Legislative Assembly of Manitoba

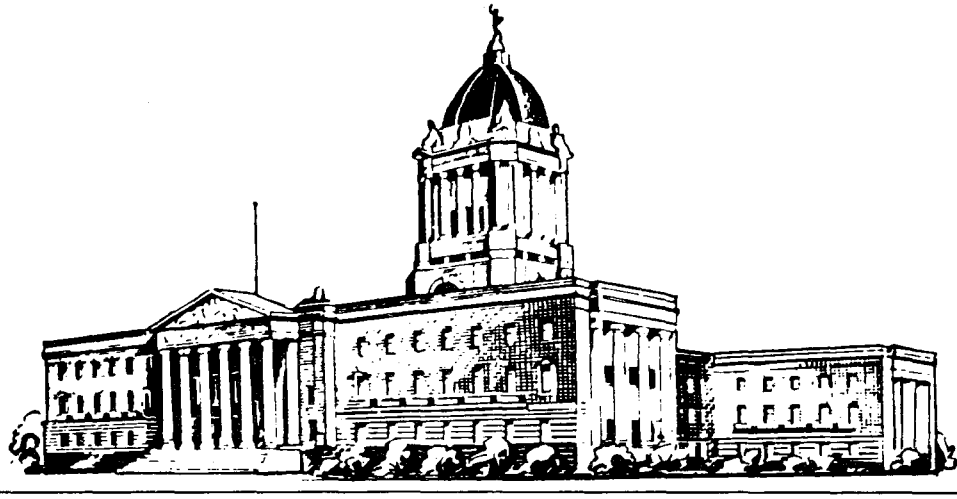
STANDING COMMITTEE

ON

STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. Warren Steen
Constituency of Crescentwood



Tuesday, July 18, 1978 2:30 p.m.

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Hearing Of The Standing Committee
On
Statutory Regulations and Orders
Tuesday, July 18, 1978

Time: 2:30 p.m.

CHAIRMAN: Mr. Warren Steen.

MR. CHAIRMAN: Mr. Mercier.

MR. GERALD W.J. MERCIER: Mr. Chairman, when we concluded, we were discussing an amendment proposed by Mr. Corrin. I haven't had an opportunity to complete my review of that, but I will have by 8:00 o'clock, when we meet again . . . if perhaps it were the consensus of the Committee that we could leave that matter in abeyance until 8:00 o'clock?

MR. CHAIRMAN: Is that agreeable to the members of the Committee? (Agreed). Therefore, to the members of the Committee, we will proceed with 1 . . . Mr. Corrin.

MR. BRIAN CORRIN: Well, I have to go out of the city this evening, and I will therefore be asking the Committee's sufferance. I'm not sure I have to, but I will be indicating at this point that the matter of the motion will be assumed, if necessary, by the Member for Selkirk.

MR. CHAIRMAN: I can assure the member that it will be presented by one of his colleagues, and it will be dealt with. Is that agreeable? (Agreed). Therefore, we proceed to 1(e)—pass.

MR. HOWARD PAWLEY: Mr. Chairman, I wish to speak on this amendment. I would ask first if the Attorney-General has any intention to make any amendments to this section.

MR. MERCIER: No, Mr. Chairman.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, then I do have to speak at some length on this particular item. First, if I could just start out from the fact that I regret that the usual definition of homestead as provided for in The Dower Act is not used in this definition; in other words, 320 acres. And my natural inclination would be to move an amendment which would restore the definition of homestead, 320 acres. I doubt very much whether that would be accepted by the government, although I do believe that that would be the proper course of action.

I am going to propose an amendment which I feel is quite essential. As I mentioned during earlier proceedings, The Planning Act prevents the splitting of title without the approval of the Planning Authority, where the acreage is 80 acres or less, and then even if approval is obtained from Planning Authority, then that split cannot be less than the requirement of the local municipal by-law. In some instances, that may be 60,000 square feet; in other instances, 5 acres; other instances, 40 acres. But there are municipal by-laws and there are as well the restrictions of The Provincial Planning Act. Now, Mr. Chairman, what we have in this instance is a situation whereby a family asset, which will be the house and only that portion around the house which can reasonably be enjoyed as a part attendant of that house, such as the garden and lawn, certainly not a livestock operation or a grain field, would not be part of this. So we are only dealing with a small area of land surrounding the house which could reasonably be regarded as necessary to the use and enjoyment of the residence.

