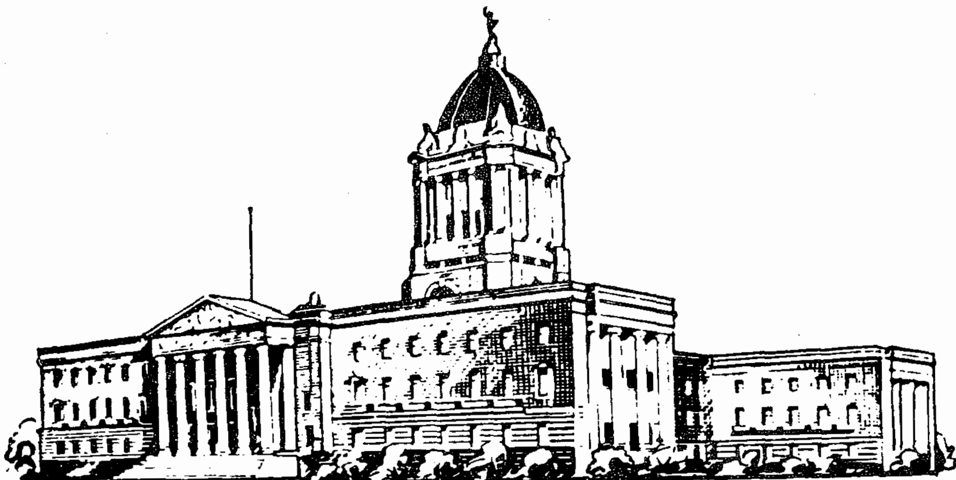
Legislative Assembly of Manitoba

HEARING OF THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. D. James Walding
Constituency of St. Vital



WEDNESDAY, June 15, 1977, 3:15 p.m.

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TIME: 3:15 p.m.

CHAIRMAN, Mr. D. James Walding.

MR. CHAIRMAN: Order please. We have a quorum, gentlemen, the Committee will come to order. We were on Page 8 of your list of amendments, Section 13(3). Mr. Cherniack.

MR. CHERNIACK: Just before the meeting started formally, we have had some discussion on 13(2) and I would like to ask that it be re-opened for reconsideration of the amendment.

MR. CHAIRMAN: Do we have the agreement of the committee? (Agreed) 13(2). Mr. Cherniack.

MR. CHERNIACK: Well, we were talking with Mr. Silver about a rewording of that clause that we had agreed earlier today to delete and I don't know if he is yet satisfied with the suggested rewording that, I think, we were coming to. I am wondering if he's ready to give us a . . . He's not.

MR. CHAIRMAN: Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I would suggest in that case that we leave that for the present time and then carry on with the other so Mr. Silver can get an opportunity to deal with that.

MR. CHAIRMAN: That would be agreed by the committee to come back to 13(2)? (Agreed)

MR. CHERNIACK: If Mr. Silver wants to. He may not want much time for this. Would you rather?

MR. SILVER: Well, I will bring it to the Chairman's attention as soon as I am ready.

MR. CHERNIACK: Well, would 13(3) not be affected by what's done with 13(2)?

MR. SILVER: It probably would. We would probably have to take out the word "wrongful."

MR. JENKINS: I would suggest, Mr. Chairman, that we leave 13(2) and 13(3) and proceed to 13(4).

MR. CHERNIACK: Yes, I think that's okay.

MR. CHAIRMAN: 13(4)—pass. Mr. Axworthy.

MR. AXWORTHY: Again a question which I think has been running current through so many of these debates but particularly going back to 13(2) again and that is that again we're establishing certain rights, in this case incidental rights, under the sharing of family assets. I would raise the question of how do you solve the matter if there is a dispute about the management or allocation of those rights? What mechanism might be available? I think it does go back to the principle that you shouldn't be giving rights unless there is some way of enforcement and . . .

A MEMBER: Section 33.

MR. AXWORTHY: . . . Well, okay, what is the reference on that?

MR. SILVER: Section 33, sub (1), gives the right to any spouse in the event of any dispute, etc., arising from under the Act to apply to a judge for an order to settle the dispute.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: So it would be, if we're going back to questions that we were talking about earlier, whether it is on disposition or the management of those assets as to who should be determining the use of the summer cottage in the month of July and August, things like that, where you want your relatives to stay, and if it just got to the point where they weren't prepared to break up their marriage over it but there was a real argument, you would have to go to court? Is that the idea?

MR. SILVER: Well, it's one method. Failing settlement court is made available to them.

MR. CHE to be IACK: I guess the important point made is that going to court on that one question does not bring into play any of the other factors involved in the separation. It means that the parties in effect are seeking what I would call arbitration because it would be dealing with any one specific matter. Now, I am sure that under the general law, they could agree to arbitrate it with anybody else but the resort of course, in the end all the legislation could do is to bring in the court or a board and surely, you know, unless it was desirable to appoint a board of some kind which I don't think it is.

MR. AXWORTHY: Mr. Chairman, during the committee hearings, we heard several representations and I think most members seemed to be relatively responsive to the idea I guess it was the idea of the court's conciliation and the idea of talking about having a body that would be available so that you wouldn't get into the formal proceedings of walking into a County Court courtroom in order to worry about . . . There are those kind of marital disputes that arise that you don't want to push to the edge of separation and I think, as we well know, you know, when we transfer our own discussions from this committee room to the Legislative Chamber, the tone and the tenor of remarks tend to become different. I think if you also transfer a dispute like this into a court chamber, you all of a sudden realize that you'd change the venue and also I think you would tend to change the nature of the relationship. I am wondering — you know it's been a short time since the hearings were over — if there has been any consideration given to those points raisedby committee and whether in fact these are areas in which such bodies may be . . . we should really think that accompanying forms of arbitration or mediation or whatever — a conciliation I guess is the best word — shouldn't be available.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, if I could just disclose to committee some thoughts that I have in connection with that because to the committee were a number of briefs dealing with subject matter

that we can't very well deal with in the legislation — pre-marital education, enforcement of maintenance orders, conciliation, what-not — and we have had some discussions with some of those that made appearances on the areas that were of special interest to them and I have had some discussions with the First Minister, it's still in the preliminary stage, of establishing some sort of task force to examine those areas that were presented to us in committee that we haven't been able to deal with by way of legislation. I don't think it would be right to allow them just to evaporate without attention and I concur that there are very important additional areas that ought to be examined.

Number 2, of course, the pilot project in St. Boniface. We hope to be able to improve the conciliation processes in St. Boniface which may tell us a great deal as to ways and means that we can improve conciliation within the court setup so that it certainly is an area that is under very active review. I am not quite sure yet of the mechanics by which we should operate in the examination. I would like to have the services of those that expressed the greatest interest in this in some sort of mechanism to look into these areas.

MR. AXWORTHY: Mr. Chairman, I am pleased to hear the Attorney-General say that there has been some steps taken. I would only ask the further question as to whether there is any advantage to be gained by including within the Act itself any recourse or intermediate step between that and the total recourse to the courts. I am not necessarily recommending it be because I don't pretend to be an expert on how these things would best work. If the Act stays as it is, it would seem that couples who had disputes about matters that come under this Act would feel that that is their only venue for resolution when, in fact, some of these other things do occur. It may be best left as an informal way, but I just wonder if there is any wording in the legislation that could be introduced to indicate that alternative means of conciliation or mediation or resolution might be also found or utilized.

MR. PAWLEY: The only method that possibly could have been used in The Divorce Act, 1968 — I don't have it in front of me — but it deals with responsibility on the part of a solicitor to advise his client of the availability of conciliation services. There is a very very weak provision; I don't know really how useful a provision like that is. It's only one that states a responsibility on the part of the solicitor. That's the only type of precedent that I am aware of that has been used in that way and it wouldn't be beyond the stretch of the imagination to include such a provision here. But I think that something much deeper and much more meaningful should be done to attempt to provide some improvement. For instance, I hope when we get through here that we will have some chance to — not that I am proposing any trip to California; I'm not, I don't think that's needed, unless the entire committee would like to journey down there — but there was some interesting proposals on that court of conciliation in California that I think we have to explore and certainly not leave untouched.

MR. CHAIRMAN: 13(4)—pass. Mr. Silver has indicated to me that he has something for 13(2) and 13(3). Proceed 13(2).

MR. SILVER: In 13(2), in place of the words that we crossed off this morning I would suggest the following: "but the spouse making the disposition is liable therefore to the other spouse."

Then in 13(3) I would simply delete the word "wrongful" and leave the rest as is and, at the same time, since we are dealing with the term "disposition" I would recommend that in the definition section of this new Act we define "disposition". I have a definition worked out that is based largely upon the existing definition in The Dower Act but with some changes.

MR. CHERNIACK: Mr. Chairman, for the purposes of defining this I suppose we ought to move back, formally move back by way of motion to clause one and the proposal that we are about to hear.

MR. CHAIRMAN: I wonder, on a matter of procedure, if we could deal with these one at a time so that we don't get too confused.

MR. CHERNIACK: All right, then.

MR. CHAIRMAN: On 13(2), Mr. Cherniack, will you move the sub-amendment as outlined?

MR. CHERNIACK: Sure, glad to. THAT the words after the word "value;" be added as follows: "but the spouse making the disposition is liable therefore to the other spouse."

MR. CHAIRMAN: Any discussion on the sub-amendment? Mr. Sherman.

MR. SHERMAN: That replaces the wording that is there now?

MR. CHAIRMAN: That was deleted.

MR. SHERMAN: Yes, okay.

MR. CHAIRMAN. Is the sub-amendment agreed to? (Agreed) 13(2) as further amended—pass. 13(3).

