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Second Session — Thirty-Second Legislature

of the

Legislative Assembly of Manitoba

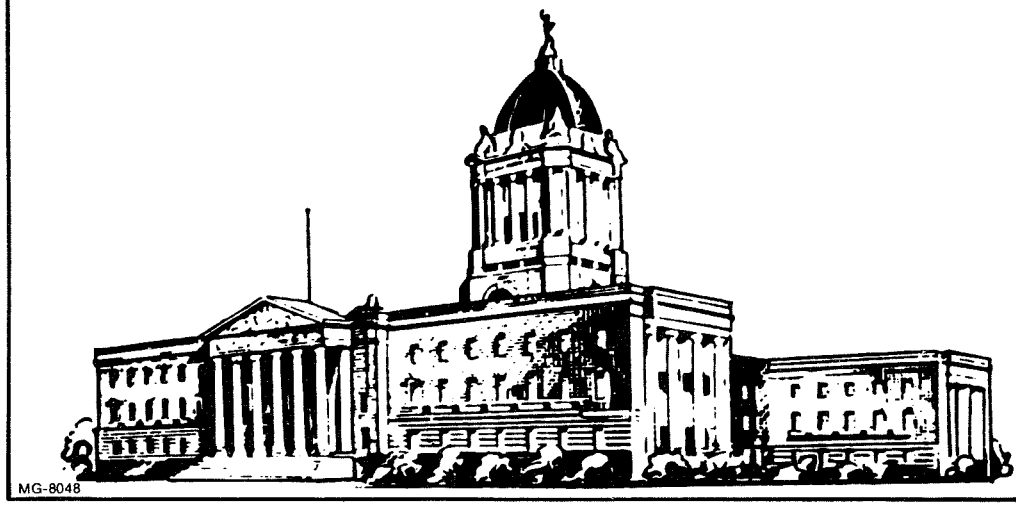
STANDING COMMITTEE

on

LAW AMENDMENTS

31-32 Elizabeth II

Chairman
Mr. Phil Eyler
Constituency of River East



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Thursday, 11 August, 1983

TIME — 8:00 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Phil Eyler (River East)

ATTENDANCE — QUORUM - 6

Members of the committee present:

Hon. Mr. Bucklaschuk, Hon. Ms. Hemphill, Hon. Messrs. Kostyra, Mackling, Penner, Plohman, Uruski, Uskiw

Messrs. Doern, Filmon, Mrs. Hammond, Messrs. Harapiak, Harper, Hyde, Lecuyer, Mercier, Ms. Phillips

WITNESSES: Dr. Linda Asper, President, Manitoba Teachers' Society

Mr. Bill Gardner, Manitoba Chamber of Commerce

Mr. David Newman, Winnipeg Chamber of Commerce and Employers Association

Mr. Wayne Ritcher, Private Citizen,

Ms. S. Juravsky, Manitoba Monument Association

Mr. Garth Steek, Steek's Interior

Mr. Victor Steek, Steek's Fine Furniture

Mr. Jim Band, House of Teak Furniture

MATTERS UNDER DISCUSSION:

Bill 62 - The Provincial Court Act

Bill 72 - The Wild Rice Act

Bill 98 - An Act to amend The Queen's Bench Act and to repeal The County Courts Act, The Surrogate Courts Act and The County Court Judges' Criminal Courts Act and to amend The Municipal Boundaries Act

Bill 99 - The Court of Queen's Bench Small Claims Practices Act

Bill 100 - The Court of Queen's Bench Surrogate Practice Act

Bill 101 - An Act to amend Various Acts of the Legislature to facilitate the Reorganization and Expansion of the Court of Queen's Bench

Bill 102 - An Act to amend The Teachers' Pensions Act

Bill 104 - An Act to amend An Act to Incorporate The Sinking Fund Trustees of The Winnipeg School Division No. 1

Bill 110 - An Act to amend The Consumer Protection Act

Bill 112 - The Statute Law Amendment Act (1983)

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MR. CHAIRMAN: Committee, come to order. We are considering several bills tonight. I understand there are several people who wish to make presentations on Bills 102, 110 and 112. I also understand that the Minister of Consumer Affairs may be making an announcement which may affect the desire of several people to make presentations on Bill 110. What is the will of the committee? Would you like to start with presentations on Bill 102?

Mr. Mackling.

HON. A. MACKLING: Mr. Chairman, I know as a lawyer that clients have to pay the shot when they sit around, so we've got I think a lawyer or two — (Interjection) — Oh, I don't know, I would say Bill 112.

MR. CHAIRMAN: 112? Mr. Penner.

HON. R. PENNER: I would think that because there are a whole number on consumer protection, let's hear the one on the MTS bill, and the two on Statute Law Amendments, and then hear the briefs on consumer protection.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, in view of the large number of people here on Bill 110, probably with respect to the rather ludicrous 5 percent deposit provision, I think if the Minister would make a statement indicating that he intends to withdraw that particular provision, would free those people up for the rest of the evening. I don't think we should make them wait, because he's indicated in the House that he was going to do that.

A MEMBER: Good suggestion.

MR. CHAIRMAN: Mr. Bucklaschuk.

