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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

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TIME — 8:00 p.m.

LOCATION — Legislative Bldg.

CHAIRMAN — Mr. P. Fox (Concordia)

ATTENDANCE — QUORUM - 6

Members of the committee present:

Hon. Messrs. Evans and Penner; Mr. Fox; Mrs. Hammond; Messrs. Harper, Kovnats, Malinowski, and Mercier; Mrs. Oleson; and Ms. Phillips

WITNESSES: Ms. Carolyn Garlich - The Manitoba Action Committee on the Status of Women

Ms. Renate Krause - Legal Aid Lawyers' Society

Mr. Joel Morasutti - Manitoba Progressive Party

MATTERS UNDER DISCUSSION:

Bill No. 64 - An Act to amend The Marital Property Act - (Hon. Mr. Penner)

Bill No. 65 - an Act to amend The Family Maintenance Act - (Hon. Mr. Penner)

Bill No. 66 - An Act to amend The Child Welfare Act - (Hon. Mr. Penner)

Bill No. 68 - The Change of Name Act; Loi sur le changement de nom - (Hon. Mr. Evans)

Bill No. 69 - The Marriage Act; Loi sur le Mariage - (Hon. Mr. Evans)

Bill No. 70 - The Vital Statistics Act; Loi sur les statistiques de l'état civil - (Hon. Mr. Evans)

Bill No. 71 - An Act to amend The Child Custody Enforcement Act; Loi modifiant la loi sur l'exécution des ordonnances de garde - (Hon. Mr. Penner)

Bill No. 96 - The Domicile and Habitual Residence Act; Loi sur le domicile et la résidence habituelle - (Hon. Mr. Penner)

Bill No. 97 - An Act to amend The Queen's Bench Act; Loi modifiant la loi sur la Cour du banc de la Reine - (Hon. Mr. Penner)

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MR. CHAIRMAN: The first person before us will be Mr. Smith of the Manitoba Teachers' Society who made his presentation last time, and today is prepared to answer questions of clarification.

Mr. Smith, it looks like you're not going to get a challenge.

MR. M. SMITH: Well, it's nice to have agreement.

MR. A. KOVNATS: I know that we allowed the extra time at the last meeting, Mr. Chairman, that he wouldn't be required to come back. At least, that was my intention, I didn't want to bring him back

MR. CHAIRMAN: Mr. Kovnats, that was in the hands of the committee. There's nothing I can do about it. I think your beef is valid.

Thank you, Mr. Smith.

MR. M. SMITH: Thank you, Mr. Chairperson.

MR. CHAIRMAN: Carolyn Garlich.

MS. C. GARLICH: I'm here representing the Manitoba Action Committee on the Status of Women. I'd like to speak very briefly on three bills, Nos. 68, 69, and 70.

First of all, I'd like to thank the government very much for attempting to bring this legislation into line with the new Charter of Rights. We regard this as very important because, of course, an organization like ours would not have the financial resources to challenge these laws in court. We feel that, while these laws are being changed, that it is important to remove all vestiges of sexism and not change them part way, so that further revisions will not be necessary or further court challenges.

First of all, with respect to Bill 68, The Change of Name Act, we would like to see some change made to Section 3, particularly subsection 4.

HON. R. PENNER: I wonder if, through you, Mr. Chairperson, Ms. Garlich, if you just wouldn't mind waiting one minute. The Minister responsible for those acts has just walked in and he should be able to follow the points that you are making. You don't mind waiting?

MS. C. GARLICH: Yes.

MR. CHAIRMAN: Would you proceed please?

MS. C. GARLICH: Yes. I would like to say, as background to the comments that I'm going to make, that a lot of the problems that stem from these laws come from a problem that really isn't a government problem, and that is, a common law problem. The problem, if you want to call it a problem, or the custom, that a women takes here husband's name upon marriage. Now we know that the law does not demand this and yet many women still think it does. They do not realize that they have an option when they marry to either assume the name of the spouse or not.

We feel that because this is the case, and because many women, in fact, have married under the misconception that upon marriage they automatically and by law have to take the husband's name. We feel it ought to be a right to every women to reassume her maiden name, or her name before marriage, at anytime she chooses to do so.

Now we have no particular objection with Section 3 as a whole. We think there are some legitimate grounds

on which this section might be used. We do feel, for example, if one spouse were to arbitrarily and somewhat whimsically give himself, or herself, an obscene name or something of that sort, that perhaps the other spouse would want to have something to say about it. What we would like to see is a rider put on this that in no case would a judge be allowed to deem it not acceptable for a married women to reassume her maiden name, even if there was an objection from the spouse, that this ought to be her right.

So we would just like to see that small addition put onto Section 3. That's particularly with regard to subsection 4 where the court could dismiss an application if the judge felt that the woman's application for a reversion to her maiden name were harmful to the family.

Also in the same Act, Section 12 of this Act, we would like to see here just a change of wording. The first sentence of this section reads, "accept in the case of a change of name to that of the husband upon marriage, and subject to The Vital Statistics Act and subsection 96 of The Child Welfare Act, no change of name in the province on or after the 1st day of July, 1938 has any effect unless it is or was made in accordance with this Act." We would just like to see the word "spouse" substituted for "husband" because we feel that although it at present is the case that it's only husbands who assume the wife's name upon marriage, we would like to see that privilege allowed to both spouses if they so choose. Perhaps in the future that would be the case.

With respect to Bill 69, The Marriage Act, this is really almost a cosmetic change I'm asking for. I found it quite bizarre that in a revision of an Act which is intended to remove sexism, the word "clergyman" which is a sex denotated word should be used 21 times. It's not as though you have to resort to some strange word like clergyperson, or anything of that sort, because there are several other adequate words like pastor, minister, member of the clergy, which could do in this act and so I would like to see just a change in wording made throughout the act wherever this occurs. It also is mentioned, clergyman, himself or he, so the masculine pronoun is used also throughout. — (Interjection) — Yes, clergy would be perfectly acceptable.

I don't think it's necessary to say clergyman or clergywoman, there are plenty of other terms. It's ironic that The Change of Name Act provides for a fine for anyone obtaining a change of name by fraud or misrepresentation, yet we know that many women do obtain a change of name by misrepresentation although it is unintentional. It does happen intentionally, however, unfortunately in our society particularly with regard to immigrant women. I have personally heard someone at the court tell an immigrant woman that in Canada it was the law for her to assume the surname of her husband and, since our custom is for the surname to become last, that official gave her as a surname what was in fact the given name of her husband because it was the last one, my colleague - Mrs. Tom, Dick or Harry. Officials somewhat high-handedly do this and so by misrepresentation there are many women who have had their names changed.

We would like to have it clarified, particularly at the time of marriage, that no woman is compelled to assume the name of her husband. We would like to see it written directly on the form of the application for marriage that the couple has a choice of either keeping their own name as before marriage, changing to the surname of the spouse, or jointly together choosing some other name, so they would have that choice at the time and that choice should be applicable to both partners.

With respect to Bill 70, The Vital Statistics Act, this is a change that we really welcome because under the current present law it is not possible for a married woman to have posterity in her children in the sense of passing on her family name. This change goes some distance to removing that by allowing for hyphenated names or allowing for the woman's surname to be given to the child. However, we forgot that ours is a very mixed society. We have people here from many cultures and these three options do not cover all of the cases. There are many cultures in which neither the surname of the husband, nor of the mother, but of some other relative is regularly given to the child.

In times when you are faced with a very complex situation and the interest of the government is small, but the interest of the individuals involved is great, we would prefer the law to remain silent on this point and not presume to enter the field of telling parents what name they must pass on to their offspring.

Do you have any questions on any of these three?

MR. CHAIRMAN: Mr. Evans.

HON. L. EVANS: Ms. Garlich, thank you. On that last point, the child and married woman, you're talking about 3(5). Are you suggesting we delete that whole section?

MS. C. GARLICH: I'm suggesting that certain words just be left our completely. Yes, that 3(5) just be deleted from the act.

HON. L. EVANS: I just might mention that this was put in at the suggestion of the Manitoba Human Rights Association because as it is now - I'm not familiar with all the sections of the act - but I believe that as it is now, you must register the child at birth in the name of the husband.

MS. C. GARLICH: Yes, well, we certainly would recommend that that be removed, but that it not be substituted with this one; that the relevant section that spoke of the husband just be deleted.

HON. L. EVANS: I guess you weren't aware then, I believe that this, in effect, substitutes for a previous section which said the child must be registered at birth in the name of the father. If you wanted to have any change then you would have to apply on a particular form, pay your money and have the name of the child changed.

MS. C. GARLICH: I'm very much aware of the past law because I, myself, have a child and was denied the right of giving my child a hyphenated name, so this is something that affected me personally.

What I am suggesting, however, is that instead of substituting this wording for that section, that the whole section simply be deleted, and that it be left to the parents themselves to decide what surname should be

given to the child, particularly in view of the fact that ours is of multicultural society and there are many people for whom none of these options would be applicable to their culture.

HON. L. EVANS: Could I ask you this question? Would you have any objection to proceeding with this section and considering your request, allowing for cultural diversity in our society, at the next Session of the Legislature. The point I'm making is that this is something we would have to give a lot of thought to whether we're ready yet to just allow anyone to name their child by any surname. There may be a problem we may not be able to envisage at the moment, records and so on. Certainly we're prepared to look at all of your recommendations. You made some interesting suggestions and we'll take them into consideration and see what we might do, but we have to have a bill or an act, finally, that is workable, at the same time, being equitable, recognizing the rights of women.

MS. C. GARLICH: You realize, so that record keeping is an excuse, which is used very often to deny women their rights. I'll just give you one small example. I, for example, had asked to have a joint credit card with my husband with my name on it and his name; and they said, for record-keeping purposes, we can't do that, so we'll have to call your wife by your name. He said this to my husband and my husband said, well, why don't you just put my wife's surname on it? He said, you're not Mr. Garlich, are you? He said, no, I'm not; and he said, well, we can't do that. But his assumption was that he could simply change my name and there would be no objection whatsoever; so record keeping is the one big excuse that is used to deny women their rights in terms of keeping their own identity, in terms of names or having posterity in their children.

Thank you.

MR. CHAIRMAN: Renate Krause.

MS. R. KRAUSE: Mr. Chairperson and members of the committee, I'm appearing tonight on behalf of the Legal Aid . . . — (Interjection)—

MR. CHAIRMAN: Put your hand up.

Mr. Mercier, on a point of order.

MR. G. MERCIER: Father Malinowski had some questions.

MR. CHAIRMAN: Father Malinowski knows he's supposed to stick his hand up.

MR. G. MERCIER: He did have his hand up.

MR. CHAIRMAN: I didn't see it.

MR. G. MERCIER: He did have his hand up.

MR. CHAIRMAN: All right. Well, we can get Ms. Garlich back, no problem. She's still here.

MR. D. MALINOWSKI: I would like to ask you, you were mentioning double names, how do you visualize that? For instance, I have in mind, like Miss Johnson married Mr. Raspberry. How do you visualize how she should use that name, first her's or combined or whatever?

MS. C. GARLICH: I'd like the government to not presume to tell anybody how they should use their names. I'd like to leave that up to them. It's up to their personal discretion.

MR. D. MALINOWSKI: So you are not giving any idea how it's supposed to . . .

MS. C. GARLICH: In fact, I think this is something that really should be a personal decision and I hope I'm not giving the impression that I'm trying to get the government to forbid women to take their husband's names or anything of that sort; that should be a personal choice. It simply should be a choice that is consciously made; that's all we're asking for.

MR. D. MALINOWSKI: No, I am asking for something else. How, as I said, for example, that Miss Johnson married Mr. Raspberry and you think that Miss Johnson will be able to use only her maiden name, or use them both? If both, which first, which the second?

MS. C. GARLICH: Again, that's a personal decision, it should be up to them to decide.

MR. D. MALINOWSKI: Now how about concerning the children? This is the problem, I believe, which will occur in the future, how the children should be registered; under the mother's name, or both, or what is your impression, what is your idea?

MS. C. GARLICH: I'm sorry to be repeating myself, but I feel that is something that is a very great concern and significance to the family. Their family tradition, the wishes of those people involved are very great, they have a great deal of interest in that. I would suggest that it is only a convenience matter for the purposes of the government, and the government's interest in that is not nearly so great.

As far as giving hyphenated names, or the mother's surname, that's entirely up to the individuals concerned and it should be, I think it should be.

MR. D. MALINOWSKI: Okay, suppose it is established that they will use X and A; do you think that the children also have to go under that A and X, or whatever?

MS. C. GARLICH: The children normally go by whatever name the parents give them until they reach an age in which they can change it if they don't like that. So at the age of 18, any person is able, under this change of name act to take whichever name they please.

MR. D. MALINOWSKI: Okay, thank you, Mr. Chairman.

MR. CHAIRMAN: Renate Krause will try again.

MS. R. KRAUSE: Mr. Chairperson, members of the committee, I am appearing tonight on behalf of the

Legal Aid Lawyers' Association and I will be addressing Bill 65 and Bill 66, and not as stated on the list - I believe it was as 64 and 65. I do have a written submission, unfortunately I have not sufficient copies to supply all the members of the committee with a copy of my brief. If the members wish to obtain a copy I'll be able to go and do that tonight.

Discussions have taken place among members of the Legal Aid Lawyers' Association. The Legal Aid Lawyers' Association has had discussions relating to the proposed amendments to The Family Maintenance Act and The Child Welfare Act as they are contained in Bill 65 and Bill 66.

