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HANSARD

Wednesday, October 31, 1979 — 1:30 p.m.

Speaker: The Honourable Donald Taylor

Yukon Legislative Assembly

SPEAKER — Honourable Donald Taylor, MLA, Watson Lake
DEPUTY SPEAKER — Geoffrey Lattin, MLA, Whitehorse North Centre

CABINET MINISTERS

NAME	CONSTITUENCY	PORTFOLIO
Hon. Chris Pearson	Whitehorse Riverdale North	Government House Leader — responsible for Executive, Council office, Public Service Commission, Finance and Pipeline.
Hon. Doug Graham	Whitehorse Porter Creek West	Minister responsible for Education, Justice, Information Resources, Government Services
Hon. Dan Lang	Whitehorse Porter Creek East	Minister responsible for Highways and Public Works, Municipal and Community Affairs, Yukon Housing Corporation, and Yukon Liquor Corporation.
Hon. Meg McCall	Klondike	Minister responsible for Health and Human Resources and Workers' Compensation Board.
Hon. Peter Hanson	Mayo	Minister responsible for Renewable Resources, Consumer & Corporate Affairs, Tourism & Economic Development.

Government Members

(Progressive Conservative)

Al Falle	Hootalinqua
Jack Hibberd	Whitehorse South Centre
Geoffrey Lattin	Whitehorse North Centre
Grafton Njootli	Old Crow
Donald Taylor	Watson Lake
Howard Tracey	Tatchun

Opposition Members

(Liberal)

Iain MacKay	Whitehorse Riverdale South
Alice P. McGuire	Kluane

(New Democratic Party)

Tony Penikett	Whitehorse West
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(Independent)

Maurice J. Byblow	Faro
Robert Fleming	Campbell

Clerk Of Assembly
Clerk Assistant (Legislative)
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Whitehorse, Yukon**Wednesday, October 31, 1979****Mr. Speaker:** I will now call the House to order.

We will proceed at this time with Prayers.

Prayers

Mr. Penikett: Yes, Mr. Speaker, in the tradition of this House, I would like to call attention to all Members to the presence in our Gallery of the former Member of this House for Pelly River, who is visiting Whitehorse today.

Applause

Mr. Speaker: Are there any Returns or Documents for Tabling?

Reports of Standing or Special Committees?

Presentation of Petitions?

Reading of Petitions?

Introduction of Bills?

Notices of Motion for the Production of Papers?

Notices of Motion?

Are there any Statements by Ministers?

MINISTERIAL STATEMENTS**Hon. Mr. Hanson:** Mr. Speaker, I hope I have the concurrence of the Speaker and the House. This statement is going to be a little longer than normal, so I hope you will bear with me to the bitter end.

It is an energy policy statement of this Government.

Mr. Speaker, it is my intention today to address this House and all Yukon citizens on the energy crisis confronting our society and some of the measures and policies which your Government plans to implement.

We cannot be so naive as to believe that Yukoners are not aware of the energy crunch. Virtually every visit to the local service station and our monthly home heating bills and the electrical bills shock us with the increasing prices.

Unfortunately, the full significance and implications of this crisis is not often realized. There are those who still persist in the belief that we can or must simply grin and bear it or that it is a short term phenomenon for which a miraculous solution will be found. Such is simply not the case, Mr. Speaker.

Our record of energy usage in Yukon is not one for us to be proud. Yukoners consume more energy per capita than the Canadian society as a whole. We are dependent on petroleum products for 33 per cent of our energy requirements. That is twice the amount required for Canada as a whole.

Our fuel oil and electricity prices are among the highest in Canada, and we can expect to be paying as much as \$1.20 per gallon for home heating oil if world prices are reached in this country.

Even more frustrating are reports from the Science Council of Canada which tell us that 48 per cent of all energy used in Canada is wasted. In May of this year the Government of Canada made a commitment to the International Energy Agency to reduce our oil consumption by five per cent. The twenty industrial nations in the International Energy Agency agreed that urgent action was needed to cut energy consumption if we are to avoid serious economic problems.

In June of this year, Mr. Speaker, the Government of the Yukon committed itself to promoting and encouraging the wiser and more efficient use of energy in this Territory. It is our intention to work towards reduction of oil consumption by five per cent in one year, the same goal adopted by the Federal Government.

We will be introducing a number of initiatives in the coming months which are designed to promote energy conservation and renewable energy resources and thus help us to attain our goal.

Mr. Speaker, these measures will include two new cost-sharing agreements with the Federal Department of Energy, Mines and Resources to promote conservation; changes in this Government's Building and Construction Codes; efforts to make the Canadian Home Insulation Program more adaptable to Yukon conditions;

monitoring an action to reduce our Government's energy consumption.

The one possible exception for a fuel source which could be developed in production in shorter time is coal. The development, production, installation and operation of new large-scale energy technology, such as nuclear fusion and solar power are at least forty years into the future. They will not have significant impact on our immediate or near future.

It should also be emphasized that any new energy supply will not result in reduced cost to the consumer. Indeed, it will only be high in escalating cost of today's energy which will make these new developments economically feasible.

While we, in Yukon, are concerned with increasing the supply of energy through the high priority development of our energy resources, we are also faced with the adoption of energy conservation practices and technologies similar to those now in effect in European countries.

The energy conservation challenge for us in Yukon can be considered unique for several reasons. We depend on diesel fuel to generate one-third of the electricity consumed in the Yukon Territory.

Last year, eighty-eight per cent of the energy consumed in this Territory was derived from petroleum products. Our high number of heating days mean Yukon residents are burdened with excessive costs for heating their business or homes.

There is a growing evidence that Yukon residents are aware of our energy conservation needs. This is reflected in the increasingly popular move to wood stoves and furnaces to take advantage of a readily available and renewable resource.

There is also evidence of growing awareness of homeowners and builders to insulate their homes with higher levels of insulation.

There is so much more which has to be done. October was International Energy Conservation Month and we designated an awareness campaign to alert our residents to the needs and benefits of energy conservation.

This initial campaign involved newspaper and radio advertising, public information displays and a Territory-wide energy conservation competition.

We hoped to generate enough public interest and use this month's activities as a launching pad for our future energy conservation initiatives.

But before I outline some of these measures in detail, I would first like to brief all Members of the problems and circumstances which have brought us to this new energy conservation awareness.

The enormous economic expansion and prosperity which mushroomed in the industrialized world following the Korean War was largely fueled and made possible by the availability of huge volumes of petroleum at very low cost.

Indeed, the real cost of energy actually decreased during this period and led to the abandoning of additional developments of conventional oil and hydro resources.

This environment of virtually free energy supplies resulted in non-existent insulation standards and the development of energy-intensive transportation and industrial systems. Wasteful energy consumption practices and attitudes were the order of the day.

Unfortunately, Mr. Speaker, inevitably this honeymoon of cheap energy ended in the mid 1970s with the depletion of readily accessible cheap oil resources and the establishment of the OPEC oil cartel.

It was the OPEC factor, more than any other influence, which led to the deteriorating international balance of payment, the high level of unemployment and accelerating the rate of inflation which plagues us today. It is now accepted, world wide, that unless conservation measures are taken this crisis will lead to us to economic depression and a drastic decline in living standards.

The measures which need to be taken by Yukon, by Canada, by the world to rectify our energy shortfalls, are obvious and straightforward.

Mr. Speaker, the supply of conventional and new energy sources must be significantly increased. It is expected that over the next twenty years these new energy sources will be brought on through

increased recovery rate from existing reserves, nuclear and hydro projects and the extraction of fossil fuels from the remote and high cost areas of the world.

However, as we in Yukon are aware, from our own experience, it will take at least ten years of lead time before new energy projects to come on stream and make a significant difference in the world's energy supply.

We are also pleased to report that we have received substantial support from the local business community and the media in carrying out this first program.

Mr. Speaker, we plan to make strong representation to various government departments and private employers to re-examine their practice of paying light and heating bills of their employees. We will also closely examine this practice as it exists under several programs of this Government.

We are of the firm opinion that it is preferable for employees presently receiving a direct subsidy to receive some other form of cash allowance as compensation.

From an energy conservation standpoint, these energy consumers have a greater initiative to improve their energy consumption and realize the savings to be made because they would be responsible for their own energy bills.

This Government is also examining new building codes which will improve thermal efficiency for all new construction projects. These new standards will set minimum requirements to take Yukon conditions into account. These new standards are expected to be stronger than those generally used today.

Such standards could include requirements for triple-glazed windows, restrictions on the amount of window area, and metering of each unit in a commercial building on an individual basis.

We also plan to make strong representation to the Federal Department of Energy, Mines and Resources for a review of their Canadian Home Insulation Program as it affects Yukoners.

We want this program to be more attractive to our residential energy consumers and we will request that their grant program be made non-taxable. We also want this program to be indexed to take our higher costs for materials and labour into account.

This Government is also negotiating with the Department of Energy, Mines and Resources for two agreements to cost-share two major conservation programs for Yukon.

Mr. Speaker, the first program would be directed towards commercial, industrial and institutional establishments in the Territory. It would provide for the cost-sharing of energy conservation investments carried out by such establishments.

Our involvement would be to provide an energy audit of each establishment to identify areas in which they would improve their use of energy and make recommendations to up-grade their facilities.

Financial assistance would be based on the findings of this energy audit.

The second form currently being negotiated would provide financial assistance to demonstration projects of new technologies in energy conservation and renewable energy, which could be applied to Yukon conditions.

Such projects, which could be considered for this program, include solar and hot water heating in commercial applications, passive solar building design, or the large scale use of wood as a heating source.

It is our hope that such assistance would help promote new technologies and make them commercially available. Project proposals would be considered from both public and private sectors.

These two programs which I have just outlined are designed to encourage private sector participation in achieving our goal of improving energy use in Yukon.

It is our hope that our negotiations with the Federal energy department will result in final agreements by the end of this calendar year and the implementation by next spring.

Finally, this Government is working on a number of programs and initiatives to improve the energy use of our departments and agencies.

Work is in progress to upgrade the insulation in schools throughout Yukon as the first step in an on-going commitment by this Government to upgrade the insulation levels of our buildings.

We anticipate spending half a million dollars over the next two and a half years to improve the insulation of schools, maintenance

camp facilities in various warehouse buildings.

The Department of Education, in the meantime, has issued a directive for all principals and maintenance staff to examine their present energy management practices and to determine areas of improvement.

Results of this program should be evident throughout the current school year. The teaching staff and students are being encouraged to actively take part in energy conservation measures.

Our program to improve energy management practices will also be extended to all government buildings over the next few months.

Mr. Speaker, we want to determine where energy use can be improved and will examine existing heating and lighting bill levels in all government buildings.

All Yukon Government buildings, in the future, will be built with thermal efficiency standards in mind and this Government's rental of private buildings will be restricted to those with similar efficiency design.

We will be giving consideration to changing our maintenance staff's hours of work, to reduce energy consumption over the peak demand period. Consideration will also be given to energy efficient performance of new vehicles purchased by this Government.

One other note, Mr. Speaker, Dr. Robert Evans of the British Columbia Ministry of Energy, Mines and Petroleum Resources met with representatives of all government departments here in Whitehorse earlier this month.

Dr. Evans is in charge of that Provincial Government's efforts to reduce and improve energy use in their buildings. He met with our officials to determine how the merits of the BC program can be applied in Yukon.

Mr. Speaker, these initiatives will assist Yukon in working toward the Government of Canada's goal of reducing our reliance on non-renewable energy sources and will result in substantial savings for all who participate.

It is our belief that the taxpayers of this Territory will be the main beneficiaries of our efforts to reduce our energy costs.

We will be making detailed announcements over the coming months as our initiatives are adopted and implemented.

Thank you very much, Mr. Speaker.

Mr. MacKay: Thank you, Mr. Speaker. I would commend the Minister of Economic Development for the energy with which he has attacked his portfolio and within a very short time has produced no less than two Ministerial Statements.

The time I noticed was overrun by about eight minutes, and I trust that his next Ministerial Statement will be reduced accordingly.

I would like to comment on a couple of things that he has said. First of all, the general approach of Government to reduce its own energy requirements is very commendable and should be encouraged.

I think that one thing that you did not say that perhaps could be said more clearly is that what we should do is turn down the thermostats and essentially be prepared to live at a somewhat lower temperature and wear, perhaps, a few more winter woollens than we might otherwise do so. That is a very basic thing and I think that is something this Government should be promoting for all Yukoners. So turn down your thermostats, that is what has to happen. We have to be responsible for that as individuals as well as this Government.

I think that Canada, and particularly Yukon, is very sensitive to energy costs. Our industry is capitalized based upon a continued source of cheap energy and therefore to suddenly revise that upwards drastically can have the effect of making us a lot less competitive in the world markets. That is an historical fact but we should not lose sight of the fact that many other countries have no energy supplies and are therefore having to deal with the crisis as it arises and not allow a phase-in period.

I would suggest that a service that the Government could do in its negotiations with the Federal Department of Energy is to take the initiative for that department to consider the equalization of energy costs across the country.

So that areas such as the north, which have a much higher heating bill and much higher energy cost would not be put at such a disadvantage as those in the south, and as we are one country, we should be contributing equally to the development of the country.

