



# **Legislative Assembly of Manitoba**

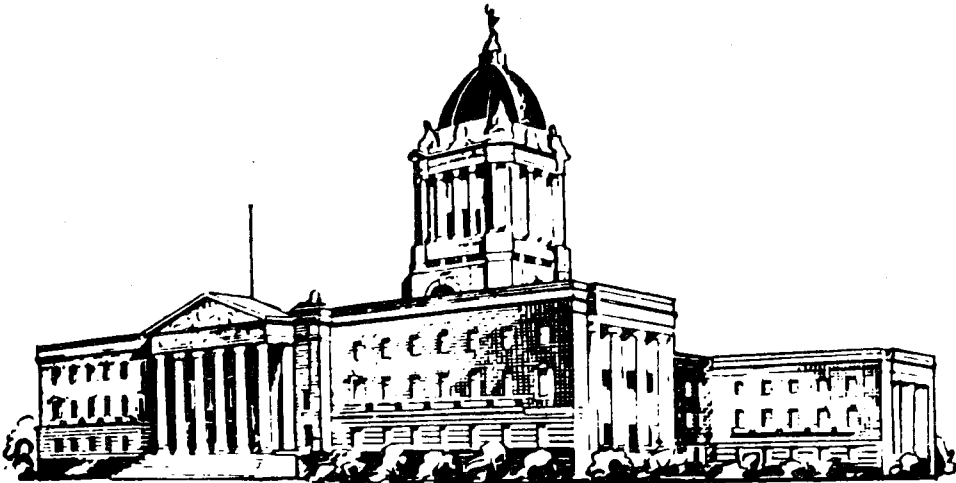
**STANDING COMMITTEE**

**ON**

**LAW AMENDMENTS**

**Chairman**

**Mr. J. Wally McKenzie  
Constituency of Roblin**



**Friday, June 15, 1979 10:00 A.M.**

**Hearing Of The Standing Committee  
On  
Law Amendments  
Friday, June 15, 1979**

Time: 10:00 a.m.

**CHAIRMAN: Mr. J. Wally McKenzie.**

**CHAIRMAN:** We will listen to the briefs that are offered on Bills 27, 37, 39, 42, 54, 59 and

Bill No. 39, Mr. Frank Steele; is he present?  
We will proceed then. Mr. Froese is not here.

**BILL NO. 54, THE MANITOBA DATA SERVICES ACT**

**CHAIRMAN:** Bill No. 54, The Manitoba Data Services Act, Edward J. Kirby. Would you proceed, Mr. Kirby? Bill No. 54.

**EDWARD J. KIRBY:** Thank you. My name is Ed Kirby. I am appearing on behalf of several companies in the data processing industry, including Cybershare Limited, which was purchased from the government about 14 months ago.  
We take objection to . . .

**CHAIRMAN:** You don't have briefs for all of us, eh? You just have your own presentation,

**KIRBY:** Just my own presentation.

**CHAIRMAN:** Fine, thank you, sir, proceed.

**KIRBY:** I can assure you it will be very brief.

**CHAIRMAN:** Thank you, sir.

**KIRBY:** I have a couple of points and I will make them and leave them in your very good hands.

**CHAIRMAN:** Proceed.

**KIRBY:** The objectionable features of the bill are roughly this. The object of the commission, stated in the bill, is to provide and maintain computer and data processing services available to the government and government agencies and government-supported institutions and other persons.

We have certainly no objection to data processing being done by the government for in-house government business. It is when the powers are extended to government-supported institutions and other persons that it infringes upon the private sector's ability and right to do business.

For example, government institutions is also defined in the bill as the Board of a school district or a school division. There are approximately 15 school divisions now served by the private sector, for example, Transcona-Springfield, St. Boniface, Dauphin-Ochre, Pembina, Morris-Macdonald, Intermountain, St. Vital, Lakeshore School District.

The resident administrator of a local government district: The sales force of at least two of these rate organizations are working on computing patterns and programs for two government districts.

The owner or operator of a hospital or personal care home: There are many care homes. Programs have now been developed for 81 private care homes by private organizations. The government

to infringe upon this business.

And the board of a housing authority, Cybershare alone, for example, does the Manitoba Housing and Renewal Programs, and student aids associations. All of these would come under the head of government-supported institutions, as we . . .

Now, that accounts for a good deal of the business that is available to the private sector. The educational services, Comcheq, whom I also represent, do a large percentage of educational institutions in the province. This bill proposes or at least asks for the power to compete with the concerns for the same business and competes, I may say, Sir, on a completely unfair basis, because under Section 13, the price is given as this: "As far as is practical, the cost charged for service shall be the cost to the Commission," so, it will be operated at cost. Further, under 26, notwithstanding any act of the Legislature, the Commission and any land, personal property business of the Commission, is not liable to taxation or to be taxed by any municipality.

So, I don't have to belabour the point, Sir. We have here a proposal to set up a cost, or rather a tax-supported business, which will go out in open competition with businesses already established. One of which, for example, Cybershare, was purchased from this government only 14 months ago for \$1,100,000.00. Now, it's hardly likely that had it not been the avowed intention and stated intention of this government to get out of the private sector, out of private business and confine itself to governmental business it is hardly likely that anyone but the village idiot would have gotten in and paid that kind of money for that business.

And so, I could go on, but I think you have my point. The advertisement, which appeared last Wednesday's Tribune, indicates it's already set up as Manitoba Data Services — rather premature — and advertising for personnel, for sales personnel and operations service personnel. There is no doubt that the salesmen of Manitoba Data Services, under this bill, have the right power to go out and compete in the open marketplace for the business, not only preserve enjoyed by the existing operators, but the potential business, which they all need very badly, because it's a highly competitive business.

The bill even goes on to say — although I don't know why — that with the approval of the Lieutenant-Governor-in-Council, the Commission may enter into an agreement to provide computing and data processing services to a person other than the government, other than a government agency or other than a government supported institution. In other words, the field is wide open for extremely unfair competition, and competition, which as I stated before, was the avowed intention of the government not to enter into it.

Thank you very much, Mr. Chairman. If you have any questions, I'll be glad to answer them.

**MR. CHAIRMAN:** Thank you, thanks. The Honourable Member for Transcona.

**MR. WILSON PARASIUK:** Are you saying that if Manitoba Data Services Corporation is another firm in the whole computing services' field, that that would be a decrease in competition or increase in competition?

**MR. KIRBY:** It would be another competitor, an unfair competitor, because it is a tax-free competitor, also a cost-free competitor. They are pledged under this statute, or proposed statute rather, to offer services at cost. I would ask you to consider the principles behind, rather than just the computer industry itself. The principle is this: That the government is setting up an organization a government-operated organization to go into the private sector, wherein 14 months ago it went out of it.

**MR. WALDING:** Mr. Kirby, I would like to ask you if this bill will enable Manitoba Data Services to do anything that it is not presently doing?

**MR. KIRBY:** I don't know what it is presently doing. I believe that it has physical limitations that it is doing mostly Manitoba Telephone and Hydro work.

**MR. WALDING:** Well to Mr. Kirby, it's my understanding that Manitoba Data Services' is now operating, offering the sale of data capacity to anyone wishing to purchase from it. Do you see anything in this bill that would change that?

**MR. KIRBY:** I don't know the powers of the Manitoba Telephone System to carry on that business. I haven't seen their particular Act. I know this, that under Section 11, the object is to go into the business wide open, no restrictions whatsoever, and supported by the government at the cost to the taxpayer.

**R. WALDING:** Would you explain that last phrase, "at the cost to the taxpayer."

**R. KIRBY:** Yes. The Taxation Charges Section provides that the commission or any land, personal property or business of the commission is not liable to taxation or to be taxed by a municipality. The other institutions and businesses that are presently doing this work, a lot of municipal and hospital work as I've outlined, do pay taxes to municipalities and of course income taxes and business taxes.

**R. WALDING:** Mr. Kirby, did you read Section 26(2)?

**R. KIRBY:** "The commission as an operating expense shall make annually to any municipality which land or personal property owned by the commission is situated, or in which the commission carries on business, such grants towards the cost of municipal and school services, as the Lieutenant-Governor-in-Council may approve optional" — may approve and that is only for municipal and school services — no business taxes, no income taxes, which are a very heavy item.

**R. WALDING:** Mr. Kirby, would they not need to make a profit before they would pay any income tax?

**R. KIRBY:** Certainly, but not to pay business tax.

**R. WALDING:** I see. Thank you.

**R. CHAIRMAN:** Are there any more questions? I thank you, Mr. Kirby.

**R. KIRBY:** Thank you very much, gentlemen.

**R. CHAIRMAN:** I call Diane Slusar. Then we proceed to Bill No. 59, An Act to amend The Manitoba Act and The Public Utilities Board Act, Vic Savino.

**R. VIC SAVINO:** Yes, good morning, Mr. Chairman, and members of the committee. First of all I want to make it clear that I'm appearing here as an individual who has been a consumer advocate with respect to Manitoba Hydro's rates.

I am not able to appear here this morning representing any particular group of people because this legislation was introduced into the House so rapidly and so late that there was no opportunity for groups to get together to oppose this, I argue, very destructive legislation that has been introduced by this government.

Here we are again, in June of 1979, it was about this time last year that I appeared before this committee to protest the destruction of the rights of ordinary people by this government. At that time the protest was over the removal of rent controls and the dismantling of the most progressive Family Law legislation in the country and here we are again today.

Bills which destroy the legal rights of ordinary people, rights which people had before the election, are introduced to destroy these rights as late as possible in the session, during speed-up, are introduced to be rammed through so quickly, as quickly as possible with as little debate as possible, with as little public limelight as possible because this government knows that if these bills were open to normal public scrutiny and normal public debate the people of Manitoba would surely see the heavy-handed deliberate removal of the rights of ordinary people in favour of the rights of the wealthy and the privileged.

Bill 59, I submit to you, members of the Committee and Mr. Chairman, is just such a bill. Before Bill 59, it was legally recognized that the people of Manitoba had a right to appeal both the amount of a hydro rate increase and the distribution of that increase among different classes of consumers.

In 1977 the Associated Tenants' Action Committee did just that. The Public Utilities Board assumed its jurisdiction and gave a fair hearing to the Associated Tenants' Action Committee and the consumers of Manitoba. I would point out to this committee that the Associated Tenants' Action Committee was joined in its appeal by interveners such as Hooker Chemicals, Simplot, various municipalities, school boards, trade unions and numerous individuals, a very broad cross-section of the Manitoba public who became involved in the exercise of this right to appeal the determination of Manitoba Hydro rates in amount and in distribution.

In February of 1978 the Public Utilities Board, having examined the economic position and integrity of Manitoba Hydro, ruled on the consumer's appeal and rolled back hydro rates for a net

saving of about \$11 million to the people of Manitoba.

At the same time, the Public Utilities Board recognized our complaint that the rate structure itself was discriminatory. And what we were saying to the Public Utilities Board at that time is I we have certain customers of Manitoba Hydro, namely Inco and Sherrit-Gordon and other large industrial consumers who are on fixed rate contracts that last for periods of 20 and up to 40 years; and Inco is paying the same rates now as they were paying 20 years ago, while the ordinary residential consumer is being asked to bear the burden of all of the increase in Manitoba Hydro activities.