Although we welcome most of the proposed amendments, especially the ones relating to The Child Welfare Act dealing with the access in child protection cases and the supply of particulars upon request, there are a number of amendments which cause us concern as they will affect the lives of individuals considerably.

Dealing firstly with Bill 65, An Act to amend The Family Maintenance Act, Clause 3, Section 1.3(1) Examination of party, it is our understanding that at the present time further amendments to the sections are being considered and and we welcome this greatly. However, we disagree strongly with the present section which would empower an inferior court judge to order psychological, psychiatric, social, medical or other examination of a party to the proceedings. We do not object to these types of reports being ordered as they relate to the child which is the subject of the proceedings. We feel that there are strong public policy reasons against giving the court the power to order such examinations as they relate to other parties.

We see problems arising from reliance upon experts from various disciplines for evidence which are not exact sciences and where consequently the results of an examination may vary from one expert to another. Especially in the area of psychology and psychiatry, a lot depends on the person's co-operation and trust in the examiner. If a person is ordered to undergo such an examination, this trust trust and co-operation will likely not be present. In these situations, non-co-operation does not even have to be overt or intentional. These cases could likely not be dealt with under Section 1.3(3) since the examiner may not even be aware of the non-co-operation.

We feel that consideration should also be given to the fact that in situations of marital breakdown people are undergoing great stress and consequently their behaviour and reactions are such as they would not be under more normal circumstances. It is doubtful that a useful examination could be done under such conditions.

It has been pointed out by this committee previously, during a previous submission on this section that judges in criminal proceedings often rely on and are asked to accept especially psychiatric and psychological reports. We believe that there is a fundamental difference between reports prepared for the use in criminal proceedings as opposed to proceedings under The Family Maintenance Act or The Child Welfare Act.

In criminal proceedings the courts are dealing with a clearly definable mental illness which, if diagnosed, will support a defence on the basis of insanity. The legal definition of insanity is set out in the Criminal Code. A psychiatric illness will also be accepted as a mitigating factor in sentencing. In these cases the courts and the experts are dealing with well established areas and a clearly defined test. But what is the test in child welfare proceedings or proceedings under The Family Maintenance Act? It's the best interests of the child, but who sets the standard? There is no clear definition and the standard may vary from judge to judge involving inevitably a subjective value judgment on the part of the judges as well as on the part of experts.

Although we realize that the child's best interest is the overriding consideration, we feel that those interests should not be the sole criterion. It is our position that the danger of violating the adult individual's rights is too high if the result is to obtain evidence which might not even be conclusive. There is the further consideration that to allow such examinations to be ordered would be potentially too great a violation of a person's right of privacy and may very well be a violation of the Charter protection of the right to security of the person.

We would also like to point out that if the court has the power to order these tests, it can very well be presumed that the court will have the power to impose sanctions in the case of non-compliance going beyond the drawing of inferences referred to in Section 1.3(2).

Dealing with Section 11.7(1) Blood test, although the proposed amendment does not allow for the ordering of blood tests, we feel that even the naming of a person in a court document will create an aura of compulsion which is not desirable. The danger exists as well that a person would be named out of revenge and would undergo blood tests for fear that the judge may draw a negative inference from his refusal. This then brings to mind the practical implications of having blood tests done. Who is responsible for the costs? Should the person who is named in the court document carry the costs? What kind of test should be taken? These are just a few questions which will have to be answered if this section becomes law.

Even though blood tests would provide a more reliable evidence due to their accuracy, the test in filiation proceedings is still on the balance of probabilities, and other evidence relating to parentage will still be necessary.

We are of the opinion that the inclusion of this section into The Family Maintenance Act would not make a significant practical difference but would constitute an invasion of privacy and should therefore not be included.

Relating to Clause 5, Section 2(3), the Obligation where cohabit for 5 years, we submit that there should be no common-law entitlement to maintenance as set out in this section. If there is a relationship of some duration and the parties have accumulated property assets, presumably a civil claim could be made. If people decide to live together without getting married, there are other means available, such as the law of contract, to order their financial affairs.

There certainly appears to be a need for education as to what legal rights the person living in a common-law relationship has. In our practice we have often come across the misapprehension that if persons live together in a common-law relationship for the period of one year their legal rights are the same as if they had been legally married. However, we do not think that this means that the law should be made to fit people's misapprehensions but that a more extensive education and information program is warranted in that area.

Again, we do not agree where that kind of constructive marriage should be imposed on persons who are living together and thus deprive them of their right to make that kind of choice for themselves.

Clause 12, Section 8(6) Maintenance ceases upon marriage, we feel that this amendment would take away a person's choice to marry if the right to maintenance would be statutorily forfeited once a spouse marries. We are afraid that this will affect especially low income people, such as pensioners, who could not afford to get married for fear of losing income they depend on. It is our opinion that the present remedy available, applying to the court for a variation of the maintenance order due to a change in circumstances, is preferable to an automatic termination.

I would like now briefly to refer to several amendments which we felt have the danger of containing definitional problems. For example on Page 10 of Bill 65, Section 11.9 - Presumption of paternity, Para. (e), as it's set out, now it states that "he was cohabiting with the mother in a relationship of some permanence." We are not sure what the term "relationship of some permanence" means. Does this refer to the length of the relationship and, if so, for how long does a relationship have to last before it is considered to have been of some permanence? Is it for days, weeks or months? What if a man has lived with the mother of a child for only a day but had promised to stay there for a longer period of time? In a situation like that the woman would certainly have believed it to be a relationship of some permanence at the time the promise was made.

With reference to Clause 16, Section 12(5) Support beyond age 18, it is our opinion that it should be possible to obtain support for a child beyond the age of 18. But we feel that there should be some criterion as to in what cases support should be received once the child has reached that age. We suggest that the same criterion should be used as in The Divorce Act. That would be, for example, in the case where a child reached the age of 18, but continues to go to school and staying at home.

With regard to Bill 66, An Act to amend The Child Welfare Act, as concerns Bill 66, again our concerns are with the proposed amendment in Clause 3, Section 1.3(1) - examination of a party. Our reasons for not agreeing with this action are the same as previously stated regarding the amendments to The Family Maintenance Act; even more so in proceedings under The Child Welfare Act. Whereas in proceedings under The Family Maintenance Act the opposing parties are usually the parents; in child protection proceedings it is the child caring agency against the parent or the parents. In these cases, the advantage lies clearly with the well established, experienced and sophisticated agency. The individual is at a disadvantage in such situations, if only by virtue of inexperience, and it would be inequitable to increase that disadvantage.

And again, we would like to stress that we are not opposed to having the child undergo any such examinations.

Section 1.4(1) Proceedings open to the media. We adopt the Family Law Subsection of the Manitoba Bar Association submission on this section to allow a judge to make an order of non-publication, similar to the one allowed in criminal proceedings.

Section 1.5(1) Application for access. We are of the view that it should be clearly defined who can make an application for access. Specifically, we see a problem with the wording of this section as it refers to "a person who has or ought to have the opportunity to visit a child," we would like to see this section clarified.

Clause 5, Section 15(1) Voluntary surrender. Legal Aid Lawyers' Association adopts the recommendation of the Family Law Subsection that independent legal advice should be available to the mother, similar to that available to a father in filiation proceedings before signing the agreement.

Relating to Clause 7, Section 17(1) Entry without a warrant in certain cases, we do not agree with the proposed amendment to allow the director or an officer of a child caring agency or Family Court officer to enter without a warrant into the premises to investigate a situation where there could be immediate danger to a child. The power to enter without a warrant is already given to police officers pursuant to the provisions of the Criminal Code. We feel that giving this additional power to the child welfare worker or any of the other persons named in the section is not warranted, but that the existing power is sufficient to protect a child in such situations.

Clause 13, Section 25(11) Cross-examination of party. We submit that giving the child caring agency the power to call the parent or guardian of both as a witness is unnecessary. In all child protection cases co-operation of the person who wants the custody of the child is essential. If a parent or guardian opposing an application by the child caring agency does not give evidence in court, the judge will draw the appropriate inference and it will usually not be in favour of a parent. Many times several family members are involved in child protection cases. For example, it would be the mother, or the grandmother, the aunt, or some other relative who will make an application for guardianship, whereas the mother is or the parents are opposing the child caring agency's application. If these parties would be forced to submit to cross-examination, one of these persons may have to say things in court against the other which could lead to hostility among these family members. The evidence brought out through these cross-examinations can usually be adduced by workers or other persons who are familiar with the home situation. The outcome of such a hearing is often that the child is lost to the family, but the family members are left to live with each other and the matters which have been brought out in court which makes this very difficult.

Clause 37 and subsequent amendments try to clarify guardship. However, we asked the committee to consider if a Queen's Bench judge may appoint a guardian. Section 112 of the present Child Welfare Act allows for removal of such a guardian but not for an appointment by the Queen's Bench judge.

Again, in conclusion, I would like to stress that the Legal Aid Lawyers' Association supports most of the proposed amendments, especially the amendments relating to the access provision in child protection cases.

Also, we agree that the best interests of the child should be the paramount consideration of the court in reaching decisions relating to the lives and future of children. We feel that the right of the adult individual should also be kept in mind when passing legislation.

MR. CHAIRMAN: Are there any questions? Mr. Penner.

HON. R. PENNER: With respect to the issues raised by you in Bill 65, I just mention that we are bringing in amendments both with respect to 1.3 and 12(5).

I have a question on Bill 66. You raised a concern about the amending Section 7 to 17(1) of the existing act giving some powers to the director or an officer of a child caring agency or a family court. The example was used in one of the presentations that we heard the other day about a situation where the case worker is five miles into the bush, and there's no phone and there's no peace officer, at least any closer than that, and comes across a situation of actual danger to the child, would you not agree that there should be some statutory power for the worker to deal with that situation?

MS. R. KRAUSE: I don't think it would really make any difference if the court worker, if there's a need, if it's actually a case that something has to be done. I believe that probably under the Criminal Code a private citizen may very well have the power to go in and do something about the situation if an offence is committed, and likely if it's the situation of immediate danger, then the child probably is mistreated in one way or another and would probably constitute an assault, a criminal offence, I would think so.

HON. R. PENNER: I have to hope that the case worker was sufficiently familiar with the criminal law to know the difference between a summary conviction and an indictable offence.

MS. R. KRAUSE: I don't think if it's only restricted to that one area that would be too difficult to explain. They are not required to make the distinction in all kinds of situations or possibilities, but it would only be a situation which relates specifically to a child being in danger. I think there's certainly a limit and I don't think it would be too difficult to make this clear to the worker in what situations they could and should or not, and I think they shouldn't.

HON. R. PENNER: My final question, because I don't think we really want to pursue it too far, is that if you are prepared to have the worker exercise the statutory power that a citizen has under the Criminal Code, why are you opposed to statutory power in a provincial statute?

MS. R. KRAUSE: I believe that in those situations giving more powers to worker and officials is further intimidating the people who have to deal with those situations. Our clients, they are not very sophisticated. They're easily intimidated and I believe to give that power would just increase that type of situation where they even feel more at a disadvantage.

MR. CHAIRMAN: Thank you, Ms. Krause.

Joel Morasutti.

MR. J. MORASUTTI: Yes, I'm Joel Morasutti. I'm the President of the Manitoba Progressive Party. I'm here to speak on Bill 64, Mr. Chairman - not as stated on the agenda for tonight - An Act to mend The Marital Property Act. More specifically, Mr. Chairman, I would like to limit myself to Section 12, Clause 5, of the proposed amendments.

I am not here as a lawyer to improve the law, but rather as a husband and as a father. I've heard many of the presentations that have been made to date. Some have been very lengthy, and some have made excellent points. The dimension that I wish to bring to this proposed amendment is somewhat different.

My concern, as I've said, revolves around this Section 12 which, in the act as it stands today, provides for the right to have assets divided equally in the event of separation or divorce, or if there is evidence of dissipation of assets within the context of a marriage. Through the proposed bill, through Bill 64, this government, Mr. Chairman, proposes to repeal this Section 12 in its entirety, and to reword it so as to give spouses the right to have an accounting of assets and a division of the assets within the context of a marriage.

Now I am not a legislator, as I stated, but I do have lots of experience in the field of marriage. I feel very strongly, as many of the people who are sitting here tonight probably do, that in a marriage there should be frank and open accounting based on trust. If this is not done however, if the trust is not there, I feel very strongly that you will not get it through legislation.

I agree that through this legislation, the spouses will be able to receive through the courts accounting of and division of assets, although as I read the news in today's paper, Mr. Chairman, I don't believe it will always be equal division of assets. I think the ruling of the Manitoba Court of Appeal today has thrown a new light or a new complexity on what seemed to be a somewhat simple change in the law here. But I ask myself, however, that even though you do get this division of assets or this accounting within the context of a marriage, Mr. Chairman, what good is it, if it will only serve as a coup de grâce in a marital relationship?

As I read this proposed legislation, I tried to imagine a scenario of a spouse, a husband or wife - in my case, my wife takes care of all the accounts. I have very little knowledge of what my assets are. So I say, husband or wife - what the reaction of the spouse would be when he or she receives a court order giving him or her a certain length of time, 14 days I think it states, to come up with a full accounting of the assets. Is this going to bring trust? Is this going to improve, in any way, the marital relationship?

We read that in Canada, Mr. Chairman, where we're looking at approximately 40 percent of the marriages which are ending up in the courts, again I ask myself what this clause here is going to do for this. I'm sure the intentions of this government, Mr. Chairman, are good, are to try to improve a situation here. Yet, I try to second guess exactly what the purpose of this Section 12 is; what exactly it will do. As of yet, I don't know. I have spoken to many people, and they seem to agree with me on it. I can't see anything positive coming out of it.