I think that is an initiative that could come from the North. I think, perhaps, our neighbours in Alberta might not appreciate it

too much, but I think that many of our other neighbours would.

So, I suggest that to you in your considerations.

One word of caution about laying down too harsh a rule now on the standards to be set for buildings that the Government is going to rent. I think that you should have some kind of a phase-in period to allow people to adjust to that. It should not just be a sudden change in policy.

I think that is all I have to say, in case I run out of my time, Mr. Speaker. I will allow my colleague to proceed.

Mr. Penikett: Thank you, Mr. Speaker.

As the Minister said, the abundance of cheap petroleum which Canada has enjoyed since the Second World War, has transformed this country into one of the most energy-intensive, and therefore, the most energy-dependent nations in the world.

As the Minister said, we rely on energy for heating and cooling and to make everything from our agricultural products and the transportation of goods and resources to scattered populations, to support energy-intensive exports, such as aluminum, and increasingly, to communicate, process and store information in a society of escalating complexities.

Our lifestyle espouses the single family home as the ideal and the automobile as an essential part of every person's personal possessions and we have had an escalating proliferation of energy consuming appliances in not only the home, but every part of our life.

The looming exhaustion of inexpensive energy presents an unprecedented challenge, especially to the legislators. It seems to me that we must take a leading role in advocating sound, realistic and democratic solutions to a multitude of problems that we now face.

I think it has only been recently that governments have found the political will necessary to attack some of the fundamental problems of controlling our energy supply and increasing the efficiency with which we use energy and stimulating the research and development necessary for future sources of clean energy.

The task, as the Leader of the Opposition said, of achieving a smooth transition to new energy supplies and new ways of employing energy will not be an easy one.

I think governments should be committed to seeing it is achieved equitably and in the interest, as much as possible, of ordinary Canadians.

I think there are some principles in this business which, I think, I would just briefly like to mention, which are important.

I think it is essential that energy needs must be met, including energy sufficient to sustain a healthy economy, to meet household needs for heating, lighting, et cetera, and to provide reasonable access to transportation.

Energy developments must be equitable in their distribution of benefits and costs and this principle should apply to individuals, to regions and to generations.

Energy policy must be consistent with the broader aspects of financial policy and economic and social development. Energy planning must be open to public involvement and community initiatives. Energy development should meet public aspirations for environmental safety with a broad view to the benefits and the costs.

New energy initiatives must be benign with respect to safety and health for both workers and the general public. I say this to the Minister since he mentioned nuclear energy and the problem of nuclear waste as one that this society has not even begun to solve yet.

I say to the Minister in respect to coal, I think it has been observed that the only safe way to use coal on a large scale is if you do not mine it and you do not burn it. Everybody has been hearing about acid rain recently and this is not an insignificant problem.

The Minister also talked about an advertising program. I would like to commend his efforts toward energy conservation in this area. I will be interested in knowing in the future whether the Government is considering, as well, to encourage consumers, through public forums and advertising and the like, to consume fewer products which require more energy to produce. I am thinking, for example, of such high energy consumptive materials as aluminum cans and styrofoam cups which we currently employ. Although these things are obviously not produced here, the fact that they are consumed here means that energy somewhere else has gone into making them. I think it is a question of conscience and responsibility within the nation and it is important.

I hope the Government will be exploring these things. I commend them for this initiative and I expect that now that we have this statement the Minister will be entertaining many more questions

in the coming weeks on this subject. Thank you, Mr. Speaker.

Mr. Speaker: Order, please.

Mr. Fleming: Point of privilege, Mr. Speaker.

Mr. Speaker: Does the Honourable Member have a point of order?

Mr. Fleming: Point of Order, Mr. Speaker, I merely would say that I would have loved to tear this policy paper to pieces this morning; however, the rules do apply although not very democratically.

Mr. Speaker: Order, please. I cannot find that the Honourable Member from Campbell has got a Point of Order.

Are there any other statements by Ministers?

This then brings us to the Question Period. Have you any questions?

QUESTION PERIOD

Question re: Land Claims Settlement

Mr. MacKay: Thank you, Mr. Speaker. My question is addressed to the Government Leader regarding his recent meetings in Ottawa with the Minister of Indian Affairs. In the course of his negotiations with the Minister, did he discuss the very real possibility that Land Claims would not be settled in six months and what course of action this Government would take hereafter?

Hon. Mr. Pearson: Mr. Speaker, the discussions were centred on the objective of getting Land Claims started again and everyone, during the course of the week, became very optimistic and left very optimistic.

Mr. MacKay: Can the Government Leader confirm then if he considers the six month period in motion now to be a realistic target for the settlement of Land Claims in principle?

Hon. Mr. Pearson: Mr. Speaker, I do not know that a six month target has been established. The six months number came up, Mr. Speaker, in respect to the transfer of recreational lots to this Government by the Federal Government.

Mr. MacKay: Would the Government Leader confirm then that, on May 1st, 1980, the transfer of recreational land will occur?

Hon. Mr. Pearson: Mr. Speaker, we agreed to a proposal put to us by the Minister that we would not seek the transfer of recreational lots until May 1st.

As I pointed out in the House the other day, that is the end of the six month period and we expect that we will be, in fact, getting the transfer of recreational lots on May 1st, 1980.

Question re: Alcohol Problems in Old Crow

Mr. Penikett: Thank you, Mr. Speaker. I have a question to the Minister of Human Resources.

During the debate on Government activities this Session, the Minister said that the Chief and Council of Old Crow met with the Minister, concerning alcohol problems in that community.

Could the Minister tell the House what was the decision at that meeting?

Hon. Mrs. McCall: Yes, Mr. Speaker.

The discussion regarding the ban of the sale of liquor, the ban of liquor in Old Crow, was very agreeable and the conclusion was that another plebiscite would be held if it was established that the previous plebiscite was not considered to be sufficient.

Both of those avenues are being explored just now and, as soon as it is established, the ban will go into effect, if it is voted so.

Mr. Penikett: Thank you, Mr. Speaker.

Some time ago, the Minister stated that another plebiscite would be necessary. Can the Minister explain what new information has caused her to reconsider her position on this question?

Hon. Mrs. McCall: Yes, Mr. Speaker, there was a question whether or not everyone in Old Crow had voted or it was made known to them. I think, probably, it was a fact that was so. Just to be sure that it is open and that everyone is well aware that it is a fair vote, it was reconsidered.

Mr. Penikett: The Minister seems to be indicating, then, that if it is clear that a majority of people in Old Crow are satisfied with this position, then another plebiscite may not be necessary.

Is the Minister now in the process, then, of confirming that, in fact, the majority of people in Old Crow are in favour of the decision to ban alcohol there?

Mr. Speaker: I believe that question has already been answered.

Hon. Mrs. McCall: Would you repeat the last bit of your question, please?

Mr. Penikett: Yes, I asked, Mr. Speaker, a question which has not yet been answered by the Minister, as to whether she had established, in the light of my previous questions, if she is satisfied that a majority of people in the community have expressed an opinion on this question?

Hon. Mrs. McCall: I personally am satisfied, Mr. Speaker, that the majority are in favour of a ban.

So it is seen that it is absolutely fair, probably another plebiscite will be held.

Question re: Energy Conservation

Mr. Byblow: Mr. Speaker, I have a couple of questions for the Minister of Economic Affairs, dealing with his address a few moments ago.

The Minister outlined a number of initiatives to reduce energy consumption and made a passing reference to coal. Very specifically, I would ask if, within the framework of energy policy, this Government is actively researching coal as an energy source?

Hon. Mr. Hanson: Mr. Speaker, I wish to thank the Member, first, for letting me get my wind back from that rather long statement I made.

I think there is some back work being done and researching of coal in Yukon for possible use and when this is made available to us, I will come back to the House with it.

Mr. Byblow: Mr. Speaker, dealing with the Minister's address, I would ask the Minister if he is aware that, in most cases, when his Department approaches private employers to forego the practice of paying light and heating bills of their employees, that he will be infringing on collective bargaining agreements and how does he plan to apply policy in that area with this in mind?

Hon. Mr. Hanson: I do not know if we have yet done this, but we fully realize that we are just kidding ourselves when we think that, by donating something, that it is going to hold the consumption down. If a person is getting it for nothing, he does not give a damn. But if he has to pay for it himself, I am sure he is going to turn off a few lightbulbs and they are going to turn down the heat a little bit.

This might be a sacred cow, but we do have a big problem and the people of Canada have got to realize that. We did not create this, but it is here and it is going to be here for a long time.

Mr. Byblow: I am not sure, Mr. Speaker, that the Minister answered the question, but I will deal with another point he brought up in the address, alluded to but not stated. Is the Minister contemplating in the evolution of his energy policy, the equalization of power rates in the Territory?

Hon. Mr. Hanson: I am not so sure that we will. It is something that we have to look at yet. There has been some talk of it. You will know when we are ready to do so.

Question re: Alcohol Problems in Old Crow (Continued)

Mr. Fleming: I have a question to the Minister of Health and Human Resources in the area of Old Crow again in the liquor plebiscite to possibly ban drinking in Old Crow. Has the Minister had any consultation with the Federal Minister on the situation?

Hon. Mrs. McCall: No, Mr. Speaker, I have had no consultations Federally at all. It is within the Yukon Government's jurisdiction.

Mr. Fleming: Does the Minister of Human Resources know of the Indian Act and what it says in the Act as concerns this problem?

Hon. Mrs. McCall: I am not aware, Mr. Speaker, that there is anything in the Indian Act that would apply. I would be happy to hear if the Honourable Member Opposite knows of something.

Question re: Small Business Loans Transfer

Mrs. McGuire: Thank you, Mr. Speaker. This question is to the Honourable Government Leader. With the understanding from a previous statement made by the Government Leader that the Federal Small Business Loans administration of funds would be transferred from the Federal Government to the Territorial Government, could the Government Leader elaborate on the progress of this transfer?

Mr. Speaker: Order, please. I would ask the Honourable Leader of the Government to keep his remarks somewhat brief as otherwise the question would be out of order.

Hon. Mr. Pearson: Mr. Speaker, we are in active negotiation, at the present time, under the General Development Agreement with the Federal Government in relation to a number of agreements. One of them is intertwined in one of these agreements what we hope will be initiative to small business people in this Territory.

Mr. MacKay: Supplementary to that, Mr. Speaker. Will the Government be able to bring forward this program in the fairly near future in view of the rapidly escalating interest rates?

Hon. Mr. Pearson: Mr. Speaker, we have been at this for a number of months now. It is quite extensive and because of the Territorial funding that will be involved, I do not foresee us being able to even get to this prior to our next budget because we will have to have money appropriated by this House before we can enter into such agreements.

Mr. MacKay: Would it be the Government's policy to bring forward a loan program that would have some rate of interest attached to it that would be less than that available for commercial sources?

Hon. Mr. Pearson: Mr. Speaker, I cannot answer that at this time, I am sorry.

Question re: Whitehorse South Land Management Report

Mr. Penikett: Thank you, Mr. Speaker. I have a question for the lonely Minister of Municipal Affairs. I would like to ask him if he could tell the House what the status of the Whitehorse South area Land Management Report is.

Hon. Mr. Lang: Mr. Speaker, I assure the Honourable Member that I am really not that lonely.

My understanding is that it is going into a final draft form and I expect it to be put forward to us here in the very near future. I could not give a time date at this time. Once I do receive it, I will let the Member know.

Mr. Penikett: Is the Minister yet ready to say if the Government has generally adopted the policies contained in the report as it did with the policies contained in the Whitehorse North Area Report.

Hon. Mr. Lang: No, Mr. Speaker.

Mr. Penikett: Yes, Mr. Speaker, supplementary to the same Minister: will the Government be attempting to obtain, as it did in the case of the Whitehorse North Report, consultation with present residents of the area before final implementation of the recommendation?

Hon. Mr. Lang: Mr. Speaker, that option does exist and we would make that attempt.

Question re: Hydro Rates in Whitehorse

Mr. Fleming: Yes, a question for the Minister of Economic Development: do the municipalities of Whitehorse have the right to negotiate their own power rates with Yukon Electric?

Hon. Mr. Hanson: No, Mr. Speaker.

Question re: Hydro Rates in Faro

Mr. Fleming: Mr. Speaker, in a different vein, the same subject but a different area, in the area of, for instance, possibly Faro where NCPC is in operation, does the municipality have the right there to negotiate their own power rate?

Hon. Mr. Hanson: No, Mr. Speaker.

Mr. Fleming: Is there a maximum charge that the power corporation or the private company can charge per kilowatt hour in the areas that are supplied by the diesel generation?

Hon. Mr. Pearson: Mr. Speaker, the companies that sell electrical energy in the Territory file, with the Electrical Public Utility Board, rates that they charge to every kind of customer in the Territory.

In the case, Mr. Speaker, of those sales by the Yukon Electrical Company Limited, they are, in fact, set by the Electrical Public Utilities Board, a creature of this House.

In the case of Northern Canada Power Commission's rates, although they are not required to file with the Board, they do so, at the present time.

Question re: Federal Government Project Acceleration

Mr. MacKay: Thank you, Mr. Speaker. I have a question for the Government Leader.

Yesterday, he indicated in the House that his Government would try and bring forward and accelerate capital funding for projects in the Territory.