SOME HONOURABLE MEMBERS: Oh, oh!

MR. CHAIRMAN: Order please. Mr. Bucklaschuk.

HON. J. BUCKLASCHUK: With respect to Bill 110, I had my assistant contact all those who had indicated that they were going to present a brief to inform them that it was my intention to bring in amendments to committee to delete Section 118, the section that required a maximum deposit of 5 percent.

MR. CHAIRMAN: Will that affect the desire of the eight members of the public who wish to make presentations? It was proposed we do Bill 112 first. Can you hear me in the back? You can't hear? You can hear now, okay. Did you hear the Minister of Consumer Affairs make his announcement?

HON. J. BUCKLASCHUK: Well, we'll try that again then. I just informed the committee that I had my

assistant contact all those who had indicated that they were presenting a brief, that it was my intention to bring in an amendment to committee to delete Section 118, that section that stipulated that a deposit may not be greater than 5 percent.

I am also aware that a number of persons have indicated that they were wanting to present a brief on other parts of Bill 110, so they may very well be the ones that are waiting.

MR. CHAIRMAN: That announcement having been made, the suggestion was that we proceed with the presentations on Bill 112 first. Is that agreed?

Bill 102 - Dr. Linda Asper.

BILL 102 - THE TEACHERS' PENSIONS ACT

DR. L. ASPER: Good evening, bon soir. I would like to thank you on behalf of our organization, the Manitoba Teachers' Society, for the opportunity to speak with you this evening.

Je vous remercie au nom de la Manitoba Teachers' Society d'avoir l'occasion de vous presenter quelques idées a propos de numéro cent deux.

With me this evening I have David Lerner, who is Chairperson of our Employee Benefits Committee and Aubrey Asper our Assistant General Secretary.

It's not our intention this evening to present a written document, given the time of day and the fact that I would suspect that most of you haven't had a holiday at this point in the summer. I would like to make three points in relation to Bill 102 on behalf of our organization.

MR. CHAIRMAN: Mr. Harapiak.

MR. H. HARAPIAK: We're having difficulty hearing you from here, so I'm wondering if her speaker is on.

A MEMBER: You have to cuddle up to the mike.

MR. CHAIRMAN: There are earphones in the middle of the table, Mr. Harapiak.

DR. L. ASPER: Would you like me to start over? My first point then is that our organization, the Teachers' Society, is present here tonight to support the legislation. It is our opinion that a major portion of it is housekeeping but the substantive changes that we find in the legislation are in conformity with our objectives, specifically and very briefly, the widening or the broadening of the types of reinstatement that we find in the plan which makes it possible for people to be reinstated where deadlines have been missed.

Secondly, we find that the legislation makes clear the intent of the amendments to the act in 1980, with respect to certain persons under the plan who transfer from one government department to another.

We have been consulted in terms of the amendments and I have a seven-page analysis that we have prepared in terms of it, but what I would like to do tonight is state that we are in favour of it, we support it, and leave it for you if you have any questions, which I or my colleagues will attempt to answer.

Si vous avez des questions, nous sommes prêt à les répondres?

MR. CHAIRMAN: Are there any questions for Dr. Asper? Seeing none then, I would like to thank you for taking the trouble to come here tonight.

DR. L. ASPER: Merci; thank you.

BILL NO. 112 THE STATUTE LAW AMENDMENT ACT (1983)

MR. CHAIRMAN: Bill 112 - Mr. Bill Gardner.

MR. B. GARDNER: Thank you, Mr. Chairman. I appear on behalf of the Manitoba Chambers of Commerce. I am here to address myself to Section 16 of Bill 112, the amendments to The Labour Relations Act, specifically Section 75.1. Various employer organizations have expressed their opinions with respect to this particular provision of The Labour Relations Act, and I would propose not to belabour the point.

I have, while waiting for the meeting to start this evening, read with some interest the comments of the Honourable Mr. Penner regarding this bill; and I am sure, Sir, that you would agree with me when I express the opinion that the ideal in collective bargaining is to allow the parties to reach their own agreement.

I would suggest, therefore, that the remedy of an imposed agreement should be a last resort, and that this committee should be wary of these provisions being used as a crutch, of being too easily available to either side who may wish to simply abdicate the responsibility for compromising and negotiating in reaching a collective agreement.

These amendments are relatively narrow in scope, and I don't wish to go over the opinions that have been expressed regarding the usefulness of first contract legislation; but this committee and, in particular, those members of the committee who are lawyers, I am sure, understand the distinction between administrative and judicial responsibilities and procedures. I suggest that if an imposed first contract is not to be had merely on demand, if a choice is to be made whether or not it's advisable to impose a first collective agreement, then that choice is a judicial one. It's a decision that should be arrived at judicially, and not one that should be arrived at administratively.

The Minister of Labour, I suggest, is not equipped to carry out the form of inquiry that I think is necessary in order to consider the merits of any particular application for an imposed contract. I suggest that there is a body that is eminently well equipped; and I suggest that body is the Manitoba Labour Board and I suggest that body, at the moment, holds the confidence of the labour relations community, both management and organized labour and employees.