On the contrary, if a spouse upon seeing this changed legislation, this new Section 12, if a spouse wishes to hide assets, it'll encourage people to be dishonest and to hide the assets so as to not be faced with having to divide them equally, or however the law sees fit.

The aspect that I find rather frightening in this sort of legislation, Mr. Chairman, is that I see the government

delving in the type of legislation affecting personal relationships, marriage, and I ask myself how far it will go in that area, in that direction. I have trouble understanding what kind of good state involvement in marriage on a day-to-day relationship, what sort of good it will do. As far as I'm concerned, Mr. Chairman, it can only weaken the bonds of an institution of marriage.

When someone gets married - it hasn't been that long for me - I seem to recall that we take sort of an oath. Both spouses tell each other that they will do all sorts of things. They will love and they will cherish. At no point are we required to say that we will share assets equally, or that we must give each other an equal accounting. Perhaps the law would be more helpful if you added another amendment, and you required that spouses come in at - I don't know - 11 o'clock at night, or that they tell each other, I love you, at least two times or at least three times, as requested by law, per day.

That might also have - or I'm sure it would have a very positive effect on marriage, on marital relationships. It would most certainly have a much more positive effect than receiving a court order saying that your partner in marriage, your spouse, is going to take you to court; will have you fined, possibly jailed. I don't know what the consequences are if you don't go along with it; if you don't come up with that division of assets, or if you don't come up with that accounting.

That concludes my very brief presentation on this bill, Mr. Chairman.

MR. CHAIRMAN: Any questions?
Mr. Penner.

HON. R. PENNER: Mr. Morasutti, there are a number of people, perhaps not as many as there once were, for whom the question of the termination of marriage is one fraught with religious difficulties and yet, for all practical purposes, the marriage is at an end. They go on living in the same household unhappily, but that's the matter of their personal ideology.

Should they, in order to find out and obtain, find out what belongs to them, in effect, and to be able to obtain it for use in an accounting sense, be forced to the wall with respect to dumping the marriage in order to achieve that end?

MR. J. MORASUTTI: Mr. Penner, it seems to me here that you are trying to redefine marriage; that instead of asking spouses who wish to stay together for the children, and we've heard all the excuses - you have much more experience than I do in that field - that they should work things out. If they can't, they will have to split. But I'm sure that coming out with a court order to divide the assets, one serving the other with a court order, I cannot see in any way how this would help a relationship. This will only hinder the relationship, a relationship which, as you describe it, is already faltering.

HON. R. PENNER: Are you familiar, Mr. Morasutti, with the fact that there are similar provisions in The Family Maintenance Act, as to the one that is being proposed here with respect to The Marital Property Act?

MR. J. MORASUTTI: No, I'm not, Sir.

HON. R. PENNER: Okay. Thank you.

MR. J. MORASUTTI: I think Mr. Malinowski had a question.

MR. D. MALINOWSKI: Mr. Morasutti, I have only one question. Maybe it seems to be personal. Are you married?

MR. J. MORASUTTI: Yes, I am, Sir.

MR. D. MALINOWSKI: Thank you, Sir.

MR. CHAIRMAN: Any other questions?
Mr. Kovnats.

MR. A. KOVNATS: Thank you, Mr. Chairman. Mr. Morasutti, I want to take this opportunity of stating right here and now that I love my wife. I'm glad that you've made a remark about it, so that I can make that remark this evening.

You also said something about that you were thinking of regulating that the spouse had to be home at 11 o'clock in the evening. Would you allow some concession to members of the Manitoba Legislature to make it at a later time?

MR. J. MORASUTTI: Depending on how long these presentations are, I think there would have to be some special concessions made. That would be up to this committee.

MR. A. KOVNATS: I don't mean to make fun of Mr. Morasutti, not at all. As a matter of fact, the name has great meaning to me inasmuch as I believe that Mr. Morasutti's mother was my first French teacher, as possibly Sid Green had the same first French teacher. There is a great respect for the Morasutti name, and his brief was well received by me. I thank him very much for making that brief this evening.

MR. J. MORASUTTI: Thank you, Mr. Kovnats.

MR. CHAIRMAN: Thank you, Mr. Morasutti.
That completes the presentations before this committee. We can now go into the bills.
Have you got amendments to any of these?

HON. R. PENNER: Yes, there are amendments to Bill 64.

MR. CHAIRMAN: Bill 64?

HON. R. PENNER: I think you should do all the ones in my name first.

MR. CHAIRMAN: Why? What gives you the right?

HON. R. PENNER: I've got a young kid to get home to.

MR. CHAIRMAN: No, not in my committee.

BILL 64 - THE MARITAL PROPERTY ACT

MR. CHAIRMAN: Clause by clause or page by page, 64?

MR. G. MERCIER: Clause by clause.

MR. CHAIRMAN: Clause by clause, okay. Clause 1(1)(a) - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, we had some representation from the - and there were so many I've got. It was from the National Association of Women and the Law, who disagreed with this amendment. I wonder if the Attorney-General has any comments.

HON. R. PENNER: I'm sorry.

MR. G. MERCIER: The National Association of Women and the Law - Ms. Devine, I believe it was - disagreed with this amendment, and suggested that jewelry should be personal apparel. I am wondering what the Attorney-General's position is.

HON. R. PENNER: Well, you mean . . .

MR. G. MERCIER: You disagree with it?

HON. R. PENNER: No. The purpose of the amendment here is to, in effect, take, in case there was any doubt, jewelry out of the category, personal apparel, and to make it a sharable asset.

MR. CHAIRMAN: Clause 1(1)(a)—pass.

MR. G. MERCIER: Did the Attorney-General give an answer?

MR. CHAIRMAN: Yes, he did.

MR. G. MERCIER: I'm sorry I missed it.

HON. R. PENNER: I'll repeat my answer. I have just been looking at this thing and wondering about the spelling of jewelry. I always have trouble with that. Is that spelled right there?

A MEMBER: I should hope so.

HON. R. PENNER: You should hope so. Okay.

A MEMBER: That's not the question though.

HON. R. PENNER: That's not the question, however. Jewelry is, by this amendment, being exempted from the category, personal apparel.

MR. G. MERCIER: So that it will be sharable?

HON. R. PENNER: Yes. There have been cases which have come to the attention of the courts of persons investing very substantial sums of money in jewelry and saying, ha-ha, goodbye. That's been the problem.

MR. CHAIRMAN: Mrs. Oleson.

MRS. C. OLESON: You're telling me, Mr. Penner, then that if I inherit family jewelry that it now becomes a sharable asset in the marriage?

HON. R. PENNER: No. An inherited asset like that is exempt.

MRS. C. OLESON: Okay.

MR. CHAIRMAN: Pass?

HON. R. PENNER: Pass.

MR. CHAIRMAN: Clause 4(1)(b) - Ms. Phillips.

MS. M. PHILLIPS: Mr. Chairperson, I'd like to move an amendment.

THAT proposed Clause 4(1)(b) of The Marital Property Act as set out in Section 2 of Bill 64 be amended by striking out the words "with the intention of benefitting" and substituting therefor the words "in comtemplation of marriage to."

HON. R. PENNER: Just by way of explanation, in the submissions heard, the more familiar test of "in contemplation of marriage" was preferred by those making submissions, and accordingly we're bringing in the amendment.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: I appreciate the concern here, Mr. Chairman. Section 4(2) seemed to me to cover this situation, where it states that, "Notwithstanding Clause (1)(c), this act applies to any asset acquired by a spouse prior to but in specific contemplation of the marriage to the other spouse."

MR. CHAIRMAN: Mr. Mercier, could you speak into the microphone to make sure we get it on the tape?

HON. R. PENNER: 4 (2) refers to 4(1)(c), while unmarried and not . . . .

MR. G. MERCIER: So, it's really the same test here then.

HON. R. PENNER: That's right.

MR. G. MERCIER: Okay.

MR. CHAIRMAN: Is it agreed? 4(3)—pass; 10(1) - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, Mr. Fishman raised the point here that the word "debts" was left out of this section, and whether anything was intended by leaving out the reference to "debt."

HON. R. PENNER: It was felt by the draftspersons that "liabilities" was sufficiently inclusive.

MR. CHAIRMAN: Is that agreed? Pass. Section 12(5) - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, we've had opposition expressed with respect to this section by Mr. Fishman on behalf of the Family Law Subsection of the Manitoba Bar by the latest delegation, and I think there were others who expressed concern with respect to this amendment. Is the Attorney-General contemplating any amendments here?

HON. R. PENNER: No. I appreciate that there are some differences to what is apparently, but not actually, novel. I think what perhaps attracts the attention of some of the commentators is finding it now in The Marital Property Act, forgetting that it or its equivalent is already in The Family Maintenance Act.

What the idea here was, there are, as no doubt you heard, a number of people who believe in the concept of instant sharing, and there are those who believe only in completely deferred sharing. This is a halfway house which is working very well, as I'm advised, in Saskatchewan. It does assist in the kind of cases that I used as an example in replying to the brief of Mr. Morasutti.

MR. G. MERCIER: Mr. Chairman, the similar section that the Attorney-General refers to in The Family Maintenance Act is a section that provides for the right to obtain information which, I would suggest, is not really similar to this section, in that this section goes much further in granting the right to an accounting and an equalization of assets while still cohabiting together.

HON. R. PENNER: Actually in the FMA, there are two sections which are linked, which allows for this kind of accounting and an allowance based on the accounting.

MR. CHAIRMAN: Pass. Subsection 13(1) - Ms. Phillips.

MS. M. PHILLIPS: Mr. Chairperson, I have an amendment.

THAT the proposed amendment to subsection 13(1) of The Marital Property Act as set out in Section 6 of Bill 64 be amended

(a) by striking out the word "reduced" where it appears in the 7th line of the section and substituting therefor the word "altered"; and

(b) by striking out the words "a complete" where they appear in lines 7 and 8.

MR. CHAIRMAN: Is that agreed?
Mr. Penner.

HON. R. PENNER: Again, this arises from a submission made, and I think it was quite right that the word "reduced" is too limiting.

MR. CHAIRMAN: Pass. Subsection 13(2) - Ms. Phillips.

HON. R. PENNER: As amended, pass.

MR. CHAIRMAN: No, it's not amended yet.

MS. M. PHILLIPS: Subsection (1), as amended.
Subsection (2),

THAT the proposed amendment to Subsection 13(2) of The Marital Property Act as set out in Section 7 of Bill 64 be amended

(a) by striking out the word "reduced" where it appears in the 7th line of the section and substituting therefor the word "altered"; and

(b) by striking out the words "a complete" where they appear in lines 7 and 8.

HON. R. PENNER: Same explanation.

MR. CHAIRMAN: Is that agreed? Pass. Subsection 13(3) - Ms. Phillips.

MS. M. PHILLIPS: Thank you. Mr. Chairperson, I move,

THAT proposed subsection 13(3) of The Marital Property Act as set out in Section 8 of Bill 64 be amended by striking out all the words after the word "dissipation" in the 3rd line thereof.

MR. CHAIRMAN: Is that agreed?
Mr. Mercier.

MR. G. MERCIER: Well, Mr. Chairman, I do want to put on the record again the comments of Mr. Fishman on behalf of the Family Law Subsection of the Bar Association, who indicated they were satisfied with the existing wording in the act, and did not see any necessity for any change in the wording. What is the justification or reason for the change?

HON. R. PENNER: I suppose, as I read it, perhaps the best explanation is to be found in the decision of the Manitoba Court of Appeal referred to in the Free Press today, where in fact, as it appears, the majority of that court went for a substantially unequal sharing on factors which arguably ought not to be taken into consideration, or at least that was the vast majority of the representations that were made to my department consequent upon recommendations contained in the Carr Report.

MR. G. MERCIER: Mr. Chairman, unfortunately I haven't even had an opportunity to read the article in the Free Press. I am not sure that one is safe to rely on simply the newspaper report of the case, rather than reading the judgment itself. Even Mr. Carr's Report indicates, if I recall correctly, that there was only one decided case in which there had been an unequal division of assets, at least up until the time of making that report to the Attorney-General. That doesn't rule out the possibility, human nature being what it is, that there will be justification for an unequal sharing in the future.

By making this amendment, the government is taking away somewhat from the discretion in the courts to make that unequal sharing where it is justifiable. It was certainly evident from the, at least, three or four years of decisions under the existing legislation that the discretion which they currently have is not being used unwisely.

HON. R. PENNER: We are not taking away the right to vary in certain circumstances, but those circumstances will not include conduct.

I am advised that the report of the case in the Free Press is, in fact, an accurate account of the full reasons for judgment, not a complete account but an accurate account, insofar as they go.

MR. G. MERCIER: The government will have to take responsibility.

HON. R. PENNER: Yes.

MR. CHAIRMAN: Pass. Subsection 14(1)—pass; Section 15 - Mr. Mercier.

MR. G. MERCIER: I didn't pass Section - in Section 9, Mr. Chairman, which amends Section 14.1, again there was a concern expressed by Mr. Fishman over the difference in the wording. I wonder if Legislative Counsel had an opportunity to look at that, and determine whether or not there is any problem.

HON. R. PENNER: The Legislative Counsel have had in mind a decision of the Court of Appeal in which obiter the question was asked, why does the act use the words "division" when it needs accounting?

MR. CHAIRMAN: Section 15—pass; subsection 17(4) - Ms. Phillips.