In view of the very cozy and intimate ties that this Government has with the Federal Minister of Public Works, can he tell us if he has made the same request for Federal Government accelerations?

Hon. Mr. Pearson: Yes, Mr. Speaker.

Mr. MacKay: I am pleased to hear that, Mr. Speaker.

I would ask further that if involved in these requests, that he has

made any strong or stronger requests for funds, in the very near future, to reconstruct the Whitehorse Airport?

Hon. Mr. Pearson: Yes, Mr. Speaker.

Mr. MacKay: Since these questions have led us to the one final supplementary, and that is, what replies has the Government Leader received from the Department of Public Works?

Hon. Mr. Pearson: Mr. Speaker, the question in respect to the terminal, I hope the Honourable was referring to, not the Whitehorse Airport but rather the new terminal building, these discussions are with the Ministry of Transport, not with the Department of Public Works.

Where the Whitehorse Terminal is going to fit into the Ministry of Transport's construction program is under consideration at the present time. Hopefully, they are receiving our requests and our petitions with a certain degree more friendliness than they were in the past.

Question re: Education/Native Language & Cultural Instruction

Mr. Penikett: Thank you, Mr. Speaker, I have a question for the Minister of Education.

I would like to ask the Minister if the program for native language and cultural activities instruction has commenced this term, in any Yukon schools?

Hon. Mr. Graham: I am not sure, Mr. Speaker. I will have to take that question under advisement.

Mr. Penikett: Thank you, Mr. Speaker. If it has not, I would like to ask the Minister if there is a problem in the implementation of these programs given that the budget for the instruction is near \$20,000. I wonder if the Minister might, when he is seeking advice, describe for the House what problems may exist in bringing these programs into the schools, especially considering that it is almost the first of November.

Hon. Mr. Graham: Mr. Speaker, we are meeting with the representatives of the Yukon Indian Education Cultural Society next week and I would be happy to report back to the House as a result of those meetings.

Question re: Airport Programs

Mr. Byblow: I have a question for the Minister of Public Works regarding the administrative functions of YTG towards the Ministry of Transport's Arctic A, B and C Airport Programs. Is the Minister contemplating an expansion in the Public Works Department to more capably handle the increasing airport management duties? It is my understanding that this area is relegated to something like a part-time status. There are some difficulties in getting the work done in short order.

Hon. Mr. Lang: Mr. Speaker, just what particular airport is he referring to?

Mr. Speaker: Order, please. I do not think it is competent for a Minister to ask a question of another Member.

Hon. Mr. Lang: Mr. Speaker, the point is that, first of all, I am not the Minister of Transport for Canada. I am the Minister for Public Works for the Yukon Territory. Our main responsibility happens to be highways. We do happen to take some responsibility from the Department of Transport in airports categorized as B and C.

Mr. Byblow: For the Minister's clarification, Mr. Speaker, I was inquiring whether or not his Department was considering expanding their personnel to handle their obligations under the Arctic B and C programs, the obligation that they have undertaken with the Ministry of Transport.

Hon. Mr. Lang: Mr. Speaker, the answer is no, and the major reason is that a lot of the money that was to be allocated in that particular area did not come through. Subsequently, our responsibilities were less.

At the same time, I think it is fair to say from this part of the House, and I hope from that side of the House, is the fact that we have X amount of dollars and we have to work within that budget. Otherwise, we could all be sitting here advocating raising the taxes and going ahead with the various programs the Honourable Member has a tendency to raise at every Question Period.

Mr. Byblow: With respect to program implementation and financing, on a more local issue, could the Minister indicate if his Department has made a decision to either do or cost-share the feasibility study recommended by MOT for the Faro Airport?

Hon. Mr. Lang: Mr. Speaker, it is under consideration at the present time, and once a decision is made in respect to what MOT is prepared to do then we will have to look at our obligations at the same time.

Question re: Energy Conservation

Mr. Fleming: Yes, Mr. Speaker, a very simple question to the Minister of Economic Development: on his policy paper this morning, he has vowed to improve the energy and so forth and so on, and I am just wondering if the Minister could tell me, for instance, where he intends to get people to turn off their lights and something I commend him on is the situation where he is trying to get the Government to turn off some of their power and lights and so forth and so on, to save energy; however, my question is, if, in the private sector, too, half of the power is turned off in the Yukon Territory for three months, what would the power rates in this Territory be?

Mr. Speaker: Order, please. The Honourable Member's question is quite out of order, in that it be so hypothetical to not even permit an answer.

Mr. Fleming: Hypothetical, but true.

Question re: Commissioner/Selection of

Mr. MacKay: Thank you, Mr. Speaker. My question is to the Government Leader.

I am wondering if the Government Leader has discussed with the Minister of Indian Affairs and Northern Development the procedure of how the new Commissioner will be selected?

Hon. Mr. Pearson: No, Mr. Speaker. I have not discussed that procedure with him.

Mr. MacKay: When the Government Leader does get around to discussing this important matter, will he ask the Minister to allow some expression of opinion to be developed from this House?

Hon. Mr. Graham: Do you want to help us make up the Budget, too?

Mr. Speaker: I think that that question ought more to be brought in in the form of substantive motion, if it is a direction to the Government.

However, I will permit the Honourable Leader of the Government to answer, if he so wishes.

Hon. Mr. Pearson: Mr. Speaker, it must be well understood by everyone that the appointment of a Commissioner of the Yukon Territory is, in fact, a personal appointment made by the Minister of Indian Affairs and Northern Development.

Now, Mr. Speaker, he may or he may not seek advice from anyone or any group in this Territory. I am sure the Honourable Member who asked the question is well aware that it has been done in the past in numerous ways.

At this point in time, Mr. Speaker, I do not know what the Honourable Minister, responsible Minister, intends to do.

Mr. MacKay: I am pleased to hear of the difficulties the current Minister will have, but I am wondering if the Government Leader would agree that only white-haired, elderly ladies who can pour tea need apply for this job?

Mr. Speaker: Order, please. I think the question is quite facetious and is probably out of order in that you are seeking an opinion.

Question re: Art Instruction in Schools

Mr. Penikett: Thank you, Mr. Speaker. At least we know the Senator will not be sought for his advice.

I have a question for the Minister of Education. In reference to a question I posed last week to the Minister of Education, regarding art instruction in Yukon schools, he said there were not the available man years at present to further instruction.

Can I ask the Minister if he will be recommending the addition of the necessary man years to be incorporated in his next year's Budget?

Hon. Mr. Graham: Mr. Speaker, as the Honourable Member opposite no doubt knows, I am giving him credit for a great deal of intelligence that I am not sure exists, but, as he knows, the school committees must first of all request that those man years be made available. In order for a school committee to request that that man year be made available they must then be able to justify that man year by having enough students registered in that school.

In once instance I know of, just recently a school committee made a conscious decision to enter into the physical education and art education in a more serious manner. They then made the decision in concert with the school principal to get people who are specialized in those areas. Other areas of the school naturally suffered as a result of this and we still leave the school committee that decision making power.

Mr. Penikett: Thank you, Mr. Speaker. I am sure the Minister will be aware that it was the Conservative Party that removed the need for IQ tests as a qualification for legislators.

Mr. Speaker, I would like to ask the Minister, since he answered me the other day in reference to one of the experimental art teachers having been fired, if he is aware that teacher has, in fact, been hired but not to do art instruction?

Hon. Mr. Graham: Yes, Mr. Speaker, I am fully aware of the fact that that teacher had been hired. That teacher has also the ability to teach art in either her spare periods or if she does switch with another teacher who wishes to have the specialized teaching available to her students. That ability is, again, the responsibility of the school committee and the principal acting in concert.

The Department of Education does not specify which teachers should teach any courses in the schools. We hire a certain number of school teachers, again in consultation with school committees around the Territory and we allow the school committee and the principal to make their decisions based on the total number of man years that that school is allocated.

Mr. Penikett: Thank you, Mr. Speaker. I enjoy the music played by the principals and school committees in concert but I would like to ask the Minister, in his capacity as a one man band, if it will be a commitment of his Department, or a priority of his Department to have art education in Yukon schools in the future?

Hon. Mr. Graham: Mr. Speaker, I do not know how I can answer this question and get it across to the Member opposite that there are only so many teachers allocated to each school because of the fact that each school has a definite number of students going to that school.

If the school committee, and the principal, decided that they want an art instructor in that school, we will hire them an art instructor. It is very simple. We do not encourage or discourage anything that the school committees or the principals want. We attempt to work in conjunction with those school committees and principals to get them everything they want.

Question re: Education/Students with Learning Disabilities

Mr. Byblow: I have a non-controversial question for the Minister of Education. It is in written form.

Would the Minister provide the following information respecting students with learning disabilities:

1. Department policy and mechanics in handling students identified with handicaps or disabilities;
2. the number of students sent out of the Territory for either testing, treatment or training, over the last two years;
3. the specifics of funding assistance to parents of students requiring aid.

Mr. Speaker: This would appear to bring us to the end of the Question Period. May I have your further pleasure?

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member for Old Crow, that Mr. Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Member from Old Crow, that Mr. Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

Motion agreed to

Mr. Speaker leaves the Chair

COMMITTEE OF THE WHOLE

Mr. Chairman: I shall now call the Committee of the Whole to order.

Hon. Mr. Graham: Mr. Chairman, due to the number of changes in Bill Number 27, I would request unanimous consent from the House to withdraw this Bill, the Matrimonial Property Ordinance from this House.

Mr. Chairman: Do I have unanimous consent?

Some Members: Agreed.

Hon. Mr. Graham: Mr. Chairman, I move that you report the withdrawal of Bill Number 27.

Mr. Chairman: Are you agreed?

Some Members: Agreed.

Hon. Mr. Graham: And as part of that motion, beg leave to sit again.

I move that Mr. Speaker do now resume the Chair.

Motion agreed to

Mr. Speaker resumes the Chair

Mr. Speaker: I shall call the House to order.

May we have a report from the Chairman of Committees?

Mr. Lattin: Mr. Speaker, the Committee of the Whole has given unanimous consent to the withdrawal of Bill Number 27, Matrimonial Property Ordinance, and beg leave to sit again.

Mr. Speaker: You have heard the report of the Chairman of Committees. Are you agreed?

Some Members: Agreed.

Mr. Speaker: Leave is so granted.

May I have your further pleasure?

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member from Old Crow, that the House grant unanimous consent to revert to Introduction of Bills.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Member from Old Crow, that unanimous consent be given to revert, on the Order Paper, to Introduction of Bills.

Does the House give unanimous consent?

Some Members: Agreed.

Mr. Speaker: Unanimous consent has been given.

INTRODUCTION OF BILLS

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member from Old Crow, that Bill Number 32, Matrimonial Property Ordinance, be now read a first time.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Member from Old Crow, that Bill Number 32, Matrimonial Property Ordinance, be introduced and read a first time.

Motion agreed to

Hon. Mr. Graham: First of all, Mr. Speaker, I would like to request unanimous consent to waive Standing Order 55(2), to give Bill Number 32 Second Reading.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Member from Old Crow, for unanimous consent to waive Standing Order 55(2) to give Bill Number 32 Second Reading.

Motion agreed to

Bill Number 32: Second Reading

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member for Old Crow, that Bill Number 32, Matrimonial Property Ordinance be now read a second time.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Member from Old Crow, that Bill Number 32 be now read a second time.

Motion agreed to

Mr. Speaker: May I have your further pleasure?

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member for Old Crow, that Mr. Speaker do now leave the Chair and the House resolve into Committee of the Whole.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Member from Old Crow, that Mr. Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

Motion agreed to

Mr. Speaker leaves the Chair

COMMITTEE OF THE WHOLE

Mr. Chairman: I shall call Committee of the Whole to Order.

Dr. Hibberd: I would like to request that the Committee do not sit tonight so we can prepare the business for the Committee and we could use the time tonight more effectively otherwise.

Mr. Chairman: Do you all agree on that request?

Some Members: Agreed.

Mr. Chairman: This afternoon we are discussing Bill Number 32, Matrimonial Property Ordinance.

On Clause 1

Hon. Mr. Graham: Mr. Chairman, maybe I should start off by giving some reasons why we decided to withdraw Bill Number 27 and re-introduce Bill Number 32.

The reason behind this is that there were, as Members know, forty-two amendments to Bill Number 27. These amendments

came about as a result of representations made to this Government. Receptive as we are to public opinion, we have decided that some of the suggestions made by people outside of the Government were good recommendations so we have therefore brought in these amendments.

Also, Mr. Chairman, we have looked at several petitions given to this Government by way of Members opposite and I would just like to, as we go on, make a few comments about these additions. The first one is one we received from the Honourable Leader of the Opposition which, in essence, made no comments about the Bill other than they are of the opinion that business assets must be considered in evaluation of total property.

It seems to me, Mr. Chairman, that the petitioners misunderstood the Bill, much as did the Leader of the Opposition in his debate in Second Reading. The Ordinance does, in effect, take into consideration business assets. It is just that the Ordinance gives business assets over to the determination of the courts for division.

Another one from Faro made reference to the fact that similar legislation in Alberta, Saskatchewan and the Northwest Territories should be looked at. We did look at those pieces of legislation. The Saskatchewan Act, for the division of business assets, does not even come into effect until January 1, 1980 so they did not have whole lot of case law.

