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HOUSE OF ASSEMBLY
FOR THE PERIOD:
3:00 p.m. - 6:00 p.m.
TUESDAY, NOVEMBER 13, 1979

The House met at 3:00 P.M.

Mr. Speaker in the Chair.

MR. SPEAKER: (Simms)

Order, please!

ORAL QUESTIONS

MR. SPEAKER:

The hon. member for the Strait of

Belle Isle.

MR. ROBERTS:

Mr. Speaker, a question for the President of the Treasury Board, the senior financial minister, I think it is fair to say, in the House because the Minister of Finance is away from the Province on a matter of business. The President of the Treasury Board, I am sure, is familiar with Premier Davis' statement, or Prime Minister Davis' statement, if you wish, in Ottawa yesterday that the increase in the interest rate by the Government of Canada was going to cost the province of Ontario forty-four thousand jobs in the next year. I wonder if the minister could tell us the results of his studies or the government's studies in the Province as to how many jobs we can expect to lose in Newfoundland and Labrador because of the rise in the interest rates?

MR. SPEAKER:

The hon. Minister of Municipal Affairs and Housing.

MR. WINDSOR:

Actually, I am not aware of Premier Davis' statement. I have been travelling all weekend on government business. However, certainly I can echo his concerns. We are concerned as well. The interest rate as it now stands is obviously a deterrent to housing and it will be all across Canada. It is something that we are as concerned about as are other ministers of housing right across Canada. Many of us have indeed expressed, either in writing or verbally, to Mr. MacKay, who is the federal minister responsible for housing, our concerns in this regard, and as well in many other policies that are now being adopted by the federal government. Many housing programmes that were in place from the

MR. N. WINDSOR: federal government previously have been deleted. The federal government is still in the process of re-examining their whole role in housing. There is in fact a proposal that housing ministers from across Canada meet with Mr. MacKay in the near future, either next month or early in the New Year. At that point in time undoubtedly the question of interest rates will be one of the top issues that we will be discussing.

MR. ROBERTS: A supplementary.

MR. CHAIPMAN: (Simms) The hon. member for the Strait of Belle Isle.

MR. ROBERTS: Mr. Speaker, I appreciate the minister's answer and I appreciate his willingness to give information, but he either misunderstood my question or did not want to answer, because he did not. I asked the minister, not in his capacity as the minister responsible for housing matters, but as the senior financial minister of the government present in the House today, and I want to know the results of the studies of the government of this Province, I want to know how many jobs we will forfeit in this Province this year, this coming year, because of the rise in the interest rates by the government at Ottawa? I can understand the minister did not have a chance to see Mr. Davis' statement. I could send him a copy which I brought in when I came in on the airplane last night of yesterday's Globe and Mail which I am prepared to regard as being reasonably accurate. It is a good newspaper. So could the minister tell us how many jobs we will be short? There was 44,000 in Ontario. It is about 3,500 in Newfoundland to use comparison, but I do not want

MR. ROBERTS:

to do that. I want the minister to tell me the results of the studies, please.

MR. SPEAKER: (Simms)

The hon. the Minister of Municipal Affairs and Housing.

MR. N. WINDSOR:

Mr. Speaker, I would appreciate receiving a copy of that. I came in on the aircraft around 12:30 P.M. or something like that, that is why I have not had a chance to see any of the media in the past twenty-four or forty-eight hours, in fact.

As the result of studies, Mr. Speaker, we have ongoing programmes, and I am answering this in both capacities because it relates primarily to housing as does the hon. member's question even though he is talking about the financial aspects as it relates to the interest rate. However, the answer to that may well be in comparing not only the interest rate but other housing policies as well as to how, in fact, we can battle this interest rate problem. It is indeed a problem. We will be looking at it from a financial point of view, but I think we have to look at it as well from a housing point of view to see whether or not our housing policies and housing programmes are meeting the needs, or whether or not there is, in fact, a housing programme that can offset this sort of thing. It is not something that can be done overnight; it is a matter of an exhaustive study on all of our housing programmes to see how effective they may be in view of this interest situation, to see if programmes that we now have in place will still be effective, or whether or not the effective interest will negate, indeed, the programmes that we do have in place. So it is an ongoing thing. We are presently doing an exhaustive critical examination of all of our housing programmes and, certainly, we will be in a position in the not too distant future to say what effect, hopefully, this housing rate will have on us.

MR. ROBERTS:

Mr. Speaker, a supplementary.

MR. SPEAKER:

A final supplementary, the hon. the member for the Strait of Belle Isle.

MR. ROBERTS:

I appreciate the minister's concern with housing - and it is important - but with all respect, Mr. Speaker, the high interest rates while they are having a crippling effect on the housing construction, and the sale and resale market, go far beyond that. The minister, I know, will agree.

AN HON. MEMBER: He misunderstood the question.

MR. ROBERTS: No, I do not think the minister misunderstood, Mr. Speaker. He is too bright to misunderstand a question.

Can the minister tell us point-blank, Has the government made any studies at all? Do they have any idea of what the effect will be on the employment situation in this Province this Winter of the high interest rates in Ottawa? Do they have any idea? Have they made any studies? If so, what?

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

MR. N. WINDSOR: Mr. Speaker, as it relates, I realize that I was talking more on housing because I am looking at the housing interest rate, the mortgage interest rate. Interest rates generally, obviously affect the whole economy in the Province. It is a matter, unfortunately, that is more in the hands of the federal government than the provincial government; nevertheless, the effects of the high interest rates are a matter of concern for us. It is more in the realm of the Minister of Finance's (Dr. J. Collins) department and, in fact, I know that the Department of Finance are looking at this. As for definitive answers, I am afraid I cannot give them, but hopefully the Minister of Finance will be able to give some answers on his return.

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

MR. D. JAMIESON: Supplementary to -

MR. SPEAKER: Or a new question.

MR. D. JAMIESON: - or a new question, as you choose, Mr. Speaker, to the Minister of Manpower (Mr. J. Dinn). He has had a number of discussions and a number of talks with the federal officials. Can the minister tell the House, in broad terms even, what he anticipates the rate of unemployment is likely to be in the Province in the coming Winter? Does he subscribe to the widespread view that we are going to have very high levels of unemployment, for the reasons which my colleague from the Strait of Belle Isle (Mr. E. Roberts) and others have mentioned? And if such is the case, are there any short-term measures that he can anticipate, either provincial or federal, that may serve to ease what appears to be at least a pending high level of unemployment?

MR. SPEAKER: The hon. Minister of Labour and Manpower.

MR. J. DINN: Yes, Mr. Speaker, my department has been involved over the past several months with assessing the unemployment rate in Newfoundland. The hon. member would be quite happy to note that since March of this year our unemployment rate has gone down continually until this month when it rose by .3 per cent, which is significant to us. We anticipate from a very superficial analysis of the employment picture in Newfoundland over the next couple of months that the unemployment rate will raise about 2 to 2.5 per cent, which is about equivalent to what the rate rose over the past several years. But we can say that the statistics that we are using are somewhat inaccurate but if we can use that as a guideline, then the 1976 unemployment rate, which is the latest time that we have the figures for the complete year that are fairly accurate - in other words, I could not use seventy-five and compare this year because these statistics have changed and the data that we are using changed in 1976. But from 1976, 1977, 1978, 1979 we look at the statistics and they peaked in 1978 and have been going down continually month by month and are at about the 1976 unemployment figures, and we anticipate that they will go down further again next year with the programmes

MR. J. DINN: that each individual department of government is proposing. And also with the federal involvement in youth employment and programmes that we have basically coming on stream, a provincial co-operation if you will, into the employment sector and we hope to have something more definitive to be able to say when the federal Budget is announced. I have agreed with the federal minister that I would not let the cat out of the bag, as it were, they do have some programmes that will fit into the Newfoundland scene and we hope that when they are announced, along with the programmes that my colleagues

MR. J. DINN: have been working on for the past several months, we should have a five year programme in place for employment in Newfoundland and the picture does not look nearly as bad as hon. members may think.

MR. D. JAMIESON: A supplementary, Mr. Speaker.

MR. SPEAKER (SIMMS): A supplementary, the hon. Leader of the Opposition.

MR. D. JAMIESON: I wonder if the hon. minister would agree with the current present Minister of Fisheries in Ottawa that, in fact, the unemployment figures totally distort the situation in Newfoundland and that they are infinitely worse than the statistics to which the hon. member referred? May I at the same time ask him if all of these measures on which he is working are going to have any impact? My question is with regard to the coming Winter, the next five or six months, when it is perfectly clear that there is going to be, from any judgements I have been able to make and from any sources I have able to assess, is going to be a very high level of seasonal unemployment.

MR. SPEAKER: The hon. Minister of Labour and Manpower.

MR. J. DINN: Mr. Speaker, I can confirm for the hon. Leader of the Opposition that the statistics that we are using are not as accurate as we would like for them to be, but we have to use something. We do not have a large statistical base which the Department of Labour and Manpower can operate with, so we have to use these statistics that are available to us. And if those statistics are accurate or have been accurate since 1976, then the unemployment rate for the coming Winter will not be as bad as what they were last year.

MR. D. JAMIESON: A supplementary, Mr. Speaker.

MR. SPEAKER: Final supplementary, the hon. Leader of the Opposition.

MR. D. JAMIESON: Could the hon. the minister tell me whether or not in making these calculations his department has taken into account the statistics provided for my colleague, the hon. member for LaPoile (Mr. Heary) on Friday or Thursday - I do not recall which - which show an out-migration of some of our best workers, that is, the younger element in the work force, of something, my recollection is, averaging more than 2,000 able-bodied workers a year moving out of Newfoundland in search of employment? In other words,

MR. D. JAMIESON: what I am asking the hon.member, Mr. Speaker, is whether or not if those figures were taken into the equation does it mean that the employment situation in Newfoundland is improving or just simply that a larger number each year are getting fed up with the unemployment and they are moving away from Newfoundland?

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER (SIMMS): The hon. Minister of Labour and Manpower.

MR. J. DINN: Yes, Mr. Speaker, there are statistics available to the hon. member for LaPoile (Mr. Neary) and to all other hon. members. What I can say to the hon. Leader of the Opposition is over the past three years the employment of Newfoundlanders has increased month by month and year by year. The year by year outlook has been about 10,000 per year more into the labour force and are being employed, which means that if you look at the statistics for 1976 to now we peaked

MR. DINN: in 1978 where we had the worst case for unemployment. This year that has gone back to the '76 levels, and we are not only beating or employing the 10,000 new people who are going into the labour force, but we are creeping up on the statistical unemployment. We were, say, in January, February and March in a fairly bad situation with the Winter unemployment and so on, but the average over the year would indicate to hon. members that we reached the stage of what may be termed as statistical equilibrium in that we had, say, 9,000 come into the labour force and not 9,000 employed, which meant that we were not touching the 28,000 to 30,000 people who were what we might term chronically unemployed people but we are now getting into that sector and our employment rate is now reaching 10,000 to 11,000 per year and we hope to - with the programmes as I outlined before, the different departments are getting into the five year plans for each different sector - we hope to bring that down even more or increase the employment.

MR. FLIGHT: Mobility grants to Alberta.

MR. SPEAKER (Simms): The hon. member for LaPoile, a new question.

MR. NEARY: Mr. Speaker, my question is for the Minister of Health. I do not think I have to tell the minister of the desperate situation in Channel - Port aux Basques in connection with the outdated, outmoded, antiquated hospital facilities they have out there, could the hon. gentleman indicate to the House what time the people on the Southwest corner of the Province can expect construction of their hospital to start?

MR. SPEAKER: The hon. Minister of Health.

MR. HOUSE: Mr. Speaker, I have been in contact with both the Chamber of Commerce and the hospital board with regard to this, of course, they, like all other areas of the Province, have been advised that we only had about \$11 million in the budget last year for capital works and that there was nothing for the hospital on the Southwest Coast or Burin or Grand Falls, but that we were in the process of looking

MR. HOUSE: at the hospital needs, that they have changed somewhat from, say, five years ago, we were in the process of looking at it and they have been advised that as soon as we get our updating of the plans put into place that they will be advised. I cannot advise them whether they will be advised exactly when it will take place or when construction will take place, but certainly they will be advised as to what time frame we are looking at.

MR. NEARY: A supplementary.

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

MR. NEARY: Mr. Speaker, do I gather from the hon. gentleman's answer that the hospital for Channel - Port aux Basques rates top priority? Can they expect anything in this fiscal year or will we have to wait for a new budget to be brought down before money will be allocated for the commencement of construction of that hospital?

MR. SPEAKER: The hon. Minister of Health.

MR. HOUSE: Mr. Speaker, I do not know how you could detect about the top priority. There are a number of top priorities that I stated. Port aux Basques happens to be one of them.

Mr. House: Of course, there are five or six others. There is no money allocated in this year's Budget and we will not know before the next Budget what money will be allocated for the next year.

MR. NEARY: A final supplementary.

MR. SPEAKER (MR. SIMMS): A final supplementary. The hon. member for LaPoile.

MR. NEARY: Mr. Speaker, the hon. gentleman wonders out loud how I figure it is top priority. Well, by the studies, the research that has been done in the hon. gentleman's department, and the hon. gentleman admitting publicly not in the House, but outside the House - that the situation in Channel-Port aux Basques is absolutely desperate. And so I am going to ask the hon. gentleman again just how would he rate the hospital for Channel-Port aux Basques, say, in order of ten, how would the hon. gentleman rate the hospital for Channel-Port aux Basques? Is it a number one priority? Is it in the top three? Just where is it? The people do not know where they stand. They like to know where they stand in connection with this.

MR. SPEAKER: The hon. Minister of Health.

MR. HOUSE: Mr. Speaker, it is very difficult to say where the government rates it.

AN HON. MEMBER: Yes, it is not!

SOME HON. MEMBERS: Hear, hear!

MR. HOUSE: It is very difficult.