MS. M. PHILLIPS: Mr. Chairperson, I move,
THAT proposed subsection 17(4) of The Marital Property Act as set out in Section 11 of Bill 64 be struck out and the following subsections be substituted therefor:
Applicant's statement of assets and liabilities.
17(4) A spouse shall at the time of making an application under this Part file with the court a sworn statement disclosing all assets and liabilities of that spouse whether or not they are shareable under this Act and a valuation thereof and shall serve the statement upon the respondent.

HON. R. PENNER: This is connected with the proposed 17(5). We've simply taken the 17(4) in the original amending bill and divided it into two sections, 17(4) and 17(5).

MR. G. MERCIER: Mr. Chairman, when Mr. Fishman spoke to this section he made a suggestion that there be a statement of assets as of the date of separation, and another statement as of the date of filing the application. Has that been given any consideration and, if it is being rejected, why?

HON. R. PENNER: No, it is something that we want to consider. It just seemed to us too much at this stage, and we would like to look at it in terms of subsequent amendments.

MR. CHAIRMAN: Section 12.

MS. M. PHILLIPS: I have more to that amendment to 17(5). Yes, and I'd like to further move, Mr. Chairperson, under 17(5):
Respondent's statement of assets and liabilities.
17(5) The respondent shall within 14 days of being served with a statement under subsection (4), or within such further period as the spouses may agree to or a judge on application may allow, file and serve on the applicant a sworn statement disclosing all the respondent's assets and liabilities whether or not they are shareable under this Act and a valuation thereof.

MR. CHAIRMAN: Pass. This section is the motion to renumber.
Ms. Phillips.

MS. M. PHILLIPS: Yes, Mr. Chairperson, I move,
THAT Section 12 of Bill 64 be renumbered as Section 13 and the following section be added immediately after Section 11:
Section 23 rep.
12 Section 23 of the Act is repealed.

MR. CHAIRMAN: Pass.
Mr. Mercier.

MR. G. MERCIER: In speaking to that motion, Mr. Chairman, I simply want to raise with the Attorney-General the additional sections that were suggested by the Family Law Subsection, whether any consideration has been given to including any of those in this bill. I agree it is unusual to take an entirely new concept at Law Amendments Committee and introduce it into the bill, but if there was any desire by the Attorney-General, upon examining any of those concepts, which seem fairly reasonable, Mr. Chairman, I would be probably agreeable to including them in the bill.

HON. R. PENNER: I'm willing to look at those, again, between now and report stage.

MR. CHAIRMAN: Pass. Section 13—pass, as amended; Title—pass; Preamble—pass. Bill be reported.

BILL 65 - THE FAMILY MAINTENANCE ACT

MR. CHAIRMAN: Bill 65. Clause 1(b.1).

HON. R. PENNER: Are there any amendments to distribute?

MR. CHAIRMAN: Clause 1—pass?
Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, there was a suggestion by Mr. Fishman that this definition did not appear to add anything at all to the concept of custody. I wonder if the Attorney-General could explain the reason for making this amendment.

HON. R. PENNER: Yes, it's not intended that in this section we further elaborate the meaning of custody; it's here because we're making that distinction that I explained at the time Mr. Fishman was here between custody, as it will apply in FMA, and guardianship as it will apply in 66, Child Welfare.

MR. CHAIRMAN: Section 1—pass.
Mr. Mercier.

MR. G. MERCIER: Now law in the next section, 2.

MR. CHAIRMAN: Section 2 - Mr. Mercier.

MR. G. MERCIER: 2, we had a suggestion for Mr. Fishman that it should include someone in loco parentis. Has that been considered?

HON. R. PENNER: Yes, the reason for it is the feeling, which I share, and I'm advancing, that we would wish and want that the persons who are in loco parentis and seek the care and control of a child do so under guardianship provisions of The Child Welfare Act.

MR. CHAIRMAN: Pass; Section 3 - Ms. Phillips.

MS. M. PHILLIPS: Mr. Chairperson, I move,

THAT Section 3 of Bill 65 be struck out and the following section substituted therefor:

Sections 1.1 to 1.3 added.

3 The Act is further amended by adding thereto immediately after section 1 thereof the following sections:

Best interest test applies.

1.1 In all proceedings under this Act the best interests of the child shall be the paramount consideration of the court.

Child's views to be considered.

1.1 Where the court is satisfied that a child is able to understand the nature of the proceedings, and the court considers that it would not be harmful to the child, the court may consider the views and preferences of the child.

Court may direct investigation.

1.3(1) In the proceeding under this Act, the court may direct an investigation into any matter by a person who

(a) has had no previous connection with the parties to the proceedings or to whom each party consents; and

(b) is a family investigator, social worker or other person approved by the court for the purpose.

Investigations only if necessary to determine best interests.

1.3(2) A court may direct an investigation under subsection (1) only if satisfied that it is necessary in order to determine the best interests of the child.

Refusal to co-operate.

1.3(3) Where a court directs an investigation pursuant to subsection (1) and a party refuses to co-operate with the investigator, the investigator shall so report to the court which may draw any inference therefrom it considers appropriate.

HON. R. PENNER: Just by way of explanation, I think members of the committee will recall that the number of persons making presentations were bothered by the language of the section, and after consideration I'm concurring in those submissions and the language here, because we still believe very strongly that in the best interests of the child the court should be able to direct an investigation. The language that we're using here is the language I think almost word for word, really, used in the B.C. act which appears to have worked very well.

MR. CHAIRMAN: Section 3, as amended—pass; Section 4 - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, can the Minister explain the reasons why this amendment is being made? Are there decisions of the courts that have caused concern?

HON. R. PENNER: No, I can't say that there are decisions or even a decision which gives rise to the proposal. It is in a sense the last vestige of conduct remaining in the package, and we're amending to make it consistent with the approach taken in other parallel legislation; also, incidentally, I might point out in an anticipatory way, consistent with changes now anticipated in The Divorce Act.

MR. G. MERCIER: Mr. Chairman, I haven't seen the changes anticipated in The Divorce Act. I simply want to say for the record, to express my concern, that I don't particularly see the need for any change in the section. The Attorney-General has indicated that court decisions have not caused any concerns. There's not been an unwise use of the very limited amount of expression that is given to the courts; and again, human conduct being what it is, I would suggest there will be a few cases, probably very few, but a few cases where this kind of discretion should be used in the future. By this amendment, the government is taking away that discretion from the courts which might prove to be useful in a very few cases.

MR. CHAIRMAN: Pass; Section 5 - Ms. Phillips.

MS. M. PHILLIPS: Mr. Chairperson, I move,

THAT Section 5 of Bill 65 be amended by striking out the heading and substituting therefor the following heading: subsections (2), (3) and (4) added, and by adding immediately after proposed subsection 2(3) of The Family Maintenance Act, as set out therein, the following subsection: "No application where spouses agree." 2(4) "No application shall be made under subsection (3) where the man and woman have, in writing, made an agreement with respect to maintenance and pleading an agreement to waive maintenance."

MR. G. MERCIER: Mr. Chairman, there were a great deal of concerns expressed about this section. I believe my colleagues want to express some concerns also. I think it was Ms. Devine who gave us arguments on both sides and, without question, there is in my own mind, as I spoke to this bill in second reading, my real concern over not including a section similar to this as in that instance where a spouse - and that's usually a woman - becomes financially dependent and then is deserted by her common-law spouse and is required to go on social assistance. In those instances, the concern that I have is that the taxpayer in those situations has to pick up the financial liability when there may be a valid reason why you can argue that the deserting spouse, or financially independent spouse, should be contributing. You have to balance that section then against the arguments that are made with respect to preserving the sanctity of the marriage relationship and the right of people to enter into common-law relationships where there is no financial requirements, supposedly, but I think my colleagues want to comment on this section.

MR. CHAIRMAN: Mrs. Hammond.

MRS. G. HAMMOND: I disagree with this section, with subsection 2(3). I believe that people make a conscious decision when they marry and they make a conscious decision when they choose to live together, and usually when they choose to live together very often today it's because they don't want to enter into marriage. I don't think that it's the right or the purpose of government to enter into a law that states that if they live five years of if they live two years together and somebody is substantially dependent that it's any business of the government to enter into this kind of a law. I believe that when you have this, why should people bother getting married? Just to have a piece of paper? I think very often today there's no great push, and I really think that you're getting into a very moral issue here and that if people can enter into this kind of a relationship, a common-law relationship, certainly they can have a contract. I don't think it's up to governments to, in essence, formalize something that was never meant to be formal.

In instances where men and women choose to live together, that's their prerogative and I believe that this section shouldn't be in there at all. I can't understand. I know that it happens, where somebody may be dependent upon another, but surely this was what Family Law legislation was all about, was we wanted to get away from the idea of women being totally dependent on men and I think this is regressive. I don't think it helps anything, and I think that when a man and woman make a decision to live together without the sanctity of marriage that's their decision.

I don't think anyone wants to make a moral judgment on it and today I don't think too many people really raise an eyebrow, and that is too bad possibly, but I think that's the way it is. But at the same time, most of them, when they go into this kind of relationship go into it with the idea that they do have the freedom and they can walk out of the relationship at any time. And rightly or wrongly, if we need to have this kind of a clause stating that anyone, when they live together, then they can go to court and then they have to pay. I just don't think it makes any sense at all. I think it's over-government, and I think if the women's movement aren't in an agreement with this themselves, then certainly why is the government entering into a clause such as this? I think it would be well to just delete it and leave things the way they are. I cannot see any good reason for this kind of a section, and I think it downgrades marriage when you have this type of a thing. I think if people choose to live together without the sanctity of marriage that's their decision, and I don't agree with this at all.

HON. R. PENNER: Certainly, a lot of point to the submission that has been made, but I think that it misses an important element which this section seeks to address. We talk about people contracting realistically the language and form of contract is the language and form of - I don't hesitate to use the term "the middle class," people who have had the advantage of better education, perhaps are in not necessarily the upper strata, but certainly people who have had a fairly substantial education, it doesn't have to be a university education, maybe amongst the industrial working middle-class. To them the language of contract and the notion of contract is not an alien concept, but for a very substantial part of the population it is. They do not habitually, or even in a cultural sense, use lawyers to advise them in entering into relationships. How many people do realistically seek the advice of lawyers in entering into a relationship? What happens is that a lot of relationships are these days for good or for ill, but we have to face the real world as it is, entered into - at least to begin with - in a somewhat casual basis without perhaps the intention of marriage or with thoughts of marriage perhaps to follow.

Marriage itself is an institution - is still very much resorted to. I don't think that the institution of marriage has been weakened by the fact that most marriage these days is without benefit of clergy, it is with benefit of marriage commissioners, but not with benefit of clergy. So where a relationship is entered into and it becomes in fact permanent, and in any partnership there is a commanding and a dependent person, it is still the case, despite the advances that have been made, that women who've been exploited in so many ways, particularly economically in our society, are dependent. They don't want to, for example, live forever in a parental home. They may be in a situation where in terms of the income that they can command in the job market exploited, as it is still of women, they have a tough time getting along alone. It is very difficult comparatively for a woman to live alone compared to a man.

There are many more hazards for a woman living alone. It is just not an easy life and they enter into the relationship and that relationship becomes a permanent relationship. It becomes, other than the benefit of clergy or marriage commissioner, very like a marriage. There are a substantial number of women in that situation who may raise from time to time the question of marriage and get the, if come; maybe, let's see how the job pans out; and, gee whiz, I'm a little busy now and I have to fix the fence. You know, it just never happens. Five years down the line, hello-goodbye, and if the woman, and it is only applicable to those circumstances, is substantially dependent on the other after all of these years simply feel that it is wrong to leave them solely without protection. I'm not unsympathetic to the notion that there's a limit beyond which government cannot go. So in response to some of the concerns which have been raised, we have in fact proposed an amendment that will allow parties, who wish to and are able to comprehend their rights, to contract out of the confines of the proposed section.

There's a peculiarity, it's almost ironic that the present law, as I'm sure Mrs. Hammond knows, allows for the maintenance of the spouse if you've lived together for one year and have a child. Why should it be that in that kind of situation by the happenstance, and often it is happenstance of a child, you become entitled to not only, let's remind ourselves, maintenance for the child but maintenance for the mother as well? I think we would all support that, but we have to ask the question if we're prepared to do that, recognizing a dependency and that's why we're doing it, why would we not do it where you have a situation of five years? There were some suggestions, I may say, that this should happen after two years. Some thought 10 years; some thought not at all. This is a compromise proposal that I would like to defend and I hope I have.

MRS. G. HAMMOND: Just speaking to the remarks made by the Minister, when the Family Law legislation first came in, I was in a position where our assets would be split in half. At the time, I was in the position where my husband had signed the house over in my name, and I spoke to the people when they were bringing this in. I said what happens to women in our position? At the time many - like my friends - have never worked, had never been out of the house and they were totally dependent. All you end up with in a marriage like that at the time was half a house, which wasn't very much. Now, I hear you saying almost the opposite. What they told me at that time, well, it's really for the younger ones, they're coming up and it'll be more equal then. It certainly wasn't equal for us, and that was the answer they gave me when I asked the question at the time.

Now, we have a situation where you're suggesting that people that casually live together because of loneliness or safety or some other thing and just because it ends up being five years, someone has a claim and most often it would be the woman. To relate a child maintenance to someone who hasn't got a child, I don't think applies at all. I feel, of course, someone would have to maintain someone with a child. That's an altogether different situation, but if someone is by themselves I don't see the situation at all. I think they've entered into that and I don't see the need to protect. I think what you want is to have people being more independent, not to encourage them to be dependent. What happens in situations where they have been living for five years and the other person is still married and supporting a family and very often that's the situation - you have many situations and many reasons that people live together - but I don't think it's the right or the place of the government to get into this type of legislation. I don't think for the ones that are in trouble, they were probably going to be that way, if they were going to be dependent on someone in any case. Does this mean that you're going to say, five years, that if somebody is aware of that, then they step out of the situation at four years? I don't know, where you have a situation that's maybe working, and then someone becomes aware of the law.