Now if the Minister wishes to provide a pre-screening service, such as is provided with respect to certain unfair labour practices, in particular, allegations of bargaining in bad faith, then the organization that I represent has no serious quarrel with that. It may well be a duplication of services; it may well be unnecessary but it isn't particularly harmful. I think what is harmful

is where you attempt to exercise a judicial function out of an administrative office. Under those circumstances, the dangers include too much accessibility for one side or another, the possibility of the appearance, if not the reality, if not the reality of political favouritism and potentially you end up with a situation that's counter productive. You in fact may go so far as to discourage free collective bargaining which this legislation is supposed to encourage.

It's true we share this legislation with other jurisdictions. If my understanding serves me, the other jurisdictions, which include the federal jurisdiction, B.C. and Quebec, all have vested the power of decision with their board. I think that it's dangerous for us to depart on a tangent, to go, in effect, one step further. I think it's useful, notwithstanding the Honourable Mr. Penner's comments which I read with interest, that we keep a view to what's being done in other jurisdictions and I would suggest that these amendments constitute a further step in the wrong direction; and I would submit that they be reconsidered and I thank you for your attention.

MR. CHAIRMAN: Are there any questions for Mr. Gardner?

Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, his last comment intrigued me. He indicated this was a further step in the wrong direction. I wonder if Mr. Gardner could amplify on that remark.

MR. B. GARDNER: It's my opinion that the first step in the wrong direction was the enactment of the provisions in the first place.

MR. CHAIRMAN: Are there any further questions? Seeing none, I would like to thank you for taking the time to come here tonight, Mr. Gardner.

MR. B. GARDNER: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Dave Newman.

MR. D. NEWMAN: Mr. Chairman, I have some quotations, this is not my submission I can assure you.

I am here representing the Winnipeg Chamber of Commerce primarily, who has submitted a letter to you bearing the date August 11, 1983. I think it was circulated to all members of the committee and in case their copies are not handy, it's signed by James W. Wright, the President and it's to the Chairman. It reads:

"The Winnipeg Chamber of Commerce wishes to record its concern with Bill 112, The Statute Law Amendment Act (1983). This bill includes amendments to The Labour Relations Act which deals specifically with first contract legislation. The first contract provisions, The Labour Relations Act, interferes with free collective bargaining and is inconsistent with that very concept.

"Section 75 of the act, not only provides for government interference of the free collective bargaining, it politicizes disputes and first negotiations. The amendments proposed in Bill 112 will make it mandatory for the Labour Board to impose a settlement when the Minister of Labour refers a case to them for this purpose. The board arbitrated first agreements, no matter how unsatisfactory or unfair to either of the parties or both parties, cannot be appealed.

"The Winnipeg Chamber of Commerce representing over 4,200 professional and business people in Winnipeg, urges the Law Amendments Committee to delete Section 16 of Bill 112 as it creates a further hardship to free collective bargaining process in Manitoba."

I'm also here representing the Task Force and Labour Relations, representative of the following groups: the Winnipeg Chamber of Commerce; The Canadian Manufacturers Association, Manitoba Branch; the Manitoba Chamber of Commerce; the Manitoba Fashion Institute; the Personnel Association of Greater Winnipeg; the Manitoba Association of School Trustees; the Manitoba Hotel Association; the Manitoba Restaurant Association.

It's the position of that group, in a brief that they presented to Marva Smith, who this committee is probably aware is undertaking a review of labour legislation in this province; a review which is in the just completed public hearing stage and this matter of first contract legislation and discretion, or lack of discretion, was a matter which was addressed by the brief presented to that body.

I might say that the position of that group, presented to that body, was first of all that the first contract provisions of the statute should be repealed, and secondly that the discretion, if they did not repeal, the discretion should be given or should remain with the Manitoba Labour Board at the very least.

Now, what has happened, as soon as those hearings ended, The Statute Law Amendments Act (1983) surfaced and tucked away in Section 16, unasterisked and unmarked, no attention drawn when the bill was introduced to the Legislature, dealt with that very question, and what it did, of course, was rather then give or make clear that the board had discretion not to impose a collective agreement, it simply removed any discretion at all or any argument upon - well not any, but maybe one of the better arguments that could be made that the board had discretion. It may have, by virtue of the Charter of Rights and Freedoms, but what happened here is that the argument will not be as strong because what that amendment does is remove certain words that make that more possible.

So, what has happened, is that the submission which was in a review process, and we thought was being given serious consideration in conjunction with the whole series of other matters, is apparently not a full and complete review, but it is only a portion and this is going outside.

Now what I hope is and we hope - all the component groups - is that this is simply a housekeeping thing, which articulates better the original intent of the people that drafted it and that the question is still, and will be open for review by the Labour Law Review Committee, who have heard very detailed submissions in this regard. But in case that is not the case, I have some of the submission which would and has been presented to the Labour Law Review Committee for submission here, and it addresses the merits of the issue as to whether or not the Manitoba Labour Board should have discretion not to impose a first contract.

We all should understand, I think, the background to this. We might understand the political background to it and see how this thing came about, but what we might not understand is what happened when that legislation came into affect and was used by the Labour Board.