SOME HON. MEMBERS: Oh, oh!

MR. HOUSE: We have not presented it to government. We have a departmental study going on for presentation to government. And therefore, if he is talking about it, I would say it is in the top five or six.

MR. SPEAKER: A new question, the hon. member for Bonavista North.

MR. STIPLING: Thank you, Mr. Speaker. A question for the Minister of Manpower (Mr. Dinn).

MR. NEARY: We were told by your predecessor that it is in the top three.

MR. STIRLING: As he is aware, and the House is aware, the Unemployment Insurance has done a very cruel crackdown on certain members in the districts of Bonavista North, Terra Nova, and Bonavista South as well. I wrote the minister; these carpenters are required to pay back substantial amounts of money because of employment problems they had no control over. I wrote the minister and asked him if he would intercede with his federal colleague, because this whole campaign in the last election was how easy it was going to be for this group of P.Cs to negotiate with the group of P.Cs in Ottawa. Has the minister interceded with his colleague on this matter?

MR. SPEAKER: The hon. Minister of Labour and Manpower.

MR. DINN: Yes, Mr. Speaker, with respect to unemployment insurance?

MR. STIRLING: The letter that I wrote you specifically about three people.

MR. SPEAKER: The hon. minister.

MR. DINN: Mr. Speaker, I receive about forty letters a day, that is what is coming into the department right now, and they are from all hon. members of the House. I cannot quite recall exactly what -

MR. NEARY: I get double that number myself.

AN HON. MEMBER: Every hour, twice a day.

Mr. Speaker, with -

MR. SPEAKER (SIMMS): By leave, Mr. Minister?

MR. STIRLING: By leave.

SOME HON. MEMBERS: Agreed.

MR. STIRLING:

By leave, I will explain to the minister the problem that I wrote him about. The Unemployment Insurance people decided to crackdown on a number of carpenters who were working for specific employers in the districts

MR. STIRLING: I mentioned, and now including Bonavista South. Three years after the fact - in 1976, 1977, 1978 - unemployment insurance has now written a letter to those carpenters saying that they have decided that the employment was with employers who were not authorized to give stamps, although they did for those three years. These people have now been asked to pay back the money. There is no action being taken against the employer, who did what they said he was not allowed to do. The action is all being taken against the employees who worked for an hourly rate for these employers. Three years later they are now told they have to pay back all the money that they have collected for unemployment insurance and that they have, without any further conviction, decided to start taking it out of any unemployment insurance that they now receive. I hope the minister now recalls the letter because it had a very substantial enclosure with it, including all of these problems, and I ask the minister if he would intercede.

MR. SPEAKER: (Simms) The hon. Minister of Labour and Manpower.

MR. DINN: I have to apologize to the hon. member. I have not received that letter myself, I am quite sure. I have gone through - unless it was a day or so ago and I have not gotten to it.

MR. STIRLING: It was sometime last month.

MR. DINN: I have not received that letter, to my knowledge. It has not arrived on my desk and if it had I would have been back to the hon. member because I have a policy within my own department myself that anybody who writes me a letter I try to get back to them within ten days to two weeks. So if the hon. member wrote me a month ago and he has not received a reply yet, then obviously there is some breakdown in communications. Maybe he sent it to the wrong department.

MR. SPEAKER: Order, please! Perhaps it might be appropriate for the hon. member to discuss it with the minister outside the House later on. You can follow it up in that

MR. SPEAKER: (Simms)
been some mis-communications.

vein because obviously there has

A supplementary. The hon. member
for Bonavista North.

A supplementary. The hon. member

MR. STIRLING:
you very much. I will take that advice. It is because of the urgency
of it that I would like to ask a supplementary question. Will the
minister consider - I realize it is a federal problem and they are
going through the appeal procedure; these people are unemployed and
on unemployment - will the minister consider providing financial assistance
to these people to enable them to prepare their case, their legal case
of appeal?

A supplementary, Mr. Speaker. Thank

MR. SPEAKER:
Manpower.

The hon. Minister of Labour and

MR. DINN:
in the estimates passed by this House that allows me to provide monies
to individuals to enable them to present a case to the federal
government. It is a federal

Mr. Speaker, there is no provision

MR. J. DINN: problem. I will endeavour to find out what the substance of the problem is from the hon. member a little later on and I can assure him that we do have co-operation with the Federal Government. We have had two meetings with the hon. minister, Mr. Atkey since he became Minister of the Department of Employment and Immigration and it has been at his initiation, if you will. He has come down and we outlined some of the problems that we have had here in Newfoundland with respect to employment and with respect to Winter programmes, and next Summer. So we are in the process now of making the plans to fit in with the federal plans that had been outlined to me, and unemployment insurance is one of the things we are discussing currently. And if the hon. member can make his specific problems available to me than I will certainly discuss them with the federal minister.

MR. L. STIRLING: A supplementary, Mr. Speaker.

MR. SPEAKER (SIMMS): Final supplementary, the hon. member for Bonavista North.

MR. L. STIRLING: In those consultations, Mr. Speaker, could we ask the minister if there has been any consultation or agreement between his department and the federal department to take part in this kind of crackdown? Are you aware of this kind of crackdown?

MR. SPEAKER: The hon. Minister of Labour and Manpower.

MR. J. DINN: Mr. Speaker, the hon. member knows that that is totally a federal responsibility. We are discussing programmes of employment and we are attempting to get programmes going so that we can get the chronically unemployed people in this Province employed. We are addressing ourselves to the general area of Newfoundland, the Province of Newfoundland and Labrador, and also specific areas of high unemployment and that is what we are attempting to do right now. But if the hon. member has a specific problem, which he has outlined here today, if he can make those specifics more available to me I will guarantee the hon. member that I will be in touch with the federal minister and see what, if anything, can be done.

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

MR. D. JAMIESON: Mr. Speaker, at the end of Question Period on Friday the Minister of Transportation and Communications (Mr. Brett) was, I think, prepared to answer a supplementary which unfortunately I did not get a chance to put in. I would like to do it now, if I may, namely, has there been consultation with the residents in the general area of Come by Chance and Sunnyside with regard to his proposal to close off one lane in each direction? And could I couple my question with a reiteration of the query as to why some form of, perhaps, manual light or something of that nature might not be feasible for school buses and ambulances, if his officials have looked at in a manner that might ensure that this particular area of concern, namely, ambulances turning off of the main highway, school buses coming onto the highway, whether something could not be done there that might improve the situation and would he undertake to have his officials talk, perhaps, to some of the residents about these two specific matters?

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

MR. C. BRETT: Mr. Speaker, to the best of my knowledge there was no consultation with the council in Sunnyside unless the mayor there was talking with the district director at Clareville. We considered lighting before we decided to close it to inside lanes, but we felt that it would not be as good as closing the lanes. But if the council in Sunnyside are really strong on some sort of lighting, then certainly we would take a look at it. As the hon. member indicated, it is a manual sort of lighting and certainly that should not be too difficult to install. I would be only too happy to discuss it with my officials. I do not think the lines have actually been painted yet so it may be possible to get the both things done at the one time.

MR. D. JAMIESON: Supplementary, Mr. Speaker.

MR. SPEAKER: Supplementary, the hon. Leader of the Opposition.

MR. D. JAMIESON: I thank the hon. member for both his answer and what I know is his genuine concern, I can report to him as of this morning that no change has been made and no lines have been painted and the situation is as it was when we discussed it last week. I want to confirm, as anybody who has driven over the highway will, I believe, agree, that there is a most serious situation there and I would be grateful with the minister in addition to examining these alternatives might, at some point, give us a statement, perhaps in the form of a letter to me or to the councils, indicating the reasons why a particular choice is made, whatever that choice turns out to be.

MR. SPEAKER: The hon. member for Grand Bank.

MR. L. THOMS: Mr. Speaker, I have a question for the hon. the Minister of Justice. Now that our Royal Newfoundland Constabulary are housed in a beautiful new edifice, has the minister given any thought to the establishment of a Police Commission in this city, and also given any thought to releasing our Constabulary from doing the routine job of ticketing vehicles in the city?

MR. SPEAKER: The hon. Minister of Justice.

MR. OTTENHEIMER:

Mr. Speaker, with reference to the second part of the question, it is a matter which is under study. It would, of course, require that, you know, some others do that work and it is a matter in which there would no doubt have to be negotiations with the City Council, but it is a matter which we are giving study to.

I think the first part of the questions dealt with a Police Commission. We are also considering examining the practice in various provinces with respect not so much a Police Commission for the city but perhaps a provincial, if you wish, citizens' appeal board, or whatever name one were to give it. We are examining practice in other provinces in that respect from the point of view of

MR. OTTENHEIMER: Province-wide; rather than restricted, say, to St. John's or this specific area.

MR. SPEAKER (Simms): We have time for one final supplementary. The hon. member for Grand Bank.

MR. THOMS: Could the Minister of Justice also indicate whether or not he has made any internal enquiries into the Newfoundland Constabulary in connection with the instructions from the Police Chief as to quotas in the city, police having to serve so many tickets?

MR. SPEAKER: The hon. Minister of Justice.

MR. OTTENHEIMER: Mr. Speaker, I think I can only reiterate what I did say in this House some time ago and that policy has been made quite explicitly and that is that there is no law enforcement policy of quotas. Quotas is not a criteria with respect to law enforcement policy.

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

NOTICES OF MOTION:

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

MR. MARSHALL: Mr. Speaker, on behalf of the hon. the Premier I give notice that I will on tomorrow ask leave to introduce a bill entitled, "An Act Respecting The Reorganization Of Certain Government Departments and Matters Related Or Incidental Thereto."

And on behalf of the hon. the Minister of Finance I give notice that I will on tomorrow ask leave to introduce a bill, entitled, "An Act To Amend The Public Pensions Act".

PRESENTING PETITIONS:

MR. SPEAKER (Simms): The hon. member for Humber West.

MR. BAIRD: Mr. Speaker, I rise to present a petition on behalf of the three districts of Humber East, Humber West and the Bay of Islands. Three could not present it, so we did have a meeting and it was agreed that I would present the petition. on behalf -

AN HON. MEMBER: Is 'Luke' not well?

MR. BAIRD: The member for Bay of Islands (Mr. Woodrow), I understand, is home sick, Sir.

The petition reads, "A petition of the citizens of the city of Corner Brook organized by the Corner Brook Senior Citizens Authority," dated October 29th., 1979. I would like to recognize Mr. Harrison Cooper and Mr. Simms, two senior citizens who came in from Corner Brook to present the petition.

SOME HON. MEMBERS: Hear, hear!

MR. BAIRD: Some statistics on the petition, Mr. Speaker. It is the municipal boundary of Corner Brook only... The number of streets, roads and avenues total 298. The total number of names on this petition, 6,416 which I believe is the largest ever presented in this House. The breakdown on the age bracket, ages 18 to 30 - 2,633; 31 to 59 - 2,698; 60 years and over - 1,085. It might be

MR. BAIRD: interesting to note, in the last municipal election the number of votes cast was 8,129.

The prayer of the petition reads as follows: "Your petitioners, therefore, pray that Her Majesty the Queen in right of Newfoundland, as represented by the hon. the Minister of Municipal Affairs and Housing and the members of the House of Assembly of the Province of Newfoundland and Labrador, do forthwith take the necessary action to dissolve the City Council of Corner Brook and replace the Mayor and councillors of that council with a Commission of Administration to administer, manage and operate the affairs of the citizens of Corner Brook until such time as a new municipal election should be held to choose and elect a new municipal council."

Mr. Speaker, I would like this petition to go to the Minister of Municipal Affairs (Mr. N. Windsor), and in view of the fact that we do have 6,416 names presented on that petition, I would like for it to be passed on to the respective minister and the Department of Municipal Affairs.

MR. SPEAKER: (Simms) The hon. the member for the Strait of Belle Isle.

MR. ROBERTS: Mr. Speaker, if the minister wishes to say a word or two, I would be delighted to hear from him. I will yield gladly.

Well, Mr. Speaker, the member for Humber West (Mr. Baird) presented the petition very, very ably, and I can understand why his colleague from Bay of Islands (Mr. Woodrow), who has never been noted for his reticence, is not with us today and I can understand why the member for Humber East (Ms Verge), as a member of the Cabinet, quite properly did not speak on this. She will have an opportunity, obviously, to speak when the matter is considered by the Cabinet.

SOME HON. MEMBERS: Hear, hear!

MR. ROBERTS: Mr. Speaker, the member for Humber West (Mr. Baird) did not support the petition nor did he reject it, and I am not sure that is entirely proper but I do not raise an objection because, Sir, we on this side are going to take our lead from the member for Humber West and the Minister of Municipal Affairs (Mr. N. Windsor). I do say that this petition ought to be taken very seriously. It is signed by, I believe, six thousand -

MR. BAIRD: Six thousand, four hundred and fifteen.

MR. ROBERTS: - roughly six thousand five hundred citizens of the city of Corner Brook, people who have considered the matter and have affixed their signatures to a petition. That is something that the minister, his officials and his colleagues in the Cabinet should treat very seriously.

AN HON. MEMBER: Right.

MR. ROBERTS: Having said that, I want to go on to say that, speaking purely personally, I think the remedy for this kind of problem is in the ballot box and I suspect most members of the House would agree. That may not be what the petitioners want to hear but it is what I, as an individual, believe. We have been through it in Corner Brook, Sir. There was a time a number of years ago when the council was suspended there and we had government by Commission, and in due course, the government of the day, the Smallwood administration, restored municipal democracy, which is, I believe, the right position to take.

I think the minister should tell us where the government stands. It is a decision by the government. Under the legislation in this Province they have the power - by Order in Council it could be done this day, Mr. Speaker - to suspend that council in Corner Brook. I think is squarely incumbent upon the minister and the government to say exactly where they speak. For our part, Sir, we think the petition should be taken seriously. We think the matters complained of should be looked into and investigated and then the government should tell us exactly where they stand.