Now, that is a family asset. The court will be asked to determine the value of that asset, and then either that asset would be (a) transferred out to a third party; or (b) would be valued by the court and the court would establish a value and then there would be an equal division, because it is a family asset generally in this respect.

But we have a situation where the Planning Authority, in many instances, will not approve the

split, and since it would not approve the split there is very little value for market purposes of such a piece of property. If they will not agree to the split and there is very little value then certainly the wife in this situation, the farm wife, is being seriously short-changed in what she receives. On the other hand, if the planning authority does approve a split and will concur with the transfer of this asset, then in fact the asset becomes extremely valuable because we all know that farmsteads which can be sold nowadays, which are rare, but when they can be sold as a result of approval of a Planning Authority, that they are exceedingly valuable.

So we are looking at, really, a situation from Municipality A, for instance, which may very well approve the lot split and if so, the same farmstead could be worth $40,000 to $50,000, to Municipality B which might very well refuse the split and the value there might be only $5,000 or $10,000.00. So we would be faced with tremendous discrepancy, and in many instances I feel a great inequity and injustice to the spouse. Surely, Mr. Chairman, if we are reducing the traditional definition of homestead from 320 acres down to, at least we should not reduce it to an acreage which is less than that by law can be transferred.

So I have proposed, Mr. Chairman, an amendment which I am not all that happy about. As I indicated before, I would like to see 320 acres, but I feel that as a very very minimum that the government can accept here, otherwise they will be creating tremendous problems in the future. So' Mr. Chairman, I want to move that Section 1(e) be amended by adding the following: "In the case of a marital home not located in a city, town, or village, the property shall include acreage comprising no less than the minimum required under The Planning Act and municipal by-laws in order to permit the sale of the said marital home."

MR. CHAIRMAN: To Mr. Pawley, did you by chance distribute that?

MR. PAWLEY: Yes, it was distributed with my other amendments, I thought. —(Interjection)— With the first amendments, yes.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, it was interesting to note that a number of delegations, I think including Mrs. Lelond from the Women's Institute, when I asked her whether the farmland surrounding the home was a commercial asset, she answered very positively in the affirmative. And I asked that question, I believe, of one or two other of the delegations. So they clearly recognized, Mr. Chairman, that apart from the residence and the land surrounding the residence which is reasonable for the use of the residence, that the remaining farmland is a commercial asset in that it is income-producing. It seems to me that even under the previous legislation, where there would have to be a division of property, or of the value of property, which is really the way it will happen, that this problem would have had to be dealt with under the previous legislation and under this legislation. So I suggest that there is no more difficulty under this legislation than there was under the previous legislation.

I do want to take this opportunity to again confirm that this definition of marital home does not take away any of the rights that a spouse has under The Dower Act. There has been no change in the definition of homestead under The Dower Act, and the non-title holding spouse's consent is still required with respect to farmland for the disposition, etc., of 320 acres. So, Mr. Chairman, I believe that this definition of marital home recognizes the realities of the situation, both in the urban area and rural areas and expect that the court, in dealing with the division of property or with the value of property, will be able to accommodate the difficulties that have been expressed by the Member for Selkirk.

MR. CHAIRMAN: Mr. Pawley, Mr. Parasiuk, and Mr. Cherniack, in that order, please.

MR. PAWLEY: Mr. Chairman, first, Mr. Mercier makes reference to Mrs. Lelond, and I might mention Mrs. Henderson and others who appeared before us, they all concurred that though, yes, the grain field and the livestock barn, for instance, would be considered part of the commercial operation, there was no question in the minds of any of them, when this problem was brought to their attention. I recall Mona Brown immediately realizing what a problem it would be in their municipality, to cause a lot split to take place involving the farmstead. Once she had an opportunity to reflect upon what she understood to be the practice of municipal government within her particular area.