And I should point out to this Committee, and I think the government probably knows and they why they've introduced the legislation in the way they have, that in Nova Scotia, where such contracts were brought before the Public Utilities Board there, the Public Utilities Board ruled that the contracts were discriminatory and unjust and unreasonable as between classes of consumers. And the utility in Nova Scotia went to the Nova Scotia Court of Appeal, and the Nova Scotia Court of Appeal held that, indeed, the Public Utilities Board had correctly exercised its jurisdiction.

In October of 1978, in Manitoba, the Board reconvened and completed its hearings on the project. It agreed at that time to proceed to hear the arguments on the fairness of the rate structure at a future sitting of the Board. What concerns me most, gentlemen, about Bill 59, is that this process has been terminated or will be terminated by this House when you pass this bill.

A termination of a judicial process in midstream — what might be called legislative abort — and I'd like to read to you the section that I am most concerned about. Section 15, the final section of Bill 59, other than when the bill comes into force, states: "Any appeal to the Public Utilities Board, pending under Section 39 of The Manitoba Hydro Act, as it was before the coming into force of this Act, is terminated and the Public Utilities Board shall not proceed to hear the appeal or take any further proceedings in respect thereof." Now, there's only one appeal, gentlemen, before the Public Utilities Board and we all know whose appeal that is, and we all know what that appeal is about.

Now, the introduction of legislation to terminate that appeal is, I would suggest, irresponsible government. It is a very unusual kind of legislation. We know that governments in the past have introduced bills to reverse judicial decisions, but this is usually done after the Supreme Court of Canada has ruled, and the government then makes a policy decision, that the particular decision that they're not in agreement with should be legislated out of existence. Now, I would like to know I would like to know why the Associated Tenants' Action Committee's appeal is being terminated by this bill. It has not been to the courts; the Board has not had an opportunity to review all the evidence and this government sees fit to terminate this appeal in mid-process. I would like to know from the Minister, who doesn't seem to be here, just what recommendation of the Tritschler Commission this section of the bill is based on. I don't see anything in the Tritschler Commission Report about terminating a tax appeal to the Public Utilities Board. But indeed, this section does appear in the legislation.

Now, getting to the Tritschler Commission and the other thrusts of this bill, we know that Justice Tritschler and his Commission accepted holus-bolus Hydro's position that the Public Utilities Board should not have jurisdiction to actually roll back rates or actually make a decision on rates. Now, in doing so, the Tritschler Commission ignored other submissions such as the Associated Tenants Action Committee, where we urged upon the Tritschler Commission that consumers should have a right to a hearing and they should have a right to representation on consumer rate review. That subject was not dealt with, either by Mr. Tritschler or by this government.

Now, we may agree to disagree on whether the Cabinet should have the final say on the setting of rates. I think that I would have to state that I disagree with the government's position that it put something to the Public Utilities Board, and then you let the Cabinet make the final decision. The Cabinet does not have the expertise of the Public Utilities Board to review the economic integrity of the utility with the kind of detail and the kind of carefulness that the Public Utilities Board does.

And as we know, virtually every other utility that serves the public in Manitoba, comes under the purview of the Public Utilities Board, with the Board's ability to make a decision on rates in terms of amount, and rates in terms of structure, in terms of what classes of consumer pay what amount. I strongly disagree with taking a different approach to Manitoba Hydro.

But accepting that, accepting that we can agree to disagree over that, the government that has introduced in this bill a new form of review by the Public Utilities Board, where, upon the fixing of rates by the Corporation, any user of power is entitled to request a hearing of the Public Utilities Board. So the question then arises, exactly what kind of hearing can you get under this Bill? What I would submit, gentlemen, that the hearing process that is created by this bill is a farce. There is no right to a fair hearing by the consumers of Manitoba under this legislation.

First of all, there is no right of the Public Utilities Board to review the rate structure, and

course we have already talked about the termination of the existing appeal on that question. And one of the big questions of jurisdiction before the Public Utilities board in the hearings was whether or not that part of the Act governing rate structure and discriminatory rates applied to a review of Manitoba Hydro's rates. That was the question that was going to be clarified by this bill. Well, that question has not been clarified, except of course by the specific section terminating our appeal; it is still very questionable from this bill what the jurisdiction of the Public Utilities Board is. And I would submit that it's the intention of this government that, although it's not very clearly expressed in the bill, it's the intention of this government that the Public Utilities Board have no jurisdiction to review the rate structure, to review the rates as between different classes of consumers. And I would urge upon this committee that the legislation be made clear on that point.

If that is government policy, let's have it on the table, gentlemen, let's tell the consumers of Manitoba that you do not believe that they should have a right to a review of rates as between different classes of consumers.

On the type of hearing that consumers will get, that's one thing which I think is clear, that the rates structure question is very much still a question.

Another serious problem with the type of hearing which is proposed under this bill, is that the content of the jurisdiction of the Public Utilities Board is still as foggy as it always was. The section in the bill which speaks of the Public Utilities Board conceivably excludes most provisions of the Public Utilities Board Act. If that is the case, I would urge upon you gentlemen that any hearing before the Public Utilities Board would be a farce; because under The Public Utilities Board Act, the Board has the powers of the Court of Queen's Bench to order up information that the Board may require to make its decision.

Under this bill, we don't know whether the Board has that power or not. It's certainly not expressed in Bill 59. What seems to be expressed is that The Public Utilities Board Act will not apply, therefore leaving the Board with no procedure, no jurisdiction, no basis upon which to proceed.

There is some statement in the bill of the kinds of things that can be brought before the bill; material supplied by corporations, Section 39(10): "A statement showing the prices fixed or proposed to be fixed and the prices which were or are in effect prior to the new prices being fixed." Well, that's a couple of page presentation with some numbers on it, which everybody will already have received in the mail from Manitoba Hydro. "A statement of the reasons for any changes in the prices fixed or proposed to be fixed" including a statement of the facts supporting those reasons." Well, Hydro could put before the Board a couple of paragraphs about the drought that they had that year, which is what they did in 1977-78, and satisfy that requirement of the Act.

"A statement of the manner in which and a time at which the changes in the prices were or are proposed to be implemented." Well, that's pretty simple. You put in that they're going to be implemented next month, and they're going to be implemented on residential consumers only, and of course, not on the fixed-contract customers, because they're not going to touch those.

And finally, the section says, "Such further information incidental thereto as the Public Utilities Board may reasonably require." "May reasonably require." Now, Manitoba Hydro has always taken the position that the Public Utilities Board may reasonably require nothing. And I would suggest to you gentlemen that those of you who feel that that section will give the Manitoba Public Utilities Board any power to order information before it that is not included in (a), (b) and (c), and that Hydro doesn't want the Public Utilities Board to have, are kidding yourselves. Because, that section is so vaguely worded, that Manitoba Hydro if they did not want to give such information to the Board would simply force the Board or the consumers to go to the courts to get an interpretation of that section.

Now, I would suggest that that in itself very severely limits the kind of hearing the consumers can have under this legislation. And I would suggest, gentlemen, that this section, 39(10), is not necessary. If you simply make it clear to consumers that when the Public Utilities Board reviews Manitoba Hydro's rates, that The Public Utilities Board Act applies to its proceedings. Now what's wrong with that? I'd like to know what is wrong with that, why the Public Utilities Board proceedings could be any different for Manitoba Hydro than they should be for any other utility.

Now, sure, you're taking the position, as a government, that the Cabinet should have the final say and that the Board should only make recommendations. But how can the Board make recommendations if they cannot use their procedure to get information before the Board, to govern its conduct, and so on, of the hearings, to allow consumers to have their fair say.

I would say, gentlemen, that, in conclusion, Bill 59 is a cruel farce on the people and the consumers of Manitoba. It removes Hydro from public purview completely because, as we all know, this bill doesn't mean anything for five years. The section says that you can appeal or at least bring before the Board, any rates that have been fixed by the corporation. Well, in the next bill that I'm going to consider, Bill 60, the setting of rates for the next five years is removed from the

corporation. So how are consumers going to have any hearings before the Public Utilities Board in the next five years, gentlemen?

Now, some of you may reply, well, we're freezing the rates. Well, what are you doing about the rates of the fixed contract customers? What are you going to do when export sales produce profits to Manitoba Hydro that are much more than the utility needs? Are you still going to require the consumers to contribute more to the profits of Manitoba Hydro when low-income people are barely surviving with the cost of food and housing and utilities in this province?

I would suggest, gentlemen for all of the reasons that I have advanced this bill, as I initially pointed out, is a farce. There are no appeals for five years so what's the point in passing it in the first place. Even if there were hearings, the Board would have no power and the procedure is such that the hearing would be a farce. And, of course, the most important point, the ability of consumers to protest discriminatory rate structures is specifically terminated by this legislation. As I have pointed out, that's a most unusual procedure for a Legislature and I would suggest, with all of those factors present in the introduction of this bill, the only rationale in terms of government policy that I can see for this bill is that it's a cover-up; it's a cover-up for the large industrial consumers who have been and will continue to be on fixed contracts well into the twentieth century and it's a cover-up for your friends in industry who are depending on you being in government to give them as many advantages as you can at the expense of ordinary people in Manitoba.

That concludes my remarks.

**MR. CHAIRMAN:** Are you prepared to accept questions, Mr. Savino?

**MR. SAVINO:** Yes, I am, Mr. Chairman.

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** I'll pass.

**MR. CHAIRMAN:** Mr. Enns, the Minister of Highways.

**MR. ENNS:** No, Mr. Chairman. I had thought that I had a question or two but after that outpouring of partisan support for this government, I really haven't any further questions.

**MR. CHAIRMAN:** Are there any further questions? The Member for Transcona, Mr. Parasiuk.

**MR. PARASIUKE:** Yes, I would like to ask Mr. Savino a few questions in relation to Section 10 of this legislation which indeed does legislatively prohibit the inquiry that the Public Utilities Board is presently conducting into the discriminatory rate structure.

In October of 1978, the Public Utilities Board determined, I would think after due consideration because that's the way they operate, that there was reason to believe that Manitoba Hydro rates may be discriminatory or preferential and as a result they undertook to look into the discriminatory rate structure of Manitoba Hydro, or at least the rate structure to determine discriminatory preferential aspects.

Now, obviously in coming to that conclusion, which was a reasoned conclusion and not a partisan conclusion by any stretch of the imagination, unless there is some type of inference that the Public Utilities Board is partisan — which I do not believe; I believe that they are an objective body and since, however, they came to that conclusion in a completely non-partisan manner, could you indicate to us, what were some of the reasons put forward to them which they took into consideration when they made the decision to investigate the overall rate structure of Manitoba Hydro?

**MR. SAVINO:** Yes, first of all on the question of the objectivity of the Boards, that should not be an issue at all. As you all probably now know, Mr. Walter Weir is Vice-Chairman of the Public Utilities Board and it's certainly not a partisan board from the left.

But the reasons that were put before the Board with respect to the discriminatory rate structure I have indicated to you briefly the fixed contracts that the industrial customers, particularly in northern Manitoba enjoy and have enjoyed for some period of time, and the reasoning that was put before the Board is, look, at that time when those contracts were entered into, it may have been that the economic situation was such that the utility could preserve its integrity and not have too damaging an effect on the other customers by having these preferential rates.

But here it is 1979, with inflation rates of 10 percent per year that ordinary consumers have to bear, and the industrial consumers don't have to bear any of that. And that is the kind of argument that was put before the Public Utilities Board here and in Nova Scotia, that these contracts

updated and, in the context of Public Utilities Board law, the common law decisions that have been made, statutory provisions of Public Utilities Board Acts, those contracts and those kinds of rates are unfair and unreasonable within the meaning of the Public Utilities Board Act and the board found some substance to those complaints in ordering a review.