MR. ROBERTS: In that sense, Sir, we are glad that the hon. gentleman from Humber West (Mr. Baird) did his duty and presented the petition - he did not support it, I do not fault him for that, Sir - I think this is perhaps the sort of issue that the government should take a stand on. A member's duty is to bring the petition before the House, which is what the hon. gentleman has done, and in that sense, I commend him.

SOME HON. MEMBERS: Hear, hear!

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

MR. N. WINDSOR: Thank you, Mr. Speaker.

I do welcome this opportunity to respond to this petition, and in so doing, I would like to join with my colleague from Humber West in offering congratulations to the senior citizens group from Corner Brook who have taken up this petition, particularly the two gentlemen who are with us in the gallery today. I would also like to thank them for their courtesy in providing me with a copy, which was delivered to my office this morning under a covering letter from their group.

Just to respond very briefly to it, first of all, let me say that a decision on this matter has to be taken by the whole government, not by the minister, although the petition requests the Minister of Municipal Affairs and Housing to dismiss the council of Corner Brook. I would simply point out to the hon. House that a decision of that nature has to be taken by Cabinet as a whole, that the minister does not have the authority. In that regard, certainly, we will take this petition under very serious consideration and will respond accordingly. However, I would like to make a couple of just very brief comments as to the content of the

MR. WINDSOR: petition; a number of statements or allegations made therein in the preamble to the prayer of the petition. The petition states the tax in the City of Corner Brook is 100 per cent higher than other municipalities in the Province. I question the validity of that. I had a few moments over lunch hour to check a couple of figures and I find that a similar house in Corner Brook assessed at approximately \$30,000 would have a tax rate of approximately \$470, whereas in Grand Falls a similar home would be \$414; Stephenville \$351, and I have two or three other examples.

So there is no question, however, that the tax rate in the City of Corner Brook is somewhat higher than most other municipalities. I am not sure that it is higher than the municipalities in the Maritimes, but then it is difficult to compare, sometimes, municipal taxes with municipalities in the Maritimes because they do have school taxes and hospital taxes and other things -

AN HON. MEMBER: Welfare.

MR. WINDSOR: - welfare taxes, right, - rolled into one. So it is sometimes difficult to compare, as the hon. gentleman says, sometimes it is, in fact, apples and oranges.

The petition states that senior citizens, for instance, have been assessed municipal taxes on the basis of income. That is not accurate, I am afraid, because, first of all, persons are not assessed municipal taxes on the basis of income. They may be granted exemptions on the basis of income, but they are assessed taxes on the basis of real property value, in the case of Corner Brook.

A number of other statements here, Your Honour, refer to things or matters relating specifically and primarily to the City or Council of Corner Brook and, of course, I am not in a position to answer whether or not statements by certain persons have been made or whatever. There is a reference here to a previous submission made by a group asking that the approval of the minister be delayed with regards to the approval of the Budget for the City of Corner Brook. I simply point out again, now, as I think I did at that time, that the Budget of the City of Corner Brook does not require a ministerial

Mr. Windsor: approval, and that the City of Corner Brook has the authority to give it.

MR. ROBERTS: The City of Corner Brook and the City of St. John's are the only two are they not?

MR. WINDSOR: That is right, yes. Hopefully, if the proposed piece of legislation coming before the House is approved by this hon. House then all municipalities will be in the same happy position, as it should be.

AN HON. MEMBER: (Inaudible).

MR. WINDSOR: Yes.

One other comment on a matter of - I am running out of time I realize that - tax concessions to industries. The petition specifically relates to a couple of concessions that have been made to industries I can simply point out that, again, under The City Of Corner Brook Act, the city does have the authority to make these concessions. We may argue that they are wise or otherwise, however, it is certainly within the power of the Council of Corner Brook duly elected, as the hon. gentleman has said, to make such exemptions.

Other than that, Mr. Speaker, I accept this petition on behalf of the Department of Municipal Affairs and Housing and the Government. I can assure hon. gentlemen that we will give it every possible consideration and will respond in due course to the senior citizens.

ORDERS OF THE DAY

MR. MARSHALL: Order 2, Bill No. 1.

On motion, second reading of a bill, "An Act To Reform The Law Respecting The Property Of Married Persons." (Bill No. 1)

The hon. member for Terra Nova.

SOME HON. MEMBERS: Hear, hear!

MR. LUSH: Mr. Speaker, George Orwell in his Utopian animal farm explained how difficult -

MR. ROBERTS: Utopia?

MR. LUSH: Utopian animal farm.

MR. ROBERTS: (Inaudible) the hon. gentleman's Utopian (inaudible).

MR. LUSH: - explained how difficult it was to arrive at the state of complete equality, and concluded that some people are more equal than others. And I believe possibly that is the state of affairs that we may have in this particular bill unless, of course, the government will listen to some of the advice that we on this side of the House will give in the next few days when we will debate this major piece of legislation.

Under this bill, Mr. Speaker, on Friday I pointed out that we on this side of the House support the principle of this bill, as my previous colleagues, the two or three that have spoken, have so eloquently stated, that we categorically and unmistakably support the principle of this bill, the main thrust of which, Mr. Speaker, is to reform the law with respect to matrimonial property and in particular recognize the equal position of spouses within a marriage. And I think, again, somebody pointed out that it is only common sense to support a bill of this nature.

Before getting into the essence of my remarks I want to commend the Minister of Justice (Mr. Ottenheimer) for the excellent and fine manner in which he introduced this particular bill, tracing as was apropos to do, all the democratic rights and privileges that have been obtained by women, in particular, in the last number of years

MR. LUSH: in this Province and, indeed, in Canada and in the United Kingdom. And, Mr. Speaker, having done this he pointed out the magnitude of this particular bill, and there is no question that it is a very significant bill, a bill of immense magnitude to the people of this Province.

I think the member for Stephenville (Mr. Stagg) showed his grasp of this bill when he talked about the political significance of the bill. I happen to differ, Mr. Speaker. I think there is no political significance to this bill at all. I do believe that there is significance, major significance to this bill but it is not political. Its political significance would be about as important, I would suggest, as ice fishing in Miami and that puts that aside. But, nevertheless, an important bill, a bill of major significance and that is why we on this side of the House want to debate the bill. We have no intention, Mr. Speaker, to delay or procrastinate the passage of this particular bill, none at all, but we want to make sure that we have debated the bill sufficiently so as to iron out any flaws, any inaccuracies, any weaknesses that might be in this bill so that we can avoid the wrath and the scourge of future generations of Newfoundlanders. We want to make this a good bill, an excellent bill as much as the government does, but we believe that there are some inherent weaknesses in this particular bill as it is now constituted.

In the last session of the House of Assembly we debated this bill at great length and I believe as a result of the debate, and as a result of the contribution of members on both sides of the House, that we were able to get some major changes to this bill which has improved the bill. But certainly goodness nobody would suggest that we have here a perfect bill, a bill that we would be proud of, a bill that will cause no legislators of this Province any embarrassment. Mr. Speaker, to think otherwise would be a lot of folly. So this is why, Mr. Speaker, we want to debate the bill. We do not want to unnecessarily delay passage of the

MR. LUSH: bill but we want to debate the bill to make sure and certain, as far as we can here, to ensure that the bill is a good bill. Of course there is nothing to say that down the road, as different circumstances develop and as society changes, that things in the bill would have made it indeed anachronism but, Mr. Speaker, as far as we can determine today I think it should be the duty of all hon. members to ensure that we have here a good bill, a bill over which we should all be justly proud. Again, as I have said, we have got no intention to unnecessarily delay or procrastinate at all in this matter but simply to have good rational and intelligent debate. This is our aim and I am sure it is the aim of all hon. members.

Mr. Speaker, we have had the benefit and the experience of six other jurisdictions throughout Canada so there is no reason why we should not have the best legislation in Canada relating to the Matrimonial Property Act. We should certainly have the seventh best since we are the seventh province to pass such legislation. So we can hardly say that in respect to developing or initiating a Matrimonial Property Act, that we are pioneers or innovators. Mr. Speaker, that is not to take away, in the meantime, from the courage of the government in introducing this particular bill and I want to congratulate them. But again, as I have said, we want to make sure that we have a good bill, that everything in fine print is analyzed and digested by those people who understand the legal jargon that is encompassed within the bill.

I get the impression that there is some move on the part of the government to rush this bill. I do not know what the immediacy is, Mr. Speaker, I do not know what the urgency is,

MR. LUSH:

I do not know why we want to rush this bill through, a bill that will affect the lives of every married person in this Province and every unmarried person in the future. So I do not see the reason why we should rush this bill. I think it is important that we all take our time and digest everything that is within this bill being that it is an historic bill and a major bill. So it is very important that we debate every clause in this particular bill to insure, as I have said before, that we do not create more problems than the bill was meant to correct, that we do not create more injustice than the bill was meant to correct.

The bill, Mr. Speaker, is designed to look after, to correct, I would suggest, a small number of injustices that have taken place in society. And though I myself view the bill as the bill reads, mainly giving legal recognition to each spouse in marriage, recognizing equal partnership, there are some quarters of course, that will look at it purely as it pertains to women. But I would suggest, Mr. Speaker, that in view of the changing society today where there is an increasing number of females entered into the work force, an increasing number of women that are working, career women, I would suggest that the bill certainly relates equally to male and female, and as the bill is presently constituted, that there could be injustices to both sexes.

Mr. Speaker, looking at other bills, similar bills throughout Canada, the main difference between this bill and the other bills in Canada, as I understand it, relates to the matrimonial home and I believe there are some weaknesses in this particular part of the bill. I see no reason, Mr. Speaker, why there should not be equal ownership of a matrimonial home that was acquired during marriage. That is common sense. There is no reason why that should not be, no reason in the world, that a home that was acquired by a couple during their years of marriage, where they struggled to save money and dollars and invest it in a home, there is no reason

MR. LUSH: why there should not be equal ownership, a fifty/fifty deal, certainly no reason. But, Mr. Speaker, as it is presently constituted in this particular bill I think it raises some questions. Where there are no conditions attached to how the home was achieved, or any length of time, where there is no consideration given to conduct or behaviour in the matter of the break-up of the marriage, I think these are serious considerations. Now these considerations are made with respect to the disposition and the division of the matrimonial assets and that is rightly so. Why that is not made a part of the matrimonial home deal I do not understand. I think it should be. And I think if it were designed that way it would not be necessary to have the contracting out. I believe that if the matrimonial home was set up in the same way as it relates to disposition and division as to the matrimonial assets, I do not think there would be any reason to allow anybody to opt out of this particular contract. But because it is so sweeping in that particular instance, because it is so sweeping with respect to the matrimonial home, then, I think, this is what caused people to ask for the contracting out. But let me reiterate again, and I believe if there were conditions attached to the matrimonial home then I do not think there would be any necessity at all for the contracting out. To my mind and in my view, Mr. Speaker, there is a weakness in the general sweeping powers in this particular clause of the matrimonial home and I would suggest that there are some injustices in this particular case. This particular clause opens itself up for all kinds of wrongdoing, all kinds of injustices, and I would certainly hope that the government, the members on the other side, would take a look at this particular clause, Mr. Speaker, would take a look at it and

MR. T. LUSH: see if there is not some way that that can be changed to make it a more equitable arrangement. Because I would suggest that there are circumstances that can develop to make this very inequitable.

I think, Mr. Speaker, the act of marriage in itself does not necessarily require that somebody come into equal ownership of a property that was existing before marriage. I see no reason for that without again as I have said before, taken terms of the length of the marriage, taken terms of how the property was achieved. But, Mr. Speaker, again the home that was achieved during the marriage as is outlined with respect to the matrimonial assets, it is only common sense that it be divided or that it be owned equally. The member for St. John's North (Mr. J. Carter), I believe, also raised some questions. I am not sure that I can articulate it in precisely the manner in which he advanced it to the House; it had to do with in the event of death to one spouse and there were children remaining.

In the event, then, of a second marriage, what happens to that property? What happens to that matrimonial home? In the event, in other words, of death in the second marriage, how is that 50 per cent divided up and how do the children fit into this arrangement? What are their rights? Do they just own the 50 per cent of the assets of the deceased spouse? If so, how do they get that 50 per cent? These are problems, Mr. Speaker, that the people of this Province need to know. These are problems that the Legislature need to know.

Mr. Speaker, how about wills in this Province? Do they all have to be done over again? If so, we are going to have an awful lot of work with lawyers in this Province and other people getting their wills. I am glad I have not made mine, I was thinking about doing it but I was waiting for this -

MR. E. ROBERTS: Is the hon. gentleman proposing to die?

MR. T. LUSH: Oh, no. Lawyers tell me that you should have a will and I have not made one yet but I am going to do it after this act gets passed.

MR. T. LUSH: Mr. Speaker, so the intent of members on this side of the House, Sir, is not to delay this bill. As I have said before, I want to make that very clear, it is not to delay the passage of this bill but it is to ensure that all of the flaws and all of the weaknesses and all of the inadequacies are identified so that we can come up with an excellent bill, a bill of which we shall all be justly proud. As I said before, as a result of the debate that took place in this hon. House in the last session, we were able to bring around, to bring about, some changes, changes that made the bill immensely better than what it was previously. And I believe if we got down to business, if we co-operated, because this is a bill of immense magnitude and it is not something that can be pushed through, rushed through, but it deserves the attention of all members in this House to ensure that we have an excellent bill. And I certainly hope that the government will listen and pay attention. Thank you.

SOME HON. MEMBERS: Hear, hear.

MR. SPEAKER: The hon. member for Exploits.