So I am not arguing the 320 acres any longer; I'm not even arguing in excess of 80 acres any longer, though I would like to. I think I am probably providing way too much of a concession. I am just simply trying to save the definition of this particular section so that we are not into a great deal of legal difficulties in the future and because I don't really believe that this problem has been contemplated. I think if Mr. Mercier would speak to his Director of Planning, or if he would speak

to the Deputy Minister of Municipal Affairs, Mr. McNairnay, that he would see the problem which I am trying to relate to here. What I am trying to do is to prevent a situation in which we are placing a value on a small piece of property that cannot be sold to a third party. Now, everyone knows that if you can't sell a piece of property by law to a third party, then it's value is very very limited. If you can sell that piece of property to a third party, then of course its value is much much higher. What we are being asked to do, by way of this definition, is to concur with a definition involving property that in many instances, and I suspect now in the majority of instances, cannot be sold. I certainly know that around the City of Winnipeg, it is very very difficult now to obtain an approval of a lot split involving only the farmstead. In fact, if it is accomplished through a planning authority, that farmstead is extremely valuable and if a wife was so fortunate to fall into that situation, she would be practically within the 30 or 40 municipalities around the City of Winnipeg, falling into a real bonanza insofar as family assets are concerned. I'm sure the Member for Springfield knows what I am speaking about here.

But those are rare situations. In most instances, the planning authority will not permit the transfer out of the farmstead, and if that is the case, then the court will be unable to attach value to that farmstead. The value that they would attach would have to be very very little and thus the situation is made incomparably worse when we compare it to the wife in town or city who doesn't face that problem. Her home and her yard can be sold without any difficulties. It already meets the planning authority provisions. So she can sell without difficulty and of course what she receives will be a great deal more in relationship to what the farm wife will receive in her situation, because of the peculiar situations of the farm wife having to contend with existing municipal and Planning Act provisions.

So what I am trying to do, again, if I could just emphasize is, regrettably, do something which I don't think is all that good because I think we should be dealing with homestead in the traditional way of 320 acres, but I am trying at least to provide for a definition that is not going to get us all into a morass of difficulty in the next year or two and cause a lot of problems, a lot of inequity, from one court proceeding to another in the attempts to place valuation.

MR. CHAIRMAN: Mr. Parasiuk,

MR. PARASIUK: Mr. Chairman, the Attorney-General wears some other hats. One of these is Minister of Municipal Affairs and the other, I believe, is Vice-chairman of the Land Use Planning Board, and I don't know if, in those other capacities, he has come across the whole set of problems regarding land use and the attempts by the previous administration, which have been continued by the present administration, to try and deal with the problem of land splits and the proliferation of them — strip development, a whole set of problems of that nature. I gather that what we have in place now is a very difficult means of getting land for lot splits, and I'm quite certain that it is not the Minister's intent to in a sense transfer to the municipality the real power of valuing the marital home, in the case of a home on a farm. And I think that municipalities, who are faced with a lot of other pressures regarding land splits will not want to establish a bad precedent on their own, or what they would consider a bad precedent with respect to lot splits, and I don't know whether they feel they can easily communicate to the rest of the population of their municipality, that they are allowing this lot split because it arises as a result of the division of marital property. I think it would be a lot easier on the municipality if they could convey to the people in that municipality that by law they are required to provide lot splits, and that they then proceed to do it.

I think you will run into a situation where if that isn't provided in this legislation, the municipalities will, in fact, vary tremendously with their rulings on this, which makes this particular subsection difficult, if not impossible, to predict, and its consequences difficult if not impossible to predict, and I don't think that's the intention or the desire of the government with respect to this particular piece of legislation.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Well, Mr. Chairman, I want to understand this problem a little better, and I look to the Attorney-General or the Minister of Municipal Affairs to explain it.

Is the assumption correct, that under this legislation a wife may acquire a half-interest in the home, the residence, and not have access to the highway, and not have a saleable piece of land —(Interjection)— well, with her husband, the two of them would own title of land that is not saleable — and the husband might retain the commercial asset which might completely surround this and might together with the residence form a saleable piece of land? When I say "not saleable" is it that they really aren't allowed to sell it under The Planning Act and municipal by-laws, is that a correct description of the problem that is being dealt with?