I find that people use the law, and I don't think it makes any sense to have this kind of a clause. I think that people marry. They marry for a reason, and most of them go into it not for one year. They are not going into it as a casual relationship. Very often, it ends up that way. Sometimes it's six months, and you see young kids breaking up very early today. But I don't believe that when they go into the marriage, and I know when they go into the marriage they mean it to last, whether it does or not. But when someone goes into a casual relationship like this, they have no intention probably of it lasting. Because one doesn't want to marry; because they always want that option to be able to leave, I don't think the government should legislate in any way that they can't leave with the very freedom that they went into the relationship with.

MR. CHAIRMAN: Ms. Phillips.

MS. M. PHILLIPS: Thank you, Mr. Chairperson. I would like to speak in favour of this section, and firstly point out that we are not talking about division of property here. We are talking about a claim for maintenance. I don't think, where a relationship is five years long and they've cohabited continuously, as the clause says, that is any longer a casual relationship by anyone's terms.

I don't think this is a moral issue. It's a financial issue. I think the key word is substantially dependent. I think that, in a situation where this happens and a person applies, what this is saying is that you have the right to apply for maintenance. You have to meet these rather stringent qualifications, and you have to prove that you are substantially dependent.

I would think that, considering all the other terms in family maintenance where the aim is for independence or if someone has the skills and facilities to be independent, in those cases this section would not apply. It would apply in a position or a situation where one could prove they were substantially dependent, either for having small children and not being able to participate in the work force, not having the skills, not needing assistance while one underwent retraining, or where one was physically handicapped or perhaps quite elderly. All those are the kinds of reasons that extend the provision for maintenance past a five-year period in the rest of the act.

I think, where a relationship has gone on for a period of five years and where one has ended up in a situation that is arguable to be substantially dependent, in those situations one should not sort of be left at the whim of another person or on the backs of the taxpayers, as Mr. Mercier pointed out.

So whatever the situation is that this couple chose to live together that long, where one is substantially dependent, I think in those circumstances one should have the right to apply for maintenance.

MR. CHAIRMAN: Section 5, as amended—pass; Section 6 - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, I wonder if the Attorney-General could indicate the justification for this section. How many cases has this proven to be a problem?

Then we had a suggestion from Mr. Fishman that the words "without reasonable cause" should be added. I take it "where a spouse fails to comply without reasonable excuse" was the wording.

Then I raise a concern. It says, "Where a spouse fails to comply with subsection (1). . . " Now subsection (1) is the existing section, which simply indicates that spouses have the mutual obligation to provide each other with this information and accounting. I would think that, and that's probably a question for Legislative Counsel, it should be, "where a spouse fails to comply with an order under subsection (1)."

I take it, you're not referring to a situation where Mrs. Smith asked Mr. Smith for the information under that section, and he says, no. Then she applies to court, and he is fined up to $5,000.00. I would think you're referring to, where there is a failure to comply with an order under that section.

HON. R. PENNER: Yes, you're right. That definitely should be in, "Where a spouse fails to comply with an order under subsection (1), a court on application . . ."

And I should point out, while I'm just speaking to the section, that the Court of Appeal has on two recent occasions expressed the need for this kind of an enforcement section.

MR. CHAIRMAN: Section 6 - Mr. Mercier.

HON. R. PENNER: Could we agree off-the-hop on an amendment to include - well I'll move, if it's acceptable; it would have to be a by leave

THAT where a spouse fails to comply with an order under subsection (1)," adding the words "an order under" after "with" and before . . .

MR. CHAIRMAN: Is that agreed, by leave? (Agreed)

MR. G. MERCIER: Mr. Chairman, what about the suggestion, "without reasonable excuse," to add those words?

HON. R. PENNER: I believe that the discretionary word "may" provides a court with the latitude which I would agree they should have.

MR. CHAIRMAN: Is that agreed? (Agreed)

Section 6, as amended—pass; Section 7—pass; Section 8—pass; Section 9—pass; Section 10—pass; Section 11—pass; Section 12.

MR. G. MERCIER: There was a suggestion by Mr. Fishman that the offer should not be part of the record for appeal purposes.

HON. R. PENNER: Yes, there is an amendment there.

MR. CHAIRMAN: Ms. Phillips.

MS. M. PHILLIPS: Mr. Chairperson, I move,

THAT proposed new subsection 8(6) of The Family Maintenance Act as set out in Section 12 of Bill 65 be struck out, and the following be added, I presume.

A MEMBER: No, struck out.

HON. R. PENNER: Just struck out.

MS. M. PHILLIPS: Oh, just struck out? Oh, that's the second one. Okay.

MR. CHAIRMAN: The amendment - Mr. Mercier.

MR. G. MERCIER: I'm sorry. There was a suggestion. The amendment can pass, but there was a suggestion by Mr. Fishman with respect to the fact that the offer should not be a part of the record for appeal purposes. Is that being considered?

HON. R. PENNER: I'm sorry, Mr. Mercier. Would you please run that by me again?

MR. G. MERCIER: The concern expressed by Mr. Fishman on behalf of the subsection was that the offer of settlement should not be a part of the record for appeal purposes.

HON. R. PENNER: It's handled under The Queen's Bench Act. The rules cover that.

MR. CHAIRMAN: Section 12, as amended—pass; Section 13—pass; Section 14.

MR. G. MERCIER: 14, as amended.

HON. R. PENNER: Section 14, Mr. Chairperson, covers all of the sub-Parts 11.1 and the following, so we'll have to take those with - perhaps hear the proposed amendments to 11.2, 11.3, 11.6, 11.8, 11.10, and then deal with 14 as a whole.

MR. CHAIRMAN: We'll take 11.1(1)—pass; 11.1(2)—pass; 11.2 - Ms. Phillips.

MS. M. PHILLIPS: Mr. Chairperson, I move,

THAT proposed subsection 11.2(1) of The Family Maintenance Act as set out in Section 14 of Bill 65 be amended by striking out the word "natural" where it appears in the 2nd line.

MR. CHAIRMAN: Amendment—pass; this section, as amended—pass; 11.2(2)—pass; 11.2(3)—pass; 11.2(4)—pass; 11.3 - Ms. Phillips.

MS. M. PHILLIPS: Mr. Chairperson, I move,

THAT proposed Section 11.3 of The Family Maintenance Act as set out in Section 14 of Bill 65 be amended by striking out the figure "2" where it appears at the end of the section and substituting therefor the figures "11.2."

MR. CHAIRMAN: Amendment—pass; Section as amended—pass; 11.4 —pass; 11.5(1) - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, Mr. Fishman made a point here about the wording "any person having an interest," I think suggesting that is very broad.

HON. R. PENNER: It's out of The Uniform Child Status Act, and has not appeared to have caused problems where used. In saying that, I think that Mr. Mercier has a point, and we'd like to look at the drafting of that later. But it replicates the uniform act.

MR. CHAIRMAN: Section—pass; 11.5(2)—pass; 11.6(1) to 11.6(5) were each read and passed. Section 11.6(6) - Ms. Phillips.

MS. M. PHILLIPS: Thank you. I move,

THAT proposed subsection 11.6(6) of The Family Maintenance Act as set out in Section 14 of Bill 65 be amended by striking out the words and figures "subsections 6 and" in the first line thereof and substituting therefor the word "subsection."

Oh, that's so exciting.

MR. CHAIRMAN: Amendment—pass; Section, as amended—pass; 11.6(7)—pass; 11.6(8) —pass; 11.7(1) - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, there have been a number of concerns expressed about this section. There

are certain people who are opposed to any sort of mandatory blood testing. Mr. Fishman suggested a change in the wording, I think, in the third and fourth line. Use the word "direct." I guess, that would be, "the court may . . . direct the party to obtain blood tests . . . " and raise the question of whether or not the child would be tested. I suppose that could be included in the order given by a judge, but has the Attorney-General considered the concerns that have been expressed about this section, and could comment on it?

HON. R. PENNER: I will undertake to bring in some amendments at report stage to clarify in along the lines suggested.

MR. CHAIRMAN: 11.7(2)—pass; 11.7(3)—pass; 11.8(1)—pass; 11.8(2) - Ms. Phillips.

MS. M. PHILLIPS: I move,

THAT proposed new subsection 11.8(2) of The Family Maintenance Act as set out in Section 14 of Bill 65 be amended by striking out all the words of the subsection immediately after the word "application" in the 5th line thereof and substituting therefor the words "hold a new hearing and discharge the previous order."

MR. CHAIRMAN: Section as amended—pass; 11.8(3)—pass; 11.9 —pass; 11.10(1) - Mr. Mercier.

MR. G. MERCIER: Pardon me, on 11.9; 11.9(d) reads - I'm just raising a question - "he and the mother have acknowledged . . . " Could you not have the presumption come into effect where "he has acknowledged in writing that he is the father"?

HON. R. PENNER: If I am understanding what is being suggested, then that would allow a unilateral declaration to invoke a presumption, and presumptions aren't easily rebuttable. I am advised by Legislative Counsel that he would be prepared to acknowledge himself a father of a very rich person, and let somebody rebut the presumption. Knowing his nocturnal habits, it would be difficult indeed to rebut.

MR. G. MERCIER: I appreciate the answer. That was running through my mind, but are we not talking about a situation where we're talking about a paternity application and someone trying to prove that someone is the father of a child? If there is an acknowledgement in writing by the person against whom the application is made, should the presumption not come into effect under those circumstances where the person has acknowledged it in writing?

HON. R. PENNER: Actually what would happen - you see, it's not really needed in this particular section - is that in a case, contested or otherwise, where the father said, yes, I am the father of the baby girl born on such and such a day to Molly Brown, then that's admissible in any court of law without the necessity of presumption. It's stronger than a presumption. So that is taken care of in the general evidentiary law.

MR. CHAIRMAN: Section—pass. 11.10(1) to 11.10(4) were each read and passed. 11.10(5) - Ms. Phillips.

MS. M. PHILLIPS: I move,

THAT proposed subsection 11.10(5) of The Family Maintenance Act as set out in Section 14 of Bill 65 be amended by striking out the words and figures "subject to section 39 of The Vital Statistics Act" in the 3rd and 4th lines thereof.

MR. CHAIRMAN: Amendment—pass; Section, as amended—pass; 11.11 to 11.15 were each read and passed.

HON. R. PENNER: Page 13?

MR. CHAIRMAN: Want it page by page?

HON. R. PENNER: Page 13.

MR. CHAIRMAN: Page 13—pass; Page 14.

HON. R. PENNER: No, 11.21.

MR. CHAIRMAN: 11.21—pass; 12(2) - Ms. Phillips.

MS. M. PHILLIPS: I move,

THAT Bill 65 be amended by adding thereto immediately after Section 15, the following sections; subsection 12(2), 15.1. Subsection 12(2) of the act is amended by striking out the word "natural" where it appears in the 5th line thereof. Subsection 12(3), 15.2, of the act is amended by striking out the word "natural" where it appears in the 6th line thereof.

MR. CHAIRMAN: Amendment—pass; section, as amended—pass; 16 - Mr. Mercier.

MR. G. MERCIER: There was a suggestion by Mr. Fishman in the 1st line that should read, "a person who stands in loco parentis or has stood in loco parentis." Has that been considered?

HON. R. PENNER: I'm sorry, Mr. Mercier.

MR. G. MERCIER: The suggestion by Mr. Fishman on 12(4) was that it should read "a person who stands in loco parentis or has stood in loco parentis."

HON. R. PENNER: I am advised that the case law, which apparently is supported, is that if you back out from in loco parentis, you back out. You're no longer in loco parentis and shouldn't be obliged as if you were, but we do want to deal with people who stand in loco parentis. That too would be consistent with The Divorce Act.

MR. CHAIRMAN: Section 12(4) and (5) - Ms. Phillips.

MS. M. PHILLIPS: I move,

THAT proposed new subsection 12(4) of The Family Maintenance Act as set out in Section 16 of Bill 65 be amended by striking out the word "natural" where it appears in the 5th line thereof.

MR. CHAIRMAN: Pass.

MS. M. PHILLIPS: I move,

THAT proposed subsection 12(5) of The Family Maintenance Act as set out in Section 16 of Bill 65 be struck out and the following subsection be substituted therefor "Support beyond age 18, 12(5). A court upon application where it is satisfied that a child is unable by reason of illness, disability, or other cause to withdraw from the charge of any person named in this section, or to provide himself with the necessaries of life may extend the obligation to provide support to that child beyond age 18 on such terms as the court considers just in the circumstances."

HON. R. PENNER: Members will recall that there were several submissions which suggested that we would be better off with the familiar language of The Divorce Act. I agree with that in supporting this amendment.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, is that the exact wording from The Divorce Act, "necessaries of life"? Mr. Chairman, unfortunately I have been spending too much time here. I'll accept that, if that's the advice that that is the same as The Divorce Act. It seems restrictive in the second part.

MR. CHAIRMAN: Section, as amended—pass; Section 14.1.

HON. R. PENNER: 14.1(2)(d), I think we have to go to. 14.1—pass

MR. CHAIRMAN: 14.1—pass; 14.1(1)—pass; 14.1(2)(a), (b), (c) - Ms. Phillips.