**IR. PARASIUK:** Thank you, Mr. Savino. In Nova Scotia you indicate that the Public Utilities Board here, which I assume again was a non-partisan objective public body, after its investigation it ruled that hydro rates were discriminatory. Were there any changes in the rate structure as a result of that?

**R. SAVINO:** Oh yes, there were. There occurred in Nova Scotia, in the wake of that decision, similar things to what have occurred in Manitoba but only the other way around. The utility in Nova Scotia was put squarely under the jurisdiction of the Public Utilities Committee, an independent board, in terms of rates and rate determination and rate structure. That was legislated into place. The board did find these contracts to be discriminatory and ordered that they be reviewed. The contracts were reviewed and the rates were upped for the industrial customers.

In addition, the board heard a considerable amount of evidence on different types of rate structures that can assist people who are getting pinched by the rate structure system. People such as electric heat customers, you know, who we all know a number of years ago were encouraged by electric utilities around the world that, "Live better electrically", and, "Electric heat is cheaper", and we all know that that just hasn't panned out. Those kinds of rates were reviewed by the Board and a considerable amount of specialized evidence was put before the Board to give them a basis upon which to reorganize the rate structure. And the rate structure was reorganized. In addition to that, in addition to the reorganization of the rate structure, the government of Nova Scotia produced rate stabilization type of legislation to freeze the rates for particular kinds of particularly oppressed customers.

**R. PARASIUK:** Yes, I think Section 39(4) of the proposed bill limits the application to the Public Utilities Board for a review to reviewing any price increase or possibly a price decrease but it doesn't enable the public or any groups within the public or any individuals within the public to appeal to the Board to review the situation to determine whether in fact there mightn't be a price decrease in hydro rates, as a result of export sales.

Manitoba Hydro is launching a fairly major exporting of hydroelectric power. Hydro has gone out securing rights of ways for a large transmission line. There is some disruption to the Manitoba society and Manitoba environment as a result of this. And this supposedly is all being done in order to benefit the average Manitoban. So, if the average Manitoban, then, feels that, say in the next two or three years or so when there is a tremendous increase possibly in export sales of hydro-electric power, that maybe this should arise in a situation whereby the price that they may pay, that the Manitobans pay for hydro-electric power, should be lower than that export price. That cannot be investigated by the Public Utilities.

**R. SAVINO:** No, it cannot, and that exactly — and I didn't state it succinctly enough — is a very important point. The rates that are being charged to American customers of Manitoba Hydro are rates that are below the cost of production, while Manitobans are subsidizing those rates for the American customers. Now, there are all kinds of jurisdictional problems involved there, including the National Energy Board and so on, and so forth, but because of the great surplus of power which we have in Manitoba, in spite of what the rates are to the Americans, Manitoba Hydro's revenues are going to be considerably increased by export sales, even if we're selling it at below the cost of production. And those benefits of the increase in export sales are not going to be passed on to Manitoba consumers because, (a), the rates are frozen for the next five years, and (b), you cannot appeal the determination of price, since it's being determined by the government and not by the corporation.

**IR. PARASIUK:** Yes, I was interested in your comments, Mr. Savino, with respect to 39(10), where you indicate that 39(10) really limits the power of The Public Utilities Board Act; that this really is a substitute for The Public Utilities Board Act and yet, with respect to all the other utilities, Greater Winnipeg Gas and Manitoba Telephone System and other utilities such as that, both public and private, the full powers of The Public Utility Board Act apply with respect to proceedings, and in your estimation, and you are a practising lawyer, 39(10) limits that legislation.

**R. SAVINO:** Yes. You know, it's not clear from this legislation what the Public Utilities Board does as the basis of its procedure. I mean it can only proceed, I guess, in the ordinary fashion



until Hydro takes them to court again. That question has not been resolved by this government. I thought that's what this bill was supposed to be about, but that's not what this bill is about, afraid.

**MR. CHAIRMAN:** Mr. Mercier, the Attorney-General.

**MR. MERCIER:** Well, firstly, Mr. Chairman, I thought the delegation would have, rather than addressing the Committee as gentlemen, would have acknowledged the presence of the Progressive Conservative Member for Assiniboia, the Honourable Norma Price, Minister of Tourism and Cultural Affairs.

My question is Mr. Savino, I believe that you are reputed to be or acknowledge yourself to or at least indicated in your introduction that you have, as your basic interest, the interest of consumer. Is that correct?

**MR. SAVINO:** That's correct, yes.

**MR. MERCIER:** How do you reconcile that, Mr. Savino, with the suggestion that the appeal should be allowed to continue before the Public Utilities Board for a rate increase by Manitoba Hydro with the policy decision of our government, to guarantee that Hydro rates not be increased, which is obviously the best interest of the consumer?

**MR. SAVINO:** Very easily, Mr. Attorney-General. The Rate Increase Application has been heard and has been dealt with. In the course of the Rate Increase Application, a question was raised about the rate structure. That question was decided by the Board to be dealt with in a separate hearing. That hearing is in process; that hearing has been terminated; and that hearing, you have to understand is a separate kind of consideration. In reviewing rates, you look at how much income the utility needs and you look at how the utility will get that income — how it will be distributed among various classes of consumers, and I suggest that it's a bit much to say that because the government is freezing rates for the next five years it's no longer necessary for our appeal to continue. That question has already been dealt with by the Public Utilities Board — the question of how much.

It's the question of who pays which is presently before the Public Utilities Board and I think that this government knows very well the intent of Section 15 of Bill 59.

**MR. MERCIER:** You would then rather see that appeal be allowed to continue with the possibility that there might be a rate increase, were it not for the fact that the government has guaranteed that Hydro rates will not increase.

**MR. SAVINO:** Well, I don't see how there can be a rate increase when that issue will not be before the Board. The issue before the Board in that Hearing will be rate structure.

**MR. CHAIRMAN:** The Honourable Member for Selkirk. Mr. Pawley.

**MR. PAWLEY:** Mr. Chairman, I would be interested in hearing from Mr. Savino whether or not to his knowledge, and possibly he can provide us with instances where government has, by way of legislation, arbitrary legislation, removed the rights of individuals to continue with an appeal whether it be in courts, or whether it be quasi-judicial bodies or before a Board such as we have in this legislation?

**MR. SAVINO:** Mr. Pawley, I'm not a constitutional expert, but my limited knowledge of constitutional law and Canadian legal and legislative history leads me to answer that question by saying I know of no such precedent; I know of no case where a legislature has, in the middle of proceedings such as this, terminated the proceedings by legislation before they could be completed.

**MR. CHAIRMAN:** Proceed.

**MR. PAWLEY:** Mr. Savino, I wonder if you could advise us as to what you see as the consequences of this intrusion into jurisprudence where rights of appeal of individuals or groups are removed in this manner?

**MR. SAVINO:** Well, I think it's a very dangerous kind of precedent; I mean, it would lead to a situation that, wherever the government didn't like what was going on with the courts, or one

s quasi-judicial, independent bodies that had been appointed by the government to consider questions independent of the influence of the government, it would mean that with a precedent such as this, if the government didn't like what a court was doing, or if the government didn't like what a Board was doing, they could just pass legislation terminating what they're doing.

**IR. PAWLEY:** Mr. Savino, would it be your view that confidence by the general citizenry in respect to appeals or hearings before other boards and commissions would be undermined by the type of precedent which we have before us?

**IR. SAVINO:** Most certainly, most certainly. I mean, I just have never seen a case where something like this has been legislated in midstream.

**IR. CHAIRMAN:** The Honourable Member for Brandon East.

**IR. EVANS:** Thank you, Mr. Chairman. I heard Mr. Savino make a statement to the effect, if I heard him properly, that Hydro power is being sold in export markets for less than the cost of production. Are you critical of that fact, or do you think that that is something that shouldn't happen?

**IR. SAVINO:** Yes. I think it's something that shouldn't happen. You know, we've had this massive expansion of the Hydro capacity in Manitoba to meet the needs of Manitobans, out at most times, we have this tremendous surplus of power. The problem is and, I think many of you are aware of this, that the pricing formula in the utility, the electric utility industry is such that there are certain kinds of contracts that you have for price; the kind of contract that we have for export power means that we end up selling the power for less than the cost of production, and I think as an economic principle with a utility — with a utility that's providing a vital commodity such as energy — that the people of Manitoba should be able to realize at least what it's costing them to deliver that power to a customer. And you know, this is a separate issue, I think, from this Bill, but it's certainly something that has to be worked through the National Energy Board and the customers of Manitoba Hydro.

**IR. EVANS:** Yes, well, I can appreciate what the member is getting at, but given the fact that Manitoba Hydro has developed a certain capacity to produce electrical power; and given the fact that this capacity exceeds the firm demand in the province; and given the fact that there seems to be no alternative Canadian markets readily available to take up the additional capacity, what alternative does the utility have?

**IR. SAVINO:** I see the point you're getting at. Certainly, no alternative at all under the present pricing formula, but I'm saying, you know, it's fine, we accept that, but let's work on changing the pricing formula so that the people of Manitoba get more benefit out of this public investment.

**IR. EVANS:** Mr. Chairman, would Mr. Savino agree then that it is probably in the long run interests of Manitoba consumers, given the fact that we do have excess capacity, to sell this power in foreign markets, namely to the United States, even if it is less than the price we can command domestically, given the fact that the alternative seems to be to dump that water into Hudson Bay, and therefore, providing even less revenue to the utility, so that in the long run, what appears to be an unfair situation really does accrue to the benefit of Manitoba consumers?

**IR. SAVINO:** Yes, exactly. And there's another point here, which is why Manitoba Hydro rates could be reviewed regularly, because in the Hearings in 1977-78, Hydro was talking about a disastrous economic situation caused by the drought and, all of a sudden in the middle of the hearings, there was a \$6 million windfall in export sales that reduced Manitoba's revenue problems by \$6 million. And we've all been reading in the papers of the increasing revenue that's coming through these export sales even though it's at below the cost of production.

The problem is, you know, with the present system of Manitoba Hydro accounting, export power sales are not adequately accounted for, and that was made quite clear in the Public Utilities Board hearings. They were referred to almost as windfall sales for the utility and, you know, a windfall of \$6 million in the middle of the hearings had to have a considerable impact on the result. But you know that windfall has been improving over the last number of years and I think that it has to be rationalized and built into the rate structure as something that's going to occur on a pretty regular basis and not just going to be a windfall.

**MR. EVANS:** Well thank you. Mr. Chairman, Mr. Savino made reference to the domestic market rate structure requiring review and change. Just briefly what is being suggested here, that we look at the comparative rate structure of commercial customers versus industrial customers versus domestic customers, and are you somewhat inferring in your questions that the domestic consumers are bearing too great a burden of the cost compared to the commercial and industrial customer? Mr. Chairman, is this . . .

**MR. SAVINO:** Yes that is exactly what I'm suggesting, Mr. Evans, and, you know, I think we appreciate that large users of power who provide economic stimulation in the province and so they should probably have lower per kilowatt hour hydro rates than the residential consumer. But the gap has grown so wide with inflation and the domestic consumer versus fixed prices as the industrial consumer, that I'm suggesting that that gap has to be narrowed somewhat, and industry has to pay more of its way as we go along here.