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, first of all I think the planning authorities, under the previous administration, and continuing, have been fairly lenient in allowing for splits for family purposes, and that has been typed. I think what we have to do is recognize first of all that it is highly unlikely that either in a situation where in a division of assets the wife obtained title to the marital home as described in the legislation and the husband obtained title through a division of assets to the surrounding farm land, it is highly unlikely that the wife, under the circumstances of marital breakdown, would want to remain living under those circumstances, or vise versa. However, even where that might be the case, I would suggest the court, when making an order for transfer of property would probably follow and make the transfer of land subject to the approval of the Planning Authority, and that would resolve the situation. Again, I point out, Mr. Chairman, that we're dealing here with a similar problem to what would have been faced by the courts under the previous situation. I appreciate that doesn't make it right not to do anything with it, but I think this will be resolved through a division of the value of assets between the parties, and if there are circumstances which develop which require amendments, then we'll bring them forward in the future. Certainly they will have to be monitored, but I think there is sufficient flexibility in the Act to allow for the division of the value of assets.

MR. CHERNIACK: Mr. Chairman, the Minister did not really reply to my question, but I think that the way he dealt with it meant that I was right, otherwise why make excuses for saying, "Well, it can be dealt with by the court."

I assume now that it is correct that, under this legislation, a wife and husband may, by order, share equally in the ownership of the residence. Under this legislation, the husband may retain the commercial assets, and the property owned equally — the residence owned equally by husband and wife — is not saleable because, under The Planning Act, there could be no title passed on the sale. Now that's the question I asked, and I didn't get a precise answer, but I'm now assuming that it is a correct legal position.

MR. MERCIER: Mr. Chairman, the member might want to have a look at Section 16, which shows how an amount shown by an accounting may be satisfied by payment of an amount in a lump sum or by installments, by the transfer or delivery of assets, which would include land, or by any combination . Sure you can describe a very difficult situation and try to exaggerate the problem, but I suggest that Section 16 provides sufficient flexibility for the court to resolve these matters.

MR. CHERNIACK: Mr. Chairman, now we have a situation where we are picturing that the wife, who can not acquire title to the land which the Attorney-General says she's entitled to have equally with her husband, is in a position where she has to come to the court and cry on the court's lapel and say, "Please give me an adequate compensation." But Mr. Chairman, the point that was made by Mr. Pawley as I understand it, was that "adequate compensation" is related to her ownership and if she owns half of something that is not saleable, then almost anything could be adequate compensation, and Mr. Mercier brushes it aside . . .

MR. MERCIER: Mr. Chairman, she owns half of everything. I would hope that the member for St Johns would keep in mind the admonitions of his fellow meers of his party this afternoon and attempt to discuss this in a reasonable manner.

MR. CHERNIACK: Well, Mr. Chairman, I would hope that the Attorney-General would recognize that what he did here was to make a distinction between commercial and family assets.

MR. MERCIER: All properties.

MR. CHERNIACK: Mr. Chairman, the Attorney-General, agreed this morning — was it this morning? — that clearly there is a distinction between family asset and commercial asset and that distinction is in the definition and relates to Section 13(1) and (2). So there is a difference and the court is expected to see a difference, and the court is entitled to make a different disposition, based on Mr. Mercier's difference. So if he wants to talk reasonably, I want to talk reasonably, and I want to talk on the assumption that he is giving to the wife a right which cannot be recorded by way of Certificate of Title. You say, "Oh, well, the court will take that into account," but the court can take into account only the value in relating it to what is left to the husband as a commercial asset Then if he thinks it will happen so seldom, why does he make the distinction here?

I have to refer to the red herring he is drawing about previous legislation. I call it a red herring because it is completely irrelevant to what we are talking about. Here we had him, as the spokesman

for his government, say, "We have to clean up that legislation. We have to take care of anomalies in that legislation. That is badly drawn legislation. There are things that have to be clarified." And here he is coming along — what is it? — seven months later or six months later with no clarification saying, "Well, it was in the last legislation." We are not really dealing with it any better than we did the last time, but he wants a reasonable approach. Well, Mr. Chairman, I want to ask in all reason is fair to make a provision that there shall be a division of a marital home in such a way that he knows in advance there can be no title to it? What's the bargaining power left to a spouse who has a half-interest in land which has no title and is not saleable? And it seems to me that f he says that The Planning Act does have the authority to make a variation, to make an accommodation, and he says it is highly unlikely then they would, why does he reject the amendment that says that they should get no less than the minimum required under The Planning Act, which may well be half an acre of land, from what he says, or is he prepared to provide that under The Planning Act the authority "shall" make an adjustment which will take into account that limited or reduced legal description which will give her title?