MS. M. PHILLIPS: I move,

THAT proposed Clause 14.1(2)(d) of The Family Maintenance Act as set out in Section 17 of Bill 65 be amended by striking out the words "the party who is not given custody of the child under clause (a) has" and substituting therefor the words "the non-custodial parent have."

MR. CHAIRMAN: Amendment - Mr. Mercier.

MR. G. MERCIER: Pass - may order access is the way it reads, okay.

MR. CHAIRMAN: Pass; 14.1(3)—pass; 14.1(4) - Ms. Phillips.

MS. M. PHILLIPS: I move,

THAT proposed subsection 14.1(4) of The Family Maintenance Act as set out in Section 17 of Bill 65 be amended by striking out the words and figures "the parent who is denied custody of a child under clause 2(a)" in the 1st and 2nd lines thereof and substituting therefor the words "the non-custodial parent."

MR. G. MERCIER: Mr. Chairman, if I could just have leave of the committee. The previous Section 14.1(3), a concern was raised by Mr. Fishman that this section should be deleted, and that the test should simply be the best interest of the child. Could the Attorney-General explain the need for 14.1(3)?

MR. CHAIRMAN: Section—pass;

HON. R. PENNER: In response to the point raised by Mr. Mercier, the reason why this is here, and it is not inconsistent with the best interest test, is there have been some, I think, best described terrible cases decided where conduct of parent cases - I'm familiar with the mother, which bears no relationship to her ability to care properly for the child - have been taken into account when they ought not to have been taken into account it is submitted, and in finding adverse to her with respect to custody.

MR. CHAIRMAN: Section agreed to—pass; 14.1(4) - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, when I spoke to this bill on second reading, I indicated that I thought this right should be something that should be granted by order of a judge. Mr. Fishman, when he appeared on behalf of the Bar Association, indicated the same type of concern, and indicated the non-custodial parent should have the right to apply for such an order to receive these reports. I think you would find, Mr. Chairman, if you made that type of an amendment that this type of order would become one that was granted in the vast majority of cases.

The reason I raise it is that there are cases where non-custodial parents are not granted access to children at all for very good reason. In those situations, it may very well be the concern of a court that they should not be entitled to receive these type of reports, because there are situations where - and they're very few, but they are very difficult and hard cases and the conduct of the non-custodial parent who is refused access in those situations is being very severe.

So I would ask the Attorney-General if he has considered that position; that such information should be given by order of a judge.

HON. R. PENNER: The operative words here really are, "Unless a court otherwise orders." Now that, of course, is a different situation than the one suggested, or at least raised by way of question. Before you could exercise this right, you would have to get a court order.

It is suggested to me and I think that's right, the courts would be deluged with applications for what should be a right, and a right only taken away under circumstances that a court deems advisable. Therefore, we feel that the onus, in effect, should be on a person to apply to detract from or derogate from a right.

MR. G. MERCIER: Mr. Chairman, how does the Attorney-General see this coming into effect? I would take it in some of these instances, perhaps not the school or medical, dental or other reports, there may very well be charges for those reports.

HON. R. PENNER: If there are charges for the report, it's up to the non-custodial parent seeking the report to pay whatever fees are required. They don't have any higher right than the custodial parent.

MR. G. MERCIER: Has a similar provision been enacted in any other province?

HON. R. PENNER: Not that I'm immediately aware of. We may be, as we have been under both governments, again progressive.

MR. CHAIRMAN: Section—pass, as amended; Section 18—pass.

HON. R. PENNER: 18.1, is there? There is a motion . . .

MS. M. PHILLIPS: Is that this one?

HON. R. PENNER: Yes.

MS. M. PHILLIPS: It says, Section 21, 18.1. Is that here?

HON. R. PENNER: Yes.

MS. M. PHILLIPS: It's confusing.

MR. CHAIRMAN: Ms. Phillips.

MS. M. PHILLIPS: I move,
THAT Bill 65 be amended by adding, immediately after Section 18, the following section: Section 21, 18(1), "Section 21 of the Act is amended by adding immediately after the figures "1977" in the 3rd line thereof the words "or an order made under The Child Welfare Act granting custody of, access to or maintenance for a child."

HON. R. PENNER: It's a consequential amendment required to allow a variation of old CWA orders.

MR. CHAIRMAN: Section as amended—pass; Section 19—pass; Section 20 - Ms. Phillips.

MS. M. PHILLIPS: I move,
THAT Section 20 of Bill 65 be amended
(a) by striking out the figure "24" in the 2nd line and substituting therefor the figure "24(1)"; and
(b) by striking out the heading "Part V"; and
(c) by renumbering proposed new Section 24.1 of The Family Maintenance Act as Section 24.2.

MR. CHAIRMAN: Section as amended—pass; Part V.

HON. R. PENNER: Page 16.

MR. CHAIRMAN: Page 16—pass; Title - Mr. Penner.

HON. R. PENNER: Before Title, with leave, I would like to move,
THAT Legislative Counsel be authorized to renumber the provisions of this bill in order to
(a) eliminate decimal points; and
(b) take into account sections and subsections which have been struck out.

MR. CHAIRMAN: Is that agreed? (Agreed)
Title—pass; Preamble—pass. Bill be reported.

HON. R. PENNER: For the record, Ms. Phillips, Mr. Chairman, has raised the point that when we went through - I think it's clear, piecemeal - 14 piecemeal, we said that we would do it piecemeal, and then pass 14 on Page 5.

MR. CHAIRMAN: Is that agreed? Agreed and so ordered.

BILL 66 - THE CHILD WELFARE ACT

MR. CHAIRMAN: Bill 66, Section 1. Do we have any amendments?

A MEMBER: Yes, we've got amendments.

MR. CHAIRMAN: What a silly question.

HON. R. PENNER: This is Family Law, isn't it?

MR. CHAIRMAN: Section 1, Bill 66 - Ms. Phillips.

MS. M. PHILLIPS: I move,
THAT Section 1 of Bill 66 be struck out and the following section be substituted therefor:
Clause 1(a.2)
1(1) Clause 1(a.2) of The Child Welfare Act being Chapter 30 of the Statutes of Manitoba, 1974 (Chapter C80 of the Continuing Consolidation of the Statutes of Manitoba) is repealed.

Clause 1(j.1) added.
1(2) Section 1 of the act is further amended by adding thereto immediately after Clause (j) thereof the following clause:
(j.1) "guardian" means a person other than a parent of a child who has been named guardian of the child by a court of competent jurisdiction;.

HON. R. PENNER: Is this technical?

MR. G. MERCIER: No, I don't think it's technical.

HON. R. PENNER: No, no, I just asked the question. I didn't say it was, relocating best interests over to the . . .

MR. CHAIRMAN: Amendment agreed to?

MR. G. MERCIER: Can the Attorney-General then indicate that the amendment to Section 41.2 later on including the best interest of the child is the same as in (a.2)?

HON. R. PENNER: Yes, word for word.

MR. G. MERCIER: Word for word.

MR. CHAIRMAN: Section, as amended—pass; Section 2—pass; Section 3 - Ms. Phillips.

MS. M. PHILLIPS: I move,
THAT proposed Sections 1.1, 1.2 and 1.3 of The Child Welfare Act as set out in Section 3 of Bill 66 be struck out and the following section substituted therefor:

Best interest test applies.
1.1 In all proceedings under this act, other than proceedings under Part III to determine whether a child is in need of protection, the best interest of the child shall be paramount consideration of the court.

Child's views to be considered.
1.2 Where the court is satisfied that a child is able to understand the nature of the proceedings and the court considers that it would not be harmful to the child, the court may consider the views and preferences of the child.

Court may direct investigation.
1.3(1) In a proceeding under this act, the court may direct an investigation into any matter by a person who
(a) has had no previous connnection with the parties to the proceeding or to whom each party consents; and
(b) is a family investigator, social worker or other person approved by the court for the purpose.

Investigation only if necessary to determine best interests.
1.3(2) A court may direct an investigation under subsection (1) only if satisfied that it is necessary in order to determine the best interests of the child.

Refusal to co-operate.
1.3(3) Where a court directs an investigation pursuant to subsection (1) and a party refuses to co-operate with the investigator, the investigator shall so report to the court which may draw any inference therefrom it considers appropriate.

MR. CHAIRMAN: Section, as amended—pass; Section 1.4(1) - Mr. Penner.

HON. R. PENNER: THAT the proposed new subsection 1.4(1) of The Child Welfare Act as set out in subsection 3 of Bill 66 be amended by striking out the word "a judge" in the 4th line thereof and substituting therefor the words "the court."

MR. G. MERCIER: Mr. Chairman, the question was raised by Mr. Fishman with respect to 1.4(1), (2) and (3) that the court should have the right to order non-publication. I believe he referred to provisions similar to those in the Criminal Code. There's probably some reasonable argument to be made there because it may very well be that a judge could allow the presence of the press, radio and television, not realizing what the hearing may be all about. Once he's into it might, because of what is occurring, wish to make an order for non-publication. After all, we're dealing with juveniles, and I think it's worthy of some consideration.

HON. R. PENNER: Yes, I think it is worthy of further consideration. I would like to do that and see whether we can agree on something for report stage.

MR. CHAIRMAN: Section 1.4(1), as amended—pass; 1.4(2)—pass; (3)—pass; (4) - Mr. Penner.

HON. R. PENNER: I move,
THAT proposed new subsection 1.4(4) of The Child Welfare Act as set out in Section 3 of Bill 66 be amended by striking out the figures "(1)" at the end thereof and substituting therefor the figure "(3)."

MR. CHAIRMAN: Amendment agreed to? Section, as amended—pass. 1.5(1) - Mr. Penner.

HON. R. PENNER: Yes, this is a biggee.
THAT proposed new Section 1.5 of The Child Welfare Act as set out in Section 3 of Bill 66 be struck out and the following section be substituted therefor:
Application for access.
1.5 In exceptional circumstances, a court may make an order granting any person who has had or ought to have had the opportunity to visit a child, the right to visit the child at such times and on such conditions as the court considers appropriate.

MR. G. MERCIER: Mr. Chairman, firstly, there was in Mr. Fishman's comments on this section, he had suggested that the word "or" be changed to "and" so that it would read, who has had and ought to have the opportunity to visit a child. I think there's a reasonable argument to be made for that change in wording because surely we're talking about people who have developed a relationship with a child and it's a relationship that should be continued. If you use the word "or," it could very well be someone who had not up until that point in time developed a relationship with the child in question.

The Minister, then in the amendment really, is adding the words "in exceptional circumstances" and I take it leaving out the subsection (2) part, so that subsection (2) stipulates that an order would not be effective while the child is residing with both his parents. So I take it, leaving that section out, you could have a child living with both parents and someone outside of both parents to make it apply for visiting rights to a child when both parents have determined, for whatever reason, that they don't want that person outside of the family to have visiting rights. That seems to be even more unusual than the original bill.

The essence of the concerns of the people who spoke against this section were that it opened up a lot of litigation that parents or particularly the custodial parents should have the right to decide who shall have access to the child, because he or she bears all the responsibility for raising the child. Mrs. Bowman talked about this section creating mischief, and that was while this section was applicable to a situation where only one of the parents had custody and the spouses were obviously not living together.

Now you're taking out subsection 2 so that the section can come into play, although you do use the words "In exceptional circumstances," but it can come into play where parents living together refuse access to somebody. That surely is a very unusual situation, is it not?

HON. R. PENNER: Well, okay, two points, I am advised that, in effect, we are not creating anything new; that the superior courts have the inherent jurisdiction to do what is proposed here. This would now have the effect of giving it to the Family Court of the Provincial Branch.

Beyond that, the controlling words, of course, are "in exceptional circumstances." One can envisage

circumstances where a person who has had or - and it's meant to be or, because it is a different circumstance - ought to have the opportunity to visit a child should be given that opportunity. I realize it sounds like it's some intermeddling that is going to be possible or some mischief that will be created, but it seems to me that the discretion of the court is drastically limited by the term "in exceptional circumstances," and that it ought to remain.

MR. G. MERCIER: Mr. Chairman, I was inclined on the basis of the original proposal to believe that there might be some exceptional circumstances, where the spouses were living apart and perhaps for some reason not in the best interest of the child or children, perhaps for revenge against a mother-in-law or a father-in-law, for example, there might be some justification for this section where a grandparent had developed a lasting relationship with a child or children.

Frankly I would support, in that situation, the right of the grandparent to apply for access to the child in exceptional circumstances. I think they would be where you could show that it was being done for some type of revenge or a way of getting back at their spouse, to cut off the other spouse's grandparents or something like that.

But to put into legislation the right of a person to apply for visiting rights to a child of two parents who are living together; who have decided for some reason that they want to raise their child or children without access by this other party, it seems to me to be a real intrusion into the rights of the parents. If the situation is so bad, then perhaps there is some justification for the Children's Aid Society intervening, but I have real concerns with the effect of the amendment that would allow a party outside of a marriage, where the spouses are living together, to apply to court and overrule the wishes of two parents who have the responsibility for raising that child or children.

HON. R. PENNER: We start out with a premise upon which, I think, there is agreement. I might call this the grandparent clause of trying to make sure that persons, who have had the opportunity to visit a child or, because of a previous relationship, ought to have the opportunity to visit the child, aren't cut out in the kind of circumstances that the Member for St. Norbert just describes. So we start out with that premise.

Now in doing that in the original draft amendment, there was a section that was put in that it was thought at first blush, first glance, ought to go in tandem with 1.5(1), as it then was. But we realized, on further reflection, that by leaving in 1.5(2) as it was, we would be taking away an inherent jurisdiction which the superior courts have had and have exercised.