DR. TWOMEY: It is with pleasure that I arise and support this bill but I know that there are some problems that will arise in the future. However, it is timely that this bill has come in for the emancipation of women in general, who have been, down through the ages, under the traditional ancient morals of a male dominated society. I know that this bill, if it will do nothing else, will help in their emancipation which I think is the ambition of everyone of us in this House as we sit here to ponder on the thoughts and ideas that are included in this bill. For too long we are aware that children have been victimized, wives have been victimized by this male dominated society where the will was the only means of passing on property. Some of these scars have been left until the end of their lives. It has cost this country dearly and the people of this country. Perhaps it is well that it being the Year of the Child this bill might be considered propitious because not alone does it correct the inequalities of marriage but it could help in some degree to alleviate the stress of the children that have often been left impoverished financially and emotionally. They are

DR. TWOMEY: now in a position that they can, at least, have a home over their heads. I know there are many reasons for marriages; there are the romantic and the practical. Most of us would think and hope that our marriages

DR. TWOMEY: are both romantic and practical.
The poets of other centuries have written of the romantic aspect of marriage, but there are certain cultures who have brought the practical aspect into it, and in looking over their laws and their contracts, one can see the practicality, especially where there is a heritage, a heritage that is the right of the children, in particular.

This act could, and should, possibly, lend itself to a more thoughtful approach to marriage. Because I know if wealth lies in one particular field that a marriage contract might be considered a prerequisite, especially if the wealth is possessed by one of the married partners. In these cases, I am sure that a contract will be much more common than it has been in the past, because only in this way can they preserve property that is part of their heritage and their right.

As I see it, by this act, possibly premarital medical examinations will become much more common than they have in the past.

AN HON. MEMBER: Premarital medical authorities?

DR. TWOMEY: Yes.

AN HON. MEMBER: Will (inaudible)

DR. TWOMEY: Why?

AN HON. MEMBER: (Inaudible).

DR. TWOMEY: Yes.

In some marriages, if schizophrenia pre-exists before the marriage takes place, it is considered null and void in the eyes of some churches.

AN HON. MEMBER: Schizophrenia?

DR. TWOMEY: Yes.

AN HON. MEMBER: That is a -

DR. TWOMEY: A marriage null and void.

MR. ROBERTS: Would the hon. gentleman permit a question, Mr. Speaker?

MR. SPEAKER: (Baird) The hon. the member for the Strait of Belle Isle.

MR. ROBERTS: I find this to be a most intriguing aspect. The hon. gentleman was saying that schizophrenia - that is a split personality, if I understand correctly.

DR. TWOMEY: Correct.

MR. ROBERTS: In some jurisdictions it is held as law that a schizophrenic who enters into a marriage is not capable of entering into the marriage on the grounds that he or she is not mentally capable?

DR. TWOMEY: Yes, that is correct.

MR. ROBERTS: But that is not so, I would submit, anywhere in Canada. The Minister of Justice -

DR. TWOMEY: Well, I cannot argue.

MR. ROBERTS: No - I find it intriguing. I mean, I can think of lots of people who thought they were cracked to get married -

SOME HON. MEMBERS: Oh, oh!

MR. ROBERTS: - some before and some after, but maybe the Minister of Justice (Mr. Ottenheimer) could speak, because that point is not dealt with in this bill but is a most intriguing concept if, in fact, the hon. gentleman has run against it in the Canadian experience.

DR. TWOMEY: I have, very close to St. John's.

MR. ROBERTS: And the marriage was held voidable? - not void, but voidable?

AN HON. MEMBER: A religious annulment?

DR. TWOMEY: A religious annulment, yes.

AN HON. MEMBER: (Inaudible) I believe it is -

MR. ROBERTS: I misunderstood the hon. gentleman, But this bill, he understands, deals, only as it can, with the civil state of marriage. The religious state of marriage is a matter beyond the scope and ken of this House or, in fact, of any House. But the hon. gentleman was not suggesting that this was the case. The schizophrenia matter applied in a civil marriage, did it?

DR. TWOMEY: For the legal dissolution of a civil marriage, no - in a religious marriage.

MR. ROBERTS: I thank the hon. gentleman, but I am -
AN HON. MEMBER: I believe it is an annulment.
MR. ROBERTS: Particularly in the Roman Church?
AN HON. MEMBER: Perhaps.
MR. ROBERTS: I see. I thank the hon. gentleman.
DR. TWOMEY: In discussing this, I feel that this
is most important when a home is passed on as part of a heritage.

I know there are practical as well as romantic reasons for marriage. We all know about the romantic, but the practical reasons are frequently considered where a younger spouse with intelligence, ambition, imagination and actuarial experience will marry an older individual in the hope that they can accumulate wealth at the demise of their senior spouse within a few years.

I am sure there are many, many other reasons which have already been mentioned, and I am sure that the minister will address himself to these when he replies at the end of our debate here. Thank you.

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

MR. L. STIRLING: Thank you, very much, Mr. Speaker. Despite all the previous discussion in the last sitting of the House, and all of the efforts by the present government and the members of the Opposition to get across the message to the people of Newfoundland that this is a very vital piece of legislation, it does not seem as if we have been successful if the turnout in the gallery is any indication. Because, Mr. Speaker, what this act is, and maybe we should change the wording - what this Act is, in that there is now going to be in effect an agreement between a husband and wife, there is going to be an agreement in effect for every husband and wife in Newfoundland. Now they, on their own, thought they could work things out and did not need a legal agreement but the government in this Act is saying to every married couple in Newfoundland, you now have an agreement, whether you like it or not, you have an agreement. And the message must go out to those people to say, 'If you do not agree with the agreement that the government has made up for you' which is this agreement, and I am sure the Minister of Education (Ms. Verge) would agree, because I have read through some of her examples of the real hardship where the government has also made an agreement, on behalf of people, and that agreement is where a person does not consider it important enough to make a Will. My colleague said a few minutes ago said he was thinking about making a Will. Well, the government has already made a Will for him. Some of these hardship cases that the minister has talked about is where the government made a Will, says if you do not make one we will make one for you.' It is not called that, it is not called a Will. This may be one of the problems here, this is not called a marriage agreement but it is a marriage agreement, just in the same way as somebody who dies without a Will has the court say, one-third to the wife and two-thirds to the children.

AN HON. MEMBER: (inaudible) Legislature (inadmissible)

MR. L. STIRLING: The government has made a Will for an individual and the minister pointed out some instances where on the death of somebody who died without his making a Will the government-imposed Will caused a lot of

MR. L. STIRLING: hardships and she gave us two or three examples of that sort of thing. She also gave us some examples of a person who did not like the government's Will so he left his House to his girlfriend. That person is now going to have to find a way to get the girlfriend to move into the House and that they will have to submit to have themselves come under this Act.

I do not think that there is any thinking person in Newfoundland who will dispute the need to do something to prevent the problems that in particular, the minister has brought up, and a couple of the lawyers brought it up some of the examples. I too have had examples of cases of real hardship and real concern. And I think it is our duty to make sure that we are trying to draft legislation which will cure the problem, not just add to the problem. Therefore, Mr. Speaker, my remarks are in the context of 'Does this Act really go far enough? Have we not just made a start? And should not there be some ongoing study and ongoing work? For example as I understand the Act, the Act now says, once it comes into effect, July 1980, 'Every home being occupied by a married couple -

AN HON. MEMBER: No, not a married couple.

MR. L. STIRLING: No, under the Act, has to be a married couple under the Act.

MR. STIRLING: Every home occupied by a married couple, if they should divorce or split up or if he dies, if there is a split-up of - every home is owned fifty-fifty, if I understand it correctly?

Now, I know this specific case in which a marriage broke up and they went to court and the court essentially did exactly what this act will do, say "Okay, it is now fifty-fifty and as this act says it is now fifty-fifty." What happens after that? As I understand it from the people who are lawyers, the courts are already overloaded and behind. Who is going to decide on the split-up of a marriage as to what is going to happen to that property? What happens if the wife has four children, six children and she is going to stay in the home and the husband says, "Now, I want my half of that home." Are we going to sell the home out from under the children and the wife? Or is she going to have to start paying off her half, section 13?

MS. VERGE: (Inaudible).

MR. STIRLING: Would you like to get up and explain it then? I would give way for a few minutes if you would like to explain section 13.

MR. SPEAKER: The hon. Minister of Education.

MS VERGE: Mr. Speaker, section 13 of this Matrimonial Property Act provides for an application of a spouse to the court on the question of possession of the matrimonial home and this section of the act gives the court the power to make a number of orders one of which is a direction that one spouse be given exclusive possession of a matrimonial home or part thereof for life or for such lesser period as the court decides. It goes on to say that the court may also, by order, direct a spouse to whom exclusive possession is given to pay periodic or other payments to the other spouse. It allows a court to direct that the contents of a matrimonial home remain in a home and it goes on to allow a court to authorize the disposition or mortgage of the interest of a spouse in a home who has not been granted exclusive possession.

And in subsection (2) of section 13, it says that, "Where a surviving spouse does not reside in the matrimonial

MS VERGE: home at the time of the death of the other spouse and a child resides in that matrimonial home at that time. the court may, on the application of the child through a next friend, direct that the child, through his guardian, be given exclusive possession of the home.

So through section 13 of the Act there is provision for a court, upon application by a spouse, to direct that one spouse, with children or without children, be able to remain in exclusive possession of the home so that the question of a spouse being put out on the street in a hardship case would be prevented through that mechanism.

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

MR. STIRLING: Thank you very much, Mr. Speaker. I think the minister just illustrates the very point that I am making. The minister illustrates the very point that I am making in that after this act is in effect the very first thing that the spouse has to do is to go to court, which is where they are right now at the present time. The majority of the cases that we are all concerned about are the hardship cases and these are the cases that will end up in court, which is where they end up now. And that this is why I am wondering if we do not go far enough with this act in that we need to provide some special handling, some special speedy mechanism of getting this dealt with through a court, a special appointment of the judge. If this is so important, and I think it is, I think it is a very important piece of legislation. It is not enough just to pass the legislation and then not provide the funds and the court and the judges to handle it. And the minister makes the point very well. This act of itself does not do a thing to that destitute woman who then has to go to court and the court has to decide, "What is she going to do with that debt that she owes? This guy is entitled to this." And she says it may make provision for him paying it some time and if there is somebody in the House - in other words, you brought the court back in. But I understand that the courts are already years behind in dealing with this work, certainly months and

MR. STIRLING: months and months and months.

MR. THOMS: Years. It is years.

MR. STIRLING: Okay, thank you. I am not a lawyer
and I was only taking the comments from others. So I think,
Mr. Speaker, that when this Legislature decides that we are going
to interfere or intercede in the daily lives of every

MR. STIRLING: man and woman in this Province, it is not enough to intercede and just throw in a piece of legislation. Now, I know the minister has been fighting long and hard for this first step and I am not suggesting that we should not go this first step, what I am suggesting is that she gave up too soon, that she should have pressed her colleagues to provide additional funding. This does not carry with it one nickle. If I am incorrect in that you can correct it, this does not, as far as I can see, does not carry with it one nickle that will help bring about the very thing that the minister, the government, this side wants to bring about, and that is to do something about the hardship cases.

Mr. Speaker, what about the children? We are now in the Year of the Child and some of the members in this House have already suggested that we should bring in legislation dealing with the rights of the child, either born or unborn. This act talks about maybe the first step, the spouse, but what about the children? Is it not, Mr. Speaker, that the essential problem that we should be dealing with in this legislature is the problem of marriage break-up in the first place, the problem of the financial hardship that we have in this Province? I was talking to somebody involved with family courts and he tells me that two of the major causes of divorce in this Province are financial problems and finances that lead to alcoholism and drinking and the problems associated. Where one stops and the other one leaves off, I do not know. But I do know that it is no good for us to just bring in a piece of legislation and expect that legislation to cure the problems. We have to provide some concerns as we have talked about here. We would like to have a major debate in this House on the concerns of the cost of living, the high cost of electricity, the number of divorces, the number of hardships, the number of broken homes that we are going to cause by this callous approach of just letting the prices reach the world levels and the survival of the strongest. And if we can survive long enough, Mr. Speaker, we are going to be like the Arabs, we are going to take our

MR. STIRLING: pound of flesh. That kind of thinking is what causes the root foundation, the root problems, the root causes of many of our divorces, of many of our hardships, of much of the wife beating, the child beating. Much of the drinking and the alcoholism is to get away from the problems, the financial problems. So it is not enough, Mr. Speaker, just to bring in a piece of legislation that says, "As of this date it is fifty/fifty," because the next practical step takes you back to the overloaded courts. The minister knows that I know of problems, of real hardship, of real cases. It seems to me that we need to go a step in the direction of providing additional funds for something that the member for Exploits (Dr. Twomey) touched on, pre-marital counselling of all types, of letting somebody know what the facts of life are from an economic point of view, letting somebody know what kind of an obligation they are taking on, what the chances are of a job. My colleague quoted that two thirds of the women in Newfoundland that are married are married at either age twenty or under. This is going to require, under the act, that if they have a contract it must go to the court to get it approved. This court that is already years behind is now going to interfere in the ordinary marriage arrangement of two-thirds of the people in Newfoundland, the young people. I think, Mr. Speaker, and I am sure that my good friend from Humber East (Ms Verge) will agree, that this Legislature does not provide anywhere in the way of enough funds for people in various crisis centers, self-help type programmes, various approaches of the Status of Women, to give people counselling before a marriage breaks up. I think that, for example, we should provide with this act funds that churches could apply for, churches or other organizations that want to get specialists who will be able to counsel people because too many people in Newfoundland today are just going from one pay day to the next pay day.

Mr. Stirling:

As costs and finances and everything are going sky-high, they have no idea of where they can turn for help and guidance and counselling. And there have been many attempts on a volunteer basis, many legitimate attempts where women have banded together, volunteers working in the evenings, to let women know where they can go to get help, to actually find a place where they can get some comfort and assurance, that they do not have to put up with unlivable conditions at home.