Mr. Chairman, all we are talking about, really, is a Certificate of Title which is marketable; that's really all we are talking about, and the Attorney-General is not making the correct adjustment to his legislation to make it possible for the spouse to acquire a half-interest in a marketable Certificate of Title.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, I thought I indicated that there may well be circumstances where he court will make an order for division of property and it will be made subject to the approval of the Planning Authority, because the court has no jurisdiction to overrule the Planning Authority. That may very well be less than the minimum required under the Planning Act in certain circumstances and would necessitate a variation under the Planning Act.

I would suggest that the amendment is not necessary, that the Planning Act will have to be complied with.

MR. CHERNIACK: Mr. Chairman, now is the Attorney-General saying that the court will not be able to give a half-interest on land that does not conform with the Planning Act? —(Interjection)— Yes, now is the Attorney-General suggesting that the court will be prevented in some way from giving a half-interest in the marital home unless it has a Certificate of Title related to it? Is that what he is suggesting — the court will be bound by that? — because I don't think so.

MR. MERCIER: Tell me what you think.

MR. CHERNIACK: Well, Mr. Chairman, the Minister said, "Tell me what you think." I think the court can declare, in accordance with this legislation, that the two spouses share an equal ownership in land and buildings which is not divisable under the Planning Act and which therefore can be described in such a way that no title will pass but there can be an order. It can be an equitable ownership. It could be a trustee ownership but it needn't be a title, and then they can't apply for partition. And I don't know why it's a problem. I really don't understand, Mr. Chairman, why it's problem.

If what the Minister is afraid of is that somehow or other the wife will become entitled to a piece of commercial asset through this definition, the least he should do . . .

MR. MERCIER: She will be entitled to half.

MR. CHERNIACK: She will not be entitled to half if the court doesn't $ want to give it to her, the court has greater flexibility. Well, the Minister seems to forget that he has got sections 13(1) and 2) for a good reason, at least, in his mind, it's a good reason, and therefore she doesn't have the same authority, she does not have the same likelihood, she does not have the same entitlement for a family marital home as for the commercial asset.

The Minister is interrupting me and saying, "That's a matter of opinion." If that's not his opinion, hy has he got a distinction between the two? He is clearly making a distinction in order to indicate to the court that the court may make a distinction, and therefore there is a possibility. If he really believes there is no problem let him say that the court should not, in making this division as between commercial and marital, the court should not leave the situation where the spouses may own a alf-interest in the marital home where there is no title possible. Let him say that and then that ould, I think, take care of the proposed amendment, but now what he is doing is relying on what court may or may not do, when he has the power to tell the court that it is not expected that he couple will own land for which there is no title available and that is therefore not

MR. CHAIRMAN: Mr. Orchard.

MR. DON ORCHARD: Well, Mr. Chairman, on this Section (e) where we have, in the fifth line there, "includes only the portion of the property that may reasonably be regarded as necessary to the use and enjoyment of the residence." Would not those words "use" and "enjoyment" give way to fulfilling the amendment that Mr. Pawley has brought forth, because in municipalities which require a minimum of 80 acres before they would grant separate title, then would not the court have to assume that the use and enjoyment of that residence was hinged upon granting title of the total 80 acres, even though it made up part of the commercial land. And, for instance, in a municipality such as the one I live in they make a regular habit of subdividing a farmyard and existing farmyard and granting separate title to it. It happens on a fairly regular basis when a set of farm buildings is about to be abandoned through sale. In that particular case, there would be no problem with the municipality giving a separate title to something in the order of — let's pick a figure and say — five acres, which would be necessary for use and enjoyment of the property.