The first decision that the Labour Board had with respect to discretion or no discretion under first contract legislation was the United Fibre Bond case involving a United Fibre Bond employer; the board constituted by Obie Baizley, the chairman; Donald Munn, representing the employer; and Bud Henderson, representing CUPE, decided that the board indeed had discretion and it was a majority of the board. It was Bud Henderson, representing unions, and Obie Baizley that made up the majority and decided it must be intended that the board had discretion to refuse to impose a collective agreement. Donald Munn, the employer representative, interpreted the legislation differently and concluded that the board had no discretion. However the majority prevailed, and then what happened, another case came along called Care-A-Lot Day Care Centre and John Kirpesha (phonetic) was the chairman; the employer representative was Mr. McCormick; and the union representative was Art Coulter.

The consequence and interpretation given by that board was that there was no discretion by the Manitoba Labour Board and they must impose a collective agreement; and a collective agreement was imposed on Care-A-Lot Day Care Centre, involving an increase in wages and a far-reaching management rights clause, far reaching in the sense that contrary to most management rights clauses in collective agreements, it involved a considerable restriction on management rights, introduced the doctrine of fairness and gave a considerable right to the union in that particular situation to challenge the management rights in the circumstances of that particular workplace.

The situation, of course, was that this particular employer was in a deficit position at the time and ultimately the government has bailed them out of that, but that was the second decision of the board, inconsistent with the first one. So what we have here now is an amendment which makes it clear that the second board did what the government wanted it to do in the first place.

The question now is, is that the best way to go? It's our submission that it is not and in support of my position and in rebuttal to the position advanced by Mr. Penner, in his comments about this bill in response to questions asked by Mr. Frank Johnson, I would like to quote from Paul Wyler, who he referred to as the author of reconcilable differences, when he decided the case of London Drugs in B.C. and Grandview Industries and Miscellaneous Workers Wholesale and Retail Delivery Drivers and Helpers Union in 1974 dealing with the B.C. legislation. Now let me just say this, if the B.C. legislation, the Canada Federal legislation and the Quebec legislation all gives discretion to the Manitoba Labour Board not to impose a first contract - in other words if there's a situation that comes along and it looks like one of the parties really is misusing the collective bargaining process, or has not exhausted all collective bargaining avenues - the board can say no, we're not going to be used to defeat the collective bargaining process and be used by you. The Minister referred it to us, but we're saying no because we've heard the evidence. We're the experienced labour relations practitioners; we've been out in the trenches; we've heard the evidence; we're objective and we come to the conclusion that your case is really without merit and you should have bargained better in the first place. The board can't do that now. The board can't say no, based on this, unless the constitutional argument survives.

Now, B.C., Quebec and Canada have discretion in the board and here's what the B.C. Board, Paul Wyler said in 1974. "We can sum up the thrust of Section 70," the equivalent of our section subject to that discretion, " . . . by saying that its objective is to promote free collective bargaining, not to substitute for it. It should only be used in cases where that particular objective requires this unusual device. It is not intended as a standard response to the breakdown of bargaining, even in the case of first contract negotiations. Even parties who are both quite willing to agree on terms each considers plausible, may fail to do so. The union may be strongly committed to basic standards it has negotiated elsewhere and be unwilling to risk diluting them by accepting less in this unit.

"The employer may believe that these same terms are inappropriate for the special economic circumstances in which it operates. Both sides are genuinely prepared to sign a collective agreement, but neither will budge from the position it feels is reasonable from its point of view" - much like the position the government now is in with regard to this bilingualism question and entrenching of language rights in this province. There's certain times when, because of principles, principles that might depend on the survival - a business might depend on for survival or a union might depend on for survival. Because look at it this way, there can be a reverse. It may not be a union applying for first contract, it can be an employer applying as well, but the board has to impose a collective agreement.

The B.C. Board, Paul Wyler concluded, "In our judgment that is not the kind of case for which Section 70 is designed." B.C. recognized that in 1974, has not changed its legislation since, has had many cases before. But also in B.C. there are a number of other facts, which are of interest and again quoting Paul Wyler in his text, cited by Mr. Penner in his legislative debates, it says: "Our experience with first contract arbitration has left me more than a little skeptical of that thesis. By and large these collective bargaining relationships did not mature. The unions were decertified after the expiry of the contract, which we had imposed. These bargaining units tended to be small, employee turnover was high, the union was not able to retain or rebuild its support and the employer remained hostile throughout the entire experience."

B.C. is a highly unionized province with more large employers than Manitoba. Manitoba is a small business economy. That's what we're dealing with in Manitoba, mainly small businesses and not - as in Mr. Penner's remarks - small unions dealing with big businesses, but when we're talking about first contract legislation, we're primarily dealing with cases where it's a big union. Manitoba Food and Commercial Workers most

significantly has been the one that's brought these applications and the Canadian Union of Public Employees, neither dependent for survival on the assistance very much of government.

They are dealing with small employers: Care-A-Lot Day Care Centre, CUPE needed the assistance of the government, the Manitoba Labour Board to achieve a collective agreement with that group, if that theory advocated or behind this type of legislation were carried through.