I'm also suggesting, and this was a big part of the presentation that we made to the Public Utilities Board, I'm also suggesting that in the domestic-user category you have to look at a concept of life line rates. You have to look at a concept of providing a minimum package of power for people on fixed incomes, and you know it's these people who are suffering the most with utility rate increases. They have fixed incomes and when their utility rates go up 20 percent they can't pay it unless their income changes. So you've either got to look at government looking after the people in some other way, or you've got to look at changes in the rate structure that recognize that there is this kind of customer, and this has been happening in utilities boards across the United States and across Canada. The Ontario Energy Commission has been looking at lifeline rates over a year now, and this was one of the issues that was raised before the Tritschler Commission and ignored by the Tritschler Commission and ignored by this government, but was raised at the Public Utilities Board and the Public Utilities Board was prepared to hear expert evidence that had already prepared, and evidence of their own that they were going to be getting independent on this question of lifeline rates for people on fixed incomes.

**MR. EVANS:** Yes, thank you, Mr. Chairman. I find Mr. Savino's remarks very interesting. I wonder if Mr. Savino when you talked about rate structure and making it more equitable and making it fairer particularly for those people on lower incomes, whether you would agree that it would be a useful restructuring to have the rates charged for electric power increase in some proportion to the increased use of that power. In other words, a reverse of the rate setting method that is used today. The rate setting method that is used today as I understand it, is that if you as a domestic consumer — I'm just talking about a domestic consumer — if you use more of the power as you get higher consumption levels you get a cheaper rate. So a big consumer, domestic consumer, on average pay less per kilowatt hour than a small domestic consumer, presumably. I'm going to make the assumption that the large domestic consumer is probably better off than the lower domestic power consumer because, a richer family is likely to have more television sets, freezers, or whatever other electrical appliances one may have. So that, is this what you are saying that, are you suggesting this that in your rate review that you would cause a complete reversal so that you would charge higher rate levels at higher consumption levels rather than the reverse that we have now; and secondly, do you think that this might have some bearing on the conservation of electric power. In other words to cause people to pay higher prices if they're going to be wasteful of electric power or to be large consumers of electric power. In other words you're penalized if you're a large domestic consumer rather than a lower domestic consumer and therefore using the price mechanism somewhat bring about more conservation of electric consumption.

**MR. SAVINO:** Absolutely, Mr. Evans, but it's not that simple, you know, that's the problem. That's why this question should be before the Public Utilities Board, because on the one hand yes I think that you want to look at lifeline rates for a particular kind of customer, and on the other hand for the customer who is a large domestic user and in many cases wasteful — (Interjection) — right? For a domestic user, the rates should be higher. But into the formula you have to put the user of electric heat who will be a large domestic consumer because he or she heats his or her dwelling with hydroelectricity and that demands a lot more usage than does normal usage. So between these two ideals you also have to take account of the electric heat customer. And you know we learn from our experience at the Public Utilities Board that at the present moment, Manitoba Hydro has no way of identifying who their electric heat customers are. They have no way of isolating them out in the rate structure and you know certainly that has to be done. There is a very obvious example of why these hearings should proceed so that we can, you know, look at all the various categories and look at all the needs within the rate structure. And on your point on conservation I agree with

ou absolutely, Mr. Evans, that if you increase the rates in accordance, at a run-off level, you know, ere's a certain package of power which is a normal average usage and if you use more than at as a domestic consumer, then you pay more versus a lifeline basic package for the low income nsumer, that will encourage conservation of much needed energy resources in the Province of nitoba.

**R. EVANS:** Yes, well on the matter of the role of the Public Utility Board and the role of the abinet in this matter, I am inclined to agree with you. I wasn't always of the view but I am now clined to agree with you or others that the Utility Board should play a very important, very vital le, as a separate body taking a completely, hopefully completely, independent assessment, dependent analysis of what's being requested, either up or down. But what I wanted to get from r. Savino, Mr. Chairman, is an indication of whether he is opposed to Cabinet's review, let's say ; a final step, let's say after thorough public hearings by a separate Public Utility Board, and ough analysis, etc., etc. But are you then saying that you would not favour any sort of last view or last say, or even I guess even a veto power, by the provincial Cabinet. Is this what you're ggesting?

**R. SAVINO:** Yes, that is what I'm suggesting and the reason, I think an obvious reason, Mr. ans, why I would take that position is that if the Public Utilities Board completely reviews the ation and goes into the kind of depth and study that it should and always has with utilities Manitoba, and makes a recommendation, I cannot understand what would move a Cabinet to verse that recommendation unless it were strictly political reasons and I don't think that the utilities' tes setting procedure should be used as a political football like that. Utility rate setting is a process olving the integrity of the utility financially and the integrity of the customers of that utility in rms of their ability to pay. And knowing what this Cabinet is introducing in this particular piece legislation, to give that particular Cabinet a veto power over what the Public Utilities Board might , I think would be wrong. Now I appreciate the argument from the other side that politically the ibinet has to be responsible for the Utility and so on and so forth, but it's clear that the mandate the Public Utilities Board is to ensure the financial integrity of the utility, at the same time as looks at fairness as between different classes of consumers. And you know if that ever became problem, the Public Utilities Board not looking after the financial integrity of the utility, then of urse legislation could be introduced to make it clear that that's the board's mandate. But the ard knows that that's its mandate, and I don't see that it's ever in the history of Manitoba not cercised that mandate in accordance with, you know, the best principles of economics and counting.

**R. EVANS:** Yes, thank you, Mr. Chairman. Well I think there's a large element of truth in what . Savino is saying with respect to who needs, you know, another look-see at it after the Utility ard has done its work. But would you not acknowledge that somewhere, somehow, the government the day would have some considerable impact ultimately on, I would suggest, on rates in general virtue of its control over the financing of the Manitoba Hydro system inas much as Manitoba dro bonds are guaranteed, or seem to have to be guaranteed by the province of Manitoba to t a lower interest rate, so that would you not agree that there is a leverage there that may be y fundamental and very important.

**I. SAVINO:** Yes there is and of course that is a very valid point that Manitoba Hydro's credit pends on the provincial government and the provincial government negotiates all the bond deals d so on and so forth. So you as a government have a pretty solid control over those financial jects of Manitoba Hydro and, you know, preserving the economic integrity of the utility as between ; different classes of consumers and setting the price, I think is something that can be correctly t under the purvue of the Public Utilities Board.

**I. CHAIRMAN:** The Honourable Member for Logan, Mr. Jenkins.

**I. JENKINS:** Thank you, Mr. Chairman. Mr. Savino, in your presentation to the committee you ve stated that the Hydro rates would not be raised in Manitoba for the next years pending the ssage of Bill No. 60, which is presently in the House. Can you inform this committee where in s Act the government guarantees the rates of Hydro for the next five years? Let us take for tance a hypothetical case in the next five years. If in the next five years, two or three of those rs are drought years . . .

**I. CHAIRMAN:** Could I call the honourable member to order. It's another Act that deals with

that particular subject . . .

**MR. JENKINS:** . . . Well, Mr. Chairman, Mr. Savino and other members have questioned Mr. Savino, and it has been generally acknowledged that there is an Act guaranteeing the rates, as it's part of his presentation. You didn't object at the time when Mr. Savino made that statement before the committee. If you objected well then you should have objected at that time, not at this time. What I'm asking Mr. Savino is that he must have studied Bill No. 60 in conjunction with Bill No. 59, and I'm asking him in his opinion, studying the two bills where he can inform this committee in that Bill that Manitoba Hydro's rates are guaranteed by the provincial government of the province for the next five years. If we have a drought for two years the costs of Hydro are going to go up. Instead of having the increases in revenue we could conceivably wind up buying power elsewhere. Can you inform the committee where in Bill No. 60 the present government bill that is before the House is guaranteeing those rates?

**MR. SAVINO:** Well I don't see it anywhere. I haven't reviewed Bill No. 60 as extensively as I have Bill No. 59, but I think the important point is the definition of the right to a hearing under Bill No. 59. And the point there is that the corporation fixes a rate; it's at that point in time that you have 60 days within which to bring a hearing to the Public Utilities Board, to initiate the proceeding before the Public Utilities Board. I'm saying that if the corporation is not going to fix rates for the next five years then where is that right going to occur?

**MR. JENKINS:** Well, if the Hydro Board of Manitoba, the Manitoba Power Commission suffers a deficit, where is the guarantee that the rates will not increase?

**MR. SAVINO:** Well, I suppose it's somewhere in Bill 60 that the government is going to make sure that the utility preserves its integrity. I don't know how, but I suppose it's somewhere there. I certainly not something that they expect the Public Utilities Board to do, from what I hear about Bill 60.

**MR. JENKINS:** In your cursory perusal, then, of Bill No. 60 you have not come across anything where the Manitoba government guarantees the rates of Hydro for the next five years?

**MR. SAVINO:** No.

**MR. JENKINS:** Thank you.

**MR. CHAIRMAN:** The Honourable Member for Winnipeg Centre, Mr. Boyce.

**MR. JENKINS:** Mr. Chairman, I have another question.

**MR. CHAIRMAN:** Oh, I'm sorry. My apologies.

**MR. JENKINS:** Mr. Chairman, through you to Mr. Savino. In your presentation to the committee you have said that in Nova Scotia and Ontario that the Public Utilities Board or equivalent there in those provinces have reviewed the fixed rates that are being charged to industry. In your study of the various power rates across Canada and perhaps in some of the jurisdictions in the United States — I believe you mentioned the United States as well, where they've been doing studies on these rates — how do you find the fixed rates for industry in Manitoba in comparison, say, to Nova Scotia, which is a sister province, or say to Ontario, which has a very extensive Hydro-electric program, as well as a nuclear program and an ordinary thermal program and which would be maybe even closer in comparison, say, to Manitoba than Nova Scotia. But how do our fixed rates compare with those provinces?

**MR. SAVINO:** As I recall the figures which were put before the Public Utilities Board by Hydro in 1978, Manitoba had the lowest rates for industrial customers on fixed contracts in the country. And as I say, what was happening at that time was that fixed rates in Nova Scotia were being adjusted upwards. So unless there's been some sizeable give-aways in the last year or so by other Tory governments in Canada, we have very very low rates for industry on fixed contracts.

**MR. JENKINS:** We'll get down, Mr. Chairman, through you to Mr. Savino. We'll get down to specifics. We have a company that operates in two provinces, INCO. Has your committee comparative figures for INCO in the Sudbury area and INCO in the Thompson area?

**R. SAVINO:** I'm sorry, I can't recall exactly what those figures were, no.

**R. JENKINS:** Could you later supply them to the committee if they are available to you?

**R. SAVINO:** I could certainly go back over the material that came before the Board in 1978 and see if the answer to that question is there.

**R. JENKINS:** Well, I don't know if other members are interested, but I certainly would be interested, and if you would care to make a copy available, I would be very appreciative. Thank you, Mr. Chairman.

**R. CHAIRMAN:** The Honourable Member for Winnipeg Centre, Mr. Boyce.

**R. BOYCE:** Mr. Chairman, the Member for Logan — I think he raised his hand at the same time I did. We reacted to the Attorney-General using the term "freeze" relative to Hydro rates, and the Member for Logan has covered that particular area. But in the establishment of rates, be it by the Hydro Board or the Public Utilities Board or by Cabinet, if somebody says that they're going to freeze the rates, is it not the case, Mr. Savino that "freeze" means that they can't go down or up?