Also for use and enjoyment of that farm house, I think an example was brought up in some of the briefs where the farm home was in the centre of a square section. No judge would consider use and enjoyment of that house possible without access and egress granted to it. And really I think the very fears that Mr. Pawley has brought forward to the committee, I think, are answered sufficiently in here in the definition "use and enjoyment of the residence". If title cannot be granted, use of enjoyment can't be given of the residence and in some municipalities it may mean 80 acres, and some not.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I define use and enjoyment as meaning it relates to those amenities which are necessary in order to use the house. That would be the lawn and the garden. I don't define that as giving to the wife any additional legal rights beyond just what would be in normal circumstances considered to be the amenities which are attached or part of the enjoyment and use of a piece of property. Now, it may be that I am wrong, but if I am right' and I think I am quite right here, then it would be an easy matter for the Attorney-General to provide for very clear direction as per that which I have provided to him.

I would like to deal with some of the points. I think there is a danger of getting municipal people involved in domestic disputes. It is true, as you move further away from Winnipeg, the municipalities are more lenient and this isn't as great a problem. But where we have this sprawl development within the 50-mile radius of the City of Winnipeg, municipalities are becoming less and less lenient. In fact, it is becoming quite a local issue in some areas that farmers are saying they can't split off a piece of their property to their son or to their daughter and are quite annoyed by that, and yet it is understandable because municipal councillors are saying, "Okay, we can transfer it to the son or daughter, but once the son or daughter move, they transfer it to a third party, so we can't even agree to that first step." And in the area surrounding the City of Winnipeg, it is not being done on a lenient basis in many instances, in many municipalities.

So what we would be doing here, the Attorney-General has indicated, well, the court would indicate a transfer subject to the planning authority. So then the planning authority is involved in a touchy situation. The local councillor, who is quite familiar with the couple involved, will have to decide whether or not he is going to be lenient and, if lenient, agree to the transfer out of the farmstead, thus probably tripling or quadrupling the value of the farmstead by his action, by his stroke of the pen, and thus benefiting the wife. Or on the other hand, he can decide that he is going to follow a tough and, probably quite justifiably, quite firm approach, no split, in which case the farmstead value will be quite low, and thus benefiting the husband in many instances.

So we are really, here, planting the seeds of friction right at the local municipal level in which the domestic disputes can end up becoming an issue right within the municipal ward level. And I don't see why we wish to run that risk, that danger, at all, and the words which were proposed would clarify that and would guarantee that that would not happen. I would urge the Attorney-General to reconsider. All we can do is present these amendments; if they are not accepted, then I say the government will bear the responsibility and will have to accept the consequences of not accepting these amendments. I regret it for those who will be negatively affected by their refusal to accept an amendment along this line, but at least we will have done what we can do.

I want to also point out to the Attorney-General that when a farmstead is split out by the local planning authority's approval, and if the wife does wish to continue to live there, in many instances the municipal authority will not, on the other hand, automatically agree to the construction of a farm home on the remaining property in the various municipalities because of, again, the attempt to minimize sprawl. So that there are a lot of consequences that can occur from this inability to

arify this definition.

IR. CHAIRMAN: Mr. Cherniack.

IR. CHERNIACK: I don't want to debate this further. I would just like to learn whether Mr. Orchard's terpretation is correct; I don't think it is. Mr. Orchard seemed to be talking in favour of the principle ehind the amendment, and I believe he was assuming that the phrase "use and enjoyment" carries ith it the need to have a piece of land which is sufficient to conform to any change in planning quirement and pass certificate of title. I think that he assumed that use and enjoyment included at. I don't think so. I wonder if we can get clarification, whether Mr. Orchard's assumption is correct, id that is that the term "use and enjoyment" carries with it the fact that the land should be sufficient give title? I think that is what his assumption was. I would like clarification.

R. CHAIRMAN: Who are we going to get clarification from?

R. CHERNIACK: Mr. Tallin, the Legislative Counsel.

R. TALLIN: I wasn't the one who made the statement.

R. CHERNIACK: I know, Mr. Orchard made the statement. I would like to know whether Mr. Tallin grees with that statement.

R. CHAIRMAN: Mr. Tallin.

R. TALLIN: The use and enjoyment, I think, has notuing whatsoever to do with the necessary nount of land for planning requirements.

R. CHERNIACK: Then, Mr. Chairman, that is all I wanted. I wanted to clarify that Mr. Orchard's

R. TALLIN: : I'm sorry, I thought you wanted what his opinion was on it, I'm sorry.

R. CHEIACK: No, I thought that Mr. Orchard assumed that use and enjoyment included the portunity to get title in accordance with The Planning Act, and since I think Mr. Tallin has pointed it that it doesn't, then I think that Mr. Orchard ought to be a little more concerned about setting ide that amendment, because I think that everything he said took into account, or was in approval' the amendment.