The other thing Wyler says in his text is, "I now believe that special conditions are needed if first contract arbitration is to be able to preserve long-term, long-range collective bargaining against the efforts of a recalcitrant employer, and one of those conditions is the unit must be fairly sizeable. The union must retain a solid core of support who can act as an inside unit committee and there should be a two-year agreement, in which to engage in visible administration, the contract, the . . . discharges, seniority cases and the like, in order to demonstrate the value of collective bargaining in action."

So there are many doubts in B.C. as to whether or not this is a good way to go and in B.C. they have doubts, in spite of the fact that they have discretion, and in some cases they don't impose. Federally, the same experience. Many cases they haven't imposed, because it would be an intrusion and a detriment to the advance of free collective bargaining in the interest of union, management and the public interest.

I just close with remarks of another old-timer whose views, I think are contemporary, if not futuristic as well, and it goes back to Canadian Industrial Relations Report of the Task Force and Labour Relations, 1968, the Royal Commission and I just quote paragraphs 396 and 397.

"Even if this basic objection to compulsory arbitration" - and that's what this is, this is mandatory interest arbitration - "Even if this basic objection to compulsory arbitration is to be rejected or outweighed by other considerations, there are other shortcomings. One of the worst features of compulsory arbitration is its potentially corrosive affect on the decision-making process, both within and between unions and management. It is natural that where both sides expect arbitration at the end of the line, should they fail to agree, there will be a tendency to hold back a little for fear of establishing a new floor or ceiling for the arbitration. There will be an equal reluctance on both sides to concede anything, lest it be something the arbitrator might force them to give in his award. Compulsory arbitration need not have these inhibiting effects in collective bargaining but there's a real risk that it will, especially the longer and more often it is imposed."

In going on, and maybe most significant, I would submit to this government, is that, "Compulsory arbitration may also serve as a crutch for weak leadership in either union or management. Where a union leader can force a dispute to arbitration, he can avoid some of the compromises within the union that invariably go into a settlement. Instead of making the hard decisions about wage gains, as against fringe benefits across the board, absolute as against percentage increases, skilled trades differentials and other issues that can prove politically embarrassing, he can take all internal conflicts to the arbitrator as demands, and let him make the unpopular decisions.

"Similar, evasion of responsibility can take place in management. Once a leader of any kind finds an easy way out of some of his dilemmas, he is likely to behave in the same manner in other areas. In the long run, the effect would be to undermine about the leadership in question and the collective bargaining process itself."

I won't go into the constitutional question as to whether or not this sort of legislation would survive the Canadian Charter of Rights and Freedoms, and in particular, the freedoms preserved, protected by Section 7, because that issue has not been decided by a court of high authority in Canada, but that's an issue. The International Conventions that deal with free collective bargaining and the spokesman for organizations like CUPE and other respected unions and large unions in this country, speak out against government interference with free collective bargaining, but that's what we have here and it's an intrusion which, I submit, is very detrimental to the advancement of good labour relations in this province and a more productive Province of Manitoba as a result.

That's my submission, Mr. Chairman, I'll invite questions.

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

HON. R. PENNER: Just one observation then, one question. Mr. Newman, you made a remark at the beginning of your comment about the section which concerns you, appearing in The Statute Law Amendment Act, and not being asterisked. In fact, I draw your attention to the notes that were circulated by Legislative Counsel in the House, and Section 16 was asterisked as one that marked a substantive change. So it was brought to the attention of the House that this indeed was a substantive change.

MR. D. NEWMAN: My apologies, Mr. Penner. All I read was the Hansard debate, which did not make specific reference to that section. I didn't mean asterisk literally; I meant highlighting in the Legislature by describing it as one of the significant features of that bill.

HON. R. PENNER: You quoted from Paul Wyler's book, Reconcilable Differences, a passage which seemed to be negative in scope with respect to first contract. Isn't it the case, Mr. Newman, that what in fact Mr. Wyler was arguing is that first contract doesn't work its beneficial effects in one year, and he was arguing, and you did quote that but in passing a little later; what he was arguing for was not the elimination of the first contract provision, which was his baby after all, but that it should be imposed for a two-year term.

MR. D. NEWMAN: What he was suggesting was that the experiment should continue and let's try that one, because it doesn't work the way it is now. I am suggesting they are experimenting with something that is different. The issue we are addressing here is whether or not there should be discretion, and the board there has discretion. So I don't think what he is doing is acknowledging there is a problem, but he thinks that that might be one way out of it; but he certainly does not in any way suggest that removing discretion from

the board is the solution; nor does any other authority who has published that I am aware of.

HON. R. PENNER: One of my colleagues across the table was kind enough to suggest the possibility which I will put to you. Would you then favour a trade-off as between discretion and a two-year first contract?

MR. D. NEWMAN: I don't think they are related at all. Both are totally experimental, and the tried and true discretion has not been the matter which has been criticized. It's those agreements that have been posed that have been criticized; not those that haven't been opposed.

HON. R. PENNER: Thank you.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Newman, assuming that you follow the first contract cases that have been before the Labour Board since this legislation was passed last year - and I believe you do - do you see any justification in the first contract cases that have been considered by the Labour Board so far, which would suggest that the discretion, which the board has, should be removed?