MR. CHERNIACK: I move, Mr. Chairman, THAT the word "wrongful" appearing in the first line be deleted.

MR. CHAIRMAN: Is the sub-amendment agreed to? 13(3) as further amended—pass

Perhaps now we might return to the definitions section.

MR. CHERNIACK: I'm sorry, Mr. Chairman. I'm sorry, I have a note and I'd like to have Mr. Silver's clarification. I have a note that I sort of expected in this place to have a reference to no disposition prior to May 6th being included. Is that elsewhere or is this where it ought to be? We had discussed that . . .

MR. SILVER: Oh, that was 2(4) wasn't it? The limitation period?

MR. CHERNIACK: Yes.

MR. SILVER: The two-year limitation period?

MR. CHERNIACK: Yes.

MR. SILVER: That's covered here by an addition to 13(3), if that's what you had in mind.

MR. CHERNIACK: Well, did we pass an addition to 13(3)?

MR. CHAIRMAN: No, but we passed 13(3) without the addition.

MR. CHERNIACK: I know, that's why I stopped because you see I have a note that would indicate that . . .

MR. CHAIRMAN: By leave of the committee we will introduce a further sub-amendment. Mr. Cherniack will move that the words "but the two-year period shall not commence before May 6th, 1977" shall be added at the end of that subsection. Do you want me to repeat them?

A MEMBER: Yes, please.

MR. CHAIRMAN: The words "but the two-year period shall not commence before May 6th, 1977." That further sub-amendment moved by Mr. Cherniack, any discussion? Sub-amendment agreed to? 13(3) as amended—pass. 13(5)—pass? Mr. Sherman.

MR. SHERMAN: Well, I was just rereading it and reviewing it, Mr. Chairman, before agreeing to it. But I think it's acceptable to us.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: This applies whether it's registered or otherwise, or registered or not?

MR. PAWLEY: Yes it does.

MR. CHAIRMAN: 13(5)—pass; 13(6)—pass? Mr. Sherman.

MR. SHERMAN: Well, I presume that I understand it — at least I hope I understand it — that all it means is that a simple situation of survivorship doesn't guarantee or confer upon a surviving spouse the right to ownership of the interest of the other spouse. Some other action would have to be taken or there would have to be proof that there was no encumbrance or no other right of claim. Is that correct?

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: The right of survivorship states that the ownership of the other half of the deceased spouse would automatically pass to the survivor. That's as land is owned — joint tenants, not as tenants in common — but this establishes, to my mind, that they're speaking about it continuing as owners in common of an undivided one-half interest, which means that a will of the deceased would supersede the right of the spouse and a person could will his or her half to someone else. So I think Mr. Sherman is correct in his summary.

MR. CHAIRMAN: 13(6)—pass; 13—pass? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I have been saving for an opportunity to speak about what was submitted to us yesterday, a distribution of the Winnipeg Chamber of Commerce document, which was not presented to us but distributed to us. The reason that I am referring to it at this stage is, firstly, to deplore the fact that the Chamber of Commerce, which was listed as being prepared to give us a brief all along, never did us the courtesy of coming or even explaining to us why they didn't come but chose to make a public statement of their position without giving us the benefit of discussing it with them.

I imagine they delayed their presentation until they had a meeting where they could get it approved and then they made it public and we only got it yesterday morning; at least, I only got it yesterday.

The reason I mention it under Section 13 is that I have made three notes where they make bald statements which are not justified, in my opinion. And by doing so, they have put some people in the frame of mind of worrying about what is an unnecessary concern. They say, "Should this bill pass in its present form," and I recognize they say in its present form, "every financial institution will require an extensive review of all of their loans as most of the persons will only be able to guarantee 50 percent of the assets." Now, I have waited until we finished Section 13 because 13 clearly protects these financial institutions. But I would say that in the bill itself there was protection and there was the improvement here which was made, I must say, not because of the presentation of the Chamber of Commerce as it may have been, but because of other briefs that did come to us and did make points which did encourage us to make changes. So that unfortunately the Chamber of Commerce has presented a position which I don't think was justified at any time but certainly was one which would have been helpful to us if it had been made at the right time and on an occasion when we could, in the discussion with them, have pointed out our desire to protect the third parties involved, which I do think is in the present bill. And I will refer to others as we come to them.

MR. CHAIRMAN: Section 13—pass; 14(1). Mr. Graham.

MR. GRAHAM: Mr. Chairman, dealing with 14(1), I notice it says "an undivided half-interest in the asset," and I would say that that is subject to any encumbrances, if any, that are against that asset. Is that clear?

MR. CHAIRMAN: Would you repeat the question, Mr. Graham, please.

MR. GRAHAM: It says, "where a spouse becomes the registered owner of a family asset in the form of real property, the other spouse is entitled, subject to Section 16, to be registered as the owner of an undivided half-interest in the asset." I would assume that is subject to encumbrances that may be against that real property. Is that the intent?

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: Well, whatever encumbrances there are against the property would, upon the change in registration, be assumed by the second spouse, that is, the transfer, the change in the title from the name of the one spouse to the names of both spouses, would be done subject to any existing encumbrances to which the title happens to be subject. That's the way it would have to be done under The Real Property Act.

MR. GRAHAM: Would that require notification to the third party, of the change?

MR. SILVER: It really wouldn't make any difference; it probably wouldn't make any difference to the third party. The third party's interest is against the title and the interest remains in the same way as before. In fact, he's in a better position because now, say in the case of a mortgage, whereas in the case of the one, when the title was in the name of only one spouse, if on a mortgage sale the mortgagee does not get all he has to get, does not get what is owed to him, he can proceed by way of judgment against the . . . under the covenantor. —(Interjection)— Oh, yes, what you are saying is that the spouse will not be a convenantor and therefore he won't be able to proceed against her. Yes, well, that's true. So he's in the same position; in no worse position than he was before.

MR. CHAIRMAN: 14(1). Mr. Johnston.

MR. F. JOHNSTON: Just as a clarification. Of course that means that it is only a half-interest in the half that that spouse owns, if I only happen to own half of something. Does that read that way? It seems to me that . . .

MR. SILVER: It's a one-half interest in whatever the first spouse owns, and what he owns may not be a complete asset because in our definition, the definition of "asset" includes an interest in an asset. So that first spouse may have only part of an asset, for the sake of argument, and it would mean then that the second spouse gets a half-interest in that part.

MR. GRAHAM: That's not what this section says though.

MR. SILVER: But you have to read it together with the definition of "asset" in Section 1.

MR. F. JOHNSTON: That's fine; I just wanted that cleared up.

MR. CHAIRMAN: Section 14(1)—pass; 14(2). Mr. Johnston.

MR. F. JOHNSTON: If I own, say, a cottage and Mr. Jenkins and I are half-owners, does that now mean that our wives are half-owners?

MR. SILVER: One-quarter.

MR. F. JOHNSTON: One-quarter. So the cottage is now split four ways. We might get along with Mr. Jenkins, but I've got some relatives that I wouldn't get along with very easy, say my wife and my sister-in-law or something of that nature. They get along but I can see a problem in here, that cottage, you're going to have trouble there. .

All of a sudden we have brought four owners into a cottage that may have been purchased by two people, two brothers or something of that nature. Now we've got sisters-in-law or even common-law wives involved.

MR. PAWLEY: Mr. Chairman, I think if there was that concern, then the easiest approach would be for an opting-out with respect to the cottage. Even if one wanted to accept the balance of the standard marital regime, there could be an opting-out insofar as the cottage is concerned in order that you wouldn't encounter that problem, if that was a particular problem that you were dealing with.

MR. F. JOHNSTON: Yes, but who is going to opt out. If we are talking cottage there are children involved who have their time at the place, or if it's any one of other assets, you're now adding four people instead of two. You have a situation where two people can get along and make the decision very easily, but the decision doesn't mean anything on the property because you have got the other two who don't agree. If a cottage is owned by three people, you have now got six people involved.

MR. PAWLEY: Mr. Chairman, in all practicality, though, I would suggest that if three people own a cottage and their wives are not shown as title owners, that the fact that three families are sharing it, regardless of how the title reads, that that is not going to change the relationship one bit insofar as the relationship of the various spouses one to the other. I can't see where it would create any practical difference.

MR. F. JOHNSTON: You have now added on a cottage at the lake where two brothers own it, their wives now become half-owners. There are four people now who own the cottage. Probably there is no disagreement between the spouses, but there sure as hell could be if I decide to do something that my wife doesn't agree with with that cottage and the other people, as I say, sisters-in-law and what have you, don't get along in that particular area. I think you have opened up a squabble here.

A MEMBER: You get outvoted, just like on the Statutory Regulations Committee.

MR. PAWLEY: It's a squabble that is going to occur regardless, I suggest, Mr. Chairman, as to the

names on the title; I don't think the names on the title contribute to the type of squabble situation Mr. Johnston is referring to. I think it is a question of the parties that agreed to share the use of a cottage — in your case three families — to find some way of living together, sharing that cottage. If they can't, then one of them should get out of the arrangement.

MR. F. JOHNSTON: Mr. Chairman, the Attorney-General is dreaming. It just won't work that way. If three people or two people get together, and I'm using the cottage as an example, or over an asset and decide how it is going to be used and we say, "Okay, it's all settled." You go home and say, "I don't agree." You say, "Look, we've settled this; we've spent a long time to settle it and I think we've got to agree with it." I won't say my wife, I can say myself, saying, "You can't agree to it; I haven't agreed to it." And you open up a whole ball of wax of argument between people. I think where that is involved, you can get into it very easily on a number of things because you are saying where two people own it, now there is four; where three people owned it, now there are six. Or if there are four; there are eight. It just doesn't make for good relationships.