R. CHAIRMAN: Mr. Mercier.

R. MERCIER: Mr. Chairman, through you then to Mr. Tallin, does Mr. Tallin consider that the nendment is absolutely necessary.

R. TALLIN: I don't think so.

R. CHERNIACK: Let me ask Mr. Tallin, if it is necessary that there shall be a certificate of title volved, is the amendment necessary?

R. TALLIN: I don't know what you mean by "if it is necessary."

R. CHERNIACK: I mean that if it is felt by the lawmakers that the marital home should be one ich has a certificate of title describing it, then will this section provide that, or is it necessary have an amendment such as Mr. Pawley proposed, in order to give title?

R. TALLIN: If the lawmakers wanted to say that there was going to be a separate title for the arital home, then they would have to comply with The Planning Act, yes, but I see nothing in the t which says that that follows.

R. CHERNIACK: I quite agree with you; that's the purpose of the amendment.

IESTION put on the amendment, MOTION lost.

R. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I would like just through you to indicate that I will certainly be preparing an amendment for Report Stage involving this. I would be so much happier if the Attorney-General indicated he would sponsor such an amendment, and certainly then I could withdraw my amendment, because I do believe that we are making a very serious mistake and that we will have to amend this legislation next year or the year after if we don't do it properly now.

MR. CHAIRMAN: On 1(e)—pass.

MR. PAWLEY: I guess Mr. Tallin is preparing it then?

MR. CHAIRMAN: Pass. 1(f) — do we have to . . .?

MR. MERCIER: I move the amendment as distributed, Mr. Chairman.

MR. CHAIRMAN: There's an amendment on (f). The amendment for (f) has been moved by Mr Mercier.

MOTION:
That Section 1 of Bill 38 be amended by adding thereto, immediately after the word "Act" in the 8th line of clause (f) thereof, the words "and either during marriage or in contemplation of marriage,".

QUESTION put on the amendment, MOTION carried.

MR. CHAIRMAN: (The remainder of Section 1 and Sections 2 and 3 were read clause by clause and passed.)
Section 4(1) — 4(1)(a)—pass; 4(1)(b)—pass; 4(1)(c)—pass; 4(1)—pass; 4(2) — on 4(2), Mr Cherniack.

MR. CHERNIACK: I move that the words "and all other assets" be included immediately following the word "home" in the first line. What it spells out is clearly that assets acquired in contemplation of marriage, like the furniture which is so commonly done in the case of engaged young couples who are saving up for their marriage, that that being in contemplation of marriage should be included I don't know if I have to debate it at length, I'll try not to.

MR. MERCIER: Could we just get the wording.

MR. CHERNIACK: Well, it will read . . . clause 1(c) this Act applies to a marital home and all other assets acquired by a spouse prior to but in specific contemplation of the marriage to the other spouse. Just the words "and all other assets" come in after "home." So, again, if a couple are planning to get married, if both are working, they save up, they buy a home in contemplation of marriage, or either of them does, and buy the furniture, buy the 'fridge, buy whatever it is that they are buying in contemplation of the marriage, that that should be covered, otherwise it is excluded from being considered part of the assets of the family.

MR. CHAIRMAN: Mr. Mercier. Okay, Mr. Johnston.

MR. JOHNSTON: The word "all other." Mr. Cherniack, the Member for St. Johns talks about fridges and stoves and chesterfields and things of that nature but he says "all other." That's pretty encompassing.

MR. CHERNIACK: Well, Mr. Chairman, may I interrupt. I don't think there need be a difference of opinion here. I said, "all other assets acquired in specific contemplation of marriage." Now if that's too broad, I don't mind limiting it. I don't mind a description that is . . . but what I'm talking about. If they're saying we're contemplating a marriage and we're buying goods that we expect will be part of it, it's not equal ownership we're talking about here, it's whether or not they are assets that later become subject to division. If Mr. Johnston is concerned about the breadth, that it's overly broad, by all means, I don't want to make it any broader than what is considered by that couple to be bought in contemplation of marriage, that's all I'm talking about. The split will still be subject to court review, court approval, to the discretion that comes in. If we agree, and if Mr. Johnston and I can agree on that fridge and that stove, then I don't mind any limiting words

iat will more definitely refer to the specifics of it, Mr. Chairman. I don't want to bring in the . . . wouldn't bring in the kitchen sink but, you know, not more than that.