MR. CHAIRMAN: Mr. Newman.

MR. D. NEWMAN: The contrary, I would submit. The board, with all due respect to their qualifications in the adjudicative process that they are familiar with, is not trained or qualified, in my humble opinion, to conduct interest arbitrations. They are learning on the job, I suppose, but what has happened to date is that they have been, I would submit, demonstrably inexperienced in that regard. I will just give an example.

In the Care-A-Lot case, what the Labour Board did three days before the imposition was to disclose what their decision was going to be. They disclosed to the employer and the union representative what their decision was going to be, and they said they would not change it under any circumstances. Now, what does that do? It just happened what the final decision was going to be was totally in favour of the union request, and went beyond the union request in the amount of wages and the type of management rights clause that was requested.

What does an employer do in that situation, or anyone do, when confronted with what is going to be a fait accompli, and is said to reconsider his position and perhaps the parties will now come to an agreement, knowing what the imposition is going to be? That, I would submit, is an abuse of that process. If that sort of, in effect, blackmail goes on, I think indeed it is a dangerous thing to give the board; and I frankly refused to treat that as a matter which should not be of public debate simply because I felt it was an abuse of the process and the sort of abuse that can go on if a power like that is given to a board that doesn't have that sort of accountability either through having to give reason-decisions or through having an appeal right from their decision, and having no discretion not to impose.

MR. G. MERCIER: Mr. Newman, in your experience and based on your knowledge of these first contract cases, what sort of investigation has been carried out by the Minister of Labour prior to referring the matter to the Labour Board? What steps has the Minister taken to discuss the matter with the parties concerned?

MR. D. NEWMAN: The only knowledge that I have directly of the procedures that are followed, other than through reported cases, is that views of both sides, since the first challenge, have been solicited by correspondence and then the political arm, usually the Deputy Minister is the one that corresponds, and the Minister then makes a decision whether or not to refer the matter to the board without any hearing being conducted, without the presentation of evidence under oath through the normal process, and without knowledge on either party as to where the information was obtained in order to make the decision to refer to the board.

However, there is a question still open, I think, as to whether or not the Minister as a consequence of the board having no discretion; in other words, the Minister in fact making the decision must act in accordance with the standards of fairness demanded now by our administrative law principles. I think that there is an area of difficulty which will continue to be a matter of considerable litigation on the administrative law argument; but there is, I think, a significant constitutional argument that can be made that now that the discretion has been removed from the board clearly, that it does contravene the economic freedom portion of Section 7 of the Charter and it could be attacked right up to the Supreme Court perhaps through that process.

Of course, the authorities in the States, the leading case being the Porter case, decided it one way, saying in effect that it was unconstitutional in the States, but in Canada it might be decided differently. But I think it is fruit ripe for litigation more so now with this change than it was before, because now it's patently clear that the board has no discretion.

MR. G. MERCIER: One final question, Mr. Newman. It was my impression last year when this first contract legislation was presented and approved by the government, although opposed by the opposition, that it was the intention of the government not to allow any discretion to the Labour Board right off the bat that they never - I think the intention was as was discussed in committee, through amendments the government brought in to the Industrial Relations Committee last year, that they never intended the board to have any discretion. Are you able to offer any opinion on that?

MR. D. NEWMAN: I have no qualifications to offer an opinion on legislative intent other than what I read in the statute but it was initial interpretation that if we disregarded these words which have now been deleted, it would seem to be very clear that there was intended to be no discretion. It was at the committee stage that this was removed. The initial amendment introducing first contract legislation was patterned more after the B.C. approach. All the public input came on the basis that there would be discretion in the Labour Board not to impose in appropriate circumstances.

It was in the last minute in the committee stage, I gather for some reason they took that out which made

the legislation far more unacceptable, dangerously unacceptable, and more contrary to the public interest in our view.

MR. CHAIRMAN: Any further questions? Seeing none, I would like to thank you for coming tonight, Mr. Newman.

MR. D. NEWMAN: Thanks for having me.

BILL NO. 110 - THE CONSUMER PROTECTION ACT

MR. CHAIRMAN: Bill No. 110 - Mr. Alan DeJardin. Is Mr. DeJardin present?

Mr. John Tinkler. Is Mr. Tinkler present?

Mr. Wayne Ritcher.

MR. W. RITCHER: Mr. Chairman, honourable members and ladies and gentlemen, I notice first of all that I'm listed there as Private Citizen. I would also like it on the record that I am part owner of a furniture firm in the city called Roche Bobois. I would like to make a presentation concerning Bill 110, part 14 Deposits, subtitled in quotations, "How to put small business out of business." Now that's rather a bold statement but that is exactly what the ramifications of this bill will do.

Initially, this bill was presented with the intention of limiting deposits to a maximum of 5 percent of a custom order. As an example, a client could order goods for $1,000 and leave the wholly inadequate sum of $50 as a deposit towards the completion of that order. When the goods arrive, the client, for whatever reason, could decide not to accept the order and of course lose the deposit. The client would be out the $50 and the retailer would now have an item that in all probability is not resaleable. It's difficult to sell a lime green plaid suit made to measure or a pink sofa with yellow ruffles. The retailer would have been lucky to make his costs back on this sale. Too many of this type of non-sale and the retailer would be out of business.