Currently, all assets in the marriage are turned over or given to the discretion of the court for division. I have talked to several people in these jurisdictions and one in Saskatchewan said that they do not really see much difference between our proposed Ordinance and their new Act.

The general opinion was that, as far as business assets are concerned, in Saskatchewan they will still be left up to the discretion of the courts.

In the Northwest Territories, the sections of their Ordinance that we asked about are not in effect either.

So, we have done a lot of checking across Canada. Manitoba's Act is the only one in Canada, that I can find, that is substantially different from ours. In Manitoba, all property acquired during a marriage, while the spouses live together, is sharable on a 50/50 basis.

Now, this means that upon divorce, the net value of the combined assets of all spouses is divided 50/50. Now, I spoke to several people in Manitoba, including caseworkers, legal people, people who were involved intimately in drawing up the Bill, and they are split just about 50/50 on whether or not this is a good system.

The consensus of opinion was that it has lowered the number of court cases that have come before the court to judge whether or not business assets should be included, but, on the other side, it also has been proved to be a goldmine for accountants.

Now, maybe this is what some of the Members opposite—I am not mentioning any specific people—wish to see. I do not know.

Mr. MacKay: That is really an unfair and unwarranted remark and I would ask that it be withdrawn immediately.

Hon. Mr. Graham: That is true, Mr. Chairman, it was unfair and I will withdraw that remark.

But, in the opinion of the people in the province, this has actually turned out to be the truth. Fewer cases have come before the court, but more and more people are going to the accountants to settle up their assets acquired during marriage.

It seems to me that just going from one profession to the other is really not the way that this matrimonial property legislation should be going.

We are convinced that, at this time, that this is one of the best pieces of legislation available in any jurisdiction in Canada. I look forward to going through it on a clause by clause basis and possibly explaining some of the clauses that are not fully understood by many Members of the Legislature.

On another subject, Mr. Chairman, the Leader of the Opposition, Mr. MacKay, has informed me, outside of this House, that I did, in fact, misquote him in my speech during second reading of this Bill, and I must admit, Mr. Chairman, after going through Hansard, that he is, in fact, correct.

I did not misquote, but I did, in effect, not quote him fully. As for that, Mr. Chairman, if I have caused him any embarrassment, Mr. Chairman, for that embarrassment I do apologize.

Thank you, Mr. Chairman.

Mr. MacKay: On the subject of embarrassment, Mr. Chairman, I think it is only fair that any embarrassment that I have suffered as a result of the Member opposite, should be fully transferred and returned to the Member.

I would like to, perhaps, take a few moments of the House to put on record all the corrections that have to be made to the Minister's remarks at Second Reading.

He is the Minister of Justice, not the Minister of Injustice and I am sure he will appreciate the fairness with which I treat this subject, or even in the manner in which I try to point out his horrible mistakes.

First of all, he misquoted me very badly, very badly for his sake, not for my sake because I knew I was right. It was bad for him because he starts out his speech by misquoting me and then the rest of his speech was devoted to castigating me for having said something I did not say. So, in effect, he wrecked the entire logic of his argument in the first paragraph or two.

Perhaps for the record, I did not say that only direct contributions of money and labour are recognized in the division of business assets. I said, in fact, that indirect contributions, such as relieving the title holding spouse of the responsibilities of child care are considered.

Having corrected that, Mr. Chairman, it then comes to my attention that the rest of the Minister's speech was ill-informed and erroneous. As a matter of fact the comments he made were ludicrous. He could be guilty of having said a totally false statement.

Mr. Chairman: Order please. The Chair rather doubts that this is part of a general discussion. Would you kindly return to the subject under discussion please.

Mr. MacKay: I am sorry, Mr. Chairman. I probably should not have used these words just as the Member opposite should not have used them either in general debate.

The points that I would like to bring out where he was erroneous though, to say that the current system of common law does not reflect some fairness is completely wrong. The current common law is this, and I can give you, I think, some of the score. There are two landmark cases involved in the current law. One is the Murdoch vs Murdoch case which is an Alberta farm case in which the wife did not receive any share of the assets. The other one is a case called Rathwell vs Rathwell where the wife was granted an interest in assets that were not in her name.

We have tended to hear far more about the Murdoch case than we have with the Rathwell case. It is interesting to note though that in the decision where the wife has been denied an interest in the property, the Murdoch case has been applied eleven times.

There are twenty-four instances where, in the same type of case, the Murdoch case has been distinguished. That is to say, it has been treated as not being relevant.

On the other hand, the Rathwell case, which granted a wife an interest in the property has been applied in nine cases. This is a decision that was just reached last year, the Rathwell case. It has been applied in nine cases and distinguished in five, that is to say rejected as a means of proceeding.

What I am suggesting from that is the common law that is being practised right now is not that far away from what is now coming forward in this Ordinance.

To say that the strict rules of ownership are still applying is not the case. The common law has come forward and has changed and, in fact, may even be a little ahead of this Matrimonial Property Ordinance.

I commend the Government, and the Minister in particular, in being so open minded as to bring forward forty-one amendments. I think that the inclusion of a provision for the common law agreement to opt into this legislation is a good one and I think that it shows some flexibility on the part of the Minister, which is commendable.

I still will address the sections, when we come to them, on business assets. I think that the Bill is actually not too far away from what it should be. I think what we are arguing about at this time is upon whom the onus should be to prove that business assets should be excluded. I think that is really what the argument boils down to at this point.

Having cleaned up a couple of sections which were, I do not know if they were poorly worded, but at least, I think there were probably some words missed out or a word missed out of Section 6, having cleaned up that Section, it is much more obvious to the reader now that the intent was to try and value the intangible contributions of each spouse against the tangible assets at the close of a marriage.

So, I suggest that the Ordinance is closer now to what we would like to see than it was when it was first introduced.

So, I hope I have not mortally insulted the Minister too much by

using his own words back to him, however, I am sure he appreciates the justice in doing so.

Clause 1 agreed to

On Clause 2(1)

Mr. Penikett: Mr. Chairman, just for clarification of "child", is there a definition in other Yukon laws for "child" according to age?

Hon. Mr. Graham: Yes, Mr. Chairman, under the Child Welfare Ordinance, there is a definition. It is much the same.

The definition means a child born within or without.

Mr. Penikett: Mr. Chairman, I was talking about age, like 16, 18, 14, 12.

Hon. Mr. Graham: I do not know, Mr. Chairman, what age they put on it.

Mr. Penikett: It is not of critical importance, Mr. Chairman, but it might be useful to know.

Hon. Mr. Graham: I will endeavour to get the information. Do you want to hold up the definition?

Mr. Chairman: No.

Hon. Mr. Graham: "Cohabit" is one of the areas that allows common law relationships to be recognized within or without.

I was just going to say that section 36 is the section that deals with a common law relationship.

Mr. Byblow: Just as a general comment on that, I believe this is altogether a new section and applies to the principle that was being lobbied for and the Minister should be commended for entering it.

Hon. Mr. Graham: A "domestic contract" is one that is entered into by people contemplating or people who have already been married.

Mr. Byblow: Could the Minister elaborate on the full meaning of that definition of "property"?

Hon. Mr. Graham: I think Mr. Chairman, that property is just that: real or personal property or any interest therein for purposes of division within the Ordinance. In the Ordinance we talk about property or assets. This is just defining the word "property". I do not think there is anything sinister in it.

Mr. Chairman, these are just "separation agreements" that are commonly entered into even now. This is just, in effect, defining what has already taken place.

Clause 2(1) agreed to

On Clause 3(1)

Hon. Mr. Graham: Mr. Chairman, this simply states that a marriage agreement takes precedence over the Ordinance.

In other words, if two people enter into a marriage agreement to circumvent the Ordinance or to eliminate sections thereof, it takes precedence over the Ordinance.

Clause 3(1) agreed to

On Clause 3(2)

Hon. Mr. Graham: Mr. Chairman, this just says that any agreement that is entered into, under (1) or elsewhere, cannot limit the powers of the court.

In other words, two people cannot get together, make a marriage agreement that says we will split everything 40/60 and the court has no right to enter into our dispute at any time in the future. They cannot do it.

Clause 3(2) agreed to

On Clause 3(3)

Hon. Mr. Graham: I think there is a very important point, Mr. Chairman. Part 2 deals with the family home and no provisions made under a marriage contract can limit the rights of one spouse to the family home.

Like when, for example, two people get married and they draw up a settlement or a marriage contract, it states, upon dissolution of this marriage the husband will get the home and the wife will get nothing, and, in effect, such a marriage contract would be invalid.

Clause 3(3) agreed to

On Clause 3(4)

Hon. Mr. Graham: This allows the court to set aside any marriage contract which, in the court's opinion, has been entered into under undue influence by one of the spouses, such as beating on their head or something.

Mr. Byblow: Just, in a very general sense, could the Minister take some time to explain the whole application of retroactivity to these kinds of things?

In the case of undue influence, property position and so on, could you take some time to explain to us the full implications of retroactivity?

Hon. Mr. Graham: Mr. Chairman, I think that the Ordinance does say that it comes into effect on the day of Assent. Also, not withstanding, again, we are getting into 4(1), but I will go ahead, if I may. Not withstanding that the spouses entered into a marriage contract or into a marriage previous to the day of Assent, that marriage contract, if valid, still is in force after the legislation has passed through this Legislature.

So, in effect, anything done previous to this time, if it was valid according to the points laid out in this Ordinance, then becomes valid also, after this Ordinance is passed.

So, if there was a marriage contract entered into and that marriage contract is valid, it will still be valid after this legislation has passed.

Mr. Byblow: So the Minister is saying, that there is in effect, as much as a forty, fifty year retroactivity in this Ordinance because of the length of the marriage or whenever it took place.

But just to clarify a point, if there was something that was valid, I do not even know exactly what specifically such a situation would be, but if there was something that was valid in time previous which no longer is under terms of this Ordinance, then that changes the status of what could have been valid but is no longer.

Hon. Mr. Graham: That is correct, Mr. Chairman. In other words, if a couple who have been married for fifty years entered into a marriage contract fifty years ago and said that as long as this contract was valid and said in that contract, if we should become divorced in 1980, the husband will take the home because of the fact that he built it with his own labour, et cetera, et cetera. If that contract was invalid, then any terms in that contract are invalid. If it was valid, then the terms within that contract are valid according to this Ordinance.

Mr. MacKay: We have not passed all of Clause 3. I am interested in why 3(1) we talk about marriage contract and 3(2) we talk about a domestic contract. Clause 3(2) seems to refer back to 3(1). Was 3(1) meant to be narrower?

Hon. Mr. Graham: The marriage contract is the contract entered into by two people who have entered into marriage. The domestic contract can mean either a marriage contract or a separation or a cohabitation agreement. So the domestic contract is the broader definition and the marriage contract is only that entered into by two people while they are cohabiting.

Clause 3(4) agreed to

On Clause 4(1)

Hon. Mr. Graham: Mr. Chairman, there is a small problem here. Section 4(1)(c) the second last line: "family home has been commenced or adjudicated", the words "or adjudicated" should have been removed and I do not have a change here so perhaps I can ask that 4(1) be stood over until this change is made.

Clause 4(1) stood over

On Clause 5(1)

Mr. Byblow: I have a general question on that entire section. Is the only change, may I inquire, from the old Ordinance, lettering and no actual wording change? I only ask that in the event that there may be an error.

Hon. Mr. Graham: I do not find a change in wording.

Mr. Byblow: I suspect that there is only the change in lettering.

Hon. Mr. Graham: Yes, that is correct. There should have been no changes, and unless there are typing mistakes, there are no changes.

Mr. Chairman, I should just go through exactly what this part does. In part (a) does set out exactly what we consider a family asset to be. Sections (a), (b) and (c) are simply the specifics of what we consider family assets to be.

Mr. Byblow: I want to understand the full meaning of the section in terms of its applicability. When you say it includes, is it restrictive to those items for what it includes, or can others be applied outside those categories?

Hon. Mr. Graham: Mr. Chairman, we have tried to be reasonably specific. I think that the first means a family home as determined under Part 2 and property owned by one spouse or both spouses, and ordinarily used or enjoyed by both spouses or one or more of their children while the spouses are residing together for shelter or transportation or for the rest of these. I think anything held within that definition or any assets that could be used for anything under those definitions shall be considered family assets.

Mr. MacKay: This probably relates to a later section, but looking for loopholes, which is part of my profession, in Clause 5(1)(b). I can certainly see that you are looking through the corporation and seeing that whatever assets in there that would be of a family nature automatically would reflect the pro rata value of these shares and are then included in the settlement.

Take the instance of where the family may have accumulated some cash over the years. That cash may have been invested in Canada Savings Bonds for which no interest was drawn for a period, no coupons were clipped. There is no way that you could say the interest was being used to fund the family circumstances and that at some point these Canada Savings Bonds were transferred to a corporation.

Later on it talks about the impoverishment of the family assets. However, if this did not impede the continuing family life, this transfer, would this still be a way of evading what was intended to be included perhaps in section (a) of this Clause, where it talks about money in a savings account, and so forth?