MR. CHAIRMAN: Section 1.5(1)—pass, as amended; Section 1.5(2) - Mrs. Hammond.

MRS. G. HAMMOND: Mr. Chairman, I had a question on the same point that my colleague did, in that I find it very difficult also to imagine any kind of circumstance where a child living with both parents, and they make a decision not to have someone visit for whatever the reason, that we would want to encourage anyone to go to court. Because in families, the situation must be bad enough in any case and to force the child - and this is what it would be. Because, I tell you, if the parents are dead set against it, it's not going to be a very nice relationship.

HON. R. PENNER: I surrender. Let's leave in the original 1.5(2), as it was. I would like to look later on, but we can do it later on, at the point that I have raised with respect to the existing jurisdiction of the superior court.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, I wonder if the appropriate amendment would be based on what is in the existing act, "subject to subsection (2), in exceptional circumstances," and leave in (1) with that little amendment, and leave in (2).

MR. CHAIRMAN: Is it agreed? (Agreed)

So we pass 15(1) and 15(2)?

HON. R. PENNER: Yes.

MR. G. MERCIER: With that amendment, exceptional circumstance.

HON. R. PENNER: Yes. Yes, the words on application then are out.

MR. CHAIRMAN: Is that agreed? Very well. 15(1) and 15(2) as agreed to—pass; Section 4—pass; Section 5.

HON. R. PENNER: Section 5, I move,

THAT the proposed new subsection 15(1) of The Child Welfare Act as set out in Section 5 of Bill 66 be amended by striking out the word "subsection" in the 4th line thereof, and substituting therefor the word "section."

MR. CHAIRMAN: Is that agreed? (Agreed)

HON. R. PENNER: Yes, I wanted to make a speech on that one. I move,

THAT the proposed new subsection 15(2) of the The Child Welfare Act as set out in Section 5 of Bill 66, be amended by striking out the figure "5" where it appears in the 2nd line, and substituting therefor the figure "7".

Explain? We're just bringing it back to where the existing law — (Interjection) — Yes.

MR. CHAIRMAN: Section 15. Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, I think 5 clear days is quite adequate, and frankly I think the amendment to 5 clear days was a good amendment. The previous government was in receipt of a Task Force on Maternal Child Care which clearly recommended as one of its most important principles that bonding was very important in adoptions, and the earlier the adopted parent gains custody of the child, the better for the child. I think this amendment was probably suggested to the Minister and the government as a result of that task force, and I think is a good amendment.

HON. R. PENNER: There were, the member will recall, a number of submissions on this question. The Minister

of Community Services has reminded me that there is a task force now that is addressing the whole question of The Child Welfare Act, and the intention is to bring in a major revision. One of the things that we'd like to look at it in depth is the whole question of the VSGs and the time periods that are involved in adoptions. It was thought, therefore, in view of the submissions and the fact that we will have a chance collectively to address this, probably in the next Session, we should just go back to where we were, plus of course, there's the addition of the two juridical days.

MR. G. MERCIER: That was my question. Is subsection 15(3) new - or that's adding another two days?

HON. R. PENNER: Yes.

MR. CHAIRMAN: Hold it, hold it. Mr. Mercier's done?

MR. G. MERCIER: If the Minister of Community Services would like to, perhaps he can explain the reason for it.

HON. L. EVANS: Yes, I've just got a point. It's a bit of a saw-off. You're not going to please everybody. I understand we went back as a bit of a saw-off, but it's still under the 14 days which the child and mother could or would be in the hospital.

MR. G. MERCIER: Who's in the hospital for 14 days?

HON. R. PENNER: That's only in the case of triplets.

MS. A. TURNBULL: Do you want an explanation? Basically, the babies may stay in the hospital for up to 14 days before they're placed for adoption. In Manitoba, babies are not placed until they are leaving and previously adopted, unlike some other provinces where they're placed without legal . . .

HON. L. EVANS: And that's the 14 days?

MS. A. TURNBULL: So what we've done is give the mothers a little bit more time to think about it while still allowing the placement directly from the hospital, so that they're not going from the hospital to a foster home and then to an adoption home, so that there's some continuity and the child is in soon enough that the bonding can begin.

MR. CHAIRMAN: Section agreed to as amended? No?

MS. A. TURNBULL: Most of the them would be free to be placed by the 10th or the 11th day, because the two juridical days would only amount to 13 or 14 days at the most, if you got up to counting the weekends into the juridical days.

HON. R. PENNER: On division?

MR. G. MERCIER: On division.

MR. CHAIRMAN: Section—pass; on division. Section 15(4).

HON. R. PENNER: 15(3), we have.

MR. CHAIRMAN: Back at 15(3).

HON. R. PENNER: I move,

THAT proposed new subsection 15(3) of The Child Welfare Act as set out in Section 5 of Bill 66 be struck out and the following subsection be substituted therefor, "No placement until two juridical days after consent. 15(3) Subject to subsection (4), no child surrendered until subsection (1), (5) or (6) shall be placed for adoption by the director or a society until the expiration of at least 2 juridical days after the execution of the agreement under subsection (1), (5) or (6) as the case requires."

MR. CHAIRMAN: Pass?

HON. R. PENNER: Pass.

MR. G. MERCIER: What is the change there?

HON. R. PENNER: I move,

THAT the proposed new subsection 15(4) to The Child Welfare Act as set out in Section 5 of Bill 66 be amended by striking out the words and figures "Part III" in the 3rd line thereof and substituting therefor the word and figures "Part II", and by striking out the word "or" in the 2nd line of clause (b) thereof, and by striking out clause (c) thereof.

MR. CHAIRMAN: Amendment agreed to? Section 15(4)—pass; 15(5).

HON. R. PENNER: Wait a minute. I move,

THAT Bill 66 be further amended by adding thereto immediately after the proposed new subsection 15(4) to The Child Welfare Act as set out in Section 5 of the bill to following subsection. "Man declared to be father may surrender. 15(5) Where a man is declared to be the father of a child pursuant to Part III of The Family Maintenance Act, he may surrender guardianship of his child in which case subsections (1), (2), (3) and (8) apply with the necessary changes."

I'm sorry, there's a typo. "Where a man is declared to be the father of a child pursuant to Part II of The Family Maintenance Act." Pass.

MR. CHAIRMAN: Pass; 15(6).

HON. R. PENNER: 15(5) - I guess we have to do now do we?

MR. CHAIRMAN: That was 15(5), wasn't it?

HON. R. PENNER: The motion,

THAT proposed new subsections, 15(5), (6), and (7) of The Welfare Act as set out in Section 5 of Bill 66 be renumbered as subsections (6), (7) and (8) respectively.

MR. CHAIRMAN: Is that agreed? Pass.

HON. R. PENNER: The motion,

THAT proposed new renumbered subsection 15(6) to The Child Welfare Act as set out in Section 5 of Bill 66 be amended by striking out the figure "7" in the 4th line thereof and substituting therefor the figure "8".

MR. CHAIRMAN: Is that agreed? Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, frankly I'm not sure what section we're on now. The one I want to speak to is "effect of placement," the existing 15(7).

HON. R. PENNER: We're not at that.

MR. G. MERCIER: Not yet?

MR. CHAIRMAN: We're at 15(6) now.
Effect of placement. 15(7).

HON. R. PENNER: Did we pass 15(6)?

A MEMBER: No.

MR. CHAIRMAN: Just a minute, 15(6)—pass; 15(7) - Mr. Mercier.

MR. G. MERCIER: Is this a new section?

A MEMBER: The old 15(6) is 15(7); the old 15(7) is 15(8) now.

MR. G. MERCIER: 15(6) and this bill is not a new section and neither is the next section? — (Interjection) — But there is no change from the existing Child Welfare Act?

HON. R. PENNER: But from the existing Child Welfare Act, no change.

MR. CHAIRMAN: No change. Agreed? Pass. That's 15(7)—pass; 15(8)—pass.

HON. R. PENNER: Yes, because of the renumbering.

MR. CHAIRMAN: Section 6, Clause 16(f)—pass; Section 7 - Mr. Penner.

HON. R. PENNER: I move,
THAT proposed new subsection 17(1) of The Child Welfare Act as set out in Section 7 of Bill 66 be amended by striking out the word "the" in the 8th line thereof and substituting therefor the word "any".

MR. CHAIRMAN: Is that agreed? Pass. 8, subsection 17(2)—pass; 9—pass; 10—pass; Section 11, Page 7—pass; 12—pass; 13 - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, I take it there is no amendment here. There has been a very legitimate concern expressed by a lot of people with respect to retaining examinations for discovery - I think probably from almost all of the people who have made submissions - and has the Attorney-General given that any consideration?

HON. R. PENNER: Sorry, Mr. Mercier, the sound of candy wrappers distracted me as it always will.

MR. G. MERCIER: Sure. Under Section 13 of this bill which repeals Section 25(9), Section 25(9) deals with the right to examination for discovery and virtually all of the people who have made submissions on this bill have questioned that and recommended I think strongly that examinations for discovery should be retained, that it's proven to be a very valuable tool in these matters.

HON. R. PENNER: The general right of an examination for discovery is still retained in the CUPE rules and may be granted under the CUPE rules.

MR. G. MERCIER: That's why, if the Attorney-General is satisfied the parties still have right, it seems odd that so many lawyers who've questioned this would all seriously question the repeal - if you're satisfied they still have the right.

MR. CHAIRMAN: Pass. All right, we have Section 11 on Page 7, 11—pass; 12—pass; 13—pass; 14—pass; Page 8, 15—pass.

HON. R. PENNER: All of Page 8.

MR. CHAIRMAN: Page 8—pass.

MR. G. MERCIER: Yes.

HON. R. PENNER: Page 9.

MR. CHAIRMAN: Page 9—pass.

MR. G. MERCIER: Yes.

MR. CHAIRMAN: Page 10 - Mr. Penner.

HON. R. PENNER: Yes, I move,
THAT Section 21 of Bill 66 be amended by striking out the word "section" in the 3rd line thereof and substituting therefor the word "subsection".

MR. CHAIRMAN: Amendment agreed to?

MR. G. MERCIER: Agreed. Mr. Chairman, on that page, the section at the bottom, 32(4) . . .

HON. R. PENNER: Before we get there, I do have an amendment to 22. Perhaps we could 22 and then get to the one at the bottom of the page.

MR. G. MERCIER: Sure.

HON. R. PENNER: I move,
THAT Section 22 of Bill 66 be struck out.

MR. CHAIRMAN: Agreed?

MR. G. MERCIER: Agreed. The section at the bottom 32(4), there was a suggestion by Mr. Fishman that there should be some power to extend the time. I think referring to the fact that in the middle of that paragraph - with the terms of the order within 14 days of the date on which the judge pronounced the order, unless within that period there is an order from a judge of the Court

of Appeal - the problem he said was that it's difficult to obtain the written order sometimes from the judge within 14 days of the date on which the judge pronounced the order and that, in effect, makes it impossible to obtain the order from the judge at the Court of Appeal.

HON. R. PENNER: Yes, I'll bring in something to that effect report stage.

MR. CHAIRMAN: Page 10—pass; Page 11, Section 24—pass?

HON. R. PENNER: Wait a minute, I move,
THAT Section 24 of Bill 66 be struck out.

MR. CHAIRMAN: Pass; Section 25 - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, this section just raises a question in my mind that has come up with respect to a number of amendments.

If you say that this section does not affect "the child's right to inherit from his parents prior to an order of adoption being granted," you have adoptions taking place, no final order. Under The Child Welfare Act, there is information with respect to the natural parents and the adoptive parents that cannot be released without the consent of all of the parties. How does this section - I think that this section then must conflict with that right to privacy. To use an example, a mother, say she has some substantial assets, has a baby, gives it up for adoption, the adoptive parents take custody, it takes a year to finalize the adoption. During the course of that year, the natural mother dies. Somehow this whole concept of confidentiality is affected, is it not?

HON. R. PENNER: I think that there would be little difficulty - there would be some - in arranging of the transfer of the gift to the child, through a court-appointed trustee in a way which would protect confidentiality. I think it's just a question of method.

MR. G. MERCIER: Mr. Chairman, I remind the Minister that it is a very important principle to a lot of people. There's a Law Reform Commission Report on adoptions and this whole question of obtaining information with respect to adoptive parents and natural parents, and this amendment does affect the principles of the law we now have in Manitoba in some way and it has to be reviewed from that perspective.

HON. R. PENNER: If it was thought necessary, I would certainly not be adverse to adding to the clause something to the effect that nothing herin derogates from the confidentiality of the adoption. Now, that's not intended to be legislation drafting, but if that is what is wanted, we could work out something for report stage.

MR. G. MERCIER: Frankly, I don't know how you solve the problem other than to perhaps even take away the right to inherit. Once you've given the right to inherit, then you have to interfere with the confidentiality principles.

HON. R. PENNER: I don't think so; I think that's just a question of finding the mechanics for getting the gift from the estate to the beneficiary through a trustee, if necessary, a court-appointed trustee.

MR. G. MERCIER: Mr. Chairman, if the Attorney-General is undertaking to have Legislative Counsel review this section and any other sections, I think not only in this act, but in the previous act we've just passed, frankly, that deal with child status and legitimacy and illegitimacy and consider amendments on report stage to protect the principle of confidentiality that is now in our law.

HON. R. PENNER: I will give my undertaking and the Minister of Community Services I'm sure will give his; that seriously, in the review that is under way, we will take into account the very real concern that has been raised about the confidentiality in such circumstances.

MR. CHAIRMAN: Agreed? Section 25 - Mr. Penner.