**R. SAVINO:** Well, that would seem to be what's implied by the word "freeze". I mean, when you freeze something, you put it in an ice cube where it can't move up or down.

**R. BOYCE:** Well, if, as has been indicated, it's a myth that the government is taking action to stabilize rates, it is because of prior prudent management of the system that it has stabilized itself, and that the present government — in spite of the present government perhaps, but nevertheless I believe Dean Wedepohl said that a one cent shift in the Canadian dollar is worth \$25 million, so over the next five years — well, it is an outside possibility, but we're dealing almost with Oujia cards, I suppose, but nevertheless if the Canadian dollar rises to 90 cents or so, then that would be an additional windfall to the general revenue of the province rather than to Hydro.

**R. SAVINO:** Yes, and you know, I should point out to this committee that it became clear through the material that was submitted to the Public Utilities Board that the rates for the next five years were going to be pretty stable because what Hydro had done in the previous years was to recover the revenues that they needed to compensate for the increased costs of Hydro expansion. And it was made clear by Mr. Bateman in October of 1978 that from 1980 onwards consumers could anticipate increase-free years, that there would be very little need for any increase in Manitoba Hydro's rates, so I found it rather surprising when Premier Lyon announced — or the Minister of Finance announced that the government was going to freeze rates when in fact it was clear at the Public Utilities Board that there was no need to freeze rates, that the economic viability of Manitoba Hydro was assured for that period of time.

**R. BOYCE:** Thank you very much, Mr. Savino.

**R. CHAIRMAN:** The Honourable Minister of Highways, Mr. Enns.

**R. ENNS:** Mr. Chairman, I do have a few questions for Mr. Savino, who, like all of us, expresses concern and is concerned about the costs of the major utility, essentially a utility like Hydro, particularly for domestic users. Did you or the action group that you represent make any representation during the years '73, '74, '75, '76, when Hydro rates were going up on average 20 percent per annum through any committee, to any Utilities Board, or more specifically this committee during those years?

**R. SAVINO:** Well, I should point out first, Mr. Enns, that during most of those years I was not in Manitoba. And secondly, the Associated Tenants Action Committee was not formed until the year 1976, so it would have been impossible for me or them to be before the Public Utilities Board at that time.

**R. ENNS:** There was a very substantial increase in Hydro in '76. Did the Associated Tenants Action Committee make presentation at that time, either through you or some other spokesman, to your committee?

**MR. SAVINO:** It was in 1977 that Hydro was brought to the Public Utilities Board.

**MR. ENNS:** It coincided with the election. I think, Mr. Chairman, members of the committee always are well served if they know, you know, a little more about the particular interest that a person has when he's speaking to us. Do you intend to be the NDP candidate in the forthcoming election in Fort Rouge?

**MR. CHAIRMAN:** A point of order. The Honourable Member for Logan.

**MR. JENKINS:** Mr. Chairman, on a point of order.

**MR. CHAIRMAN:** A point of order. Order please. Order. The Honourable Member for Logan.

**MR. JENKINS:** The question that the Member for Lakeside, the Honourable Minister, has raised is strictly out of order, it has nothing to do with the presentation that was made before this committee and questions are to be asked before the brief that is presented and the bill, and that has nothing to do with the bill, and I suggest that you rule it out of order.

**MR. ENNS:** Mr. Chairman, on the same point of order.

**MR. CHAIRMAN:** The same point of order. The Honourable Minister of Highways.

**MR. ENNS:** It's a common practice of this committee to ask persons who represent themselves in front of this committee as to which association they represent, which group they represent, whether labour union they represent, or which farm union, which farm bureau they represent, whether they're speaking for a professional association. I'm simply asking, I think, a very legitimate question, unless members of the New Democratic Party are that sensitive about being identified. I'm simply asking and wanting to know whether we are indeed witnessing this morning a nice half an hour, you know, start to somebody's election campaign. We've had a nice series of questions back and forth, and so the question was asked, "Are you going to be a candidate . . . ?" —(Interjection)—

**MR. JENKINS:** Mr. Chairman, I ask you to make a ruling.

**MR. CHAIRMAN:** Order please. Order. On the point of order, the Honourable Member for Transcona.

**MR. PARASIUK:** Mr. Chairperson, I believe that Mr. Savino identified himself at the beginning of his brief by saying that he was here in a capacity on behalf of the Associated Tenants Action Committee. I think he said that he had had that position when the Associated Tenants Action Committee existed. This government cut off the funding for the Associated Tenants Action Committee. It no longer exists, so he's here in an individual capacity, and I think that's the relevant point. I don't know what bearing Mr. Enns' question has, unless of course it's to deflect from the substance of the presentation.

**MR. CHAIRMAN:** The Honourable Minister of Labour on a point of order. No point of order would think that it's in order for any member of a committee to ask the witness who he's representing. I don't see any problem in that type of questioning, but other than that, I don't think that his political ground should be discussed around the table, but I have no problem with them asking who he's representing here today. Other than that, I feel that the question is partly out of order and it's partly in order. It's very difficult.

The Honourable Member for Elmwood.

**MR. DOERN:** I just say that it is out of order to ask any representative before the committee, I think, about their political affiliation or about their interests in seeking any political nomination and, you know, I have to say that if we push that to its limit we get into an absurd situation because Mr. Chairman, I have it on pretty good authority that the Minister of Highways was once seen talking to a Liberal.

**A MEMBER:** Shame, shame.

**MR. CHAIRMAN:** Well, for the benefit of the honourable members of the committee, it is . . .

**R. ENNS:** On the same point of order, Mr. Chairman.

**R. CHAIRMAN:** The Honourable Minister of Highways.

**R. ENNS:** We know what the New Democratic Party does to people that talk to Liberals or endorse Liberals. We're not that sure what they do to people that openly conspire and work with communists. However, Mr. Chairman, it is in order to ask the question. It is entirely also in order for the person not to answer the question.

**R. CHAIRMAN:** The Honourable Government House Leader.

**R. JORGENSEN:** On the point of order, what we're witnessing here is the inevitable result of a witness who appears before this committee and becomes overtly political. If the witness had stuck to the bill and made his comments about the bill, there would have been no problem. However, he chose to use this opportunity to do something much more than that, and these are the almost inevitable consequences of departing from the purpose of appearing before this committee.

**R. CHAIRMAN:** The Honourable Member for Logan.

**R. JENKINS:** Mr. Chairman, on the same point of order.

**R. ENNS:** Mr. Chairman, I withdraw on the point of order . . .

**R. CHAIRMAN:** Okay.

**R. JENKINS:** Speaking to the same point of order as the Government House Leader. Mr. Chairman, I suggest that the remarks of the Honourable House Leader are a reflection on you as a Chair of this committee. You allowed the person who was here making the presentation to make the remarks that he did. You did not rule him out of order, and for that I respect your rulings as a Chairman, but for the House Leader to come in here and say that this person who is here before this committee deviated from the bill that was before us — it's not his opinion. It was your opinion he was in order, and therefore I say that the remarks of the Honourable House Leader are nothing but a lot of hot air.

**R. CHAIRMAN:** Well, may I remind the committee and the member that's a witness that he has his remarks taken wide strips off the government of the day on several occasions. So I'm at the mercy of the committee. I shall proceed.

The Honourable Minister of Highways. The Honourable Minister of Highways — are you finished with your questions, sir?

**R. ENNS:** No further questions, Mr. Chairman.

**R. CHAIRMAN:** The Honourable Member for Pembina. adequately.

**R. ORCHARD:** No questions, Mr. Chairman. They've been answered.

**R. CHAIRMAN:** The Honourable Minister of Labour.

**R. MacMASTER:** Yes, Mr. Savino, you made reference to two major mining industries, I believe you said, in northern Manitoba that are on set rates. I know the circumstances somewhat surrounding one of them with the Inco operation which you specifically made mention to, that some 20-odd years ago under, I believe the Campbell era, the Liberal era, an agreement was reached where they put up front \$20 some-odd million, I believe, at a very low interest rate to develop the Kelsey project so that the City of Thompson could become a reality. I'm pleased that something happened that it became a reality, because it happens to be my home town, and there are many thousands of people who have made a living out of it. Whether we like the agreement or not, there certainly are some benefits that came out of it.

I'm wondering if you know the circumstances surrounding the other major development that took place. You know, you made reference to two; I'm aware of those loose facts surrounding the Inco/ Liberal Government arrangement which, of course, was a long-term contract. You are correct, and that contract went through the Liberal regime, through the NDP regime, the Conservatives and



and nobody has made an effort, none of those governments, to open that contract. You are aware of course, that in a few years it expires and it will be renegotiated.

Now, those are the circumstances surrounding the Inco one. I'm wondering if you have the circumstances surrounding the other development?

**MR. SAVINO:** Yes, Mr. MacMaster. First of all, with respect to Thompson, I can appreciate what you are saying and what was arranged almost 20 years ago with respect to the Kelsey Generation but I think we also have to appreciate that in 1979, the residents of Thompson are paying a considerable amount per kilowatt hour for their electricity, while Inco is paying the same rate that they were paying 20 years ago. My point was that 20 years ago, those contracts might have made sense or even 10 years ago, to the economic planners of the day they might have made sense, and I believe that the Sherritt-Gordon arrangement with respect to Lynn Lake and Fox Lake was negotiated in 1969-1970, in that area there.

In analyzing that question, I made no reference to the political stripe of the government of that day. What I did say was that we all recognize that industry needs encouragement with lower rates but I also said in my presentation that the rates for industry in other provinces are not as low. The point that I was getting at throughout is that in the inflationary economy that we have had for the last number of years, the consumers, the domestic consumers have had to bear all of the burden of the increased costs of debt, all of the burden of the increased costs of construction through their rates, while Inco and Sherritt-Gordon have not had to bear anything. I don't think it matters what political stripe the government was that created those rates, I think it's a question that has to be examined in the best interests of the consumers of Manitoba Hydro.

**MR. MacMASTER:** I see. You don't know the exact circumstances surrounding the other — you say it was Sherritt-Gordon — how they came about to get a long-term contract; you don't know the circumstances there? I had mentioned all I know about the Thompson one was the Liberal Government negotiated it. It was X number of years. They lived with it, the Conservatives lived with it, the NDP lived with it, we have lived with it for a period of a year and a half and I understand the circumstances there. I was wondering what prompted the other?

**MR. SAVINO:** I would imagine the same considerations but I don't know, I was not party to those negotiations.

**MR. MacMASTER:** Have you brought this concern that long-term agreements should not be negotiated in the best interests, as you allege, for all people — have you brought that concern to anybody else except ourselves? Have you been advocating this type of thing for years or days or weeks or what?

**MR. SAVINO:** Well, there was a presentation made to the Tritschler Commission which will be in the government's file on the Tritschler Commission Hearings, which dealt with that and a lot of other questions that I have raised here.

**MR. MacMASTER:** I also noticed, Mr. Savino, that you said that countries didn't use very much foresight when they were encouraging people at random and loosely to use Hydro, because of the situation we are in today. Does this apply to all countries, including our own province? You are in a difficult position where you own the utility; you are trying to push it and at the same time you have suggested that now we see that that maybe wasn't a good action. How does government who own a utility, operate under those circumstances?