MR. PAWLEY: What happens now in the event that different people own a cottage and share in the cottage, interests in the cottage — one dies and the heirs enter into the picture. If they can't agree on the use of the cottage, then there has to be some arrangement agreed to voluntarily or through court process.

MR. F. JOHNSTON: Nobody has to die here. There are lots of squabbles over who gets the arrangements of —(Interjection)— Somebody might, yes.

MR. PAWLEY: I don't see where this should generate a problem that wouldn't otherwise exist.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, I just wanted to point out that we weren't talking about the use of the asset at all, we are talking about the disposition and when you get into a disposition, that's usually where you get into dispute. Instead of two or three people involved, suddenly you've got twice as many involved and I think you are going to have twice as many problems.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, we can find troubles if we look for them, but, Mr. Chairman, I find it difficult to visualize any property which may be owned by two husbands, that is used jointly by the two families, that would not have the kind of squabbles that might arise as described by Mr. Johnston, whether or not the wife is on the title. If there is going to be squabbling, it will be squabbling regardless of who owns the property.

On the other hand, if the husband, say, is so dominant that what he does when he is the only member of the family who is the owner, then if he is that dominant, then it doesn't matter whether she is on the title or not, she will bow to his wish. Therefore, I can see the squabble taking place regardless of whether the wife is on the title or not.

The only thing is that if there is a difference of opinion and only one is a registered owner, then I presume he can say to her, "Well, get out of here," and kick her bodily out of the property. If he is going to take that attitude, then they had better separate that property earlier rather than later. In other words, I do not think that problem would be caused by ownership and if it asserts to the wife a certain say, then I for one wouldn't want to deny her the right to say, "This is our cottage for a portion, half-time use, or to be shared with someone, but nevertheless it is ours and I want to participate in the decision of how we use it." It's not an asset that is used to earn money; it is not an investment. It is a living accommodation and I think that the two spouses should have the right to decide on how it is to be used. This section only gives each of the spouses an equal right to say that and I think that is the principle in this legislation and one which I thought we had all accepted as being right, and that is, the equal sharing, in this case, of jointly used property that is used not for earning a living but for family living.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, in all deference to the argument put forward by Mr. Cherniack, I don't think this deals at all with the use of it. All this says is . . . If you want to dispose of it, how do you dispose of it, because you can't register any document to dispose of it without the consent of all involved? How are you going to get rid of it?

MR. CHERNIACK: In 14(3), we are really talking about the whole picture that was raised by Mr. Johnston.

MR. CHAIRMAN: 14(2). Mr. Graham.

MR. GRAHAM: Mr. Chairman, again, I would suggest that we deal specifically with 14(2) which is an instrument which, as far as I can see, only spells out the entitlement of the spouse but really, to my mind, is a stumbling block in any movement to dispose of an asset because it prevents the registration of any document or instrument which could be a bill of sale. Correct me if I am wrong.

MR. CHERNIACK: You're right.

MR. GRAHAM: But I'm just wondering, if there is a disagreement, a court would normally say, well, we'll dispose of the thing and share in the assets. But here, this prevents the disposition. It doesn't allow the dispostion to go forward and the sharing. It effectively stops the disposal.

MR. CHAIRMAN: 14(2)—pass; 14(3).

MR. GRAHAM: You mean you have to then apply to the court to get a consent of the court before you can sell it, is that what is going to occur?

MR. CHERNIACK: Yes, if the two owners do not agree on how to deal with a property, then there is recourse to the court to make that decision for them. That's the normal way of any jointly-owned property. The point was made already that we hope, or the government hopes, to bring in the possibility of a conciliation part of the court which would make it on a more friendly basis. But still, in the end, somebody has to make the decision for two parties who do not agree otherwise.

MR. CHAIRMAN: 14(3). Mr. Johnston.

MR. F. JOHNSTON: Where we say "where a spouse is entitled to be registered" —again, does that bring up the subject they were on last night with the . . .

MR. SHERMAN: Yes, 15 does, on the next page. You're back into that same argument.

MR. CHERNIACK: I think Mr. Silver has a proposal to make on 15.

MR. SHERMAN: 15 brings up the same argument as 5(4).

MR. CHERNIACK: Mr. Chairman, may I suggest that we deal with 14. I know that Mr. Silver has a suggestion to make on 15.

MR. CHAIRMAN: 14(3). Mr. Graham.

MR. GRAHAM: Mr. Chairman, dealing with 14(3), and here I want legal advice on this. "Where the spouse is entitled to be registered as an owner of an interest in a family asset under subsection 1, the spouse is also entitled to the same usage, possession and management rights in the asset." Now, that asset can be in the form of real property, it could be the family farm . . .

MR. CHERNIACK: No.

MR. GRAHAM: Well, am I wrong right there?

MR. CHERNIACK: I'm sorry, I apologize for interrupting, Mr. Chairman, but I reacted quickly. We're dealing here only with real property and only with a family asset that is not the homestead. So to me it would be of a recreational nature , sort of the second home, the summer home, the recreational home, whatever it is that is used as a secondary piece of real property used by the family, the fishing lodge, limited to real property. That's why I reacted and said no when Mr. Graham said the family farm. The family farm we've already dealt with under the marital home section. I'm sorry, Mr. Chairman.

MR. GRAHAM: Well, Mr. Chairman, then I will revise my. . . I wasn't referring to the family farm. I will refer to "a farm."

MR. CHERNIACK: Not if it is a commercial institution, Mr. Graham, that's my point. This is real property not used to earn a living or not used as an investment. This is only the family asset and that's why I said it would only be something used by the family, and I can only think of a recreational second home as being applicable here. Perhaps Mr. Silver has another idea.

MR. GRAHAM: Is that clearly spelled out that that is what it identifies it for? Somehow I read it that it could apply to a variety of types of property.

MR. SILVER: No, this whole division, Division 3, first of all deals with family assets which are defined as being other than commercial assets. Secondly, Section 13 deals with chattels, personal property such as a car, boat, and Section 14 which we are dealing with now deals with real property but still real property that is a family asset. That is, it must not be a commercial asset and it must not be the homestead. If it is a homestead, it becomes a marital home under Division 1, and if it is a farm used for commercial purposes, it becomes a commercial asset to be dealt with under Division 4. That's pretty clearly spelled out by definition in Section 1 and also Section 2, I mean Division 2.

MR. GRAHAM: Mr. Chairman, what is a commercial asset then? Supposing it was a vacant farm, it wasn't being used for commercial purposes? —(Interjection)— It's real property.

MR. CHERNIACK: No, it's an investment. Why else do you have it?

MR. GRAHAM: Maybe it was given to the family. That's possible.

MR. SILVER: Well, if it were possible to say that that farm is not being farmed for commercial purposes, maybe it's being farmed for home use. Maybe, you know, somebody's growing cucumbers on it for home use or something and it is not being held for investment purposes, that is, for the purposes of re-sale to a developer or to a farmer, then it can be a family asset to which Section 14 would apply but only in those circumstances. —(Interjection)— Yes, that too.

MR. GRAHAM: So your wife then can effectively prevent you from going hunting on it?

MR. SILVER: Then it wouldn't be a farm.

MR. GRAHAM: She has management rights too.

MR. CHAIRMAN: 14(3)—pass. Mr. Graham.

MR. GRAHAM: I suggest that this is not clear enough, not in my mind anyway to pass at this time. I think we have to do a better job of defining what it does entail.

MR. CHAIRMAN: Order please. Continue, Mr. Graham.

MR. PAWLEY: Mr. Chairman, I wonder if Mr. Graham would allow me just to interrupt for one

moment. I wonder if committee members would like to call Mr. Lamont over now and even if we're not at those sections, if we leaped ahead to them, or leave it until tonight. I don't want to ask Mr. Lamont to wait around until we arrive at the sections, a lot of time could pass by. But if it was agreeable to members, we could deal with those sections involving Mr. Lamont and call him over this afternoon or we can leave it until tonight.

MR. CHERNIACK: Could we call him but have him wait until we've finished 14? Mr. Goodman, you haven't yet got clearance from the committee.

MR. CHAIRMAN: Would that be agreeable to the committee? Mr. Sherman.

MR. SHERMAN: I don't see any reason why we shouldn't call him over this afternoon. We could go ahead to those sections. We can deal with 14 while we're waiting for him.

MR. CHAIRMAN: 14(3). Mr. Graham.

MR. GRAHAM: Mr. Chairman, I suggest that all of Section 14 deals with land and the registration of the ownership and the management rights of it and the usage and all the rest, perhaps that whole section should be held until we get Mr. Lamont.

MR. PAWLEY: Well, it's agreeable to me if members have questions on those sections they feel they would like to pose to Mr. Lamont. If there aren't then I would suggest that we do deal with them.

MR. GRAHAM: . . . deals with mortgages.

MR. PAWLEY: I wonder, are there other questions or areas on those two sections separate and apart from titles that members would like to address themselves to?

MR. CHAIRMAN: Mr. Spivak, 14(3).

MR. PAWLEY: 14(3) and 14(4).

MR. SPIVAK: The principle of course that we've got to recognize is that in this situation, if, in fact, title is in the name of brothers or wives or sisters-in-law or strangers, shared with strangers, what we are now suggesting is that one spouse in which there are four parties involved is capable, realistically now, of asking for partition in the event that there is not a settlement to the spouse's satisfaction of whatever they want to do with respect to the premises. That will be the law.