Thankfully the provision of this bill has been rescinded. However, I contend that the same inadequate research and unawareness that led to the proposal of a 5 percent maximum deposit is also evident on another aspect of this bill, namely the provision to have all deposits placed in a trust account.

The revenue of deposits are not extra cash to a small businessman and in fact may be the lifeblood of its continuing function. The money from deposits on custom orders is of necessity used as general revenue by all small businesses. After all, when the deposit is taken and the order placed, the 6 percent provincial tax is paid by the retailer that month, not when the order is completed, as the tax is to be placed in trust or is the tax to be placed in trust as well. Or is the retailer to remove that amount from general revenue and in fact refinance, because now it's costing him money, so he can pay the provincial tax?

We don't have bags of cash sitting around in the back store room. If 30 percent of a small business' total revenue is done by custom order, that means that 30 percent of his cash flow would be wiped out by placing it into a trust account. In my particular small business, 80 percent of our total revenue is done on a custom order basis. The provisions of this bill will effectively wipe out our family-operated business.

Now what alternatives are left for us to continue in business? Re-finance at the bank. In other words, borrow money against money we consider part of our general revenue to begin with. The banks may, and I emphasize may, as they are under no obligation to do so, borrow us a like amount or less amount to enable us to meet our monthly cash flow obligations. Of course, they would have to charge us interest. After all they're in business too.

The net result is that we would have to raise our prices to the consumer in order to offset the increased expenses of interest. Horrendous paper work and of course additional work load to the small businessman.

We now have a situation where this consumer protection bill is indeed costing the consumer more for his or her goods. Also, as businesses fail, because of the provisions of this bill - and make no mistake, this bill will cause some businesses to go over the edge. The choice in the marketplace will diminish also for the consumer. Now the consumer will have less outlets in order to compare prices or goods.

Now let's look at the ramifications to the small businessman and I must emphasize that it is the small family-owned or recently started business that will bear the brunt of this legislation. Large corporations are able to borrow quite easily at favourable rates. The small businessman has to raise his prices, clearly an inflationary move, just to stay even. Contrary to popular belief, most small businessmen hate to raise prices. We don't do it on a whim or under the mistaken belief of charging what the market will bear. We realize that raising prices leads to less sales and there comes a point when buyer resistance will mean no sales at all.

Now of course inventories will also be reduced further. Only the top-selling items will be displayed or available as a result of shortages of cash flow and the cost of inventory. The choice to the consumer is again reduced. So what has occurred in the marketplace as a result of this proposed bill? The consumer is losing because of higher prices and less choice, both in outlets and in goods. The small businessman is out of business or if still able to carry on, has to do so by creating an inflationary spiral. And the banks seem to be doing just fine.

Now I understand why this bill was introduced for consumer protection. It was because some consumers lost deposits when some businesses failed during the last two years. Last year was the worst year for both personal and business bankruptcies in living memory. However, I would contend that the percentage of lost deposits is minimal when compared to the total revenue and successful completion of sales overall for the year.

No one likes going bankrupt or being faced with the prospect. Any forthright businessman will do his damnedest to honour his commitments. After all, we have to face these people eye to eye on the sales floor, as well as ourselves in the mirror in the morning.

However, the small businessman may not be able to last due to circumstances beyond his ultimate control; his business fails, he's out of livelihood and probably in debt. The consumer will be out of his deposit for undelivered goods; unfortunately, that is the workings of the marketplace. If there is to be any universal protection afforded in the marketplace, I submit that

it must be equally applied to both partners in this transaction, namely, the consumer and the small businessman. This bill protects neither.

As a suggestion, may I offer the following: If an individual client wants their deposit recoverable in the event of a bankruptcy, why not make deposits insurable? - the same way when you rent a car, the extra $2, get the extra insurance. The Manitoba Public Insurance Corporation could offer the program. For a small additional fee, the client would have the protection, the peace of mind and also I feel, more importantly, the freedom of choice.

Small businessmen could continue in business without having to worry about increased costs and one-sided interference into the marketplace and possibly MPIC might make a few dollars.

That ends my submission.

MR. CHAIRMAN: Are there any questions for Mr. Ritcher?

Mr. Bucklaschuk.

HON. J. BUCKLASCHUK: You had indicated at the beginning that this was going to be very hard on small businesses. What you're saying then is that the viability of a small business would appear to depend entirely on the use of deposits for cash flow. Is that correct?

MR. W. RITCHER: No, not entirely. In my particular business, it does; we import from all over Canada, Europe, USA, all over the world. In many businesses it does. A tailor who makes a suit has to get a deposit to begin with; he has to put money out for it, so there is a percentage of his business that is always under deposit. If that percentage, it may be as much as 50 percent, that means 50 percent of his cash flow is now tied in, can't be used. I can think of no business going that will voluntarily put their general revenue in an area where it can't be used.