But how much of that could be helped if there was money available, money available for professionals or for churches who could counsel and advise and help people get the kind of direction that might keep a marriage together or to let them see that the problems are coming up in debt. We have a horrible situation where people are well over their capacity to ever get out of debt. And I go back to the point that many of the divorces in Newfoundland are caused by a combination of financial and alcohol problems and one works on the other. There is nothing in this Act that is going to help that situation and that is why I wonder if it has gone far enough?

When we start applying this Act surely we need a separate device, I would ask the minister if he would consider setting up some kind of funding, maybe the establishment of a division of The Family Court or an extension of the Court, generally, to be able to handle some of the problems that we know. When I asked a question the minister first got up and explained that the first step is that you have to go to court, and the court is already years behind. Some of my other colleagues have pointed out some of the other weaknesses, as have members opposite, and I hope they will continue to do that because it is not only the government's job to bring in this piece of legislation, it is the job of this Legislature to make sure that we are providing the best overall legislation, not a for and against kind of situation.

And as far as the right to opt out of this - I am disappointed that the minister had to leave as we are in the middle of this discussion, both ministers, the Minister of Justice (Mr. Ottenheimer) and the Champion of the Bill, the Minister of Education (Ms. Verge). But maybe the approach that we have taken to this Act is really the opposite

Mr. Stirling: to the one that we should be taking. Instead of saying this is an agreement between every couple in Newfoundland and you can opt out of it - in those cases that the Minister of Education (Ms. Verge) is concerned about, she knows and I know that in many of those cases one partner is so desperate to get out of a marriage agreement, is so desperate to get out of it, so desperate to get a separation or a divorce, that they will agree to anything.

Now, in that kind of atmosphere, what is to prevent the person who we are trying to help being victimized by this bully that they are so concerned about, what is to prevent that person from saying, Okay, I will let you out of the marriage, I will go live somewhere else, we will get a divorce, however, before we do I want you to sign this agreement getting us out of this matrimonial act. And under that kind of pressure, Mr. Speaker, I have talked to a number of people in that situation, they will agree to anything to get out of that unlivable marriage.

And so, Mr. Speaker, we may be providing an Act which is only a paper Act because the few people who are now taking advantage in this area can still take advantage in this area. And I just

MR. L. STIRLING: wonder if this Act should not be made on application for either one of the spouses. In other words, if they are about to break up regardless of the agreement, to say, 'Okay, I want this Act to apply, if we really are interested in protecting the people that the minister says we are interested in protecting.'

So in summary, Mr. Speaker, it is my belief that this Act does not go far enough, it is my belief that this Act needs in it some money, some money first of all to help people before they get married, to know what they are getting into. Secondly, to provide churches or other women's organizations the funds to assist people get out of a marriage if they want to get out of a marriage. That we must provide funds to provide a separate mechanism not delayed by the years in court to have this Act implemented. And that I think, we should provide funds, Mr. Speaker, to help marriages- that now have the problems of finances and alcoholism and all of the related kinds of problems. And I would like to see in this House a major debate on the real fundamental causes and problems of many of the break-ups and that is that the cost of living in this Province is just too high for the average citizen to live with.

Thank you, Mr. Speaker.

SOME HON. MEMBERS:

Hear, hear!

MR. SPEAKER: (SIMMS)

The hon. the Minister of Tourism.

MR. C. POWER:

Thank you, Mr. Speaker. Mr. Speaker, I do not think it would be proper, if I, the member for the district of Ferryland, were to let this opportunity pass by to pass comments on, I suppose, one of the most important pieces of legislation that is to -

AN HON. MEMBER:

(Inaudible) married (inaudible)

MR. C. POWER:

There are several married persons in the district of Ferryland and there are also some women of some very great stature historically and culturally, in our district who, I think, deserve to have their member in the House of Assembly, at least, say a few words with regard to this Act and this Bill which is going to be of major importance to them and also of major importance, I think, to all married persons and persons who contemplate marriage within the Province.

MR. C. POWER: A couple of comments - the member for Bonavista North (Mr. Stirling) almost talks so sensibly sometimes I almost think he is a Tory at times. And I have to agree with many of his comments with regard to the actual workings of the Bill, that there is great concern amongst ourselves and amongst many persons in the Province whether this piece of legislation will actually be workable. I do not suppose there is any part of the world where it is more difficult to change the cultural and historical set-up of marriage than it might be in Newfoundland where we have been so traditional, where because of our statures as a people and because of our position, our geographic isolation, sometimes, our society has developed in a way that it is not always in keeping with North American society or even world society. We have developed in Newfoundland a type of people who are, I suppose, thankfully, quite unique. Our marriage system is also quite unique. I think it is important for us to realize, and one of the reasons I want to comment on the Bill, is because the premise of the Bill itself, I think, is based upon a certain amount of equality which must exist between, not only husbands and wives, but between all members of any given society where civilization is deemed to be, I suppose, in vogue. But the equality of marriage has not always been what we, I suppose, meant it to be in a christian setting. The member for Terra Nova (Mr. Lush) mentioned earlier on that he was wondering if we were not rushing this Bill, if we were not getting into something more quickly than we possibly should. My only thought in that regard is that the Bill is probably hundreds of years too late, that the women of our society for so long have been looked upon as being non-entities sometimes, that now for once, at least, in a certain, given gradual progression, that they are now being recognized as being truly equal partners in a marriage. And I think 'partners' is the important word because for too long the men of the world, maybe, who earned most of the money in any given family situation always assumed, because they earned more, that, therefore, their position was more important. I, for one, have never agreed with that contention and I do not now. I do believe that the wife who stays home and rears children, who does housekeeping chores and, what have you, is equally as important as I, in my case, who goes out to work each morning and brings home a certain amount of money at the end of every couple of weeks. I think that that is a system, it is an

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MR. C. POWER: attitude that is prevalent in Newfoundland society, particularly so and possibly in all North American or all industrialized societies, but in Newfoundland, particularly so, where we are so historically tied in with the man being the breadwinner and the woman being sort of a secondary type of housekeeper who did not have the same importance within the marriage system. I just want to say, that for my position, that I am glad to see that this Act, if nothing else, tries to establish a Newfoundland law, a simple fact of reality, that men and women when married become equal partners of that marriage. And that is

MR. C. POWER: the way it was meant to be and that is the only way that they are workable. I also have to say that the premise of this act is not particularly one that is designed around break-up of marriage. I think this act, in its very real, I suppose, in the philosophy of it says, in fact, that we believe that marriage is a basis of our society and therein, I really agree almost heart to heart with the member for Bonavista North (Mr. L. Stirling) when he says that the social problems that are causing the breakdown of marriage also have got to be dealt with, maybe not in this act, maybe not in the House of Assembly but the problems of marriage breakdown and the problems of the cost of living that, I suppose, lead directly to alcoholism and other problems within a marriage, wife beating, child beating and all the other abuses that may take place, that those things become socially acceptable, culturally acceptable and once that happens, then you are going to find that the basic unit of our society, which is a family, is in very deep trouble. And I just only hope and pray that this act firmly implants in everyone's mind in Newfoundland that marriage is a partnership, that there are two persons there who have equal rights, that they are recognized by law as being equal, not where one person as all the say and the other person may or may not get out of the marriage with some kind of, I suppose, materialistic goods at a break-up. But I want to say that at least my concept of this act is that it is based primarily on the idea of a Christian marriage as being the basis of our society.

I would just like to say that, I suppose, the most important aspect of a marriage is the children, that man and woman may very well marry but it is the children of those marriages which very often do not have the real, I suppose, effects of power, they do not have control over their own destiny sometimes and it is those persons in a marriage who have to be protected to a much greater degree. Hence, I agree fully with some of the persons who say that children have got to be protected. And the member for Bonavista North, for instance, talks about contracting out, when one or the other persons in a marriage are allowed to contract out of this legislation. Again, it is very difficult to enforce a law on persons.

MR. C. POWER: The idea of the act is, if nothing else, to appreciate the fact that women have a certain human right. I think if you were to remove that aspect of contracting out of a marriage then you also take out of account the fact that men also have a human right, that as adults they should be allowed to contract out and no government should become so domineering and so totally in charge of a person's life that they do not have some control over their own destiny.

I just want to say in conclusion, Mr. Speaker, that I, certainly as the member for Ferryland, am totally in favour of this bill. I fully support the concept that women must become equal partners in a marriage. I fully support the concept that children must be protected and I also would like to reiterate by a comment that I believe the philosophy of the bill is one that says, that the christian marriage is the basic foundation of our society, and that we have got to do everything we can as government, and individuals, to protect that basic system of our society. Thank you Mr. Speaker.

MR. SPEAKER: Hon. member for the Strait of Bell Isle.

MR. E. ROBERTS: Mr. Speaker, let me begin by saying that I listened with a great deal of interest and in a large measure of agreement to the hon. gentleman from Ferryland, the Minister of Tourism (Mr. C. Power). I do not want to disagree in any major way with anything he said, except I would point out and I think, perhaps, upon reflections he will agree with me that one does not speak in this debate or in any debate, in a sense, as a member for a district. We stand here as members elected by people grouped for convenience sake for the purpose of electing us, in the districts, but we stand here as legislators for the Province. I do not raise that point to quibble with my friend from Ferryland, he and I have had our quibbles, in fact, as he will be the first to testify, it was not my doing that he is a member of the House, but he got here fair and square, in fact he got here, really, under much more difficult circumstances than did many of us and that is much to his credit.

MR. E. ROBERTS: This particular bill, Mr. Speaker, The Matrimonial Property Act, I guess is the short title of it, really is one to which we should address ourselves as members of the House, as legislators, as one of the fifty - fifty-one. When my friend, Mr. Derek Hancock, who will shortly be the member for St. Mary's - The Capes, is sworn in in a day or two there will be fifty-one of us, then, on the nineteenth or twentieth, the fifty-second member will be elected again, doubtless another friend of ours, I would hope, believe. Mr. Speaker, this bill, as most hon. members who have spoken have noted, is really

MR. ROBERTS: one of the more fundamental pieces of legislation that could come before this House in this session, or indeed, has come before this House in quite a number of past sessions. I think it is much to the Premier's credit and I am glad to see he is back with us again, it is much to the Premier's credit that this bill has come in, and it is entirely appropriate that the bill is designated as number one on the Order Paper. It is certainly the most important piece of legislation that we, in this House, are being asked to consider in this session.

Now I have had a chance to review some of the speeches made by hon. members opposite and by hon. members on this side with respect to the bill. I note with some interest, Mr. Speaker, that I am quoted in Hansard on November 8th, page 2426. I think that is much to the credit of Hansard since I was several thousand miles from Newfoundland on that date. I do not know whether the editors of Hansard attribute to me anything that is said by anybody on this side if it is good or bad. But I read the debate, and I am not going to repeat what has been said because I think there were some first-class speeches made by members on both sides.

In particular, I think, the speech made by the learned gentleman, the Minister of Justice (Mr. Ottenheimer) was a first-class speech. He is wrong in law, I think, on one point, his reading of the Intestate Succession Act. I asked one of the Clerks, Your Honour, to get me a copy of it, but I would suggest to the hon. gentleman if he has a look at the Intestate Succession Act, as I recall it - and when I get it I will point out the section to him - it does not coincide with what he said on page 2424 of Hansard. The hon. gentleman is quoted as saying that if a man or either spouse dies without a Will, \$30,000 goes to the surviving spouse and all the rest, whether it is \$1 or \$100,000, goes according to the pattern of intestate succession. I think that applies to spouses and no issue.

MR. MARSHALL: It is stated in the explanatory notes.

MR. ROBERTS: The explanatory notes? Well, I prefer to look at the Intestate Succession Act, I would say to my friend from St. John's East. The amendment is consequential, I agree, but the fact remains the explanatory note is correct. The Intestate Succession Act is correctly referred to in the explanatory note, it was not in the speech of my friend, the Minister of Justice (Mr. Ottenheimer). I do not say that again in any critical sense. I happened to have occasion to look at the act this morning, that is the only reason that I am particularly up to date on that point. Mr. Speaker, I think every hon. member who has spoken has welcomed this act, and I would simply like to say that I too welcome it and I too intend to vote for it. We as a caucus have come to that conclusion and it is one that I whole-heartedly and enthusiastically endorse. There is no doubt that it is a reform whose time has come. I am not sure that my friend from Ferryland (Mr. Power) was entirely correct when he said it is one that is terribly long overdue. This is a fairly new idea, the first of these acts in Canada came in possibly three, or four or five years ago. I believe that, from memory, Alberta, British Columbia, Saskatchewan and Ontario have adopted legislation similar to this, there are some variations but the first of these acts is only four or five years old. It is hardly an act that is long overdue, it is an act whose time has come, and I think it is, generally speaking, a good bill. I quite like the idea of equality. I agree with the other hon. members who spoke and who have made a point, and I will simply make it again and leave it as that - that a marriage is a partnership and it is completely irrelevant whether one partner or both goes out into the market place and earns money, and whether one or the other stays home and looks after children, or indeed contributes to the marriage in some other way. That is really-

SOME HON. MEMBER:

(Inaudible)

MR. ROBERTS:

I thank my friend. I do not need to look at the act, I think my version of it was borne out correctly and the learned gentleman from St. John's East quite correctly pointed out the explanatory note does set the matter straight. The Minister of Justice (Mr. Ottenheimer), I am sure, simply overlooked the point in quite a long and quite a thorough and quite an excellent speech. But, Mr. Speaker, the principle of equality, of assets acquired during the marriage, I think, is one that cannot be questioned, and indeed, I do not think anybody in Newfoundland questions it, I do not think anybody anywhere in this Province, or for that matter, anybody in this country would question it. What more do we need to say? Equality of assets acquired during the marriage, that I think is something that should be adopted into law. This bill does adopt it into law, and accordingly I think we should support the bill and I think we should adopt it. I have no doubts the House will do that.