MR. CHEIACK: That's quite right. Where now there are four men, apparently, who own the piece of property each an undivided one-quarter interest, any one of those men could force partition. That's absolutely true. And if the title is owned by two men and the wives become partners so that there are four people, then any one of those four can force partition.

MR. SPIVAK: But there might be four men who are involved and the decisions with respect to those assets have been arrived at by the men. You are now saying that the four wives are part of it and that's eight people. One person, one spouse, for whatever reason, makes a decision — because we used men, it could have been the reverse, it doesn't make any difference — one spouse then who is not satisfied, then he or she will be entitled to ask for partition. I think that there are problems that will arise in that situation.

MR. F. JOHNSTON: What if three of them are single, you know? Well, the one that's married, the wife can get rid of the hunting lodge.

MR. SPIVAK: Let's just face the problem.

MR. F. JOHNSTON: Well, it works both ways. My wife's involved in a few things too, you know.

MR. SPIVAK: The problem as we stated is probably the law as it will be if this is passed. What we are saying is that the feeling generally is that it is unlikely that those sets of circumstances will arise and, if they do arise, it will be very few, there will be very few of them occur. But my feeling generally is that we have to understand the real direct intent of the Act and its application and I think that in many many situations we'll probably cause greater harm than good. I'm not sure how you correct it but I think that you've got to visualize these situations and you've got to discuss them. If we ignore these scenarios that we're talking about now, we're ignoring what in practical terms is going to happen.

MR. CHERNIACK: Mr. Chairman, I don't know that I persuaded anybody but I must assure Mr. Spivak that I made that effort on this very point he's raising before he came in and the point I made, if I can just summarize it quickly, is that when a property is being used as a marital asset by a couple, then I don't think it's very important from the standpoint of decision-making management, as to who owns the property. This is a marital asset, it's not used as an investment; we don't have four people using it as an investment. It's the family that has a share in using it and I don't visualize that a marriage of two people whom I believe we all recognize are entitled to share equally in decision making about their marital assets and their way of life should not therefore have an equal say in how they are going to make use of their interest in whatever property. Frankly, although I can see that there could be the problems described which I think would very seldom arise, I think they would arise anyway in the case of any wife who says to her husband, "That place we go to so much of a period of a year, it needs to be made a little better or sold or changed for our marital good." And that means that it's a joint decision and I think that's the intent of the Act and I am all for it.

MR. PAWLEY: Mr. Chairman, I just want to pose this to Mr. Spivak. It seems to me that where you have married couples that register their names as joint tenants now in contrast to those that register their titles only in the name of one, that in my few years of practice, I didn't experience great

difficulties and problems confronting couples that worked under joint tenancy as compared to those that kept title in their own individual names. I didn't witness any particular problems. If anything, generally those that registered names in joint tenancy had a fairer understanding one to the other than those that just registered the title in the name of one.

MR. F. JOHNSTON: Mr. Chairman, I think the Attorney-General is talking about the two spouses getting along. But we're talking about another couple not getting along or possibly even more. Supposing somebody remarries and they both have children. You're now into a situation where you've got two-people ownership and then you've got with families and now you've got another family involved with these children and you're going to have arguments over this. For Mr. Cherniack to say that he can't visualize problems, I don't know why he can't, the problems are there.

Mr. Patrick makes the case of a hunting lodge. It is very easy for two people to decide that one can be part owner of a hunting lodge and then she . becomes part owner of it but there could be four men involved in a hunting lodge and there could be four women involved in the purchase of real estate. It's not uncommon and you now are running into a situation that I don't think is a solvable situation. Quite frankly, I think you could beat this law at any given time in any court. I'd go to the Human Rights Commission.

MR. SPIVAK: The interesting thing is, what about those situations where a mother and a son or a mother and a daughter purchase a cottage. Now, what you're simply saying is that the husband or the wife, as the case may be, who now acquires a half-interest of the son's interest or in the case of the wife is the owner, a half-interest of the wife's interest, can on division simply ask for payment out or, in turn, simply ask for partition. That's a very common situation because the financing will, in many cases, be available from the parent whether both are living or one is living and even though the use may be by the couple, it may be available to the parent at will. Those are the kinds of problems and inequities. You see, the problem that Mr. Pawley's talking about here, he's talking about a husband and wife who are buying a marital home in which there is joint tenancy and that's true, there is no problem. But how many people buy a home with four joint tenants or three joint tenants or eight joint tenants? I mean we just don't have those things. You obviously don't because you have two people who are dealing with it. Now, we're talking about many situations in which there will be three, four, five, six, seven and eight, and the kinds of scenarios that we're talking about are going to be directly affected. I understand the principle and I know what we're saying but I wonder if we're not at this point talking about in some cases hardship that will really arise as a result of this or unfairness. Well hardship in one case; unfairness in another. Whether there is another way of coping with this, I don't know.

MR. GRAHAM: Mr. Chairman, I want to deal with the management aspect of it. Supposing — and this is a very good possibility — two brothers, both single, purchase a hunting lodge. One of them subsequently gets married and his wife wants management rights in the operation of that hunting lodge. Supposing she says, "I don't want any guns in this place." What good is the hunting lodge then to the other persons? These are things that I don't think we have fully thought out yet. I just use that one example and I am talking about the management aspect of it rather than the ownership or the disposition but the actual usage of it when it is a common property of more than one individual.

MR. CHERNIACK: Mr. Chairman, I would like personally to welcome Mr. Patrick and his contribution to our committee. Having done that, I want to come back to what we're talking about here. —(Interjection)— I said you're very welcome here; it's a great contribution you're making. Mr. Chairman, what are we talking about here? We're talking about saying that when people are married and are living together today and there is ownership of assets other than those which are investments or savings or business or anything unconnected with the day-to-day lives, that those assets are something in which both people to a marriage should have an interest. That's what we're talking about.

We've been through the marital home. There has been no debate about that. Now we're talking about recreation and, Mr. Chairman, I think that is a very, very important part of any marriage. And then I would say by all means let's explore every possible problem that may arise between couples who don't see eye-to-eye and then let us recognize the first principle is that they ought to share in the ownership and in the management of them, and they ought to find a way to work out their relationship and their management of it in a way other than what may now exist, where one persons says, "This is mine and I will decide how it happens." That's really what we're talking about; we're talking about joint decisions. Now, when they can't be made, there are problems. And if they can't be made then if there is a separation, then at least the spouse who is the loser in an argument will at least have his or her share of the asset as being distributable when that happens. But as long as it is going on, then surely we are fighting the thought that a husband who decides to own a share of a hunting lodge will do so without regard to his wife's feelings. Because if he will, then he will use it as he pleases without regard to her feelings, then I am not part of that desire to encourage a continuance. And I put it right in that way, that it does not create problems, it may assure that if a problem is there that a person, who is otherwise left out of a decision, now becomes part of it and says, "There is a problem; I want my

say."

Therefore, if you call that creating problems, I think it is just carrying the problem to the stage where both parties have a say instead of one having the whole control and the other having to say, "Yes, Sir. No, Sir. That's the way it has to be."

I lay it that way because I think that we can think of even more disagreement that could occur. But the main thing to the root of it would be a basic disagreement in the marriage, in which case they should have an equal right when it is a recreational asset that we are discussing.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Well, Mr. Chairman, don't we really get back to the problems that were brought to our attention by the Law Reform Commission when they suggested deferred sharing rather than instantaneous sharing. This section deals with instantaneous sharing.

The arguments that have been put forward, in my humble opinion' Sir, suggest that there is a very good reason for a concept of deferred sharing in this respect.

MR. CHAIRMAN: 14(3)—pass? Mr. Johnston.

MR. F. JOHNSTON: Mr. Chairman, when you create a situation of a lot of ownership, it's not unlike the Minister running a department in this government, or the manager, or somebody; somebody has to make the final decision or you are going to have problems. The theory that Mr. Cherniack is talking about is a very good nice-sounding theory but it won't work because the decisions are going to have to be made.

MR. CHERNIACK: May I ask Mr. Johnston, by whom should the decisions be made? By the husband? Or his partner?

MR. F. JOHNSTON: Well, if you want to draw lots on how to make the decision, if you want to go that far. But somebody is going to have to make a decision and if you are going to make situations where you are going to just automatically make four owners instead of two, or six instead of three, the decision on that property, especially if it's recreation, you are going to have problems.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: What experience I have enjoyed in respect to dealing with separation cases and the type of situations that would come to head, would be situations in which generally one spouse took that type of role where he assumed an arbitrary type of responsibility, giving very little responsibility to the other spouse, feeling that it was up to he or she to make that ultimate decision unilaterally. The impression that I have is that's when family stress and marriage difficulties occur; the very opposite to the suggestion by Mr. Johnston that it's important that one spouse make that final decision. I think it has to be a mutual decision arrived at in a consultative basis and, rather than do what Mr. Johnston suggests, the impression that I have is that it encourages a healthier marriage relationship rather than an unhealthy type of relationship. Or they can opt out. If this, some way or other, is imposing a situation onto any couple, I again stress there is nothing to prevent them from mutually opting out.

MR. F. JOHNSTON: But everybody keeps talking about the decisions between spouses here. The decision is going to be between couples. I'm not prepared to say that if we are in an agreement with somebody else that I can get them agreeing, too. Then we come to the point where they partition a sale. It could be done and sold out from under you.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: The problem here is this. You know, we're not attempting through this bill to be marriage counsellors to the people who are married in Manitoba. Nor are we attempting to try and tell them how to run their lives. Nor are we trying to tell them what is good and what is bad. You know if we're really thinking about that then we're off base.