How do you define the term "impoverishment"? Does it mean just a straight reduction or does it mean reducing it to the point where the family could not continue to live?

Hon. Mr. Graham: Mr. Chairman, I asked the same question some time ago, I believe, in the Sub-committee on Legislation and, to my way of thinking, "impoverishment" means taking away anything from the family assets that are for the purpose strictly of impoverishing the family assets, in other words, to avoid the legislation.

If a person had a million dollars and they took \$900,000 away, \$100,000 is still a reasonable amount of money to live on, but, in my opinion, and I am assured that this is the intent of the Ordinance, is that that would be considered impoverishing the family assets.

Mr. MacKay: Okay, I think I am satisfied with that answer. We could probably just review it again when we get to the section about impoverishment.

Mr. Fleming: Possibly I just do not quite understand the wording, but where a property owned by a corporate partnership or trustee would, if it were owned by a spouse, be a family asset, shares in the corporation and so forth, and they say what the market value equals the value of the benefit, but when you go into it, is that a corporation? Of course it would possibly be a large business asset.

Well, it explains to me here, more or less, that that is now part of this Ordinance and part of the split-up in this Ordinance. Could I just have that clarified a little bit?

Mr. Penikett: Mr. Chairman, in answering the question perhaps I could ask one.

It seems to me that it covers the kind of circumstance where people in my occupation, if they ever reach the level of income that they can afford to go to chartered accountants, sometimes might go to chartered accountants and lawyers and get the kind of advice that it would wish to incorporate for tax purposes; therefore, what would normally be a family income could then be, in fact, held in the corporation and perhaps not disposed of.

Mr. MacKay would know more about this than myself, but that could perhaps be held and invested by this corporation, which the one spouse was the sole owner. It might be a case that, in fact, a very large part of the family income was going into this and could be therefore, if you did not have this provision, kept out of the hands of the spouse upon dissolution of the marriage.

Hon. Mr. Graham: That is correct, Mr. Chairman. I think it also includes things like shares in an apartment building, where a bunch of people get together, buy an apartment building and live in one of the apartments and hold shares in a trust or in a company that owns the apartments, where, in fact, all of the people in the apartment buildings are the owners.

So that could be considered a business asset and yet, you are using that apartment as your family home.

Mr. MacKay: I would not like to leave my friend here entirely satisfied with this proposition, because I think in the example he gave, where a proportion of the family income was being consistently used to finance a business or to be put in there and that business then proceeded to acquire assets that were not of a family nature, then, indeed, these assets would not automatically be included in this Ordinance. It is only the assets in the corporation that are of a family nature, such as a house, that would be reflected in the value of the shares.

Mr. Penikett: Yes, Mr. Chairman, we may as well do this now as later.

As the Minister knows, I have a problem on that score, on exactly that score, for the reasons stated by him and that is what is probably wrong with the business assets section.

The Member for Tatchun, a week or two ago, when this subject was being raised, almost moved me to apoplexy on the subject, but I may deal with the Member for Tatchun at Third Reading, Mr. Chairman, if I may.

The problem clearly is that you could have a situation, and perhaps I could just describe the circumstance for the Minister and he might respond, where two people of, two gentlemen, let us use this example, of similar incomes, living on the same street, perhaps working for the same employer, both having families of the same size, one man might put all his income into feeding, clothing and caring for his family. He might put all his income into building a very pleasant, comfortable home for them and that home, which would be the major asset, perhaps the only real property held by the family, would be then subject to division upon dissolution of marriage.

His colleague down the street, on the other hand, might, while not impoverishing his family, keep them in an extremely modest home, might keep the kids clothed at a much lower standard. They might be eating hamburger instead of steak and he might be taking a very large part of what is the family income and investing it in a business.

Now, I would guess that this is very common in the entrepreneur tradition of this area, that, in fact, a great number of people have started businesses this way. It concerns me that we could have exactly that circumstance where the person could, at some point over a long period of time, have this business created, have the business become successful and he has done it quite literally at the expense of his family, but those business assets could not be touched under this law, except, unless in court, the poor long-suffering spouse, if she had any money left to afford a lawyer, which she might not have, would then go to court and make a case for impoverishment, which, depending on the mood of the judge that day or whoever was sitting on the bench at that time, she might win or lose. There is an uncertainty there.

The Minister and I have talked privately about this, but I still submit, Mr. Chairman, that this is the major flaw in the legislation as it is now proposed.

Hon. Mr. Graham: Mr. Chairman, I agree to a certain extent with the Member opposite, but I think there are a few things that must be clarified.

In the first place, I think he is talking about the extreme. I do not believe that this is something that is going to happen on a daily basis.

The other thing is that not only does the wife have a case, or in this case the wife, have a case for impoverishment, but she would also be able to pursue her remedies in the form of going after the business assets, again in a court of law.

Again, to correct something he said, a small correction, perhaps, but we have given definite guidelines to the judiciary in this Ordinance and I do not believe then we are depending on them just to be in a good frame of mind and therefore they will give the spouse who feels she is wrong, 50 per cent.

I believe that the guidelines we have set down state quite explicitly that we do not want to see that type of thing happening; therefore, we have given the judiciary the ability to give additional business assets to the spouse who stayed at home and looked after her children and had the family assets, if you want, impoverished through the business.

I think that by giving the judiciary that ability, that discretionary ability, I think that it can turn into a strong point in this legislation, simply by allowing them to give 65 or 70 per cent or 80 per cent of the business assets to the wife who has stayed home, in order to compensate for the lack of family assets that have been accumulated during the life of the marriage.

I think that is a very important point.

Mr. Penikett: Mr. Chairman, the Minister is gentle and persuasive as always, but I think he will admit that there is a big difference between legislation in those jurisdictions, which provides for, as he made reference to, guidelines which say that the principle is 50/50 and then the partner wanting more than the 50/50.

Let us assume the example I gave the husband, in Case B, having to go to the court because he has the means to go to the court, the means to hire the lawyer and, in fact, make the case before the court, and what is proposed here, which is the weaker partner, that is the woman who may have no cash other than that 50 per cent of the house, which may not be a very good house, to then have to employ a lawyer. I do not hire lawyers often, but I would guess that the ability of lawyers you can hire has some bearing on the price you pay for them. She might be up against a very expensive lawyer, on behalf of her husband.

She, it seems to me, goes into court, she, one, has to bear the expense of going to court, but, two, goes into court with a disadvantage.

I admit to the Minister it is a question of emphasis, but I think it still remains a flaw.

Mr. Fleming: Yes, Mr. Chairman, I still have a problem with, as I go through, it is very simple, it seems, as we go down through the family asset portion of it.

It says in (a), "money in an account with a chartered bank, savings office, credit union..." all these things, are very simple. "...educational, recreational, social or..." so forth.

But then when they get to (b), the property owned by a corporation, and I have a problem as to the property owned by the corporation and just how it got there and where it is, really, declared in here that that is property that can be a family asset.

Then you carry on "...shares in the corporation...partnership or trust owned by the spouse having a market value equal to the value of the benefit the spouse has in respect of the property." Of course, those are more or less two questions.

What property got to be owned by the corporation in the first place, because it does not seem to say it in the other sections here what that property would be other than money in a chartered bank or something. But that is not necessarily the way it might be, a corporation could be many things.

Then, the other question is having a market value equal to the value of the benefit the spouse has in respect of the property. There are actually two separate questions.

I just cannot quite clarify them.

Hon. Mr. Graham: Mr. Chairman, I think I have a fairly good example that will maybe explain it to the Member opposite.

There was a person that owned approximately 120 acres outside the city of Whitehorse quite a few years ago. He attempted to subdivide that property into ten acre parcels. He was not given that authority by the Government of the day; so, he found ten or twelve people who wanted to buy ten acre parcels. They formed a corporation, called it the Yukon Land Development Corporation or whatever they wanted to call it at that time, and each bought a share in that corporation and the share cost them the value of the land.

They then got title through the corporation for the total 120 acre parcel. They all owned a percentage of that corporation that was the exact price that they had paid for the land. They then built homes and developed the land and turned them into family assets because they developed them as family homes. Upon the dissolution of any of those marriages, the assets of that chunk of property that they owned, that ten acres which represented a percentage of the shares of the Yukon Land Development Corporation, then were a family asset because those shares, in actuality, were the family home.

Mr. Penikett: Thank you, Mr. Chairman. I would be interested to know if that person is now working for the Yukon Government and who was their lawyer.

Mr. Byblow: I think, Mr. Chairman, it might be most appropriate in this Clause for the Minister to take some time and articulate his logic behind the non-inclusion of the business assets because that is really what we are talking about in this whole "family asset" definition, if for no other reason than the benefit of the people whose petition I represented and the rest of the people in the Territory who feel the same way. Why is not this broader to include that?

Hon. Mr. Graham: I do not think I understand the first part. To include what?

Mr. Byblow: To rephrase: the Minister has indicated judicial discretion to be the guiding principle for division of assets beyond those strictly identified as family. As has been pointed out repeatedly in the debates that have gone on, the onus of proof beyond the 50/50 of the family asset is on the person who has less than that. I am simply asking the Minister to articulate why he has not created that to be a mandatory thing as opposed to the will of the court and come what may.

Hon. Mr. Graham: Mr. Chairman, I think then we would be getting into the debate that I anticipate on business assets. We made a policy decision that we did not wish to see assets other than family assets divided 50/50 without first using the discretion of the court. That was a policy decision made by us. It is something that I will attempt to explain when we get to that part in the Ordinance.

Hon. Mr. Graham: Perhaps, Mr. Chairman, I should just explain subsection (d). It is property which you transfer to a person with the ability to receive it back for a dollar, much like, I am sure, what some of us have done in the past either for tax purposes or to get out of divorce proceedings or something like that.

Mr. Byblow: I would just enquire of the Minister why that particular wording? From the old Bill there is a change from "the law shall take notice of the facts" to "the law takes insufficient notice of the facts". I am sorry, am I in the wrong section?

Mr. Chairman: We are down at the bottom of page 3, subsection (d) of Clause 5.

Mr. MacKay: Before we clear this Section 5(1). The discussion that the Minister refers to, coming up, is he referring to, when we get to Clause 14 and 15? You see the business assets, as such, are not really mentioned. Are we talking about 15(1) where we are talking about any property?

Hon. Mr. Graham: I think, Mr. Chairman, you would be talking about several points throughout the Ordinance but 15 speaks of assets other than family assets as I believe, do some of the sections under property rights, Clause 7, and thereafter.

Clause 5(1) agreed to

On Clause 6(1)

Hon. Mr. Graham: Mr. Chairman, this is basically a policy section stating that this Government does recognize the fact that the law takes insufficient notice of child care, household management and that when you enter into a marital relationship that there are joint contributions to the total marriage and we have stated here our policy of believing in an equal distribution of family assets as a result of a division or divorce.

Mr. MacKay: I am pleased to see the amendment that came in here, Mr. Chairman, because having read and re-read and re-read this section I was going to believe the Minister's assertion before that I was not capable of understanding this Ordinance; however, having put in the missing word, "insufficient", it suddenly made much more sense.

I do not disagree with this section. I think it is a good statement of policy as far as it goes. We will get into the business assets later.

Perhaps I could clarify where the last line of this section talks about considerations set out in sections 14 and 15. The way I read that, is, that this intangible contribution may be recognized vis-a-vis versus the financial contribution, or in conjunction with the financial contribution, is actually being applied to section 15 which is then talking about business assets. That is the intention of the legislation.

Hon. Mr. Graham: That is correct, Mr. Chairman. We are also saying, in the policy statement, that we do recognize the contribution of a spouse to the family while the other spouse is operating a business.

Mr. Penikett: Mr. Chairman, it is times like these that I wish Mr. O'Donoghue were with us. The spirit may not be willing but I think we need the flesh.

The problem I have with this section is not with anything it says in a substantive part, but really the first part says, "The purpose of this Part is to recognize that the law takes insufficient notice of the facts..." I guess most of us know what we are talking about when we say "the law" but I am worried that some lawyer might read "the law" as being this thing.

I wonder if there should maybe be an adjective in there somewhere. I am not suggesting an amendment, but the Minister might want to through something in there like "existing law" or "past law" or "previous law" or something like that.

Hon. Mr. Graham: That sounds like a reasonable statement Mr. Chairman. I will take that under advisement.

Mr. Byblow: When I was in the wrong section I began to suggest something like that. I was wondering if the section could not simply read: "The purpose of this Part shall take notice of the fact..." or "notice of the following facts shall be..."

Hon. Mr. Graham: Mr. Chairman, probably some Members have noticed that we have changed Clause 6 on Line 2 roughly four times in arriving at the same thing that we started with. There has been a great deal of thought put into this section, at least the wording of the section, and we felt at the time that this was the best wording that we could come up with.

Mr. Fleming: The simple thing that this section is trying to say is that the law may take insufficient notice of the facts here.

A word such as "may" in there would probably clarify the situation. The purpose of this part is to recognize the law may take insufficient notice of the facts.

Mr. Byblow: I just hope that this section is not the case of where "it does not mean what it says", Mr. Chairman.

Mr. MacKay: Since the Minister has agreed to take this back and look at it, I can throw in another thought and it has to do with the last paragraph. It says, "rectify this deficiency by entitling each

spouse to an equal division of family assets upon marriage breakdown, subject to the equitable considerations set out in sections 14 and 15".