MR. ROBERTS: Mr. Speaker, there are one or two other points though I think that are worth bringing before the House. They may be - in fact, one or two of them, I think, probably are - fairly small, but I think they are related to the principle of the bill before the House, and so I believe they are in order at second reading. Before I go into that, though, I want to comment very strongly on a point made by my friend from Bonavista North (Mr. Stirling), when he spoke of the -

AN HON. MEMBER: Never call (inaudible) learned.

MR. ROBERTS: Well, my friend from Bonavista North qualifies as learned but not in the archaic sense in which we use this term in the House. We do not have any gallant members here that I know of at present. I do not know if the hon. gentleman from Pleasantville (Mr. Dinn) is gallant, he did serve in Her Majesty's forces, doubtless with distinction, but I do not think he did so in the face of the enemy. The only powder he smelled might have been in a boudoir or somewhere, but, Mr. Speaker, I do not think we have any gallant -

MR. DINN: You are out of order.

MR. ROBERTS: The hon. gentleman can object if he wishes. I could lead evidence, possibly, one way or another if it suits him. But, Mr. Speaker -

MR. STAGG: Go ahead and state your terms.

MR. ROBERTS: Well, the hon. member for Stephenville (Mr. Stagg) agrees it is a highlight from his position, so almost anything is a highlight these days.

Mr. Speaker, the point made by my friend from Bonavista North is one which I think ought to be given a great deal of consideration. This act - I venture to predict that if I were wearing my professional hat along with my learned friend from Stephenville and my learned friend from St. John's East (Mr. Marshall) and my learned friend from Mt. Scio (Mr. J. Carter) and from Waterford-Kenmount (Mr. Ottenheimer), each of whom is temporarily out of the active practice of law, may some day return to it, may some day not,

MR. ROBERTS: any other lawyers who are members of the House - this act will create - it is going to be the greatest bonanza for lawyers, I guess, since the Income Tax Act. Every person in Newfoundland and Labrador who is (a) married, and (b) owns property, will be affected by this particular legislation and will be well advised, I would suggest, to consult his/her solicitor at the earliest opportunity to review the matter of property in the light of this act. It will also, I venture to predict, lead to a great deal of litigation in the courts. There are a number of provisions in the act which are going to generate very significant law cases. There is one lovely one in Section 2. (1) (a) (ii), "a person whom the parent has demonstrated a settled intention to treat as a child of his or her family", shall be regarded as a child of the marriage for the purpose of this act, that is worthy at least of the Supreme Court of Canada. It is a new phrase, it may or may not have been tested in the law. I do not pretend to know that, but the fact remains it is going to lead to a great deal of litigation. Our courts are already overcrowded. Anybody who practises at the bar in any capacity will agree that our courts in this Province are seriously overcrowded. We are two or three years away from trial in District Court of matters set down for trial. The Supreme Court is six to eight months behind on matters set down today for trial. I venture to say the Supreme Court, at earliest, would be able to grant a trial date for late this coming Spring or, more likely, early next Fall. I think that it is entirely right and proper that the government should provide extra facilities for the courts, extra courts and should ask the Government of Canada or the Parliament of Canada to create the extra judges who are needed or, indeed, vest this matter in the provincial courts, as opposed to the Supreme Court, the high court, the Unified Family Court. We have only one judge in the Unified Family Court, His Lordship, Mr. Justice Fagan. Only starting off now, the court is, I guess, only now hearing its first cases. It is obviously going to be a very valuable court, a very important part of the judicial system, but it will be heavily overworked, heavily and seriously overworked by this particular type

MR. ROBERTS: of problem. I say, Mr. Speaker, and I just want to reinforce what my friend from Bonavista North (Mr. Stirling) said, that if we provide the legislative remedies without making available at the same time the judicial means to enforce those remedies, then we are not carrying out a reform that is worth doing. We cannot half-do the job. The Minister of Justice (Mr. Ottenheimer) should take whatever steps are necessary to ensure that additional court facilities, staff and space are made available and additional judges - I suppose we have to ask the Parliament of Canada, they create the judges, or, in fact, we could vest this in the provincial court judges, if we wish. But until additional judges are made available, the judges now then, I venture to say, will not be able to shoulder this additional load in addition to their present workload. In fact, I believe the Law Society has already waited upon the Minister of Justice or, if not, they have said they intend to, to ask for additional courts. But that is a point, Mr. Speaker,

MR. ROBERTS:

which is certainly, I think, well worthy of note and I believe commends itself for action.

Mr. Speaker, I want to go on as well to talk about what I believe is the most important part of this legislation, and that is not the equality concept. The most important feature of this legislation is that we are going to allow in this Province and make lawful, make valid, contracts between parties married to each other when those contracts deal with the dissolution of the marriage. If I understand the law correctly, at present such a contract is unlawful. Two parties who are married or who enter into a marriage cannot make a contract contemplating the dissolution of that marriage, the courts have ruled them void on grounds of public policy. So we are now going to change that and that is a very fundamental change in the common law. It is one which I think we should welcome but it should be noted that we are doing it. And then we are going further and saying that in the event - I think we can describe this bill simply by saying that in the event that the two parties to a marriage do not enter into a contract, to settle out their rights as between each other, then we the Legislature not the government, the Legislature, are making a contract that says, Here are the rules. But we are allowing - and I commend the government for changing the section of the Act, the previous draft Act, which said, the parties to a marriage could not contract out of the matrimonial home. We are now allowing the matrimonial home to be contracted out of, and I think that is fair. If two parties prefer to settle their affairs so that they involve the distribution of the matrimonial home as well as the other matrimonial assets, then I think that is something we should allow.

Mr. Speaker, there are some features in the Act which, in my opinion, ought to be considered further - and I would hope I could get the attention of the Minister of Justice (Mr. Ottenheimer). I am quite sure that his colleague has an important point but I would ask if it could wait because I know the Minister of Justice has put a great

MR. ROBERTS:

deal of time into this bill and I would simply ask him to consider some points which I think are worth looking at further.

Mr. Speaker, I have already mentioned section 2 (1)(a)(ii) of the bill. I invite the minister to consider it further. That is the one that says 'A child in this act shall include a person whom the parent has demonstrated a settled intention to treat as a child of his or her family.' I do not find that offensive in principle but I do say that those words are going to be subject to a great deal of interpretation. And I have never been one of those who thinks that we should adopt legislation and leave it to the courts to spell it out. I think our job as a Legislature ought to be to spell out as precisely as we can. These words are new. I do not think they crop up anywhere else. And I would point out that under our adoption Act it is quite easy to adopt a child assuming that child is, when I say is lawfully available for adoption, I mean, assuming the child can be adopted within our law, I would suggest to the minister that if he wants to embody the concept - the concept may not be a bad one - but if he wants to embody the concept perhaps he could provide for some form of declaration or something so that if I choose to regard a certain person - in other words, what I am saying is spell out what settled intention is, not leave it to the courts, not leave it to the vagaries of an individual judge applying his mind as best he can and coming to a body of case law. I think we should spell it out. There should be no reason why there cannot simply be any form of declaration saying, You know I regard John Jones as being a child of mine. And it would take that kind of thing to bring the relationship within the ambit of the Act. We are talking about something very serious.

Section 4 - and I am glad the minister has plugged the corporation loophole, I think that was essential. It would have made a mockery of this Act, to allow a matrimonial home to be owned by a corporation, the shares of which were held by one party to the marriage and then that party of the marriage say, well, there is

MR. ROBERTS:

no matrimonial home. That would make a mockery of the whole Act.

It is the sort of thing that clever solicitors would doubtless be doing and if it were lawful, I suppose, they should do it. But I am glad that that loophole is closed.

But we come down to subsection 4 of section 4, 'Where a dwelling has up to three apartments'. Now, I understand that that is to cover the basement apartment situation. Three? It could have been two, it could have been four. But I would suggest two is a better guess or perhaps one because three, I would suggest, is getting into a commercial asset and the commercial asset is differently regarded and ought to be differently regarded, in my opinion. I simply make the point I am not sure there could be any firm I mean, you just have to pick a number. But three seems to me to take it beyond the ambit of a basement apartment. Now, I can see it where a house has

MR. E. ROBERTS: a basement apartment and, I suppose, is considered two apartments, you know, the owners who live upstairs and the tenants in the basement apartment. I simply bring that to the minister's attention.

Section five, Mr. Speaker, which gets into the matrimonial home, and I think I can state very simply here that I have a difference in principle, I do not think it vitiates the Act but I think that it certainly is a point of principle that ought to be stated. I still see no reason why a matrimonial home acquired prior to marriage ought to be treated as a matrimonial asset. We have set down all other matrimonial assets as being those things, to use that word very broadly, which are acquired during marriage. I think I can understand what is behind the matrimonial home but I am still not so sure that that validates the principle. I think that you might be able to leave it, Mr. Speaker, to the courts. The courts have the power to change the fifty/fifty settlement and I will come to that section, but I think the courts might be able to use their power there. What happens if, for example, a man has a million dollar house or a woman, for that matter, has a million dollar house when he or she gets married; the other party takes off after three or four months and says, 'Well, I do not want to be in this marriage anymore I have found somebody else or what the words are,' and has thereby acquired a fifty/fifty interest in that home? I know that the court has a power now -

AN HON. MEMBER: (Inaudible)

MR. E. ROBERTS: In section 20, but I will come to section 20 because it talks about, 'grossly unconscionable'. And those, Mr. Speaker, are very strong words and they have a very definite meaning, I would submit, in the law of this Province and in the law of this country. I do not know how strongly the government feels on this point of matrimonial homes acquired before marriage but I would simply say to the minister that I think this should be looked at again. I think that where a man and a woman get married - perhaps I could state it this way - what each of them brings into the marriage, in my view, is their's to do with as they wish. What they acquire during the marriage, during the partnership, in my view, ought to be shared equitably fifty/fifty, subject to the sorts of factors that are set out in this Bill.

MR. E. ROBERTS: And, I would suggest, Mr. Speaker, that this is something the government ought to examine further. This is a weakness in the Bill, I think it a case where ideology has taken the place of common sense.

Mr. Speaker, along those same lines, now let me skip over to Section 16. (1) (b) (vii) which talks about matrimonial assets including real and personal property acquired after separation. Now this is a new concept added and I see no justification for it. Separation is a definite state in fact and in law, not necessarily both. I mean any given series of events may be a separation in fact or in law but they are both definite and precise, the minister will agree. If a man and a woman as two spouses separate from each other, Mr. Speaker, I do not see why properties or items acquired after separation ought to be considered to be joint property.

MR. MARSHALL: It is not (inaudible) with the exception (inaudible).

MR. E. ROBERTS: I am sorry. Then I have misread the - then I do apologize to the minister I have misread it and I congratulate him because I think that is a key - that once the separation occurs the marriage may legally exist, it may, in fact, re-exist if the parties reconcile but for practical purposes that marriage, or at least for the purposes of this Bill, that marriage is at an end.

Mr. Speaker, the matrimonial home, again, and I would refer to sub-section 2 of section 16, 'A matrimonial home acquired by gift, settlement or inheritance.' Now, I would simply say there that my remarks about the matrimonial home acquired before marriage I think still apply. If we exclude other items acquired by gift or inheritance all we are doing is inviting people, Sir, to leave their children cash and not to leave them a house by Will or to give their children cash or to give their - well, normally it would be parent to child, that would be the normal or the usual situation. I think we either exclude things which come into the ownership of one or both of the parties through gift, settlement or inheritance, either we exclude everything or we exclude none of them. And yet we have, again used this principle, which I suggest is ideology coming before realism.

MR. ROBERTS:

of the matrimonial home being treated differently from other assets of the marriage. I do not think it should be. Mr. Speaker, without any difficulty I could - and I am not terribly ingenious-but I could find, I will bet, five ways to void the practical effect of that provision. And the ideologs who say, well the matrimonial home is where the family nest is. Mind you we could have 100 matrimonial homes under this legislation. You can mortgage the nest up to the hilt and, in fact, anybody who gets married now, owning anything would be a fool if he or she either did not mortgage it up to the hilt and take the cash - and the cash is not considered to be a matrimonial asset unless it is acquired during marriage - or to enter into a marriage contract. As my friend from Grand Bank (Mr. Thoms) says, you stand at the altar and just before you get into the 'I do' part the minister says, now, you know, there is the paper, please both of you sign before either of you goes any further. So I would say to the minister that that whole principle - you know it crops up again in section 16, subsection (2) - is worth looking at. I have no personal interest in it. I have come to grips with that. I think it is something that ought to be considered because I believe that the principle embodied in the bill, or that portion of the principle, is wrong.

What is acquired during marriage split equitably, fifty/fifty, subject to change by a court. What is acquired outside the marriage, before the marriage or by means of gift, settlement or inheritance, in my view, ought not to be considered a matrimonial asset unless the parties decide to make it so. And I would suggest in the normal case that is what parties would decide to do, to throw it all in the pot. Sure. Nobody enters into a marriage thinking it is ever going to end other than by death. Nobody does. I venture to predict that there will be very few marital contracts entered into, I mean, unless people are much more cautious than they normally are of their affairs. You are not going to get some young man and some young

MR. ROBERTS:

lady who have fallen in love with each other and want to spend their lives together, you are not going to have them saying in the midst of the moonlight and roses, 'Now dear, just before we go any further let us have a little chat about the house now, and if we buy a car who gets the car, and what about that diamond ring that I gave you.' You know that just is not going to happen. People who are accustomed to dealing with lawyers, who tend to be the wealthier people, are going to have marriage contracts, sure. I am not revealing any professional secrets when I say that the law firm of which I am - I am not an associate, I guess, I am a partner in it, has had a number of our clients sort of raise the matter and I will bet my learned friend from Stephenville (Mr. Stagg) has had a few of his clients say to him, You know, what is this going to mean to me? And that is fair enough. But it is not going to apply to most people. With most people this would only happen when the inevitable, not when the inevitable happens, when the end comes, when a marriage breaks down and that is when you get into the sort of problems that my friend from Bonavista North (Mr. Stirling) was talking about.