ANNOUCEMENT

IR. CHAIRMAN: Could I have the permission of the committee members to interrupt for a moment. ou will recall in the House this afternoon where the Minister of Northern Affairs made an nnouncement regarding one of the Government Air Service planes and the Leader of the Opposition howed some concern, and the Speaker asked if he had any further information that he might bring to the attention of the House of or whatever committee was sitting. So I would now ask Mr. lacMaster if he has further information.

IR. MacMASTER: Yes, Mr. Chairman, I'm delighted to be able to say that one of our planes has een to the scene. We have the pilot picked up and the pilot is back in Thompson. He's being hecked out at the Thompson hospital. It appears superficially, by laymen like ourselves, that he ppears to be in reasonably good shape; a great number of bruises, of course, and pretty shook p. The total situation is being investigated by DOT along with ourselves. My Deputy and one of iy senior people are on their way north now and, as I think everybody here would appreciate, you iouldn't be getting into any further details in relationship to the accident or the extent of the accident r the extent of damages while the Department of Transport is investigating it, but I think the real iportant thing is that the pilot appears to be in very good shape. Thank you, Mr. Chairman.

IR. CHAIRMAN: Thank you. Mr. Cherniack.

IR. CHERNIACK: Mr. Chairman, I appreciate the interruption. We're running out of time. I said) marital home and all other assets. Would it help Mr. Johnston's concern if we said, "And all ther marital assets," because we do have a definition of marital assets — or is it family assets? es, I thank Mr. Goodman. Yes, "and all other family assets." Just so as to limit it.

IR. CHAIRMAN: Mr. Pawley on the same subject.

R. PAWLEY: Mr. Chairman, what really Mr. Cherniack is attempting to do, as I see it, and I'm irprised that this is not readily acceptable by the government in view of the position they've taken sewhere throughout this legislation, is to permit the courts to consider more than just the marital)me, to not restrict the opportunity of the court to exercise its own discretion. I don't know why e would want to rigidly restrict the court from examining any other asset except that of the marital)me. Now if you do feel that the words "and all other assets" are away too broad, — I don't - but if you do feel, then let's at least refer to marital assets or family assets, but let's not restrict only to the marital home. In fact, Mr. Chairman, marital home, if I can go back to it again, in y view limits the marital home to that practically valueless piece of property if we're dealing with farm situation.

R. MERCIER: Mr. Chairman, in considering this matter, I was just attempting to find in the previous gislation what provision they had with respect to this matter, the previous legislation. I wonder Mr. Pawley recalls that.

R. PAWLEY: I don't have the previous bill in front of me, but if it was restrictive, then it was ong too.

R. CHERNIACK: Section 4 (2) referred to the marital home only. Wait a minute, wait a minute, at's . . . No, I'm looking at the bill, I'm sorry.

R. MERCIER: Yes, there is a reference in 7(1)(b) to the marital home acquired in specific ntemplation of the marriage and in specific contemplation of the use of the premises as the marital me. I, frankly, Mr. Chairman, in looking at it at this point, and perhaps what we can do — obviously won't get through it before 5:30 — in view of really recognizing what occurs in society nowadays, iere people tend to have a lot longer engagement periods and in many cases, in my experience, d many people I've known, purchase a number of assets in contemplation of marriage. Subject some discussion with my colleagues, my tendency would be to say this Act applies to all assets quired by a spouse prior to but in specific contemplation of the marriage. Perhaps prior to nfirming that, we can have some discussions over lunch break.

MR. CHERNIACK: We'd better have dinner together. Frank will cover it.

MR. CHAIRMAN: All right, maybe with the hour almost being 5:30 we can leave this matter and this amendment plus the amendment that Mr. Corrin raised earlier in the day which Mr. Pawley has agreed to move for him after the supper hour and we'll reconvene at 8 o'clock. Committee rise.