**MR. SAVINO:** I think what I indicated was that utilities across the country in that period of the early 1970s were encouraging — we all thought the slogans and the advertisements, Live Better Electrically — were encouraging people to convert to electric heat. I think it became clear with Manitoba Hydro and the Nova Scotia Power Corporation and other power corporations over the years, that the problem with encouraging electric heat was that it put such a demand on the system in terms of your firm peak, in terms of how much power you need at any given point in time, that you had to build an overabundance of power supply for your domestic needs for those times when the water flow was low, and that resulted in electric heat not being such a good bargain as the utilities were promoting.

But this was a utility-wide problem and what I would suggest now is now that we know about that problem, that we look at the electric heat customers who have been misrepresented to Manitoba Hydro and other utilities about how they should heat their home and the economies of that, and that some formula has to be looked at for those kinds of customers. You know, when

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was talking to Mr. Evans about run-off rates, domestic users up to a certain limit, except you've got to make an exception for electric heat customers.

I think in light of the knowledge that we have now which we didn't have 10 years ago, that is to be looked at.

**R. MacMASTER:** So what you are saying is this government should consider corrective measures it relates to the advertisements and the push that was made in previous years.

**R. SAVINO:** Not only with relation to the advertisements, with relation to the rates that people are paying and that's my point about the Public Utilities Board Rate Structure Inquiry. They could look at all of these questions and they could look at the economics and they could look at various systems in which the utility could adjust their rates as between different classes of customers, to come up with a fair rate structure. The problem is, the rate structure as it now is, is not fair.

**R. CHAIRMAN:** The Honourable Member for Winnipeg Centre.

**R. BOYCE:** Yes, Mr. Chairman, through you to Mr. Savino, the Minister of Highways demonstrated interest when you made representations. Did you perchance make a representation to the former Minister of Mines and Natural Resources back in the latter part of the Sixties, that the figures that he was using and the department was using and the Hydro Department was using, projecting interest rates to be stabilized at 4-½ percent was . . . Did you make any representations in the latter Sixties?

**R. SAVINO:** No, we didn't.

**R. BOYCE:** Did you make any representation to the committees that were running around the province talking to people in the north that would in effect, if they followed through on the former Minister of Mines and Natural Resources' suggestion to proceed with the development in the north, at the City of Thompson would now be part of the Burntwood River? Did you make any representations relative to that?

**R. SAVINO:** No, I was not part of that.

**R. BOYCE:** Thank you.

**R. CHAIRMAN:** Thank you, Mr. Savino.

**R. SAVINO:** Thank you, Mr. Chairman, and members of the committee.

**BILL NO. 68 — THE STATUTE LAW AMENDMENT ACT (1979)(2)**

**R. CHAIRMAN:** I call Mr. Frank Cvitkovitch, the Mortgage Loan Association of Manitoba, on Bill No. 68. Proceed, sir.

**R. FRANK CVITKOVITCH:** Thank you, Mr. Chairman. Members of the Legislature, I have with me Mr. Warren Barnard who is the president of the Mortgage Loan Association, and I would like Mr. Barnard to come up here in case there are any questions that the members might have as well of him.

**R. CHAIRMAN:** Do you have a brief, or just a verbal brief?

**R. CVITKOVITCH:** No, it will be a brief verbal, I hope.

**R. CHAIRMAN:** Thank you, sir.

**R. CVITKOVITCH:** Mr. Chairman, so there's no misunderstanding of whom I represent, the Mortgage Loan Association of Manitoba has made presentations to the Legislative Amendments Committee before. The members of the association are basically the major mortgage lenders in the Province of Manitoba, comprising of the life insurance companies, the trust companies, chartered banks, credit unions, and direct mortgage lenders. We are here merely, Mr. Chairman, to acknowledge the action of the government with respect to Section 10 of Bill 68 relating to the amendment to Section 7 of The Payment of Wages Act.

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Our association had recognized, unfortunately only recently, the confusion and complication and the undermining which that particular legislation, after its recent amendments in the last couple of years, has created with regard to title, not only with regard to security to lenders, but title to the owners of that property. Therefore, we would like to merely go on record here today as supporting the amendment which will return to this jurisdiction the philosophy of priority of registration in Land Titles Office.

That, Mr. Chairman, is our submission.

**MR. CHAIRMAN:** Thank you, sir. The Honourable Member for Inkster.

**MR. GREEN:** With regard to priority of a mortgage, you are in a similar position with regard to taxes, despite the fact that your mortgage is registered, the taxes take precedence to your mortgage. Is that not correct?

**MR. CVITKOVITCH:** Mr. Chairman, that is correct to the extent that one can make enquiry about taxes and determine and verify what the tax position is. Whether they are buying or lending on a property, they can ascertain if there are any outstanding realty taxes.

**MR. GREEN:** But if there are no outstanding realty taxes, then next year there could be outstanding taxes, and they take priority to your mortgage.

**MR. CVITKOVITCH:** That is correct, Mr. Chairman.

**MR. GREEN:** And you can find out if those taxes are paid.

**MR. CVITKOVITCH:** That is correct.

**MR. GREEN:** And indeed you do. You find out that the taxes are paid, and if they are not, you don't let them get too much in arrears, you have a right to foreclose on your mortgage if the taxes are not paid. Outstanding taxes is a default in mortgage, is it not?

**MR. CVITKOVITCH:** That's correct, Mr. Chairman, yes.

**MR. GREEN:** Could you not do a similar thing with regard to an employer and wages, that in effect before you advance the moneys on a mortgage you could ask the employer: how many employees does he have; what is his wage exposure; and ask him to in some way bond that that will be paid and that will protect your security.

**MR. CVITKOVITCH:** Mr. Chairman, there is a correction that is being made I think by the government at this stage in the Act, which we approve and agree with, but there are many other areas in the Act that require review and I understand this bill may be reviewed by the Law Reform Commission.

The definition of employer under The Payment of Wages Act, I would submit, may be almost broad enough to involve the Members of the Legislature as employers of the people who work for the Government of Manitoba, because of the elephant-gun approach of the definition. So that when you talk in terms of the employer, that's one point.

Another point that we have had actual experience with is that an employer may not have been an employer when he entered into the loan, and he becomes subsequently an employer and you have no idea that this man has decided to establish a business, and subsequently he becomes involved in a wage claim.

**MR. GREEN:** But, Mr. — I'm sorry, I didn't get your name. Cvitkovitch. Yes, I'm sorry, we know each other and I apologize for that.

But every year you find out whether the taxes are paid. Your mortgage companies determine as to whether or not the taxes are paid, in order to protect their security, at least I think they do. —(Interjection)— They don't?

**MR. CVITKOVITCH:** Well, Mr. Barnard perhaps will answer that with regard to the procedure because there is a variation of procedures between the lenders as to how they follow up on realty taxes.

**MR. CHAIRMAN:** Mr. Barnard.

**R. BARNARD:** Mr. Green, as you're a well-known lawyer and so forth, and as for taxes, it depends on the mortgage itself, it depends on the company whether it's a 75 percent mortgage or a high ratio mortgage, and in today's inflation and so forth, with taxes being so high, most mortgage companies collect monthly taxes so they have no worry about the taxes. But we are paying them and the individuals are remitting their payments.

**R. GREEN:** There are many mortgages on which the taxes are included as part of the payment, and you do that for exactly the purpose that Mr. Cvitkovitch has given, that the taxes are a first charge on the property despite your registered mortgage. So you have found a way of protecting yourself with regard to outstanding taxes.

**R. BARNARD:** Yes, we've started out on the right foot but . . .

**R. GREEN:** Do you think that you can find a way, and if you can't, I am willing to offer my services for a fee, of course, of protecting the mortgage company from outstanding wages.

**R. BARNARD:** Would you be willing to pay the administration costs of doing this?

**R. GREEN:** I am willing to offer my services for a fee, and I am sure that the —(Interjection)— at's right, I think I'm raising that. The fact is that when you talk about the administration costs and the other costs, I assume that your administrative officers will try to see that all costs are paid, ultimately, by the consumer of the loans — and I have no illusions that this will also be the case. But I am concerned with a man who is working and performs services for an employer for a period of time and then finds that he has no wages coming in. I am concerned with the security of his wages, as you are concerned with the security of the mortgage. And I am asking you, whether you cannot find a way of protecting yourself, with regard to payment of wages, in the same way that you have found a way to protect yourself with regard to taxes which are a charge against a property, which comes before your registered mortgage.

**R. CVITKOVITCH:** Mr. Chairman, perhaps I should answer that on two points. One, Mr. Green has offered his services . . .

**R. GREEN:** For a fee.

**R. CVITKOVITCH:** . . . I'm sure not directly to my client . . .

**R. GREEN:** To the world.

**R. CVITKOVITCH:** . . . from that point of view, because the association has retained legal counsel and I have identified myself as representing them. I think, with respect to the matter of a tax claim, frankly that this is a completely different item. It is a known factor against the property, it is set annually by a corporation, a civic or municipal corporation where you can go to and obtain the information. Mr. Green is now a practising lawyer, he is well aware of the fact that he can ascertain those taxes. He cannot, however, deal with a purchase where he is acting for someone who's buying a property and determine really, from the vendor, in any certain way, whether or not a vendor has employees.

We have what we call a declaration as to possession which deals with, have you done any work on your property? That means that you would then have to rely on the statement of the person who is declaring who could then be moving to Edmonton and gone, and you don't know where a lien could be coming from. However, when you deal with the city of Winnipeg for the Realty taxes, you know exactly where you're at. Now, let me conclude that with regard to the working man there's no suggestion in our agreeing with this recommendation that we are putting down the right of that individual to have a claim. But the legislation as drawn conflicts even with such matters as The Mechanics Lien Act, which is a basic right of the working man to file a lien on a property under construction. Now, where is his lien right? There is a mechanism, there is a machinery that has developed over a number of years, and suddenly the person who works as: for example, a foreman or clerk for the owner of that property that is under construction, he has a prior claim on the man who has been working down there and putting up that building, and for which there has for years been some security. That security is undermined.

What we're suggesting, and the legislation seems to provide at least a stopgap measure, is that a document be registered in the Land Titles Office so that people can then recognize and relate

their priorities and their rights that present legislation does not allow for that.

**MR. GREEN:** Mr. Chairman, I have forgotten my question. I wonder if the clerk would go back because Mr. Cvitkovitch apparently . . .

**MR. CVITKOVITCH:** I think the question was, could we not develop something in relation to tax and I explained I thought, Mr. Chairman, the difference.

**MR. GREEN:** No, I said, could you not develop something, could your mortgage companies develop something to protect themselves with regard to wages as they do with regard to tax? And your answer was as given. And I will try desperately to relate your answer to question.

**MR. CHAIRMAN:** Any more questions? Thank you.

**MR. CVITKOVITCH:** Thank you, Mr. Chairman.

**MR. CHAIRMAN:** Mr. Walter Kehler. Bill No. 68.

**MR. WALTER KEHLER:** Thank you, Mr. Chairman. —(Interjection)— I'm not a candidate, I think it's fair to say I have done legal work for the last administration, for this administration, I hope for the next one as well, but I am representing the Manitoba Branch of the Canadian Bar Association and really, just briefly to speak in support of the amendment that is before you on The Payment of Wages Act. We're a little dismayed, actually, that the amendment does not cover the problem altogether, in fact it covers only about half of it, because as I understand the amendment at least it appears to relate itself primarily to security priority in relation to Real Property, an equally large problem exists in respect to Personal Property.