Mr. Speaker, section 20, I think, is badly conceived - it is not badly drafted, I think it expresses the intention clearly - due to the words, 'grossly unjust or unconscionable' and those words have a precise meaning, I would submit, in law. I would favour the word 'unreasonable' which has an equally precise meaning in law. Mr. Speaker, I have probably gone beyond my time but if the House would allow a few extra minutes there are some other points I would like to make.

SOME HON. MEMBERS:

By leave.

MR. ROBERTS:

I thank my hon. friends on both sides.

AN HON. MEMBER:

You have got about fifteen minutes.

MR. J. CARTER:

Carry on for a full hour.

MR. ROBERTS:

I am sorry?

MR. J. CARTER:

(Inaudible) carry on for a full hour.

MR. ROBERTS:

As my hon. friend from St. John's North (Mr. J. Carter)

will agree I am quite capable of carrying on for another hour. I am

MR. ROBERTS:

even quite capable of making sense which puts me apart from him.

Mr. Speaker -

MR. STAGG:

You did sound (inaudible).

MR. ROBERTS:

I am, I am as my hon. friend from Stephenville (Mr. Stagg) knows better than most. Mr. Speaker, the point I want to make with respect to section 20; this is the section which gives the court, the Unified Family Court, the Supreme Court, the power to alter the fifty/fifty split of matrimonial assets. The matrimonial assets are basically everything acquired during marriage with some exceptions and they are set forth, I believe, in section 16.

MR. E. ROBERTS: The matrimonial assets include the matrimonial home whether acquired before or after marriage, and I have already expressed an opinion with respect to that. And the general scheme is fifty-fifty but the court has the power to vary it. In fact the court has another power, the court has a power, with which I very much agree, to order possession of the matrimonial home for the benefit of children. In fact, it is not even restricted to that, but section 13 deals with, inter alia, the question of children and I agree with that. If a man and a woman decide to go their separate way there should be power given to the court to allow the children to have their home even if the two adults, their parents, cannot make any sensible or rational agreement.

But section 20 talks about 'grossly unjust or unconscionable.' Now I would say to the minister that I think that could lead to unfair and inequitable situations. Because, you see, when will this come up? Well, it will come up when some lady or some gentleman goes to a lawyer - and at this stage we are talking lawyers. You do not need lawyers to make matrimonial agreements but you certainly, I think at this stage will need a solicitor, a lawyer - and the woman says, 'Well, now, here is what we put together over the years, it is only fifty/fifty.' And the lawyer says, 'Gee, you know, you have not got very much. The guy has walked out on you after fifty of marriage' - I did not read all of the horror that my friend the member for Humber East (Ms. Verge) spoke of but I am sure, you know, we will all run into them. By the way, we should recall, Mr. Speaker, the hard cases make bad law, you know, you cannot legislate to deal with specific hardships, you have to deal with the general principles. But I suspect the horror cases - we have all run into them. Well, let me give you one that is different, I suspect than any others that most people have heard, where a gentleman and a woman lived together by choice, neither of them was married, lived together for a number of years, about twenty years, and it was one of these situations where the woman had the earning power and she earned a great deal of money and the couple had a home and the home happened to be in the name of the man; no particular reason except, you know, that is the way it was. Who knows? Maybe the the solicitor who acted on the purchase of the home put it in the name of the man who knows why? But it was not any conscious decision

MR. E. ROBERTS: And the home represented really everything that that couple had accumulated during a period of fifteen to twenty years, which is longer than many marriages last. And the marriage came to an end in the all too common way of the gentleman casting his eye elsewhere. And he wandered home one night and said to the lady, 'Out; Out of my house! She took legal advice; she has no claim; she has no claim for anything, really. The matter will be tested I understand, in the courts; there are possibly some presumptions of advancement of resulting trusts, the sorts of things that certainly this Bill will abolish. She may or may not be able to get something. Now let us supposing that lady had come after this Act becomes law on the second day of July coming, 1980, and the solicitor says, 'You have been treated badly, my dear; you know, you ought to get fifty/fifty.' And that the minister will agree, is surely the situation that section 20, or one of the situations that section 20 is designed it may be an extreme example - but one of the situations that section 20 is designed to cope with. And I quite agree, I think every Act in Canada gives a discretion to the court.

The minister, I think, knows what I am going to say, you know, he anticipates the point, and I think it is a sound point and he is well to anticipate it. That lady will have to go into court and convince the judge that it is grossly unjust or unconscionable. I think that is a very heavy burden to lay upon an applicant, a petitioner, or a plaintiff, whatever they will be called when this matter comes before a court. I think that is a very heavy burden. I would rather use the word 'unreasonable' and that gives the court much greater discussion. Let us leave aside the horror stories, let us forget the horror stories. Any one of us who has dealt with case work, be it legal or political or both, has run across the horror stories, and they will continue after this Act is in force. There are a thousand ways to defeat this legislation if a man or a woman wants to set out to do it, a thousand ways! And that is just thinking out loud, I will bet if you give the lawyers a few years we will have ten thousand ways figured out to get around this Act.

MR. E. ROBERTS: But let's supposing a man and a woman come together, they marry, they have children, they carry on for a number of years and then, for some reason or another, the marriage comes to an end. It could be any one of a number of things; it could be alcoholism, it could be one of the parties finding another partner, heavens alone knows! You know, what is it now? One marriage out of three now in Canada ends in divorce? Does anybody have the figure? It is of the order, one out of three, one out of four,

MR. ROBERTS: and it is going up steadily. Newfoundland is a little behind the rest of Canada in the numbers, but it is catching up all the time.

MR. STAGG: Two per cent.

MR. ROBERTS: I am sorry?

MR. STAGG: Two per cent existing.

MR. ROBERTS: Two per cent of?

MR. STAGG: Existing marriages.

MR. ROBERTS: Of existing marriages. But, you know, it is a far higher percentage. Four per cent per year, and if the average marriage is 25 years, then 4 per cent per year comes to 100,000. Let me put it this way, the odds of any given marriage breaking up are a lot greater than fifty to one; they are probably of the order of three or four to one. I think, you know, my friend from Stephenville (Mr. Stagg) would agree with that. What he is saying is that in any given year, 2 per cent of the marriages are dissolved.

MR. STAGG: Four thousand over eleven years.

MR. ROBERTS: Yes, but the pace is increasing significantly. But be that as it may -

MR. STAGG: The more recent the marriage, the higher that incidence.

MR. ROBERTS: Well, I have seen some statistics which indicate that may not be the case, that a lot of it are marriages of ten to fifteen years duration. But be that as it may, the fact remains we are not dealing with isolated examples, we are dealing with a very practical, a very permanent and an ever present and a continually present problem. So a man and a woman - the marriage ends. It ends essentially because one party wants out, maybe both want out, but unless both want in there is no effective marriage, and no law that this or any other Legislature can ever enact will make that marriage last. It may make it last in law, but it will not make it last in fact or in reality. So, they come to divide up the assets, and they get a little bloody minded by now. Any of us who have done any family

MR. ROBERTS: . . . law work realize - and I have not done very much - You know, I have not done as much as the member for Humber East (Ms. Verge) possibly, but I have done some of it, I have certainly seen some of it and run across some of it in the course of practice - the partners of a marriage get increasingly bloody minded, and I think my learned friend from Humber East would agree on how many people come in to see her when she was in practice who said, "Well, look, let us just divide it up and get it over with", and then six months down the road they are at each other's throats with fingers around each other's necks, fighting over who gets the piano or who gets, you know, the cars and that. I am told by the people who practise family law, and from what little I have seen, that that is the way it often goes. So, you know, sweet reason disappears and very quickly, and it is a truism that two people who have been married to each other know full well, better than anybody else in the world, how to hurt each other.

So, you have the situation where a marriage is ending and let us suppose that there is not very much money around. Let us suppose it is like most marriages, there just is not a great deal accumulated. Most people in this Province today are living paycheck to paycheck. Could any one of us last for six months without a paycheck coming in or a source of income? You know, my bank manager would not give me six weeks, maybe not even six hours. It is a fact of life, nobody has enough income or enough, not nobody; there may be some people - but very few people in this Province have any private means, to use the phrase that the English used over the centuries, so they have not built up very much. Now, I say to the minister that I think it is too heavy a burden to lay on one of those parties to try to show a court that it is ungrossly - I am sorrow. What is the phrase - it is grossly unjust or that it is unconscionable not to split that fifty-fifty, and that is what will have to be done. You will have to go in and say, "May it please Your Lordship, this application is for a division other than fifty-fifty, this application is being made under Section 20 of the Family Law Act", as it then will be, "and I propose to show to Your Lordship that it is grossly unjust to

MR. ROBERTS: split this fifty-fifty", and that, I say to the minister, is putting an awfully great burden on a judge. I would suggest that perhaps we should use the word 'unreasonable', and that is a term of some precision in our law. We might -

MR. OTTENHEIMER: (Inaudible).

MR. ROBERTS: I am sorry?

MR. OTTENHEIMER: (Inaudible)

quite a fundamental change, it would not deny the principle of the bill, but -

MR. ROBERTS: I think it is a very important change and that is why I am spending quite a deal of time on it. It is an important change, but I think it is a very sensible change. You know, I mean I am going both ways. There may be those who will say, well, putting out the matrimonial home acquired before marriage works against the principle of the bill, you know, it works against, in most cases, the wife. Well this one, with the change I am suggesting now to Section 20, would equally work, I submit, in favour of the wife, because - let us be realistic - in most cases it is the man who makes the money and the wife stays at home and raises the children, and each makes a contribution, each should be recognized. I think it is laying too heavy a burden upon what in most cases would be the wife. There may be husbands applying but in most cases it would be the wife. It is laying too heavy a burden to require them to show the court that it is grossly unjust or unconscionable. And my learned friend is at least as familiar as I am with the way the courts have used those words, but my understanding is that grossly unjust

MR. ROBERTS: or unconscionable is a very heavy burden indeed, very heavy. And along those lines, you know, the government may wish to spell out at a little greater length some of the factors which can be taken into account. I find the list in Section 20 to be quite complete, but it may be thought necessary or desirable to put in a couple of other indicators. I think the Ontario act, in particular, has a very long list of factors. And furthermore, we are beginning to see some case law from Ontario, the reports of the family law are now filled with cases from Ontario and Alberta.

My learned friend referred in this connection to the Murdock case. The Murdock case, I am told, is mainly the result of bad feeling on the part of the solicitors. That lady was not treated justly and I suppose that more than anything else has led to this wave of legislation and it is good it is so. But I would suggest to the minister that he should have a look at Section 20, this grossly unjust or unconscionable; those are very heavy burdens to lay upon a petitioner. I think I would give the court a little more discretion than that. Mr. Speaker, I like the business assets one, I think that is the Murdock one in particular. As my learned friend will recall the Murdock case, they held that the farm was a business and the wife - you know, Section 27. I want to make a suggestion with respect to Section 25, it would apply to 26 as well - perhaps it is a general suggestion - and that is that there ought to be a limitation period placed upon the time in which applications can be made under Section 25. I would suggest that might be, say, twelve months after the pronouncement of a decree absolute by the court. Why do I suggest that? It is not a new concept in our law. A limitation period, perhaps I should make it clear, simply says that you must apply, you must begin to exercise your rights within a definite period or you lose them. The most common example in our law, I guess, would be motor vehicles where if your Honour was unfortunate enough to be killed tonight in

MR. ROBERTS: in a car accident, and therefore give rise to a cause of action in Your Honour's estate and in Your Honour's survivors, they have to take that action within twelve months or they lose their rights. I think that is a well understood concept; it is embodied, I would venture, in legislation all across this country and in British law. It is quite common. Some periods are one year, some are two, some are six, some are twenty. I think twenty is the longest limitation period we have, but I am subject to correction. Here we are talking of a situation where a marriage ends, and in due course most marriages that end, in fact, are ended in law, are ended by an application or petition under the Divorce Act to the appropriate court and in due course, assuming the grounds are there and the matter is established under the law and decree nisi is pronounced, and in due course the decree nisi - I do not know why they use the Latin words - but the conditional decree becomes an absolute decree; the two parties are no longer married to each other in the eyes of the state. They may be in a religious sense, but they are not in a civil or a legal sense. Each of them is then free to contract another marriage, and I understand from the statistics that most people who are divorced remarry. Somebody, perhaps more cynical than another said that is the triumph of hope over experience; but be that as it may I think that is the way that it works. Now, under the legislation without a limitation period, there is the sword of Damocles hovering over that second marriage. Let us assume that during the first marriage there was a matrimonial home - and there is bound to be a matrimonial home; even if it is only a leased apartment, you have a fifty-fifty interest in the lease, in the tenant's right under the lease, the lessee's interest - and then the courts decree an end to the marriage. And let us assume the wife has possession of the home, you know, that is not an uncommon deal, 'Okay, dear, you take the home. I am taking off, you take the home.' And they are not well enough advised that they get the legal advice and

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MR. ROBERTS: they sign an agreement saying, 'All right, the home is yours'. And remember, under the divorce action the court has no power to order property, it can only order maintenance, alimony; it cannot deal with property as I understand it. It gets around it by attaching mortgages to

MR. ROBERTS:

justify maintenance and to support it. But the court cannot make orders with respect - that is why we are passing this bill now. This is a provincial matter under the BNA Act, not federal. So the woman has the house, and let us suppose in a year or two she gets remarried and her former husband says, 'Well now, to blank with that. Why should the new husband live in the house I sweated for? I did not mind the former wife and the kids living in it, but I will be blanked if the new guy can live in there where I used to.' So he nobbles off to his friendly neighborhood solicitor and nobbles off to the friendly Unified Family Court for an application under section 25, has his half interest confirmed. The wife may or may not get a possession order. She says; 'Well, the children of my first marriage are still here' and she comes back under section 13 and gets a possession order. She may or may not get that. All we are doing is inviting a forest of litigation and thicket of bad will. That is not a bad phrase, I say to my friend from Stephenville (Mr. Stagg). He is welcome to use it. I know he will anyway. He is welcome to it.