What we're trying to do is protect rights. And the problem here is we have got to be realistic about the multitude and the thousands of decisions that are made by husbands and wives as they themselves make a determination of how, and in what way, they are going to operate.

What we are saying is that regardless of all of those decisions, and how they are made, there are certain basic legal rights that a husband and wife are going to have, as spouses who are cohabiting together and who are married. And if they separate there are certain legal things that flow.

I mean it is ridiculous to assume that somehow or other we are going to in any way change, as a result of this, and create a greater management capability on the part of others because this is the law and they now know they have to deal with that. I mean that really is not the intent and that's not going to be the result, and there is no accomplishment that I think you can even forecast along that line. I really believe that. I don't think that we can even consider that.

So, our problem at this point is recognizing that all the decisions are going to be made by the couples who will arrive at the decision themselves, some of which may be unfair if one was to view it from an objective point of view on the basis of what is fair and reasonable. But, nevertheless, that is what has happened. Some may, in fact, be reasonable; who knows? Our problem at this point is, it would be foolish not to recognize that there are going to be dominant decisions with respect to the decision-making of spouses living together, and those dominant decisions will be motivated by a number of things, which there is no point talking about or dealing with. And there is no point of talking that in some way or other we are going to be able to legislate it. Because that's nonsense; we

are not legislating anything like that. Nor have we got the capacity to do that. We're not policing that.

Our problem here is to recognize that there are a multitude of family assets that are not the marital home, that we are now talking about, that could be included in this, in which there are so many different kinds of scenarios. What we are suggesting is an entitlement to usage, possession and management. But' in reality, that entitlement is only a legal ability if in fact separation occurs. Because the reality will be the decisions will be made by one, or by the other, and it is not going to be made by both. Nothing that this Act is going to suggest will, in fact, make it happen that way. What really happens is that because there is an entitlement to the management, therefore there is the right of the claim for the half in the event of separation. So, while the wording may give that impression, I don't think that it really amounts to anything in terms of the day-to-day normal relationships that people will cohabit under.

I think we have got to recognize that all we're really talking about is the legal ability of the people, in the event of separation' to claim certain things and that's all we're really talking about. And then, when we have talked about that, then we have to talk about its application and its exercise in those family assets that are not the marital home, and the problem areas that we're talking about, and whether there are other solutions to what we are saying. Because it would seem to me that we are going to get ourselves into a whole host of problems. I'm not saying that I have the answer to this. This is one area where I think we have got to see whether there isn't something better than what we have got here. But I can see a number of problems. But I think it would be foolish to suggest, in some way or other, that this clause which entitles the same usage, possession and management rights, is going to change in any way, shape or form, the day-to-day lives that husbands and wives are living under in this province now, or in the future.

MR. CHERNIACK: Mr. Chairman, there is only one change I see, and Mr. Spivak is so right in describing all this. The only change is the immediate right of the spouse to have a say in what will be done with that particular family asset. That is the change. —(Interjection)— No, no, no. Management, use, and equal rights at the time of use, and without contemplation, and hopefully without a separation taking place. And all it does is put them on an equal basis to discuss what should be done with the family assets.

Now, all the other points Mr. Spivak makes I think are valid. We're not going to change human nature. We're not going to create a less dominant spouse. We will not create a spouse who is under the control, or take away from the spouse who is under control. All these things are true. But the rights will be there. And that's really all we're talking about. If Mr. Spivak is absolutely right, then there really will not be any problem. If he is almost right, then all I'm saying is what we're doing here is creating an equal say. And I see only good of that, and not bad. —(Interjection)— Not in the sale, in the use, in the possession, in the management. And if it's only in the sale, then he has convinced himself that this has no effect therefore it will not create a problem, then let's go ahead and pass it.

MR. SPIVAK: No, I really believe that it will only occur with respect to the sale, or costs that are attached. But I don't mean management costs in the normal operation but I mean costs that are attached, significant costs that are attached. That's the only thing that I can see really happening.

But the problem, at this point, in the kind of descriptions that are described, there may, and I think could be, some unfairness realistically. I think there is a capacity to get around this for those who have not completed their affairs. They can organize their affairs in a very real way to be able to get around the kinds of things that we're talking about. That's what is going to happen. So we'll have the lawyers just advising clients of the ways in which to do it, and they will do it. So that, you know, it's not going to be airtight, by any means, for future acquisitions with respect to it.

If you take the hunting lodge situation that Mr. Graham is talking about, they will be done by way of gifts and that will finish it. —(Interjection)— Well, gifts will be done.

MR. CHERNIACK: Mr. Chairman, may I ask Mr. Spivak, why bother with that? All you have to do is agree to opt out of that. You don't have to go through any elaborate legal mechanics.

MR. SPIVAK: That means an agreement, too.

MR. CHERNIACK: Oh no.

MR. SPIVAK: I'm not talking about situations where they may agree . . .

MR. CHERNIACK: Oh no, we're talking about hoping to achieve an agreement of two.

MR. SPIVAK: Mr. Chairman, what you're talking about is legally establishing the position that the agreement . . .

MR. CHERNIACK: No, equal rights.

MR. SPIVAK: Well, I know, but that too will require it. You may not cause that.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I understand what Mr. Cherniack is saying and I agree with what I believe is his fundamental concern, and that is that what we are trying to formulate here is legislation that recognizes equal rights in terms of decision-making and participation in decisions within a marriage.

I also recognize that to get at the problems that some of my colleagues have raised in this area

would require such a fundamental change, such a central change to the whole concept of the legislation, that that would be unacceptable to the government, and I would say, Sir, would be unacceptable to us. It would be unacceptable to the whole committee because it would, in effect, negatize the thrust and purpose of the bill, which is to enshrine that concept of equality inmarriage.

But I think that these problems are practical problems. They are not abstract problems and I think the way the bill and the amendments are worded and prepared, at the present time, they underline the message that I won't belabour but that we have delivered to this committee before. They underline the fact that there are problems that are not properly anticipated and not properly dealt with in concept in the legislation and the amendments as they presently stand.

I would appreciate, from the Attorney-General, an explanation of the rationale for the concept of instantaneous sharing of land. I'm sure there must be a rationale for it. But we did, after all, move some distance from the original informal positions that were held by various members of the committee in November, December and January, having to do with instantaneous community of property and deferred sharing of property, to the point where we have now two specific divisions of instantaneous shared assets and deferred shared assets. I would like to know what the rationale was for putting land — except for the marital home — into the instantaneous category? It seems to me that there could be consideration given to the concept of deferred sharing in respect to this particular item. I think Mr. Graham touched on that point earlier.

That's what we're dealing with here, with the instantaneous sharing of land, and it seems to me to be really at the nub of the whole debate that has taken place over the last half-hour.

MR. CHERNIACK: Would you not think that, next to the marital home, the summer cottage is probably the most used marital asset of a family group; isn't that what we're talking about here in the main, except for the occasional, you know, the unusual case of one-eighth ownership in a hunting lodge? —(Interjection)— Cars, yes. Yes, all right, home, car, summer cottage for recreational occasional usage.

MR. SHERMAN: If I may just respond to Mr. Cherniack's question. I'm not sure that I would agree with that; that the summer cottage is the next most important item and the one that would most frequently occur in considerations of this kind. But even given that, if that were true, the fact that that kind of item was shared on a deferred sharing basis would not deprive the spouse in whose name that cottage did not rest of his or her equity in that asset. It would simply preserve a situation in which there would be fewer of the kinds of difficulties than as has been suggested are likely to occur when you make it instantaneous. For a great many people, a great many people, the question of a summer cottage doesn't even come into it. Where it does come into it or where a hunting lodge or any of the other kinds of temporary residences or recreational residences referred to do come into it, we obviously face quite a tangle of potential questions and problems. Those could be removed or side-stepped by putting the deferred sharing concept to work here without depriving the spouse in whose name that recreational residence did not rest of any rights in equity. It would simply put them in the same category as the business or the commercial enterprise or whatever, so I think it's worth considering and I'm just wondering what the rationale was for taking this position.

MR. CHERNIACK: Mr. Chairman, I'll just answer briefly that to have a deferred sharing in the summer cottage means that as long as that couple is living together and the summer cottage is owned by the husband then all decisions are made by him in relation to the use, the management, the control. The buying or selling of the summer cottage is his decision alone and the only way she could assert her rights to it is to separate from him and to carry out the complete separation. But in the interval he is the one who has complete ownership, control, management of the summer cottage. And we're now talking including the one that he owns alone which is used only by that family. Don't forget that Mr. Graham's example prodded by Mr. Patrick was the hunting lodge owned by four people. In the main we are talking really about the family cottage owned by the family and used for its recreational purposes and what Mr. Sherman is suggesting is that it be under the complete ownership control, all decisions, usage, etc. to be in that of the husband. The wife has no rights. What Mr. Sherman is saying, if as and when they separate completely, then she can get her share of it. I think that her share of it in moneys value is much less important than her having a right to participate in the ownership, control and management during their marriage.

MR. SHERMAN: Mr. Chairman, I think Mr. Cherniack takes a very rigid view of the conditions that exist when a couple owns a summer cottage. If I may give my own personal example of my own summer cottage. It is owned by my wife, totally, completely and entirely and I know of many other persons in the same position and it doesn't bother me one bit that it's owned by my wife. In fact I want it owned by my wife and the same is true of many persons I know who have summer cottages. Now Mr. Cherniack says that if it's owned by me, that I will make all the decisions and my wife will have no role in that management. Well the converse then must also apply. You must also be suggesting that if it's owned by my wife she will make all the decisions, she will be the total manager or manageress and I will have no role to play. But I suggest to Mr. Cherniack that that isn't the way it works. It happens to be owned by her but we make joint decisions with respect to it.