HON. R. PENNER: I move,

THAT Bill 66 be amended by adding immediately after Section 25, the following section:

Section 41.2 added.

25.1 The act is - I don't understand this numbering.

MR. CHAIRMAN: Join the club.

HON. R. PENNER: Forget the 25.1, just forget the 25.1 for the moment. We'll let counsel worry about the numbering.

The act is further amended by adding thereto immediately after Section 41.1 thereof the following section:

Definition.

41.2. In this Part "best interests of the child" means the best interests of the child in the circumstances having regard, in addition to all other relevant considerations, to

(i) the mental, emotional and physical needs of the child and the appropriate care or
(ii) treatment or both, to meet such needs, the child's opportunity to have a parent-child relationship as a wanted and needed
(iii) member within a family structure, the child's mental, emotional and physical
(iv) stages of development, the effect upon the child of any disruption of the child's sense of continuity and need
(v) for permanency, the merits and the risk of any plan proposed by the agency that would be caring for the child compared with the merits and the risk of the child returning
(vi) to or remaining with his or her parents. the views and preferences of the child where such views and preferences are appropriate and can reasonably be
(vii) ascertained, and, the effect upon the child of any delay in the final disposition in the proceedings.

MR. CHAIRMAN: Is that agreed? (Agreed)

The section, as amended—pass; Section 26—pass; 27—pass; 28—pass.

HON. R. PENNER: The balance of the page.

MR. CHAIRMAN: 29—pass; 30—pass; Page 12, 31—pass; 32—pass; 33 - Mr. Penner.

HON. R. PENNER: I move,
THAT Bill 66 be further amended by adding thereto immediately after Section 33 thereof the following section:
33.1 Subsection 100(6) of the act is repealed and the following subsection is substituted therefor: Where the parent of a child makes an application under subsection (1) and the other parent who is served with a copy thereof under Clause (2)(b) makes an application for the right to visit the child to the court either as part of the proceeding for the adoption order or as a separate application after the adoption, the judge may by order grant that other parent the right to visit the child.

MR. CHAIRMAN: The section, as amended—pass; 34—pass; 35 - Mr. Penner.

HON. R. PENNER: I move,
THAT Section 35 of Bill 66 be amended by striking out the figures "102" in the line thereof and substituting therefor the figures "102(3)".

MR. CHAIRMAN: 35—pass; 36—pass; 37—pass; 38, Page 13—pass; Page 14, Clause 41—pass; 42—pass; 43 - Mr. Penner.

HON. R. PENNER: I move,
THAT Section 43 of Bill 66 be amended,
(a) by striking out Clause (b) thereof; and,
(b) by renumbering clauses (c) to (j) thereof as clauses (b) to (i) respectively.

MR. CHAIRMAN: Agreed? Pass.

HON. R. PENNER: I move,
THAT Legislative Counsel be authorized to renumber the provisions of this act in order to
(a) eliminate decimal points; and,
(b) to take into account sections and subsections which have been struck.

MR. CHAIRMAN: Agreed? Pass; Title—pass; Preamble—pass. Bill be reported.

BILL NO. 68 - THE CHANGE OF NAME ACT

MR. CHAIRMAN: Bill 68, The Change of Name Act.

HON. L. EVANS: Bill 68 has basically only one amendment. That's subsection 2(4), that's Page 2.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, what is the position of a married woman who wishes to use a name at work, perhaps a maiden name, it's not her legal name, wishes to retain as her legal name her married name but just use another name at work for reasons of confidentiality, is there any prohibition against that?

HON. L. EVANS: Would you be referring to her maiden name, perhaps, that she would use? I think by common law a woman can always retain her maiden name.

MR. G. MERCIER: As her legal name.

HON. R. PENNER: She could legally, unless there's an intention to defraud or whatever, use any name.

HON. L. EVANS: The males can as well; we don't distinguish between males and females.

MR. CHAIRMAN: Take the amendment now and then we can go page by page.

HON. R. PENNER: I would move,
THAT subsection 2(4) of Bill 68 be struck out and that the following subsections be substituted therefor:
Application by unmarried parent.
2.4 An unmarried parent may apply for a change of name of any unmarried infant children who are in his or her lawful custody.

HON. L. EVANS: What this amendment does is replace the word "mother" with the word "parent", and replace the phrase "children born out of wedlock" with the phrase "children in his or her lawful custody."

MR. CHAIRMAN: Is that agreed? Page by page. Page 1—pass; Page 2—pass; Page 3, as amended—pass; Pages 4 to 9 were each read and passed. Title—pass; Preamble—pass. Bill be reported.
Bill 69, are there any amendments to 69?

HON. L. EVANS: The delegation tonight urged that we use the word "spouse" instead of "husband" in Section 12.

MR. CHAIRMAN: By leave, we can go back to Bill 68.

HON. R. PENNER: By leave.

MR. CHAIRMAN: Is that okay, Gerry?

HON. L. EVANS: It's a very minor thing, if we could agree to I'd move . . .

MR. CHAIRMAN: Spouse instead of husband.

HON. L. EVANS: On the 2nd line of Section 12 of the act.

HON. R. PENNER: Good move.

MR. CHAIRMAN: Is that agreed? (Agreed) Thank you.

BILL NO. 69 - THE MARRIAGE ACT

MR. CHAIRMAN: Bill 69, any amendments?

HON. L. EVANS: The only amendment we have on Bill 69, again is one raised this evening by a delegate using the word "clergyman" and what we have here is an amendment which, in effect, substitutes wherever the word "clergyman" appears with the phrase "member

of the clergy". Someone has kindly written this out for us, so I don't know exactly where that motion would come. Would it come right at the very end? At the very beginning.

That's the only change, otherwise, the bill stands as it is.

I move,

THAT Bill 69 be amended by striking out the word "clergyman" where it appears (a) in the definition of clergyman; (b) twice in clause 2(a); (c) in subsection 9(3); and in subsection 9(4); (d) twice in subsection 9(5); (e) in subsection 9(6); and in subsection 21(1); (f) in subsection 21(2); (g) in subsection 21(3); (h) in subsection 21(4); (i) in subsection 24(1); (j) in subsection 24(2); (k) in subsection 25(1); (l) twice in Section 28; (m) in Section 29; and (n) twice in Section 31.

Substituting therefor in each case the words "member of the clergy".

MR. CHAIRMAN: Is that amendment agreed to? Page by page.

Pages 1 to 20 were each read and passed. Title—pass; Preamble —pass. Bill be reported.

BILL NO. 70 - THE VITAL STATISTICS ACT

MR. CHAIRMAN: Bill 70.

HON. L. EVANS: 70, we have a few amendments here. It is suggested that we pass the amendments and then the bill.

MR. CHAIRMAN: Ms. Phillips.

MS. M. PHILLIPS: I move,

THAT Section 4 of Bill 70 be struck out and the following section be substituted therefor:

Registration of hyphenated surname.

4. Upon the request in the prescribed form of the mother and the husband referred to in subsection 3(5) or of the mother and person ackowledging himself to be the father under subsection 3(6) or 3(8), the birth of a child may be registered,

(a) where the registration is under subsection 3(5), showing the surname of the husband hyphenated or combined with the surname or maiden name of the mother as the surname of the child; or

(b) where the registration is made under subsection 3(6) or 3(8), showing the surname of the person acknowledging himself to be the father, hyphenated or combined with the surname or maiden name of the mother as the surname of the child. The director may on a similar application made after registration of the birth of the child alter the registration of birth to hyphenate or combine the surname of any unmarried child.

HON. L. EVANS: I'll give you the explanation. What we've done here is insert the words "maiden name" in (a) and (b), so that the child's surname may be registered as a hyphenated version or combination of the mother's or the father's surname or the mother's maiden name - that's put in. It also permits alteration of the initial registration regarding a child born to an unmarried mother or to a women living separate from her husband.

MR. CHAIRMAN: Bill, as amended?

MS. M. PHILLIPS: No, I've got some more.

MR. CHAIRMAN: Oh, well, read them out.

MS. M. PHILLIPS: I move,

THAT clause 6(1)(b) of Bill 70 be amended by striking out the word "legitimation" and substituting therefor the word "marriage".

HON. L. EVANS: Okay, Mr. Chairman, we're substituting "marriage" for "legitimation" in keeping with all Family Law. The words "legitimate" and "illegitimate" are being revised and being replaced by the words "married" and "unmarried". So it's consistent with the other legislation.

MR. CHAIRMAN: Is that agreed?

MS. M. PHILLIPS: I move,

THAT subsection 34(2) of Bill 70 be struck out.

HON. L. EVANS: Okay, this section is removed entirely in order to be consistent with amendments to The Family Maintenance Act. The Family Maintenance Act establishes requirements to determine paternity, therefore, the necessity to delete 34(2). Is that clear?

MR. CHAIRMAN: Amendments, agreed to—pass. Ms. Phillips.

MS. M. PHILLIPS: I move,

THAT Clause 48 l) of Bill 70 be struck out and the following clause substituted therefor (l) prescribing the evidence on which the director may make a registration of birth in the case of a child whose parents intermarried subsequent to birth.

HON. L. EVANS: What we've done here is simply remove the word "legitimated" that was in the original version, so that is all that is occurring there.

MR. CHAIRMAN: Amendment, agreed to—pass. Bill, as amended—pass. (Agreed) Including the Preamble and the Title.

BILL NO. 71 - THE CHILD CUSTODY ENFORCEMENT ACT

MR. CHAIRMAN: Bill 71, The Child Custody Enforcement Act, no amendments?

HON. L. EVANS: No amendments. Bill be passed.

MR. CHAIRMAN: Bill—pass. Bill be reported.

BILL NO. 96 - THE DOMICILE AND HABITUAL RESIDENCE ACT

MR. CHAIRMAN: Bill 96, any amendments?

Let's have the amendments. On Bill 96 - Ms. Phillips.

MS. M. PHILLIPS: I move,
THAT Section 11 of Bill 96 be amended by striking out the word "July" where it appears in subsection (1) therefor and again in subsection (2) thereof and substituting therefor in each case the word "October".

MR. CHAIRMAN: Is that agreed? (Agreed)
Ms. Phillips.

MS. M. PHILLIPS: One more. I move,
THAT Section 15 of Bill 96 be amended by striking out the word "July" therein and substituting therefor the word "October".

MR. CHAIRMAN: Agreed? (Agreed) Bill, as amended—pass.

BILL NO. 97 - THE QUEEN'S BENCH ACT

MR. CHAIRMAN: Bill 97. Ms. Phillips.

MS. M. PHILLIPS: I move,
THAT the proposed Clause 6(a) of the Queen's Bench Act as set out in Section 1 of Bill 97 be amended by adding thereto at the end thereof the words "and who shall be the Senior Associate Chief Justice".

HON. R. PENNER: Explanation - as we have now developed the relationship between the Family Division and the Court of Queen's Bench, there will be an Associate Chief Justice of the Family Division, and on the suggestion of the Chief Justice there should be an Associate Chief Justice for the Bench as a whole designating that person as a Senior Associate Chief Justice.

MR. CHAIRMAN: Amendment, agreed to—pass.
Ms. Phillips.

MS. M. PHILLIPS: I move,
THAT proposed subsection 11(2) of The Queen's Bench Act, as set out in Section 3 of Bill 97, be amended by striking out the words "as required by the court" and substituting therefor the words "as required by the Chief Justice of the Queen's Bench or a judge designated by the Chief Justice of the Queen's Bench."

MR. CHAIRMAN: Pass.
Ms. Phillips.

MS. M. PHILLIPS: I move,
THAT proposed Clause 52(2)(f) of The Queen's Bench Act as set out in Section 4 of Bill 97 be amended by adding at the end thereof the words "between spouses, former spouses or persons who are living together as man and wife or have so lived together." Man and wife?

HON. R. PENNER: Well, it's just consistent with antiquity.

MS. M. PHILLIPS: I don't like it.

HON. R. PENNER: I'm glad you moved it.

MR. CHAIRMAN: Pass.
Ms. Phillips.

MS. M. PHILLIPS: I move,
THAT the proposed subsection 52(10) of The Queen's Bench Act as set out in Section 4 of Bill 97 be struck out and the following subsection substituted therefor:
Designation of territory of jurisdiction.
52(10) The Lieutenant Governor in Council may, from time to time, designate the place or the area within which or in respect of which the division has jurisdiction.

MR. CHAIRMAN: Pass.
Ms. Phillips.

MS. M. PHILLIPS: I move,
THAT Section 6 of Bill 97 be amended by numbering the present section as subsection (1) and by adding thereto at the end thereof the following subsection:
Repeal of Section 1 . . .

MR. CHAIRMAN: Statutes of Manitoba.

MS. M. PHILLIPS: 1978, Chapter 27.
6(2), Section 1 of An Act to amend Various Acts relating to Marital Property, being Chapter 27 of the Statutes of Manitoba, 1978, is repealed.

MR. CHAIRMAN: Pass.

MS. M. PHILLIPS: I move,
THAT Section 7 of Bill 97 be struck out and the following sections substituted therefor:
Commencement of Act.
7 This act, except Sections 2 to 6 comes into force on the day it receives the Royal Assent, and Sections 2 to 6 come into force on a day fixed by proclamation.

MR. CHAIRMAN: Pass. Ms. Phillips.

MS. M. PHILLIPS: I move,
THAT the title to the English version of Bill 97 be amended by striking out the words "court of" therein.

MR. CHAIRMAN: Pass. Bill, as amended—pass. Bill be reported.
Ladies and gentlemen, that does our job for tonight. Committee rise.