By just specifying the equal division of family assets, and then drawing in section 15 later on, I am not just sure what the effect of that is.

Let me try to give a concrete example. Say a couple had a house worth \$50,000 and a business worth \$100,000 and other family assets worth \$25,000. The law would initially say that 50 per cent of this \$75,000 would be split 50/50. Under this section, it seems to me that if the wife were able to prove that by her contributions to the household management, she enabled her spouse to create this \$100,000 asset, this section would then allow the judge to make a different division of family assets to compensate for the fact that there is another asset excluded. Is that the way that it is supposed to read? In other words, he could give all of the family assets then to the spouse without the business and leave the other spouse with just the business.

Hon. Mr. Graham: Mr. Chairman, I think that you have just hit upon a very important point and I think that this will be brought out as we go along further. In essence, what you are saying is true. When one spouse applies to the court for a division of business assets, because they have already split the family assets and decided that they would like to go to court, or one spouse decides that he or she would like to go to court to get a share of his wife's business as well, then that throws open the door for all of the assets to be considered by the judge. If the judge, in his opinion, feels that the business would not be able to survive if it were split down the middle, then he may give a comparable amount of money in family assets to the spouse who did not own the business.

Mr. MacKay: I understand that. I am just wondering about the converse. Does this section give the judge the right to split some of the business assets directly to the wife, or because of the statement here that we are just talking about family assets that we are really only talking about the redistribution or re-evaluation of how much of the family assets she or he gets?

Hon. Mr. Graham: Mr. Chairman, the underlying principle is that both business and family assets would be split 50/50. That is the underlying principle. How they are split, we leave up to the judge because he must consider each individual business and family situation on its own merits.

We are not saying that every business has to be split 50/50 and every home or family asset has to be split 50/50. We are saying you must consider the whole family asset and thereby allow the judge to make a decision whereby not only the business continues, because I think that is primarily in all of our minds if the business is the sole means of support, so, we are allowing the judge to make his own decision.

I think that is the underlining principle in the Bill, as far as division of business assets goes and I think it is very important.

Mr. Penikett: Mr. Chairman, I am glad this question was raised by Mr. MacKay, because I think it is an important one.

I have always been nervous of the notion that some people seem to have that somehow a business has to end just simply because it is split. But, of course, I wondered and if somebody could answer the question, I do not suppose that a spouse who was not a chartered accountant could be a partner in a chartered accountants' firm or a spouse who was not a doctor become a partner in a medical practice or a partner in a law firm.

So, presumably it is absolutely necessary that if you have the judge to have the power to have to attach the family assets.

Hon. Mr. Graham: Yes, Mr. Chairman, that is right.

Clause 6 stood over

On Clause 7(1)

Hon. Mr. Graham: Mr. Chairman, this just states that when the breakdown occurs, each spouse is entitled to their equal share of the family assets, no matter whose name they are in.

In other words, if the home is in the name of the wife and all the vehicles are in the name of the husband, each spouse is entitled to an equal division of each family asset, no matter whose name it is in.

Clause 7(1) agreed to

On Clause 7(2)

Mr. MacKay: I read it last night and I am just trying to find it again, but it does say, either in the next subsection or further on, that none of this actually happens until there has been a separation. You do not split up the assets based on just an application by one of the spouses to have this Ordinance apply.

Hon. Mr. Graham: Mr. Chairman, in some cases, yes, you may

apply to a judge for a division of family assets without a divorce taking place.

In some cases, this will be necessary. We are talking about not the normal, run-of-the-mill person like myself and the Honourable Member from Whitehorse West, we are talking more of people who have some money.

Where it is important to the banks or financial institutions to find out what would happen if two people were divorced, this couple may, in fact, — we will eventually get down to that, it is in 7(3), that is right — apply to the courts for a division of family assets and the court will give it to them.

Section 7(2) basically says that the marriage breakdown shall be deemed to occur upon the first order of divorce from the court, which is the decree nisi, the pronouncement of a declaration that the marriage is a nullity, which could be a number of things, a JP married people and he was not a JP, a fake clergyman married them and this type of thing and a separation without reasonable prospect of resumption of cohabitation and the making of an application.

So, in other words, even if they are living together but have decided to get a divorce and they apply for a separation, that the court will, in fact, look at it.

Mr. Fleming: Mr. Chairman, this probably a hypothetical question, in a sense anyway, but I am looking at a couple who have a business or a corporation which really cannot be considered a family asset in any way, shape or form and yet, both should have some rights in it, and that corporation or company is doing fine and everything is wonderful; however, upon separation, at that time, they were indebted and their family assets were indebted to the bank for mortgages so badly that they did not have any family assets, in that sense.

I am just wondering, in this case, the court, I presume, would decide on possibly a separation of the business assets?

Hon. Mr. Graham: That is true, Mr. Chairman. In fact, that is one of the reasons why 7(3) is there, because I can see situations arising where a couple, or a husband, owns a relatively large business, both spouses have a certain number of assets and, if the marriage is on the rocks and the husband applies for a great deal of money from a bank to expand his business, I could feature the bank being put in a position where they say, well, what happens if the marriage, which is currently on the rocks, dissolves? What position is that going to put us in, with reference to your business or to your home?

Therefore, they will ask the couples to apply to the court for a separation and yes, if either one of the spouses apply to the court for a division of business assets, as well as family assets, the court would divide them, but they would divide them in conjunction, both the family and business.

Clause 7(2) agreed to

On Clause 7(3)

Mr. MacKay: I am curious as to the purpose of this section where it seems to say that this is the provision where you can request an order before a breakdown of marriage, however, that order would not affect the rights of the spouses upon a breakdown of marriage.

So, is it not saying that you can get this order, but it does not really mean anything until your actual marriage breaks up?

Hon. Mr. Graham: In essence it says that what we are trying to do is allow for the case where they apply for a division of family assets and business assets and the marriage does not break down. They have a reconciliation and they do not get divorced for ten years and during that ten year period they expand and gain a whole lot more assets. That is the part that we are trying to allow for.

If they applied for a division of family assets, separated, and then got a divorce three months hence, I am sure that the division would be the same, yes.

Clause 7(3) agreed to

On Clause 8(1)

Hon. Mr. Graham: Mr. Chairman, this section 8 is based primarily on a case that Mr. MacKay brought up at an earlier point and that is the Murdoch case. In this case the wife had worked with her husband for a great number of years on this farm. The farm was in her husband's name and she was not granted any part of the farm upon her divorce. She then applied for wages for working the number of years that she had worked on the farm and, I believe, that this also was turned down in the lower courts in Alberta.

This section, in essence, says that the contribution of one spouse of work or staying at home and looking after the children while the husband goes out and runs the business, she is entitled to be paid for that work done in her husband's business.

So, in other words, if she works for her husband for two years, does not take any money because they are trying to get the business done up, she then goes home and lives at home and at a later point in time and day they become divorced, then she may ask the court to pay her for the years that she did work in her husband's business and, in fact, she will be paid for it.

Mr. Penikett: Mr. Chairman, I think it is important since the Minister has taken poor Mrs. Murdoch's name in vain, that it was the Supreme Court of Canada that published the decision in that case and, in fact, it was as a result of that decision that just about every jurisdiction in Canada, all the provinces started looking at this matter, at least the law reform commissions, and that is how most of the provinces in Canada got into this legislation.

I think it is important what the Minister says about the Murdoch case because it has some bearing on what we are doing.

I noticed in the documents of the case that said that she applied for a half interest in the property and the cattle and the other assets owned by Mr. Murdoch, but the court ruled that she had made no financial contributions. One of the things that came up in the evidence was that Mr. Murdoch was away, on average, for five months every year on stock association business and in his absence, Mrs. Murdoch made significant contributions by way of haying, raking, swathing, mowing, driving the truck-tractor, de-horning, vaccinating and branding cattle, in addition to the usual chores performed by the housewife.

But the decision in the court case, and I think it is important to mention that when people are making reference to the wonderful things courts can do, did decide that she was not entitled to half the farm in that case. I think it is important that it was that stunning decision, in fact, that ironically precipitated this whole business of reforming the matrimonial law.

Mr. MacKay: I am interested in this word "work", in the first sentence, "The contribution by one spouse of work..."

I presume it is meant to be narrowly construed that that work is directly contributing—I think you are thinking, perhaps, of a man with a highway lodge, where she does the cooking.

But what about where she is just a wage earner somewhere else and, out of the money that goes into the joint bank account, they invested in diamonds or gold or a more popular thing, that would be covered in this section then.

Hon. Mr. Graham: It says "...work, money, or money's worth..." I think in the Murdoch case, they at some point expanded their land holdings as a result of the work that both had done, and that would be considered money's worth, as a contribution to the business.

Clause 8(1) agreed to

On Clause 8(2)

Mr. MacKay: I think this section seems to be implementing the other case I mentioned, that was the Rathwell case, the presumption of a resulting trust became the issue.

So, I do not have any quarrel with that and I think it will probably lead to quite a wide interpretation of what may be included in the assets for division.

Hon. Mr. Graham: Mr. Chairman, in most cases, a resulting trust is between a child and their parent. In this case, it is between the husband and wife.

I am just going to get myself into trouble if I try and give you a legal definition. I will let that one go.

It is sufficient to say that if we did not add in (a) and (b), to 8(2), there is some fear that the wife would lose both of those rights.

What I am trying to say is that by putting subsection (1) in, there is at least some doubt in our minds. This is more or less to ensure that the wife does not lose both the rights inferred upon her in (a) and (b).

Mr. MacKay: Just let me rephrase that for the Minister to see if he is with me. Where you presently have a bank account in joint names, or property in joint names, you fear that the law, up until Section 8, may, in fact, ignore that and therefore, if these were not family assets, they could be excluded, even though the one spouse had had the joint authority over it.

So, this is really a protective clause to make sure that the Ordinance does not remove any existing rights. But do you not think, in fact, it implies even more that by applying the rule of presumption of a resulting trust, do you not think that that can be construed then to go a lot further than what I understand the Ordinance is trying to do?

It seems to me it might then pull in all these business assets. I am not complaining, but they might, in fact, pull in all these business assets by virtue of this section.

Hon. Mr. Graham: No, Mr. Chairman. We had a great deal of discussion between the Legal Advisor and myself on this section. As I understand it, the fact that we have in Subsection 1 determined that when a wife works for the business, and after that the people become divorced, the wife will be considered unmarried for the time that she worked for the business.

Due to that fact, we had to put in subsection 2, to protect her rights as a married person, if she was considered an unmarried person for the time she worked for the business and then, at some period after that, she did not work for the business, but stayed home and raised the kids.

Clause 8(2) agreed to

On Clause 8(3)

Clause 8(3) agreed to

Mr. Byblow: Before we clear the entire section, I have just a bit of difficulty with mainly 8(1). The Minister will correct me if I am assuming wrong, that a court is making this judgment, in 8(1), the determination and the assessment of the person who made the contribution outside the family asset, in the settlement. Is the court doing that?

Hon. Mr. Graham: That is correct, Mr. Chairman.

Mr. Byblow: It appears, from my understanding that a court could then award to the person being grieved, if you will, a share in that business as well as compensation for work, or in lieu of. Would that be correct?

Hon. Mr. Graham: Mr. Chairman, I asked this same question. As I understand it, under this Clause 8, if a wife worked in her husband's business two years, then the business got on its feet and was running profitably, she then went home and for the next two years had a couple of kids, looked after the children, generally ran the affairs of her husband at home, she would then be in a position, if they were divorced after that time, to, under (1), claim for the time that she had worked in that business. Under (2), she would then be in a position to request a portion of the business for an indirect contribution to that business.

There is only one kicker. That is that the Statute of Limitations places a six year limit on the time following the period she last worked. In other words, if she worked for the business seven years ago, she would not be in a position to make use of Clause 8(1). Any business assets that she wanted she would have to pursue under the division of business assets.

Clause 8(3) agreed to

On Clause 9(1)

Hon. Mr. Graham: Mr. Chairman, this section merely states that if the house is in the husband's name or in the wife's name, and it is awarded to the other spouse as part of the division of family assets, then the bank mortgage is still valid even though the spouse whose name the house is not in now owns the house.

Clause 9(1) agreed to

On Clause 9(2)

Hon. Mr. Graham: Mr. Chairman, maybe I can go through this and explain them in my own simple-minded manner.

Subsection (a) is simply to protect where contracts with banks sometimes state that you may not sell the house without the bank's permission when you have a mortgage on that house. This is to say that if the court orders that the ownership of that house shall be transferred, then the provisions under the contract then do not apply.

Subsection (b) states that if you get the house you also are in a position to exercise any rights of the owning spouse in relation to getting and receiving tax notices and other information such as that.

Subsection (c) is upon release of the charge; if the mortgage is paid off you then receive title to the property.

Subsection (d) - if in a case where the wife is given the home and she is making payments and is in charge of the house, the fact that she is making the payments is considered a discharge of the husband's obligation to make payments on that house.

Mr. MacKay: Could I have just a minute to re-read (d) again?

Could I hear the explanation of this?

Mr. Chairman: On Subsection (d) would you give your explanation again please?