MR. CHERNIACK: Then you're proving the point and I think you should have the same rights in law.

MR. SHERMAN: But I do have. I know that when the day comes that my wife and I separate, if we do, that I've got half the equity in that cottage. I'm not concerned because it's a fact. Under this legislation I would have half the equity in that cottage. I don't want it today, but I do have it further down the road. Mr. Cherniack is dealing with a very small percentage of the population anyway. In most cases we're not dealing with people who own summer cottages.

MR. CHERNIACK: . . . a hunting lodge is a much much smaller percentage.

MR. SHERMAN: I know it's a small percentage, but it raises the problems and there are problems related to a small percentage of the population and that's why I say I don't see what would be so difficult about changing it from instantaneous to deferred.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, I believe Mr. Cherniack has made reference on numerous occasions only to the— this only applies to the summer cottage— and he's talking about the one that is owned only by a married couple. I was wondering if he would be prepared in that case then to spell it out as such in the legislation and any place where there is multiple ownership that deferred sharing would be preferable.

MR. CHERNIACK: Mr. Chairman, I don't know whether we're talking about ¼ of one percent of the instances where four men might decide to purchase a hunting lodge or a fishing lodge up in the remote parts of Manitoba where the wives will be expected to stay out. If that were the case and wives were expected not to have to play a role in that, and it's just a place where the men can go away for their own recreation, then frankly even without this body of law, or anything, I would have done exactly what Mr. Spivak suggested could be done and that is to incorporate a company and see to it that there is one entity that owns it and then there are shares that entitle to joint usage. I would do that anyway.

The other thing I would do in a marriage where I can communicate with my wife is to ask her to sign off that one so that she is not involved in what is completely my own recreational usage and I would have no trouble either. So there are ways to get out of it but those ways have to be either prepared for, as Mr. Spivak says, or by mutual agreement. I see nothing wrong with expecting mutual agreement between two people who are living together and maintaining a marriage. That is the time when you say this hunting lodge is one where my co-owners would like to keep it for the men only because we are a group of friends and we don't want to involve wives. At that stage I see no problem and therefore I would not agree to Mr. Sherman's suggestion which I think is, wipe out all of this entitlement to a half interest in the recreational land just because that one example has come up of where four men or six men own something that they want to use separate and apart from their wives. If they're prepared to use it with their wives I say give them the ownership and I would also say to Mr. Sherman he is very comfortable with the fact that his wife owns the cottage because in fact he has joint usage and joint management. Well, that's fine. I'm saying if he has joint usage and joint management and it works that way then his marriage is the kind where this Act will just develop exactly what he has and make it available to others to have an equal say in the use of it and therefore I see no problem. If, however, he would rather it belong to his wife all he'd have to do is to sign a release saying it belongs to you my dear.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Mr. Chairman, we've given Mr. Cherniack the opportunity to dwell on a hunting lodge and I submit to him that where I have our cabin at the lake— that's a good word "I have our cabin" — or we have our cabin. Notice I used the word "our" because it happens to be in my wife's name. I don't own anything. The thing is, I can take you to at least five cabins in that area that are owned by couples that are not related. I can take you probably to another four or five that are owned by brothers. They've bought them together. I know people that have bought trailers together and you have now got it into a four person ownership or whatever it might multiply to. And you're going to have problems.

There's the other thing. If your wife has, or somebody's wife has her own money and I have mine, there are people in this world that like to do things on their own and perfectly happy to live that way by letting the other one make the decisions they want to make. Now, on that basis we are interfering with people's lives.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, in answer to Mr. Johnston again I don't see where there is any problem here of interference, unreasonable interference. If the two parties don't want this for some reason or other to apply to them they mutually opt out. If the one person doesn't want to share the management role or have anything to do with it, as Mr. Cherniack says they just simply sign a release. The only situation that there would be any difficulty or any problem in is if there was some disagreement. I suspect, Mr. Chairman, if that disagreement develops after this law has come into

effect then there is already an existing disagreement or quarrel pertaining to the spouses' interest in the trailer or whatever it is.

MR. F. JOHNSTON: Mr. Chairman, the Attorney-General is just not looking at this in a practical way. People will go into these agreements and they go in and they are perfectly happy. What we're doing here is creating a situation where they won't be perfectly happy. I don't know of anybody that's going to sit down when they automatically become an owner and say okay, now you've got to opt out of the management and if you don't want to have any say in it you don't have to but you've got to opt out of it. Somebody says well if I opt out of it, then it means I can't have any say in whether my children go there or not. If you want to put in here about cabins that are jointly owned by two people or by a married couple, that's fine. But you've got a lot of situations where you've got joint ownerships between couples and it's going to create problems. The theory is beautiful. The theory is not workable though and it just won't work. You're going to create a situation of selling. You know they often say that you can't put two women in a kitchen and I say you can't put two men in a garage either. I don't think there is any difference between the sexes on that particular subject. But if they've been able to work it out and now you put this law in front of them, you're going to have problems and you're going to create problems for it. So why don't we just say that we're talking about where a cottage is owned by that couple fine. You're suggesting that you form a company and make it commercial. Who the hell wants to go to that trouble. That's just ridiculous. So now we're almost putting this joint ownership cottage in the same position as commercial. I think that it should be looked at. If we are talking about the sharing of 50-50 in a marriage, why are we bringing in the sharing of 50-50 into an agreement between two couples? Because it isn't going to work. They all won't agree and it just won't happen.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, again I'll come back to a suggestion I made to the Attorney-General before. I would again ask him, in light of the problems that we have suggested may very well arise, would he be willing to look at applying the instantaneous sharing only in cases where the land involved or the property involved is owned only by the two spouses. If there is multiple ownership above and beyond that, that it go into a deferred sharing arrangement. I'm asking the Attorney-General if he would consider that change. Wherever there is an ownership outside of that marriage or an involvement outside of that marriage in the ownership, that it be deferred.

MR. PAWLEY: Mr. Chairman, I don't know how you would avoid the loophole that would be created because all that one would need to do then to defeat the purpose of this legislation, it seems to me, would be to have some third party take a small interest in the property so that it wouldn't be covered by this type of legislation. I don't know how Mr. Graham would propose that we avoid that sort of loophole from occurring and defeating the objectives of what we're trying to do.

MR. GRAHAM: Mr. Chairman, we're not playing games and trying to defeat one another. People aren't going to be playing games to try and defeat one thing or another. If what the Attorney-General says would be the case, then they would opt out of the marriage in the first place.

MR. CHAIRMAN: 14(3)—pass?

MR. GRAHAM: No.

MR. CHAIRMAN: Are you ready for the question? Those in favour that 14(3) pass and be adopted raise one hand: One, two three, four. Down hands. Those opposed: One, two, three.

A MEMBER: It's five to three.

MR. CHAIRMAN: The section is adopted and so ordered.

MR. PAWLEY: Excuse me, could we deal with Mr. Lamont? We've caused him to wait for some time. I wonder if we could just proceed ahead to his areas, Mr. Chairman.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: When we came to 14(4) Mr. Graham thought that that should wait for Mr. Lamont. I'm wondering whether we couldn't deal with any question Mr. Graham had in relation to 14(4) and then . . . So then we could finish 14.

MR. CHAIRMAN: 14(4), Mr. Graham.

MR. GRAHAM: Mr. Chairman, dealing with Section 14 and the instantaneous sharing of land, I would like to ask Mr. Lamont if there are cases where there is multiple ownership by individuals and this suddenly comes into effect would it cause problems? For instance say three people owned a hunting lodge or a cabin and two of them were married and one was not. How would you divide up the ownership on that basis or would it cause problems?

MR. CHAIRMAN: Mr. Lamont.

MR. LAMONT: I don't think it would necessarily cause problems, if their interests were specified. For example if each of the three had an undivided 1/3 interest, then the 1/3 interest of the married ones, any surplus on the mortgage sale or judicial sale would be divided equally between those with respect to their interest. I haven't studied this section in depth but I think it's spelled out sufficiently that we could apply it that way.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I gather that in this section we can raise the same difficulty we saw in relation to the issue of the marital home that we discussed last evening. . —(Interjection)— Well, we were going to defer our. . .

MR. CHAIRMAN: We will go back to 5(4) after this.

MR. AXWORTHY: Yes, but I think the same principle applies in this case. The only difference here is that we're talking about a family asset versus a marital home and in this . . .

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: We bogged down on 5(4), which we left but the fact is we went back to 3(1) where we spoke about being entitled to ownership and I think that would relate probably — and I ask Mr. Silver's assistance — probably to 14(1) and I'm wondering if we couldn't, just for the sake of getting things done, deal with 14(4) and then go back to the principle Mr. Axworthy mentions as it relates to probably 3(1) and 14(1), because that is the same.

MR. AXWORTHY: Although the principle is still extant in 14(4) as well about the differentiation between ownership and the entitlement to ownership that has to be exercised through an act of registration, the same principle is there. So the same problem arises in several of these clauses.

MR. CHERNIACK: So we'll deal with the whole . . .

MR. AXWORTHY: Yes, I would think so.

MR. CHAIRMAN: That being the case, perhaps we should go back to 5(4) and come back to this section. Mr. Axworthy, I believe you brought up the point. Would you like to repeat the question for Mr. Lamont.