It is my understanding that the matter has also been put before the Law Reform Commission and I would hope that there would be speedy movement to further amendment to correct what we've gotten off on to a bit of a wrong track in attempts to protect one group of people at the expense of others. And I think if the Bar Association has a concern it is that the labour relationship which I think obviously does bear scrutiny and which we have no wish at all to effect in a derogatory to the workman, is now being used to effect the rights of third parties who have nothing to do with that relationship, and that should always be kept in our view, at the very minimum. In other words, all the rights that can be created as between employer and employee are one thing and they should be there, but as soon as they affect the rights of third parties, who have no voice of either influencing, controlling or even knowing about the particulars of the relationship, then I think you begin to develop bad law. And that was the concern that the Bar Association had with the sections of The Payment of Wages Act as they now stand. And specifically we had suggested that the lien right that was created under that section be retained, but that there be some mechanism set up that the lien must be recorded before it has a priority, and then that it have a priority from that point onward, because the alternative, and we already have some case examples that are not either decided or are in process before the courts, where you're going to get very unfair results.

The Mechanics Lien Act has been mentioned already as one of those, and I know of one case that is now, well I shouldn't say that it has become a law suit yet, I know that it is just under consideration in another law firm, not mine, but where there is a very real possibility that the lien created under The Mechanics Lien Act for the benefit of creditor workmen, suppliers of labour and material, is now going to be superseded in that case by a group of employees who probably, at least as far as an analysis of it can be determined, had a pretty good awareness of what was going on in the business, and it seemed to us that that's probably unfair to the workmen who supply work and materials for the project.

The Mortgage Lenders Association has presented a brief on behalf of its group in respect to lenders but actually the same problems that occur for lenders equally exist for purchasers of property, and I think that it would be unfair that any one of you who go and enter into an agreement to buy a house, completely unrelated to any business arrangement that your vendor has with employees, either now or hereafter, should suddenly be later on made subject to that kind of priority.

I know of another case involving an elderly couple in a pretty classic situation who sell their house when they are no longer able to maintain it, they take a mortgage back because they need to invest the money somewhere anyway, it helps them to sell and gives them a regular income. Now these are little people, they're not a big insurance company. They are now standing behind

a series of workmen years later and there goes their retirement fund. And it seemed to us that is easily possible to protect workmen from their employers without interfering in completely unrelated business relationships.

And indeed, finally, to the extent that lenders are involved, it's our view after study in the association, that it doesn't really probably have any good effect for the benefit of workmen anyway, as it stands, and consequently should be changed. The reason we say that is that in all logic, I think Mr. Green is quite right that it is possible for the lenders to figure out a way to protect themselves. One of the ways, certainly, would be to require regular declarations from their borrowers as to whom they're employing and that they're paying them. But you can imagine the kind of administrative cost that that involves, and we'd be kidding ourselves if we didn't say that that cost will be passed along as a cost of borrowing, and then the already high interest rates that everyone must pay on mortgages will go even higher. That's going to be at least one sure result.

Another way is for mortgage lenders to cut back as to whom they'll lend to, or how much they will lend. That equally detrimentally affects the common man.

Finally, if one is looking at major financings, and I've looked at some of those, too, it really invites you to play games with this kind of legislation, and you start setting up one organization that employs the people and another organization that has the assets, and then you lend to that one. And things like that, there are all kinds of legal creative possibilities, if you like, but frankly, the Bar Association, I think has always taken the position that those kind of things are not good for either the legal profession or the general public. And consequently we have suggested that the government should take a look at the provisions of this Act, and that certainly Section 7(1) should be immediately changed because we've already had to tell the members of our association to report on all lending transactions and to all purchasers that this legislation exists and there is no way that we can protect them against it. So the results will inevitably begin to flow in, and we submit that all it will do is set up one group of labourers against another, the general public against a particular class of the public, without benefit to any of them.

That is essentially my submission. I would like to make one comment in response to the questions raised by the Honourable Mr. Green in relation to the comparison to taxes. I think that's not really a valid comparison, part has already been touched on. Taxes are a part of public record. Employees' earnings, and their payments by employers, are not part of public record, and I think that a lot of employees, employees not employers, would be very loathe to have them made part of public record. And I think you certainly as a lender, I'd think it would be a very interesting exercise to go around through some plant and ask all of the employees to tell you how much is owing to them by the employer, and how much it should be. And that's really what the lender would have to do.

So, moreover, if there is a default in the tax situation, the law now is that the taxing authority, be it a municipality ordinarily, must give notice to a registered security holder of any tax sale proceedings and that notice comes forward relatively automatically. That kind of machinery does not now exist for payment of wages.

So, in summary, the amendment as it now stands doesn't remove the right of lien as such, but simply requires that it become publicly ascertainable. We support that. We say only that you've gone one half the way now, and we really think you should equally go the rest of the way because the same problem applies with all personal property. Thank you.

**R. CHAIRMAN:** Mr. Mercier, the Attorney-General.

**R. MERCIER:** Mr. Chairman, through you to Mr. Kehler. In addition to the lien for wages having priority over a claim for wages by workmen under the Mechanics Lien, Mr. Kehler, is it not also correct that that lien could also take priority over a lien under The Builders and Workmen's Act for work performed; for work performed under a lien under The Garagekeepers Act; for work performed in a lien filed under The Repairshops Act; for an execution to collect an order for wages for a lien under The Threshers Lien Act for wages; and in fact over an order for maintenance for wife and children filed in the Land Titles Office.

**R. KEHLER:** That's quite correct, it could. The problem is, I think we had a list of something like eight other lien rights that there is a conflict with, and one of the problems really is that there is more than one Act which says that "notwithstanding any other legislation, this takes priority," and frankly, we don't know what the courts will do as it now stands but clearly that possibility exists.

And if you look at just the Payment of Wages Act as it now stands, it would appear to leave the question because it says, "notwithstanding any other legislation", but when you get to the next Act and it says the same thing, which one has priority? I think that our best judges would

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have a very difficult time, and that's why we're suggesting, you know, the clean up by amendment is necessary.

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** Mr. Kehler, I don't know if you're aware, but perhaps just for your information with respect to your second request that we've only gone halfway, I should indicate to you that I have referred to the Law Reform Commission the confusion over existing priorities of various liens and encumbrances, I believe, referred to in at least 27 different pieces of legislation in existence and asked them to study this matter and report early to me so that we can attempt to clarify the legislation as early as possible.

**MR. KEHLER:** Well, certainly when that comes forward I think I can assure the Committee that the Bar Association will study it. I think probably — I can only speak as an individual here — I think we would welcome an attempt generally to bring some order into lien claims and perhaps some centralization into how these things are created, how they are registered, and how one can find out about them, because I think the public at large would be much better served. It has nothing to do with the rights of one group as against another. I think it would be much better for the public if it were always clear because I think every lawyer has far too many experiences of somebody coming in not knowing that a lien right existed, or else not knowing that they should have checked for it if you're on the other end. This happens all the time, and anything that can be done to clarify that up would obviously be welcome.

**MR. CHAIRMAN:** Mr. Green, the Honourable Member for Inkster.

**MR. GREEN:** Yes, Mr. Kehler, I'm rather confused when you say that you're not asking that security be done away with, that you're just asking that it be registered. Is that your position?

**MR. KEHLER:** What we're suggesting is not that there be no ability to get a loan, but we're saying that the lien should begin when the lien has been specifically registered, in terms of priority at least.

**MR. GREEN:** But that is a significant, as I perceive it, no, it's a significant difference in security.

**MR. KEHLER:** Yes, of course.

**MR. GREEN:** Because you are suggesting that I only have that security after I don't get paid if I file a lien, and the present Act is that I have that security even if I'd been paid every penny that is owing to me on wages that may not be paid to me a year from now. So it's not registration that mean, would you permit me to register a lien now for potentially outstanding wages, which is what this Act does?

**MR. KEHLER:** No, I think we would be opposed to that. We're saying there must be another way to protect a workman in a business relationship, not . . .

**MR. GREEN:** I just question, Mr. Kehler — I'm sorry.

**MR. KEHLER:** . . . not against unsuspecting third parties who have nothing to do with the relationship.

**MR. GREEN:** Well, I am just then questioning what I thought was your statement that you're interested in removing the security; you just want it to be registered. Because there is a significant difference in what you are suggesting insofar as security of wages, unpaid wages, are concerned with what is presently in the Act, not merely the registration.

**MR. KEHLER:** I agree with you, and perhaps I did not put it well, obviously I didn't. No, we're suggesting that if you're going to have an automatic lien right that is created from the date of the commencement of the employment, and will always take precedence over everything else, then there is going to be a cost involved to the whole of society that is very substantial, but will ultimately end up affecting a specific group, those who are purchasers, those who are borrowers, but who have no necessary relationship whatever with the employer/employee relationship, and in principle

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seems to us that that doesn't give rise to good law; it gives rise to a lot of misunderstanding; gives rise to a lot of unhappy results for people who have no way of determining what risk they're taking. And it's not so much the big lender who can't determine the risk, he can, and he'll charge you a good fee for it. But what really happens is the average man on the street can't protect himself from that. There isn't any good way. I'm not the labour management expert, and I wouldn't purport to suggest which other good ways there are of protecting that relationship, but I'm sure that there are a good many other ways that can be found. For example, if you really wanted to have the lien right from Day One, well, fine. You know, you can pass legislation which requires that that lien be registered, and once I know it's there, fine, then I can protect my clients against it, but that's not the position we're about.

**R. GREEN:** That is the position. You know that it's registered because you have an Act which says that it is . . . You say you can protect your client against it if it was registered. This Act institutes registration of a lien right for every employee. You say you can protect your client. Go ahead and protect him.

**R. KEHLER:** The problem is it protects against every employee. I can protect now, but I can't protect ten years from now. That's the real problem. And I don't know, if you asked me to lend you money today, whether you have any employees or not, but it really doesn't matter whether you have now or not because five years from now you may have.

**R. GREEN:** But Mr. Kehler, you said that if the lien was registered, you would know, and you would be able to protect against it, and I'm suggesting to you that this Act is tantamount to the registration of the lien.

**R. KEHLER:** Well, no, I'm saying there should be a specific registration, because just a general lien is of no use to anybody because that may mean . . . For example, in my law firm where I have a partner and we have maybe some 20, 25 employees, if currently our arrangement in our firm is that the firm pays the staff, then I have 25 employees and a potential, or a contingent lien at times against me equal to \$50,000.00. Now, if, for example, I have those employees hired by a management company that supplies our firm, I probably have no employees, and that can go back and forth at any time. And what use is it to the general public to say, "Well, there's always a general lien right", if you don't know who it applies to. If you have a specific lien, sure, let the employee file it from Day One if he wants, I don't think that causes us the problem. But then when the employee ceases to be an employee there is also then presumably a right of withdrawal of it, and so the lien is no longer there. So you can know who you're dealing with. That's the concern that we have.

**R. GREEN:** Mr. Kehler, this legislation has been in effect for two years. Is that correct?

**R. KEHLER:** Approximately.

**R. GREEN:** Do you know of any mortgage company that has lost their security to an employee lien holder by virtue of this legislation?

**R. KEHLER:** I think there are some, and there are some that are now before the courts. There is a number of cases now pending.

**R. GREEN:** You've told us about cases where different employees are contending for the lien rights. I'm asking you whether you know of any mortgage company that has lost its security by virtue of this lien on wages?

**R. KEHLER:** Well, I can't say that there are any completed cases, and I wouldn't want to comment on the ones that are before the courts, I think that's proper.