Hon. Mr. Graham: "The performance by the holder of the charge of his obligations under the charge..." So in other words, if the mortgage is in the husband's name, and the wife has received the house and is making payments on that house, the husband's credit cannot be harmed by the fact that the wife did not make payments,

or something to that effect. If she makes payments, that is considered a discharge of the husband's responsibility to make payments on that house.

Mr. Byblow: Is the Minister saying that the mortgage moves with the property?

Hon. Mr. Graham: The mortgage goes with the recipient of the property, unless the court so otherwise orders.

Mr. MacKay: Can you tell me in (d) then, who is the holder of the charge? I read that as the bank, but when I insert the word "bank" in there and reread it, it does not make as much sense. "The performance by the bank of its obligations under the charge, in a manner benefitting the recipient spouse is a sufficient discharge of its obligations under the charge to the owning spouse." If that is the case, I cannot see how the previous argument is holding up.

Hon. Mr. Graham: He was right, Mr. Chairman. The performance by the holder of the charge is the bank. So it is the bank's obligation, in a manner benefitting the recipient spouse, which would mean, in this case, the wife, if she gained control of the house.

Mr. MacKay: Just to get it clear in my mind, that means that the recipient spouse is entitled to receive the same obligations from the bank. In other words, the bank cannot call the loan because it is switched, and the bank has to continue the same rate of interest, and the bank has to send notices, and pay taxes. All right.

Clause 9(2) agreed to

On Clause 10(1)

Mr. Byblow: Can the Minister can interpret the legal jargon of "assignable" or "subject to attachment," in practical terms?

Hon. Mr. Graham: One spouse cannot mortgage the house, or sell the house, while a divorce proceeding is in process without the consent of the other spouse. We get into this in Part 2 where we talk about the family home.

Mr. Fleming: Yes, Mr. Chairman, now that the Honourable Minister has stood up and said that, I think this is where my question was that I have been meaning to ask.

I was just wondering, I was presuming, though, that it would be a court decision as to what would happen if, for instance, a couple were married and the name on most of the family assets, and say they did not have a business, just family assets, were in that person's name who walked out the door, went downtown, sold the works completely, in Vancouver or somewhere, came back into the Yukon and then said now we have split up.

Is there a time area in between there? What happens? Would it be a court decision to say you owe so and so something?

Hon. Mr. Graham: Yes, Mr. Chairman, we get to that later on, but, in effect, yes; that will no longer be possible under this Ordinance, if this Ordinance passes.

Clause 10(1) agreed to

Mr. Chairman: I think before we proceed with Clause 11, we should take a short recess.

Recess

Mr. Chairman: I call Committee of the Whole to order.

On Clause 11(1)

Clause 11(1) agreed to

On Clause 11(2)

Mr. Penikett: I would just like to ask the Minister for a brief explanation of the policy or the philosophy behind this section.

What I would like to get an understanding from the Minister is, the reason, in policy terms, for the government, in this Legislation, requiring the economically weak partner in the marriage to have to go to court for an application for a share of the property, as opposed to the economically stronger party having to make a case of more than 50 per cent.

Hon. Mr. Graham: Mr. Chairman, I do not think that is a fair statement.

The policy that this Government has put forth is that family assets should be divided on a 50/50 basis. If one spouse feels that they should receive more than 50 per cent, they may apply to the courts for that additional family asset, or the additional value in family assets.

By the same token, if there are business assets involved in the marriage, then the spouse who is not a part of the business may apply to the court for a division of those business assets.

The Member opposite talks of economically weak as opposed to economically strong and I do not think that is a fair statement, because I know of several businesses—I was in one myself, at one time, that was anything but strong, so I cannot really agree with his

statement.

Mr. Penikett: Mr. Chairman, obviously for reasons of kindness, I was not about to reflect upon the Member's ability as a businessman and therefore his fitness to serve in the Cabinet but I do want to pursue this matter just briefly.

Is the Minister then saying, well, will the Minister admit at least if, given the situation he has just described, that most often we will have applications to the court in cases where we have a spouse who does not own the business or does not have a share in the business, making application for a share of the business upon dissolution of the marriage.

In other words, the non-business owning spouse will be the one who has to go to the court, the one who does not have the economic means to hire competent lawyers to go court.

I am asking the Minister if he can confirm that, because it does seem to me that, in the cases, the examples we were discussing previously, that if the spouse has been in the home, she has been looking after children, she does not have an income, the only means she will have to pay for the lawyer to make such an application, may be by obtaining a mortgage on her half of the family home, which may be the only asset in her name, upon dissolution of the marriage.

Hon. Mr. Graham: Mr. Chairman, I find it difficult to answer either yes or no, because what I think Mr. Penikett is missing is the fact that every situation is different and because of the fact that we did not want to make one law that should encompass all business, then we have opted for this system.

It is very simply a policy decision that we have taken, that the division of business assets will be determined by a judge unless the partners can arrive at a solution acceptable to both of them out of court.

Mr. Penikett: Mr. Chairman, I understand that, I understand that all marriages are different. I understand that there is as much variety in the human community, perhaps as our Members. There is probably at least half as much variety in the kinds of marriage as there are people married.

Still, we do have a situation, what we are dealing with, basically, is a law which attempts to rectify a fundamental and historic inequity between property owning spouses and the non-property owning spouse, usually an income-earning, asset-owning husband and a non-income earning, non-asset owning wife, a fundamental historical inequity between men and women but when it comes to going to the court, we have a strange principle, it seems to me, to get a share of business assets, to make an application for that, it is the historically weak member of the marriage who must go to the expense of making the application to the court for a share in those assets. It is not the strong partner, the one who has the assets, who has the money, who must incur the expense of hiring a lawyer to argue for a share of more than 50 per cent.

Hon. Mr. Lang: Mr. Chairman, I just thought I would enter the debate here. I have been kind of quiet here for a while. I cannot agree with the Honourable Member that the analysis of the situation as he puts it sounds very good in political terms, but I think that you have to get down to realistic terms as my colleague just said, and that is the fact that each marriage is different. You have accepted that principle. The point is that it is going to be up to the judiciary to decide.

As I used the example the other day, if you have \$200,000 worth of liabilities and some Members are saying 50/50 split. Well, we will give \$100,000 both ways and the responsibility and the accountability goes along with it.

Mr. Chairman, from my perspective this is the proper route to go. I think it is fair to say that with the enunciation of the fact that in legislation that these are the terms or the principles that will be taken into account for the judge to arrive at a decision, I think that with that, we may well find that as time goes on these things will be resolved out of court because people can well look and say these are the things that are happening. These are the circumstances. Let us just make a settlement outside of court. Let us not bother going.

I think first of all that the Member is making a mistake inferring automatically that everybody is going to court. I do not think even now that is happening in many cases. I think it will even become less prevalent as time goes on with this legislation once it is in place.

Mr. Penikett: Mr. Chairman, I always enjoy the interventions of the Honourable Minister for Municipal Affairs, and I want to say that he is always right. I mean right not as opposed to wrong, but right as opposed to left.

I would recommend to him since I know that he is a busy man and has not had a chance to read this, but the debate in Manitoba, which

I know the Minister has read, on this kind of law where they dealt with the question of business debts as opposed to the assets and the liabilities of the businesses, broke businesses or bad businesses.

I am sure that the Minister would not want me to explain it all to him now because I am sure that it would take me much longer than it would take him to read the debate. I would recommend it to him. He would find it amusing. I know he appreciates the reading material that I have given him on other occasions and I know that he would want to read that.

I want to say also, Mr. Chairman, that it is my fondest hope that most of these settlements will be reached out of court. I think we all agree on that, and I do not want the Minister of Justice to feel too sensitive, because I do think that it is getting to be quite a good piece of legislation.

I am just trying to help him out by pointing out to him, as I know he would want me to, the small flaw in the logical purity that might otherwise exist in the Bill. We are talking about the principle of equity, equality. We are talking about, in principle, rectifying an historic inequity. If one is going to be consistent in doing that, it seems to me the onus of proof in every situation of doubt ought to be on the strong party. The onus of proof, the expense of proof, and the, if you like, the burden of proof.

In this particular one, that is not the case, and I am not going to propose an amendment, because I am sure we would just be wasting time having a vote on it. I would like the Minister to think about it, and discuss it with some of the more intelligent members of his caucus, and perhaps if they could reach an agreement, then they could talk to the rest of the caucus, and perhaps there might be time to reconsider the Bill in this small area.

Hon. Mr. Graham: Mr. Chairman, we have discussed this several times within our caucus, and I have discussed it also with learned people in the Province of Ontario.

It has been their experience in Ontario that the applying of judicial discretion to the division of business assets has, in many cases, worked to the advantage of, as Mr. Penikett puts it, the weaker partner, because in many cases the judges have gone so far as to give the majority of the business assets to the wife, because of the fact that, in the judges' opinion, the husband had unreasonably impoverished the home assets. He had not built up any family assets, he had put everything into the business.

So, in some of these judgements that have taken place, and I think there were four or five judgements in particular that were quoted to me, the judge had given 60 to 75 percent of the business assets to the wife, because, in his opinion, that should have been the amount due to her under the family assets and the division of business assets system.

So, Mr. Chairman, I think this goes to show that the system does work. Any way you look at it, both of them are going to have to get a lawyer.

Speaking of the burden of proof, we have set down guidelines in this legislation stipulating that the indirect contributions of a wife living at home shall be recognized. Therefore, if a wife can show that she has stayed at home, looked after the children, and kept the house clean, if that means proof to Mr. Penikett, then, yes, I guess she does have to, the burden of proof is upon her. But we have set down guidelines that the judge should follow in making any decisions upon division of business assets. I think that those guidelines have been disregarded by Mr. Penikett and I think that is really unfair.

Mr. Penikett: Mr. Chairman, I am too nice a person to comment upon the strength of an argument which says, in effect, that judges, as a rule, tend to be more fair than Tory governments. Therefore, even though this legislation happens to be weak in this area, you should be looking at what the judges that the Liberal government have appointed over the previous years have done, if you want to see how well these kinds of laws work.

Frankly, Mr. Chairman, I would be a little embarrassed at making that kind of argument, and the reason I am expressing my concern is that we may very soon have a flood of Tory judges coming onto the Bench, because, you may have heard, there is a new Government in Ottawa, and there has been an historic tendency in this country to appoint judges of similar political persuasion to the Party in power.

I seem to recall, in the cases of a couple of gentlemen named Kleech and Berger, there was an experiment made by adopting people from another Party, but I think neither the Government Party nor the Conservatives seemed to like those people very much, or their choices, or some of their decisions.

I seem to have been told once by a very prominent Liberal that there would not be any more of them, over his dead body.

Mr. Chairman: Order, please.

Mr. Penikett: Mr. Chairman, I just want to make the point that I think we are doing something in this Bill here. In terms of this legislation, we are trying to do exactly what the Minister of Justice says, avoid the necessity to go to the court. I just finally make the point that I think, from my point of view, it ought to be the stronger partner whom the burden of proof is on, not the weaker.

Hon. Mr. Lang: Mr. Chairman, I just want to pursue this a little further. I would like to hear the definition of the stronger partner. I mean, the Honourable Member talks in all these platitudes, but when you start talking about law, are you inferring that in anyone's marriage here, that one is stronger than the other, or something? I thought we were all in this thing together.

Mr. Penikett: I know the Minister was busy reading my speech from yesterday when I made the explanation earlier, but it had reference to the economic strength of the partners and possession of their relative assets.

I do not want to take the Minister of Justice's time in this Bill, so, perhaps if the Minister of Municipal Affairs wants more education on this thing, I would be prepared to give it to him after we adjourn. Mr. Chairman.

Mr. Tracey: Mr. Chairman, I would like to interject a little bit here, too. I think the Member opposite usually tries to pick the worst possible situation and imply that this worst possible situation applies all the time. I can point out quite a few different times when the person that is in business is actually less well off than his partner would be, in a situation such as this. He might end up with a business that is in the red so far that he is just barely able to survive. Yet, he gets only half of the family assets and his wife gets the other half of the family assets, and he is still stuck with all the debts of the business.

The Member also says that this business is also impoverishing the family assets.

It may be, when it first starts out. Maybe he has taken money that would go to family assets to develop a business, but if the marriage breaks down right away, it is very unlikely that he is going to have any more in the business than she has in the family assets, or him either. But, perhaps after a few years, the family assets that would accrue to that wife, her half of the family assets, would be ten times as much as if he had just stayed working for wages. I think we have to take the whole thing into account, and not just take one little particular aspect of it, as the Member across the floor tries to do.

Mr. Penikett: Mr. Chairman, I know that the Member from Tatchun wants to go out trick-or-treating very shortly, so I will not take a lot of time replying to him now. I should warn Mr. Chairman that when it comes to Third Reading, my Third Reading speech, which had been originally in reply to the Member's outrageous remarks in the Second Reading, will now be twice as long as I had originally intended it to be.

Mr. MacKay: Now that my friend to the left has tired himself out, I think it is time for some fresh troops to come to the rescue. I think what I am gathering from this debate, which is quite informative, is the sense that we are trying to legislate a very human situation. We are trying to legislate it as closely as we can, to achieve equity, and that each Member, depending upon his biases or his background, or whether he is in a successful business, or an unsuccessful business, or has been through a divorce, or has not been through a divorce, cannot help but allow his personal biases to come through here.