MR. AXWORTHY: Mr. Chairman, I would certainly ask other members to amplify upon it, but I think in the discussion last night, changes as presented in these sets of amendments, in our minds, could radically or certainly significantly alter the intent of the bill which has always been assumed to be, in the case of the marital home, an automatic ownership of half that home. We discovered that in these amendments, the ownership would have to be registered, and it was explained by Mr. Silver that that was because of your intervention, that you felt that that — and I don't want to put the thumb on you, but you said that it was your feeling that it had to be registered in title before the legal definition of registered ownership would be accepted. It did mean that that did change the nature of the bill substantially, because if the rights that are attached to that registration are denied, then in fact one wonders how real and significant is the intent of the bill in terms of an automatic community property sharing of the marital home.

I think that that also applies later on to family assets as well, and we're wondering if there is not a way that that could be resolved by — I think Mr. Cherniack had some wording which I'm trying to recall — something to the effect that it is deemed to be an owner, the woman or spouse, is deemed to be an owner and therefore, without necessarily being registered, and in that way clarify it. Mr. Silver didn't think that that would be acceptable to you and we would like to have that resolved.

MR. LAMONT: I think in my initial discussions with Mr. Silver, I pointed out the difficulties that would be involved if the title was never registered in the names of both parties. For example, how would we deal with someone who came along to encumber it. Would he consent under The Dower Act to a mortgage or would the person who was deemed to be registered owner have to sign, even though that person wasn't the registered owner. In the case of bankruptcy, would we transmit it without regard or would we take evidence on the point? There were so many ramifications to this thing that I felt it would be extremely difficult.

Now, my objection to stating that the parties are deemed to be registered owners as joint tenants, has been largely overcome by the amendments that have now been put in. For example, there has been, I understand at least, an amendment going forward to The Real Property Act, Section 67, which will make the certificate of title subject by implication to the rights of the spouse under The Marital Property Act so that people will be able to deal on the strength of the register if they can read the fine print in Section 67. Also, the provision that is now embodied in the Act which will require them to become registered owner the first time they register a dealing, for example a mortgage. As soon as they come to register a mortgage, we have the authority now to endorse a memorial on the title showing them as joint owners. In that case the general register with all the liens will apply to the wife; we'll have the wife's name or the husband's name, as the case may be. The other way, if they are deemed to be owner, we don't know who the other party is, or we don't have any way of defining their name, no particulars of them. So that, it's sort of they will get the benefits of registration without being registered. But now at least they will be required to register before they put a mortgage on. We will know that they are now required to sign the document. They will certify that they are the person entitled to be the owner and so forth.

So I think it would be possible now to incorporate "deemed" in, but still keep these provisions requiring them to register.

MR. CHAIRMAN: Mr. Silver. .

MR. SILVER: I think there is another subtle problem that some of the members appear to be concerned about, and that is that we have suggested, yesterday I think it was, that while the spouse is

under the terms of the Act entitled to one-half interest even though he or she is not at that time registered as such, still, in order to get her name or his name on the title, he or she would have to take certain steps in order to become registered. Now, I think what is concerning some of the members is that that formal step has to be taken in order to achieve full ownership. I'm suggesting that even with the concession that Mr. Lamont feels able to make and to enable us to speak of a spouse as being deemed to be the owner, even if we incorporate that into the section, that additonal step of registration will still have to be taken in the same way as before. So I think that the members should be aware of that.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: May I ask, Mr. Chairman, what wording would Mr. Silver now be able to put in, and where, to take care of the point we made yesterday and still accommodate Mr. Lamont's wish to be clear on it?

MR. SILVER: If we look at the existing new 3(1), I think it could now read something like this: In the third line, right after the words, "the other spouse is," I would add, "the other spouse is deemed to be a joint owner of the premises and is entitled, subject to Section 7, to be registered as a joint owner," or something to that effect. So that two concepts would be expressed: (1) the concept of being deemed to be a joint owner, which I personally don't see it adding anything at all; it's just window dressing. But it would be there. The second concept, "is entitlted to be registered as a joint owner of the premises" — that is the meat of the section, "entitlted to be registered."

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: If Mr. Silver interprets that amendment simply to be window dressing, there is no point in doing it; there is no point in us just sort of gussying up an Act for the sake of . . . I mean, I'm not trying to satisfy my particular piques or the questions raised by Mr. Johnston. What we are trying to say is that there is a widely held understanding that the bill, by its passage, would vest 50 percent ownership in the marital home, automatically, no other steps required.

Now, we looked more carefully at these amendments last night and said, that's not quite the way it is. All that the Act will do is give you certain incidental rights, but to fully exercise those rights, you would have to undertake an Act of volition — voluntarily you would have to go and entitle yourselves, take out joint registration at the Land Titles Office.

Now, again, the practicalities of it. There are going to be a lot of people who probably would not take that step. There are a lot of people who are not sophisticated in those ways.

What I would want to know is — let's put it this way — what would be the end result or the impact upon those who, for reasons of ignorance or not knowing or whatever, did not take that step of actually having joint registration? Would they in any way suffer a penalty or any inhibition, any limitation under the law as compared to those who did register?

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I want to give my opinion on what Mr. Axworthy asked, and that is, that if they don't do anything, then the first time that title is dealt with by the registered owner, their interests will become recorded as long as there is no perjury involved in the affidavit that accompanies it because it will be reported as being the marital home and the moment it is reported even by the owner in an affidavit, I think Land Titles will immediately jump up and say, "Okay, let's get that person registered or consent," and the rest of it. So I think there is no . . .

MR. AXWORTHY: It's really a latent right, then, is that right?

MR. CHERNIACK: Well, latent to the extent that it can arise at any time the property is dealt with or the unregistered spouse wishes to have it arise. I agree. But, Mr. Chairman, I want to agree with Mr. Axworthy — at least he did want these words in yesterday and I do too. I still want them in, in spite of the fact Mr. Silver thinks they are window dressing, because as a lawyer, I will agree with Mr. Silver that it does not strengthen the case, but we legislators always want to try to make our laws intelligible, and the fact that we debated yesterday whether or not this in effect did have that deemed provision, satisfies me that unless Mr. Silver said it is dangerous to put it in or is liable to be misinterpreted; if he says with equanimity that it doesn't make it worse, then I would think it makes it better simply because somebody reading it will understand the words to mean, "Yes, I've got rights now." On that basis, I would support Mr. Axworthy, unless Mr. Silver says, "Don't do it; it's bad."

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: No, that's fine, I see the merit in what you are saying, Mr. Cherniack. But then if we do that, we might wonder whether we have to specify that the spouse has equal management rights, possession rights and so forth, because once the spouse is deemed to be an owner, those rights flow. But again, that is not something that does any harm. If it isn't needed, then it's just superfluous but it doesn't detract from anyone's rights. So I guess that's okay.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Could we ask Mr. Lamont if he sees any problem with this wording?

MR. LAMONT: No, I think that would be acceptable. I had another little suggestion that I wanted to add. There are a a number of marital homes that are registered in the names of people as to undivided

interests each or as tenants in common without any specified interest. I was wondering if they should also be covered by a slight addition to that section. I have already mentioned it to Mr. Silver. So that they would also be deemed to be registered owners as joint tenants instead of each having an undivided interest. Survivorship would then apply and so on and so forth. We could then handle it in the same manner.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I would go beyond Mr. Cherniack's suggestion, that this might make it more intelligible, and suggest that it seems to me it should be in there, because if a spouse is entitled to be registered as a joint owner, that spouse is also entitled to the same usage, possession and management rights in the premises. But we have already been told that entitlement simply is a preliminary step to exercising claim to those rights. So it would seem to me that an unregistered spouse would lack the same usage, possession and management rights that would be available if the spouse were registered. But if that spouse were deemed to be a joint owner, then the usage, possession and management rights would flow from that position.

So I suggest that although it has been presented to Mr. Axworthy as possibly window dressing, that the way I read the sections of the bill in front of us, it is much more than window dressing. It would in fact guarantee that unregistered spouse the same usage, possession and management rights as would otherwise only be available to him or her if that spouse took that next step. By putting "deemed" in there, the rights would naturally flow. Is that not correct?

MR. CHERNIACK: I would say it's not incorrect.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, if that wording was adopted — let me put the question this way — would that then mean that the person who is unregistered has all the same rights as a person who is registered and that we are really requiring the registration primarily to keep in accord with The Real Property Act? But that there would be no differentiation or difference between whether you were registered or unregistered in terms of the effect of the law? —(Interjection)— That's the point, that your name is on the title. But in terms of the effect of the law, that there would be no differentiation between those who are registered and those who are unregistered?

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: Perhaps Mr. Lamont would like to speak on this, but let me just give you one example: If I buy a house and I pay all the money, I satisfy the purchase price and everything and I get a transfer of land from the seller; and if there is no mortgage, I also get the title. Now that makes me the owner of the land and I don't have to register it in the Land Titles Office in order to be the owner. I can hold that transfer of land and the title in my safety deposit box or under my mattress for the rest of my life and not register it and I'm still the owner to all intents and purposes of this house.

But there are certain risks I would be taking in terms of priorities of registration and so forth. They are refinements and not unimportant ones. But without registration I would be a full owner, and if I want everyone to know that I am the owner and if I want to be protected in certain ways that I would not be protected by just keeping the document in my possession, then I would have to register under The Real Property Act.

MR. DEPUTY CHAIRMAN, Mr. William Jenkins (Logan): Mr. Axworthy.

MR. AXWORTHY: But that would be the question that I raise, Mr. Chairman, what protections are available to those who are registered as against those who are unregistered?

MR. SILVER: I think perhaps this is a field where Mr. Lamont would be the expert.