Mr. Speaker, I think there ought to be a limitation period. I really do not understand why there is not one in it. I understand in most of the provinces that have adopted legislation similar to this there is a limitation period. You simply say that within a year, or whatever period you pick, but a year - I mean, if it is a year of death - you know, if Your Honour is killed tonight in an accident there is only one year, and if Your Honour's survivors and administrator or executor as the case may be, if he does not get the writ out within the twelve months, that is it, it is the end of Your Honour's legal rights. Your Honour's physical rights have been terminated some time before that in my example. So I would suggest to the minister then in a very practical sense he ought to put a limitation period in. I am not aware of any argument against it. It seems to me sensible and it does not in any way void the principle of the bill. I would think in practice what will happen, whenever from now on a solicitor files a petition for a decree for divorce,

MR. ROBERTS:

whether it is a separate action or whether it is joined.

I do not understand the procedure, I do not know if we have coped with that yet - he will simply ask as well for an order under the appropriate sections of the Family Law Property Act, you know, deciding the rights of the party assuming they have not already decided it by negotiation. In others words, he will ask for maintenance, he will ask for an order dividing property under the Family Law Act. But I would suggest a limitation period and I really do not see any reason why there should not be one. There may be one but I do not see it, I am not aware of it, and most provinces - I have done a little checking; I have looked at the Saskatchewan, British Columbia and Ontario and Alberta acts - they all have a period. And at the end of that period, if neither party has applied, than that is the end of it. I mean the game is over. If the house is in the wife's name and the husband has not applied within a year of the decree absolute, that is it. There has to be an end to all things in this world and that is the end of that.

Mr. Speaker, I have gone on at perhaps greater length, but I am grateful to the House. And I venture to say that, in my view at least, the comments I have made, I think, are not only relevant but I think they are in point. They do not really detract from the principle of the bill. I think the principle of the bill is an extremely sound one. I have no trouble at all in supporting it.

I wanted to look at section 29. I have been given a note as to why we are abolishing 'the presumption of advancement' and substituting therefore, 'the presumption of resulting trust'. I gather, reading the note quickly, that the presumption of advancement was sexist in that a husband advancing to a wife would be considered to advance money, but a wife advancing to a husband would not. Is that it? I do not pretend to be an expert in many areas of law, including that. While we are at it we should abolish consortium. Do you know I actually saw a claim this morning for loss of consortium. And only husbands, as I understand it, can claim for loss of consortium which is surely

MR. ROBERTS:

an anomaly that ought to be unanomalized and quickly. You know, imagine a husband being able to claim - imagine anybody being able to claim!-but I mean a husband being able to claim for loss of consortium and a wife not.

AN HON. MEMBER: (Inaudible) consortium.

MR. ROBERTS: If the hon. gentleman, having been married for a number of years does not understand consortium, it is not for me to tell him but I would have some words with his wife.

AN HON. MEMBER: (Inaudible) everyday colloquialism.

MR. ROBERTS: Well, I am sure it is and it is called by several, some of them crude. Since I am not aware of them the hon. gentleman might be able to help me. Consortium - what is it? sexual services? How does the law phrase it? I am not sure. In sexist terms - and I am afraid the law is that right now - it is the male's loss of his wife's services in a sexual sense. I believe that is probably close to a textbook definition.

AN HON. MEMBER: Conjugal rights.

MR. ROBERTS: Not conjugal rights. Conjugal rights are reciprocal, I think, or they should be. But loss of consortium. It is like - there was actually an action in the States said that they were, you know, crim con, the old criminal conversation where a husband could sue another man for depriving him of his wife.

MR. MORGAN: (Inaudible).

MR. ROBERTS: I am sorry?

MR. MORGAN: I have to consult my colleague here.

MR. ROBERTS: Well, if the hon. gentleman were to consult her he would get better legal advice than he normally gets. And when next he appears before the Public Accounts Committee he might do well to consult her in advance.

MR. MORGAN: Do not be nasty.

MR. ROBERTS: I am not being nasty. I am giving the hon. gentleman very sound legal advice, as his colleague would too. Mr. Speaker, if we want to talk of sexist anomalies and all that, what about breach

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MR. ROBERTS:

of promise? Why do we not end -

AN HON. MEMBER:

Let us have more talk about sex.

MR. ROBERTS:

I am sorry?

MR. LUSH:

He wants more talk about sex.

MR. ROBERTS:

Well, the hon. gentleman - have you
ever noticed empty kettles make the most noise over there. The hon.
gentleman wants more talk

MR. E. ROBERTS: Mr. Speaker, apparently the doctrine of presumption does work unfairly as between a husband and the wife and, therefore, I would assume it is as well that we are abolishing it. Sir, I have, with some jocularly from the other side, and I am grateful to hon. gentlemen opposite, for providing a foil, a foiler, and a foilee, in a legal sense. I do think it is a good bill; I think it is immensely more important than any piece of legislation that I have seen come before the House in a long time. When would we have a bill comparable to this? The Married Women's Property Act of 1875 I do not know when it was adopted here. It surely is a very significant step forward and I think that those who helped to make it into reality ought to be very proud. I am sure the Minister of Education is proud of it and so she should be; it is a greater achievement than most people can look back upon at the end of their political career, whenever that may come and that may well be many years. I think the Minister of Justice ought to be proud. I think the Premier - now I think I know that the Premier has a very deep and real interest in it and I venture to say that is the reason why the bill has come this far today. I will have no trouble voting for it, all of my colleagues will have no trouble; we think it is a good law. It is an idea that is being adopted across Canada, it is an idea whose time, or which's time - I am not sure when an idea is personal or not - it is an idea the time for which has come. It is well that we should adopt it and make it into law. But I have tried to put forward some suggestions that I think, would improve the bill. It has been improved significantly from the draft which we saw in the last session, the session before the general election in June. It has been improved, and I think that is good. I think it can stand further improvement, and I have put forward some - I am sorry. Did the hon. gentleman for Bonavista South (Mr. J. Morgan) say something? What did he say?

SOME HON. MEMBERS:

Oh, oh!

MR. E. ROBERTS: Mr. Speaker, I think the bill we now have is significant improvement, but I think it can be improved even more, and I would simply say to the Minister of Justice - it is not a matter of partisan debate. The sad thing is that there is so little interest in this bill. The galleries are hardly crowded to overflowing with the people whose lives will be affected by this. I venture to say that people across the Province, even though there has been considerable publicity given to it by the press, that if any one of us was to be in his district on the coming weekend and to ask about the "Matrimonial Women's Property Act" we would get a very scanty response indeed.

AN HON. MEMBER: True.

MR. E. ROBERTS: But the fact remains it is a very significant bill. It is not a partisan one. Now the government, if they wish, can claim credit for it. That is fine; they claim credit for the good, and we will blame them for the bad, and that is the way that the system works. But it is a matter that the House, in my suggestion, and my opinion and my view, ought to approach in a sense that each of us here is a legislator, not as a member for a district or as a supporter of a party, but as a legislator concerned with very fundamental reforms in a very important area of the law of this Province. It is not going to make everything right; it is going to cause endless difficulties and problems and probably as many hardships and as many horror stores as the Minister of Education has already encountered in her practice, because I assure her, and I think she knows full well anyway, that there is no legislation drafted that the mind of man/woman cannot get around somehow, and there will be people trying to get around this. If they want to get around it, they will try to get around it

Mr. E. Roberts:

and they will find a way.

The Income Tax Act was first brought in in 1916 as a temporary measure, and I do not suppose there has been legislative session in Ottawa since 1916 that there have not been amendments to the Income Tax Act to try to plug a loophole that some enterprising accountant or lawyer has found and developed and used to his own benefit. This will happen with this bill, too. But that is no reason not to go ahead with it. It is a reason to comment on it, in my view, in the way I have. I think I could have made a partisan speech; I have been known to on occasion and I will again. Hon. members on either side have resisted that temptation; I think that is good. This is not the New Jerusalem, it is not going to build a new kingdom in this land; there are still going to be problems, still going to be women deserted by husbands and getting nothing. We have had maintenance legislation in this Province for as long as it has been a province, but I am sure the Minister of Education will be the very first to say that maintenance legislation is largely ineffective, it is just not possible. I do not know how we could devise to make it work. It is not serving its purpose and somebody who wants to get around it will, and the same with this. But the fact remains it is a significant step forward. I would hope that the Minister will look at the comments that I have made, and I am sure he will do so in an impractical and a fair way. I put them forward very positively.

MR. ROBERTS: I think they are important, I think they are relevant, I think they would improve the bill, and I would suggest to the minister that even a bill as good as this can be improved and I hope it will be.

Thank you very much, Sir.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER: (Mr. Simms) Hon. Minister of Finance.

DR. COLLINS: Mr. Speaker, just a few comments.

I have not been here for the whole of the debate so I am not exactly certain how many have spoken or how many have yet to speak. I suspect that most people, most members in the House, will want to say a few words on this, so I personally will not take much time.

I just wanted to firstly go into a point that the hon. House Leader opposite raised there, to make sure I understand the point he was making. I think I understood him to say that he wished that a house, the matrimonial home, if it was acquired before the marriage, that this should be treated as a matrimonial asset rather than as a matrimonial home. In other words, that it would not necessarily, therefore, be equally divided unless the couple by their marriage contract wished it that way. My understanding is - I have not read the act fully now, in great detail, for some little while, but when I did my understanding was that matrimonial assets that are acquired before the marriage remain the property of the spouse who actually owned them before the marriage. I understand that the hon. House Leader opposite wished that the matrimonial home, if acquired before the marriage, should be in the same category, but I would suggest that that would not be a good idea, quite honestly, because if there is a matrimonial home and it was acquired before the marriage, I would suggest that it is unlikely that the couple would acquire another matrimonial home. I mean, why? I suppose it is possible, it is not unknown for couples to have two matrimonial homes, but I would suggest that most couples have one matrimonial home and, if a matrimonial home is

DR. COLLINS: already in the possession of the couple at the time they marry, well, if you hold to the idea that the matrimonial home should be divided when the marriage comes to an end for the benefit, I suppose, mainly of the children of the marriage, if there are any children, that home, be it acquired before the marriage or afterwards, should so be divided. I would think that that is the reason behind this. Again, if the matrimonial home is acquired before the marriage, and that was not to be divided, and the marriage came to an end, there would be no matrimonial home to divide, except in the unlikely situation that a second matrimonial home was acquired.

Now, I suppose we all have our own particular concerns in this act. I know mine and I am sure my concern has been expressed before. My own concern is particularly, I think, for the children of any marriage, because I suggest that most of the adults involved in a marriage that breaks up usually have the capability of carrying on, of making whatever arrangements they feel are necessary for them to survive and make their way in life, but the children are very dependent on us, so I think the emphasis in an act like this where we are dealing with the property in a marriage, especially in a marriage that does not continue, I think that tremendous emphasis should be put on the protection of the children of the marriage. If there is a tragedy in the break-up of a marriage in terms of the adults, I think that that pales into insignificance when it comes to the tragedy in terms of the children. And that is not just a glib statement, I think there is quite a lot of evidence to that effect; if one might put it in that term, there is scientific evidence to that effect, that the people who suffer principally and with most weight in the break-up of a marriage are the children resulting from the marriage. This is not just a temporary difficulty to them, it probably is a difficulty that lasts throughout the rest of their lives. Now, my reading of the act does give me reassurance in that way, that even though clearly the act cannot relieve all the burden on the children, nevertheless, they are protected to a large degree. I understand that in terms of the matrimonial home, even

DR. COLLINS: though it is equally divided in most instances, if there is a child and the surviving spouse is not resident, that the court can, in actual fact, turn that exclusive possession of the matrimonial home over to the use of the child by application to the court. And I think that is extremely important because it is not unlikely that that situation might well come up. In other words, maybe one of the spouses would leave the marriage and the home and go elsewhere and then the spouse who remains to take care of the child could die before the child reached an age whereby the child could take care of himself. And in that situation it would be unjust if the home was equally divided in terms that half the home would be in the possession of the surviving spouse who is not even resident in the area. I am glad to see that the court can have discretion in that matter.

My understanding too is that even if that particular situation did not pertain but it was in the best interests of the child, that the matrimonial home be given to the full use of the child, that the court can decide in that regard too, where the best interests of the child are involved. Similarly my understanding is that in the matrimonial assets, where again the Act wishes these to be divided equally in most instances, it is pointed out under section 17 that child care is the joint responsibility of both spouses. I am glad to see that that is in there, not just the spouse who is left with the physical day by day care of the child but still, even after breakup of a marriage, there is joint responsibility remaining with both partners in the marriage, and that again there is the capability for the court to give an unequal division of the matrimonial assets, as the last speaker pointed out, where the court would feel it would be unjust not to do so.

So making those points - and I think that it is extremely important that the children of any marriage be taken care of under this Act and I feel that the Act has done that - I am quite happy to support this Act.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER (BAIRD): If the minister speaks now he closes the debate.

MR. OTTENHEIMER: What I would propose to do, Mr. Speaker, would be to move the adjournment of the debate. A number of points have been raised today, serious ones and fundamental ones and before, obviously, the government wishes to give its position with respect to them, obviously one wishes to think them through and when one replies to have the benefit of that, having thought through it. So I thank hon. members on both sides for their participation and move the adjournment of the debate.

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

MR. JAMIESON: Mr. Speaker, I guess it is probably redundant but I simply wanted to say that we were perfectly agreeable with this in consultation with my colleague, the House Leader, and also in the process of doing so to compliment members on both sides on the debate. I think it has been a first class effort and we will look forward to the words of the hon. the Minister of Justice presumably on Thursday.

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

MR. MARSHALL: Mr. Speaker, I move the House at its rising do adjourn until tomorrow, Wednesday, at three o'clock and that this House do now adjourn.

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