As a result of that, we can argue for hours, because each of you can produce a different situation. Really, what I feel is that — perhaps this is a little premature, because we are not quite to that section yet, but when we come to the section about the judicial discretion, perhaps a lot of our argument could centre in there as to whether or not there has been enough judicial discretion given in these sections to allow for the multitude of different, and quite valid, circumstances that have been suggested by both sides of the House.

I feel that it is very difficult, because each of you can cite circumstances where it would be unfair, given either side's point of view. If we both recognize that each side has slight differences, and can cite cases where it would work a hardship, or be unfair, that what we have to do is sort out the broad law, and then allow that judicial discretion to work. When we get into that section, I have a couple of suggestions.

Clause 11(2) agreed to

On Clause 12(1)

Mr. Fleming: Yes, Mr. Chairman, this will be a question on what we are doing, not a tirade against the opponents across the floor.

I take Section (d) to mean that if, for instance, the family assets were such as could not be called family assets, but family liabilities, which I would consider there will be many in the Territory, and all over Canada, when you consider the mortgages and how people live today, with credit cards. I take it that that section does cover that, and if, for instance, a couple split up tomorrow, and there was \$70,000 owing on a \$20,000 home, which is a very logical thing nowadays, too, when the mortgage is worth more than the home actually is, when you want to sell it, that, in this case, the court would probably split up the liabilities between the couple?

Hon. Mr. Graham: Mr. Chairman, this Section applies only when one of the spouses does apply to the court for a determination of family assets.

To answer the Member's question, any time one is talking about family assets, you are talking about the net assets. The liabilities must also be split, and I am sure that as we go along in this Ordinance, you will see that we do protect the right of mortgage companies, banks, loan and trust companies. But in the case where a mortgage company has lent more money to a mortgagee than they have assets to back up, I am afraid there is not a lot we can do about that.

Yes, in all cases in this Ordinance we are talking about net assets, so all liabilities must, of course, be taken into account.

Mr. Fleming: I realize that the banks, mortgage companies, and others who lend money will be protected, that is no problem, and their mortgage is due and payable from the person who has the mortgage, which may be one of the couple, either one.

What I am interested in is when this does become due and payable, and the marriage is split up, under this Ordinance, will the liabilities be split between them, or will the person who has his name on the sheet of paper be liable for all payments?

Hon. Mr. Graham: The liabilities would either be split or assigned as the court saw fit. I cannot imagine a court assigning a mortgage payment of one thousand dollars, or something to that effect to a wife who had four children and no visible means of support, no job, or anything like that. You have to look at the circumstances, is what I am saying, but, yes, the liabilities can be assigned by the court as well.

Mr. MacKay: Just to follow up on that point, would this not give rise to the question of whether or not the person who is lending the money wants to continue lending the money to somebody completely different from whom they lent the money to in the first place?

In other words, if there is a right in the mortgage to call it, can this Ordinance supersede that right?

Hon. Mr. Graham: Yes, it does. We went through that back in Section 7, a court order would supersede the mortgagee, so if the mortgage had a section that said this house cannot be sold unless the mortgage company does agree, the court may supersede that specific section.

Mr. MacKay: Looking at all the possible situations, if you transfer a house with a mortgage, but there is a personal guarantee element in the mortgage upon the spouse who previously had signed the mortgage, he is still liable for that personal guarantee. Am I not correct?

Hon. Mr. Graham: Mr. Chairman, that would have to be a decision of the court, if it was applied for.

If they applied to the court, and the court made some ruling, that ruling would apply. If they did not apply to the court, the personal guarantee would apply, of course, no matter who was paying.

Mr. MacKay: So, looking at it from my friendly banker's point of view, he may wind up with a significantly diminished security, as a result of this if, in fact, he was relying on the personal guarantee, which is then struck off by the judge. It seems to me that the banker might have some right, at that point, to say I do not want to lend that money any more. I want it back.

Hon. Mr. Graham: Mr. Chairman, I think in most cases we are talking about a family home and, in most cases, the family home is adequate security for a mortgage of any type. I am sure that a judge is not going to make some kind of a decision in any court that is going to result in the mortgage payments not being made. So, I do not really share the Member's concern, at this time, because, by the same token, a bank, before it lends money, may ask the couple to apply to see how the assets would be divided upon a divorce, and they have that right.

If a bank was lending a great deal of money, they have the right to ask both spouses to apply to the court to determine what the breakdown of assets would be upon dissolution of their marriage. So they are covered.

Mr. MacKay: I would not want to be seen worrying about the banks losing any money at this particular time in history.

Clause 12(1) agreed to

On Clause 12(2)

Clause 12(2) agreed to

On Clause 13(1)

Mr. MacKay: What is the difference between a legal or an equitable interest?

Hon. Mr. Graham: "No legal interest" would be no interest under law, like the title is registered in only one spouse's name. "Inequitable" would mean, I would imagine, that they do not have any money invested in that particular asset. That one of the spouses only had equity interest such as the fact that my wife purchases her own car, but if it is used by both of us it is a family asset, I do not have an equitable interest in that car because she bought it, but I have a right to it as a family asset.

I am looking after myself.

Clause 13(1) agreed to

On Clause 13(2)

Hon. Mr. Graham: Mr. Chairman, this section, in total, sets out what the court may do and I direct the Opposition's attention to (g) because there was a question raised earlier: what would happen if a husband ran out, sold everything that was in his name and then came home and said he was getting a divorce.

Under this section 13(2)(g) it would, in fact, be looked after.

Mr. MacKay: Maybe this is a section to get into a slightly different area. We were dealing with the division of property at the time of a marriage breakdown.

Often that is not the most significant part of a financial settlement at a marriage breakdown, that we may be more concerned with the support for the children and the ability of one parent to support the other children and so forth.

I notice that, under this section (d), just to give it a reference to some relevance, that we are talking of the transfer of property to or in trust of a child to whom a spouse owes an obligation.

Is this the first Bill in a series of one or two that are going to come forward which is going to tie in this whole process? Because if we just deal with this in isolation, we may very well wind up with situations where a husband is left with half the family assets and maybe even half the business assets, but still having a heavy obligation to support two households at that point, his own and his former wife with the children.

Will the next Ordinance, if there is going to be one, somehow dovetail into this so that the judge will consider both of these concerns at the same time?

Hon. Mr. Graham: Yes, Mr. Chairman. This is only the first of what we hope will be a total family law package.

It is just that we found, when we got into the support law, family law, it was much, much more complex and needed a great deal more time than this one. Consequently, we are doing a whole lot more research and, hopefully, we will be able to release some kind of a package to the public in the spring.

Mr. Byblow: I would assume from Section 13(2), that these are the items of judicial discretion that we are referring to. Am I correct there?

Hon. Mr. Graham: No, Mr. Chairman. This deals with family assets; the court may order the transfer of title or the sale of property, division of spouse, sale of property and that type of thing. In this, we are dealing basically with family assets.

The division of business assets, under judicial discretion, comes later in the Bill.

Mr. Byblow: That was going to be my follow-up question. Could this section apply then to assets other than family? At one point you said "only family," and then you said, "basically, family," and, say, applying Section 8(1), and so on, could the court order a distribution of property under these guidelines, for property other than that strictly identified as family?

Hon. Mr. Graham: Mr. Chairman, yes, I think the Member opposite has a point. Section 13(2)(h) deals with the Murdoch case, where the wife, in fact, did work for her husband on the farm, as part of their business, and received no compensation for it. This, in fact, refers to that, so she can get either paid for the contribution that she made, or, the payment of compensation appropriate to the contribution. Yes, she could get a chunk of the business as payment for her years of labour.

Mr. Byblow: The Minister makes quite frequent reference to the Murdoch case. Why does he not use the Rathwell case, as well?

Hon. Mr. Graham: Because the Rathwell's were not married.

Mr. Fleming: Mr. Chairman, is the Minister also saying that now they could delve more into the business interest, could she now also be stuck for, say, half of a business liability?

Hon. Mr. Graham: Mr. Chairman, one thing that has to be understood is that wherever we are talking about assets, we mean net assets. This is, again, one of the reasons that we left business assets to the discretion of the court, because, technically, if you were going to split the business 50/50 then you would have to assume some of the liabilities, if you assume some of the assets that produce the revenue for the business.

So, we felt that, without knowing each individual case history, we were in no position to determine exactly what the division should be. We leave it up to the judge.

Mr. Byblow: Perhaps the Minister can correct the flaw in my logic, but why could not this Section be designed, rather than, "the Court may order" these things, that "the Court shall order them where applicable?" Then you would get rid of the debate we are having.

Hon. Mr. Graham: Not everyone is going to have all of these things. Not everyone is going to have to sell property, so you cannot very well say that the Court shall order the sale of property, if there is no partition of property due. Also, these people may not apply to the court.

I think we are talking semantics here. If people do apply to the courts, the courts may order any of these things. The court does not have to do any of them, but it may do any of them, or all.

Mr. Byblow: I will leave it after this, but it seems a weakness that, in law, they may or may not do it at their own discretion. If we are establishing the law, it would seem to me that it should be a "shall" situation, "where applicable, upon application", if you like.

Clause 13(2) agreed to

On Clause 13(3)

Clause 13(3) agreed to

On Clause 13(4)

Mr. MacKay: I presume this allows the Court to weigh the other factors that I referred to earlier. It is a very general thing, saying that the court can really do what it likes, in all the circumstances considered.

I am concerned about the applicability of this law as it emulates the ability of the spouse to maintain or obtain support thereafter. I am wondering if there is a bridging section somewhere, which I do not recall seeing. I have a vague memory of seeing something like it, but I do not recall a specific section that says that the judge will consider the obligations imposed upon one spouse, by virtue of having support a former spouse and children, in considering what is a fair and equitable breakdown of these assets.

You could have a situation where it would be very fair to split the assets 50/50, but if it means that one of the spouses cannot make the support payments that are required thereafter, then it is not a fair split.

I wonder if there is a bridging section anywhere, or something in reference to that other than this very, very general thing.

Hon. Mr. Graham: Mr. Chairman, this section is just as it says. It does not restrict the generality or the rights of the wife under any other legislation. In other words, this does not limit her to only these things.

If under another Ordinance she is given additional rights, this section does not limit her rights to only these. It does not narrow the scope of the court, in other words. It also allows the court to take into consideration not only the family assets, but also the business assets, if they are also to be considered at the same time. It gives the court the ability to take a wide scope of the total assets, the earning picture, everything.

Mr. MacKay: I would hope that is what it means, but when I read it, it seems to just refer to the powers given to the court under this part. If that is what it really means then we are just talking about the family assets, and perhaps business assets.

Hon. Mr. Graham: No, Mr. Chairman. We are talking about applications to the court. That is what this part is. This Part I refers to applications to the court.

Mr. Penikett: Mr. Chairman, I thought Mr. MacKay was going to raise the problem of the poor person who had gone through a series of marriages. Obviously, what this law takes care of in this kind of a situation, it really means that there is a kind of economic law of diminishing returns, if you had the misfortune or the bad luck to not only go through one marriage, but continue to do that, you are not going to have very much to share by the time you are finished.

Hon. Mr. Lang: Mr. Chairman, you want to make sure that you are number 1 and not number 5.

Mr. MacKay: I am used to reading a different law called the Income Tax Act and whenever the Income Tax Act refers to "this part", it is broken down to Part 1, Part 2, Part 3, Part 4 and so if this is the same construction, Part 1 is "Family Assets".

Hon. Mr. Graham: Mr. Chairman, that is not the way I understand it. This part means Part 1. Perhaps we can settle 13(4).

Mr. MacKay: I do not want to set up a discourse, I just want to find a clause which makes this provision because I think that as I read this clause it does not do that but I am wondering if there is another clause somewhere else, if not, could there be a clause.

Hon. Mr. Graham: No, Mr. Chairman. As far as I am concerned this deals with Part 1, the whole thing.

Clause 13(4) agreed to

Hon. Mr. Graham: Mr. Chairman, I move that you report progress on Bill Number 32 and beg leave to sit again.

Mr. Chairman: It has been moved by Mr. Graham that I report progress on Bill Number 32 and beg leave to sit again.

Motion agreed to

Hon. Mr. Graham: Mr. Chairman, I move that Mr. Speaker do now resume the Chair.

Mr. Chairman: It has been moved by Mr. Graham that Mr. Speaker do now resume the Chair.

Motion agreed to

Mr. Speaker resumes the Chair

Mr. Speaker: I will now call the House to order.

May we have a report from Chairman of Committees?

Mr. Lattin: Mr. Speaker, the Committee of the Whole has considered Bill Number 32, the Matrimonial Property Ordinance and directed me to report progress on same and ask leave to sit again.

Mr. Speaker: You have heard the report of the Chairman of Committees.

Are you agreed?

Some Members: Agreed.

Mr. Speaker: Leave is so granted.

May I have your further pleasure?

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member for Tatchun, that we do now adjourn.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Member from Tatchun, that we do now adjourn.

Motion agreed to

Mr. Speaker: This House now stands adjourned until 1:30 p.m. tomorrow.

The House adjourned at 5:16 o'clock p.m.