**R. GREEN:** Well, you did comment on the ones that were before the courts, and you said, and I don't think it's improper to tell me that there's a case in court where lien rights are claimed by a lien holder under this Act, or a lien claimant under this Act, or one under The Builders and Trades Unions Act. Certainly it's not improper for you to tell us that, and if you think it is, I for one would want to absolve you from any impropriety. Do you know of a case, do you know of any case —(Interjection)— Well, I can tell Mr. Kehler that it is absolutely not improper, under Legislative Rules, for somebody to bring to the attention of a Committee that there is a case before the court



where somebody is suing somebody, and I'm asking you whether you know of any mortgage company in the past two years that has lost its security — mortgage company — because of a lien claim under this Act?

**MR. KEHLER:** I'm not suggesting that I know of any specific mortgage company that has already had a loss. I think Mr. Cvitkovitch could tell you better than I could whether there has been one of those. I do know of one case where it involved private individuals, and that case is not complete either, I don't believe, but where it appears that the mortgage rights will be lost, or at least in part.

**MR. GREEN:** Do you know, Mr. Kehler, of whether there is any change in the mortgage lending rate in the Province of Manitoba as against the Province of Ontario where this lien right does exist?

**MR. KEHLER:** Well, the rate differences exist for many reasons. Again, I think I shouldn't comment on the practices of the mortgage lenders since their association is represented here. I think that question would properly come before them. That wasn't our consideration, we were concerned that obviously there is a potential for it there, but our association looks at legislation in terms of workability of the law as it stands, not the policy of it. That's not the function in the Mortgage Lending Association.

**MR. GREEN:** But you indicated, Mr. Kehler, that this is going to lead to a rise in lending rates because it will be passed on to the consumer, and I have asked you whether in two years a mortgage company has lost money, or whether there has been any difference in the pattern of lending rates in the Province of Manitoba as distinct from other provinces, and you seem to be saying you don't know.

**MR. KEHLER:** I think it's far too early to say, frankly.

**MR. GREEN:** It's too early. I see. Then, there is no substantiation of the fact that any mortgage company has lost money. You say there is a case where it may be the case, but there certainly has been, to your knowledge, a whole series of mortgage companies who have lost their security because of this lien?

**MR. KEHLER:** No. Well as I say, I think that you need more than two years to determine whether that will work. But I think there's obviously I don't know that we need to wait for whatever length of time it is till we've had the disaster and then deal with it, because I think the practices of lenders are well known, and they set rates in relation to risk. I think that, Mr. Green, you know that as well as I do, and I think the logic of that submission is not really refutable, because it's obvious that that's the longer term result. Now, whether it's happened in the relatively short length of time, I think that the Mortgage Lending Association told you that they only recently really became aware that it was there.

Now, what they're going to do as that awareness spreads . . . I know that I've had some interesting calls in my office from lawyers, from mortgage lenders, and others who are saying, "What's this thing that you sent around a practice note to the legal profession about? We're going to have to look at what we're doing." Now, what they'll do — perhaps next year we can tell you but we're suggesting that the projected results are obvious enough so that another method of protection for the workman should be found, and this isn't the right one.

**MR. GREEN:** Mr. Kehler, I would hope that I could get a rather definitive answer to the question as to whether you know of any problems that mortgage companies have had — not the projected disaster because your projections of disaster is something that one can argue about. Do you have the disaster projections with you?

**MR. KEHLER:** No, I'm not in the business of making disaster projections.

**MR. GREEN:** Well, you have just done so.

**MR. KEHLER:** I think that . . .

**MR. GREEN:** You say that it is an irrefutable logic that there will be a disaster and don't worry for it. Now, I would like to know whether you have your disaster projections on hand?

**R. KEHLER:** That's not what I said at all, and obviously I don't have disaster projections on and; I don't maintain them.

**R. GREEN:** Well, that is exactly what you said; you said, "Why wait for the disaster; the logic the position is so clear as to be irrefutable, and therefore, you don't wait for it to occur." Now, want to know whether other than your logic, which I may believe to be refutable rather than refutable, is supported by any disaster projections or any past experience, other than what you said that there might be one case where a mortgage company is in danger of losing its security?

**R. KEHLER:** No, there are a number of cases that are now in process, or in contemplation. I don't have a complete list, obviously and I haven't . . . In The Bar Association, this matter came before us about late March of this year, and it takes a while to get all of the material together, it we do know that there are cases in process, and that there are more under contemplation. You know, more than that I can't say to you, and if you wish to argue with my suggestion that something which either increases risk, or which makes risk undefinable in dollar terms, or if the . . . well, that kind of thing, generally results in increased cost. And if you want to say that isn't . . . of course that's your privilege, but I think I stand by that submission.

**R. GREEN:** Mr. Kehler, you've indicated some things which I consider to be the possibility of constructive changes. You say that two groups of wage earners can be arguing about the same lien. Wouldn't that be subject to remedy by indicating that the amount of the lien would be divided *in passu* amongst the wage earners who are contesting, or that they would all be entitled to an equal lien? And if that ate up the property, they would share equally.  
Couldn't we put in a provision of the Act that said that where it is two lien claimants, and both are claiming with regard to wages, that they are share equally and by the way, the Attorney General's indicated that The Builders and Workmen's Lien would be affected by this lien, and both of those would take priority to the mortgage.

**R. KEHLER:** Okay. Yes, sure you could pass another amendment that ranks them equally, if that's what you want to do. That isn't sort of what's under contemplation in the amendment as presented, but the problem, though, is that you are then saying that your own legislation that you have passed other Acts is bad, and that the amount of remedy that you allowed for to another class of workmen now to be affected negatively by an amendment here. And I agree with you, you can do that. Any question, however, whether that's again the way to go about it; I think you have other alternatives.

**R. GREEN:** I assure you, Mr. Kehler, we have been here long enough to know that the fact that we are amending something or changing it or revising it doesn't constitute an admission that what exists now is bad. The government has come in with legislation which they've amended the next year; it happens. But you have raised a problem that workers are competing with each other for the same lien, and you . . . say that if we pass a law saying that they share equally, we are somehow stating that the other legislation is bad. That's another part of your irrefutable logic.

**R. KEHLER:** I didn't say it was irrefutable logic at all, but it does seem to me that, for example, if you take The Mechanics Lien Act or The Builders and Workmen's Act and the lien rights that were created there, you set aside a certain fund that by this time is pretty well known to all of the people that are affected by that legislation, and that is the standard our community has as being efficient protection for those people. And now if you start introducing another class of employees who are workmen who will share that same fund — and I know of one particular case where that bears now to be about to happen — then that 15 percent or whatever it is was that was held back suddenly becomes something considerably less, and how much less, nobody knows, including these workmen who are used to having their right at the 15 percent of the contract, and they know at it is, they can determine that readily and easily, and they don't know what's going on in the back rooms of the employer with maybe his own employees. And I'm suggesting that there should be another way found and this isn't the place.

**R. GREEN:** Mr. Kehler, you've also indicated and I accept it as a real matter for consideration that an employer's home may be something completely and apart from where the employee works. Would you consider that that kind of thing can be corrected by saying that this lien will only apply to the premises where the employer conducts his business, and where the employee's employed?

so that we won't worry about your house being taken over by your employees whose wages you say might not pay, although I don't believe you, I believe that you will pay your employee's wages and that most people will pay their employees wages as a priority, in any event, but that we can change the law so that it refers to the building in which you are employed, and if you don't happen to own that building, then there's no lien. Couldn't that take care of that particular problem?

**MR. KEHLER:** It's another way of going about it. It has about an equal number of problems. I think we looked at that to some extent as a possibility and it tends, we thought, it tends to involve more machinations on the part of anyone who really wants to terminate the lien rights, and particularly those people who are advisors to business people as to how they should organize their business, long before any problems exist.

What would I do as a lawyer with the businessman who's going to set up his business? The first thing I would tell him is, "Get that property out of the business and put it in another name and it's that kind of thing that we fear is one of the results and again if that happens, it doesn't help the workman but it doesn't help the businessman or the general public either and that's why we rejected it in our own little group as an alternative, but I agree with you, it could be approached that way."

**MR. GREEN:** Mr. Kehler, did The Manitoba Bar Association, in its sub-Committee try to figure out a way how this lien could be made more effective rather than saying that it should be removed?

**MR. KEHLER:** Well, you should understand that the subsection that I'm particularly attending to is The Real Property subsection, so we are dealing with it in terms of the problems that it creates in Real Property law. Now, in terms of the context of enhancing lien rights for workmen, there is another section of The Bar Association that looks —(Interjection)— Pardon me?

**MR. GREEN:** When are they going to appear here and tell us how to make this section more effective?

**MR. KEHLER:** It's a voluntary association of people; I don't know if they have an intention to speak to it. They know what our recommendations were, but just how they're proposing to deal with that I don't know. Perhaps you as, presumably, a member of that subsection have a better idea.

**MR. GREEN:** I'm not a member of the subsection, nor do I know that it has ever come here to tell us how the employees can collect their wages. It doesn't seem to be a preoccupation of The Bar Association.

**MR. CHAIRMAN:** Mr. Enns, the Minister of Highways.

**MR. ENNS:** Mr. Chairman, just one short question of Mr. Kehler. When you refer to the potential disaster for somebody. . .

**MR. KEHLER:** That's an unfortunate way to . . .

**MR. ENNS:** Well, I want to come back to it and I want to not refer to specific cases of which I know there are only a few. I think really what you are doing is alerting government to a problem area with one of our Statutes; that would it not be fair to say that the likelihood of difficulty would accrue most often to those in the least possible position to properly defend themselves? That is that the companies, the more sophisticated borrower, will indeed find ways to protect his investment that it may be costly administratively which eventually will get passed on to the lender, but in the case of the retired couple, that senior citizen that sells her home or his home to move into an apartment then decides to lend out her money in a private mortgage. The least sophisticated mortgagee is the type of person who could get entrapped in this kind of situation, and to whom it could be a disaster in a smaller sense.

In other words, I'm prepared to concede that Mr. Green was making the point that you could name a string of difficulties or disaster cases for mortgage companies, but the likelihood that it could hurt the individual — lesser sophisticated borrower — is real, and for that reason we ought to make amendments.

**MR. KEHLER:** Well, again, I don't carry statistics with me, but I would expect that to be the res

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at is nearly always the result of legislation, that the most sophisticated people have the greatest ability to avoid the largest part of the results. I can speak from my own experience in relation to larger scale financings, where we've been aware of this, the existence of this for sometime, and usually there are a number of ways that it can be dealt with fairly satisfactorily. But one of the results is that it avoids the intent of the legislation as it stands. In other words, it's not that difficult to avoid the effects of Section 7(1) as it has been, but this would normally only come to the fore if you have a major, a larger debenture, and you're acting either for a lender or for the sophisticated borrower, and you cover a broad range of fields and yes, you can avoid it if you want to. But it's usually the less sophisticated transaction and the less sophisticated people who are either not aware and are the first to get caught. I think that's generally true, although I can't give you statistics in this particular case.

**Mr. ENNS:** Thank you, Mr. Kehler.

**Mr. CHAIRMAN:** Thank you, Mr. Kehler. Any more questions? Is Mr. Steele here? Frank Steele? Mike Froese, Edward J. Kirby? We had Mr. Kirby. Diane Slusar, I'm sorry. Then that is all the people who have signified their intention to make presentations to the committee. Committee rise.