MR. CHERNIACK: You wouldn't get notice of what is happening to that . . . if there is no registration.

MR. LAMONT: I think one of the fundamentals of the registration system of the Province of Manitoba is that anybody can go in and search the title and find out who is the registered owner and he is supposedly entitled to deal on the strength of the register. There is a section in The Real Property Act that says that if you purchase from the registered owner and there's no fraud on your part, then you could ignore everybody else. Supposing this gentleman that Mr. Silver spoke of had given two transfers, one to him and one to someone else and the other person came in and registered his first, he would be dealing on the strength of the register and Mr. Silver would never get title and he probably wouldn't even be entitled to any compensation for having sat on his transfer for that length of time.

MR. SILVER: But it is true, Mr. Lamont, is it not, that notwithstanding those pitfalls, I am still as much the owner of the property as if I had registered it.

MR. LAMONT: Under The Real Property Act, no. What you become is a person that has a transfer and you have a right to register it. That's the way it is defined in the statute, you have a right to register that transfer. Now you may, if you pay the taxes then obstensibly you may be entitled to exercise ownership but actually you are not the owner under the statute until you register it under the statute.

MR. CHERNIACK: Who is the owner? The transferor?

MR. LAMONT: The transferor is still the registered owner and any one is entitled to deal on the

strength of register with him.

MR. AXWORTHY: Mr. Chairman, that does give me some pause because it does mean that there is some major differences then between the status of the two classes of people and maybe I would put another question following then to Mr. Lamont. Is there any way that the law can be so written to ensure that even though the one party to the marriage is not formally registered at this time, yet they would be able to achieve the same degree of protection?

MR. LAMONT: Well, I think having said that they're deemed to be the owner and then having made the title which we have issued subject by implication to the rights of this statute, the rights of the spouse under this statute, then no one can now deal on the strength of the register with the husband because he's put on notice that he has to have evidence under this statute. If he doesn't get that evidence that it's not the marital home, then he doesn't have a registerable transfer which he can register so he can't defeat the spouse's rights by registering a transfer. It's not the same as the example that Mr. Silver gave.

MR. AXWORTHY: Mr. Chairman, so you're suggesting that if we introduced that phrase "it is deemed to be the owner" as it was so worded, then that would give real effect then to the notion of equal ownership of the property and that any protection that would normally come through registration would also be available to those who would be unregistered in a sense because no one could do anything with that registered property without first checking with the other spouse. Is that a correct reading?

MR. LAMONT: If would have to be fraud, it would have to be fraud, a fraudulent affidavit.

MR. AXWORTHY: It would have to be fraud, yes. So maybe, Mr. Chairman, that is the solution to the problem then.

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: Mr. Lamont, would you, on the basis of what you have just said, would you recommend, would you say that it is advisable for a spouse who is deemed under this section to be the owner of a joint interest in a homestead, would you say that it would be advisable for that spouse not to register, not to get her name on the title, since she does have the same protection?

MR. LAMONT: No, I wouldn't say that. I would say that it would be advisable to become registered owners as joint tenants so that that would preclude the possibility of one spouse or the other filing a false affidavit at a later date. It would obviate the necessity of getting a judge's order if one of the parties died because certainly a District Registrar isn't going to take evidence that it was the marital home and decide on his own after someone is dead and unable to file his own request, signed by both parties, that it was in fact the marital home. This would require a judicial decision so I would say it is certainly to their advantage to register at the earliest opportunity.

MR. SILVER: So, in the final analysis then, it is not possible by just a clause in this bill to give the spouse the maximum ownership and maximum protection that she requires. We have to have the additional step of registration of the The Real Property Act.

MR. LAMONT: Well, that would be maximum but he or she still has the right to file a caveat to give notice of the fact that it is the marital home and, of course, there is always the protection. There are very few people who are willing to perjure themselves on a major point like that.

MR. AXWORTHY: Well, Mr. Chairman, I would certainly be prepared to move the phraseology that Mr. Silver indicated but I gather that Mr. Lamont is recommending that an additional item be entered into in terms of joint tenancy and that would provide even further firmness to that position, is that correct?

MR. LAMONT: With reference to undivided interests or tenancy in common.

MR. AXWORTHY: Well, I wouldn't dare try to make wording on that, Mr. Chairman, I wonder if someone else could?

MR. CHAIRMAN: Well, Mr. Silver has indicated to me that he would be prepared to work out a wording and bring that to the committee later. We want to move on. Mr. Silver.

MR. SILVER: On that second matter, what Mr. Lamont is suggesting is this: that just as we take care in 3(2) of a situation where the property is registered in the name of a third person and not at all in the names of the two spouses, of either one of the spouses, similarly we should take care of a possible situation where the property is registered in the name of both spouses but as tenants in common, so we should provide the same benefits over there and that's fine. In order to effect that, I would propose incorporating a few words in subsection 3(2) probably in the third line right after the word "thereof" . . . I don't know or maybe we ought to have a separate subsection 3(3). But in any event I haven't got the exact wording now and I will work on it and perhaps consult with Mr. Lamont again, privately, and bring the exact wording to the committee.

MR. CHAIRMAN: Would that be agreeable to the committee? Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, that would be agreeable to me. I think the one other point which was also raised last night which I didn't mention but I think it was a concern that Mr. Johnston had raised and that is that the issue then of liability isn't incumbent upon registration but then becomes

part of the 5(4).

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: I will wait until 5(4) and that's the subject I. . . .

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: While we're still on 3(1) and 3(2), just before we go to 5(4), Mr. Chairman, could I put that question again. Might I ask legal counsel whether the unregistered spouse lacks the same usage, possession and management rights as a registered spouse has. Because if that's the case, it even makes a stronger argument for registration.

MR. CHAIRMAN: Who was the question to?

MR. SHERMAN: Does the unregistered spouse lack the usage, possession and management rights that a registered spouse has, to the same degree?

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: Well, in my opinion, the unregistered spouse would have these rights anyway as long as he or she is in a state of being entitled to be registered. It seems to me in order to be entitled to be registered, you have to be an owner. It's just that you're not an owner under The Real Property Act and, as an owner, I think the incidental rights flow therefrom but I am not suggesting that there's anything wrong with spelling out those rights, notwithstanding . . . I don't know if Mr. Lamont agrees with me.

MR. JENKINS: Mr. Chairman, doesn't 5(1) answer the question that Mr. Sherman raised — incidental right to the spouse. It says "where a spouse is entitled to be registered as a joint owner of premises under Section 3, the spouse is also entitled to the same usage, possession and management rights, in the premises as those that the other spouse has therein."

MR. SHERMAN: Well, my problem, Mr. Chairman, in response to Mr. Jenkins, it's 5(1) that prompted me to ask the question. I didn't want to identify it because we weren't really reviewing 5(1) but that did prompt me to ask the question because the term and title is used in two cases and we know what "entitled" means in line 1, it means that you have the right to take a step that would legalize and enshrine your ownership and if it means the same thing in line 3, then it means there's a step that has to be taken to get to that same usage, possession and those same management rights and if you don't take that step, you don't have the same usage, possession and management rights.

MR. CHAIRMAN: Mr. Silver.

MR. SILVER: Well, I understand your point. I think your point is well taken, Mr. Sherman, but it's just that in the case of registration of property, we have The Real Property Act to contend with and under that Act, certain steps have to be taken in order to become registered. That's why when we say "entitled to be registered", it still leaves a further step to be taken to realize registration but in the case of being entitled to usage, the spouse can say to the other spouse, "I am entitled to use this car as much as you are and therefore you have to let me use it." That would be a correct statement; however, if the other spouse refuses, then she would go to court. But in the case of the first line, a spouse can't go to the husband and say, "I am entitled to be registered; therefore give me title." It doesn't depend on what the other . . . well, I don't know whether I am making myself clear.

MR. SHERMAN: Yes, you are. You are making yourself clear, Mr. Silver, but I just wonder, you know, whether that could be interpreted different ways by different judges and whether it would be better if it said, "Where a spouse is entitled to be registered as a joint owner of premises under Section 3, the spouse enjoys the same usage or has or possesses the same usage, possession . . ."

MR. SILVER: I would have no objection "is to changing also entitled" to the word "has".

MR. CHAIRMAN: Does that have the agreement of the committee? If Mr. Sherman would then move an amendment to 5(1).

MR. SHERMAN: Delete in the second and third lines thereof, to delete the words "is also entitled to" and replace them with the word "has."

MR. CHAIRMAN: Is that sub-amendment agreed by the committee? (Agreed) Anything further then on 3(1) and 3(2)? Mr. Axworthy.

MR. AXWORTHY: Just before we get away from it, is Mr. Silver going to come back with actual wordings that we can look at next time we meet?

MR. CHAIRMAN: Yes.

MR. CHERNIACK: I wonder as to procedure. We still have to deal with 5(4) and then we have Part III to deal with with Mr. Lamont. Is he coming back? I'm wondering if there is a . . . oh, I think we're meeting tonight. I am wondering whether there is an inclination to stay later or meet earlier or . . .

MR. CHAIRMAN: Order please.. The committee has to go back into the House for 5:30 and is due to come back into committee this evening at 8 p.m. Mr. Lamont, can you join us at 8 o'clock? May we proceed then with those other sections? Mr. Cherniack.

MR. CHERNIACK: I think we're making proper progress with proper exploration of all the implications of the sections. I suppose we all want to get out of the Legislature as soon as we can. Is there any inclination to curtail the dinner hour or to . . . well, let's not. If there's any doubt, let's meet at 8.

MR. CHAIRMAN: Committee rise. We convene again at 8 p.m. this evening.