HON. J. BUCKLASCHUK: That's not unlike any other retailer who may have, let's say, a refrigerator. He has put up capital, however he may have obtained it, whether through a bank, on which he pays interest, why would a retailer who makes use of a deposit, is he not at some advantage to that retailer who has borrowed money to stock the inventory?

MR. W. RITCHER: You're going on the assumption that the retailer has scads of money somewhere. We only have money through sales. If we are able to sell an item that is directly off the floor, we collect the money at that point of sale. If the client wants it in grey suede, as opposed to the black that is shown, and it must be ordered in, in order to complete that order, we have to get a deposit. There is a commitment between the client and the retailer at that point and that becomes part of the general revenue. Because as soon as that sale is written, and it has to be written that day, the sales tax is applied that month, even though the goods may not come for two to three weeks.

Now, if it happens that a client orders an item from a supplier that you do not normally deal with - and this does happen very often - they'll come in with a photograph saying, can you obtain this for me? That means you have to set up an account with that supplier and all first orders are on a C.O.D. basis. In other words, you must pay for the goods before they arrive to you, so you have completed the sale to the supplier, you have got the goods and now the client decides they don't want it. That has happened and you are stuck with the goods. Deposits are used as general revenue; they are not separated, because it is a sale. It's an uncompleted sale but it is, in effect, a sale.

Like I say, if 30 percent of your business is based on custom ordering, that's 30 percent of your business that will be wiped out completely. It goes into a trust deposit; you cannot use it. We have to meet monthly obligations: payroll, lighting, heat, taxes, suppliers.

HON. J. BUCKLASCHUK: Can I just deal with the suggestion you made as an alternative and that was the insurable deposit? Are you aware of any insurance company that provides that type of insurance?

MR. W. RITCHER: Not at this point. However as I suggested, MPIC, being the Manitoba Public Insurance Corporation. If your concern primarily is for the consumer and worrying if they are going to lose a deposit and a bankruptcy that may ensue, why not put up a program? This will certainly give them peace of mind where they can have their deposit insured. If the business does go bankrupt, they collect their deposit. If it doesn't, they've paid a few extra dollars to ensure themselves peace of mind and you have not wiped out the small businessman.

HON. J. BUCKLASCHUK: From what you're saying, you're taking a very pro retailer viewpoint . . .

MR. W. RITCHER: Obviously.

HON. J. BUCKLASCHUK: . . . and I would like to think of this legislation as being pro consumer. I must admit I find it somewhat difficult to understand the suggestion that when a consumer puts down a deposit on a good that he should have to insure himself.

MR. W. RITCHER: He's ensuring that he's going to get completion of the order, the same way that if you rent a car, for the $2 you can have the extra insurance. Now that's freedom of choice; you can either pay the $2 or not pay the $2.00.

The worry seems to be on whether the retailer will go bankrupt, hence, the consumer will lose the deposit. I wonder though, why isn't the worry about the retailer who's gone bankrupt. Where's the concern for him?

HON. J. BUCKLASCHUK: Certainly the concern is there for the retailer but he is in business.

MR. W. RITCHER: Exactly, he's working in the marketplace, the same way that the consumer who makes that purchase is working in the marketplace. I'm offering a suggestion that would help both of them.

HON. J. BUCKLASCHUK: I have no further questions.

MR. CHAIRMAN: Are there any further questions for Mr. Ritcher? Seeing none, I would like to thank you on

behalf of the committee for coming here tonight, Mr. Ritcher.

Ms. S. Juravsky.

MS. S. JURAVSKY: Mr. Chairman and honourable members, first of all, may I thank you for the opportunity of appearing here and thank you also for the deletion of Section 118 on Bill 110. It's a step in the right direction.

We are an industry association representing approximately 98 percent of retail monument dealers in the province. The average length of time that our member firms have been in business has to be well over 20 years, most much longer. We are small businesses and generally family run.

As consumers, as well as business people, we are concerned with the protection of the consumer, especially our customer. However, we take strong exception to areas of Bill 110 related to deposits of over $50 being held in trust. At the present time our member firms require anywhere from one-third to one-half of the purchase price, which includes Manitoba revenue tax and often charges imposed by the cemeteries where we place our product which we must redirect to them immediately. Foundations have to be paid in full before they are poured. Our product is completely personalized. We are 100 percent a custom product; our product is customized, personalized, not transferable or resaleable.

Further to Section 119(2), deposits may be removed from the trust account on delivery of goods, would be a nightmare for most of us. Our season for installing monuments runs, if we are lucky, approximately six months, during the summer months and before the snow falls. However, when orders are completed during the winter months, we cannot collect a balance due until that product is installed in the cemetery, sometimes not for a six-month period. If we are going to be able to retrieve our deposit also, until goods are delivered, this has to be an added hardship on our industry.

Can you imagine receiving $50 for a product, where disbursements are many times that; that is, pay for the raw material; pay for the labour that goes into producing the finished product; pay for the overhead, taxes, foundations, perpetual care, installation fees, etc., and not be able to collect anything over $50 until those goods are delivered?

We are also concerned as to how these funds are to be placed in trust. Who is going to administer these funds and how these funds are to be disbursed? We can foresee an administrative cost being added to the price of our product and any other product that is custom-made. Ultimately it is the consumer that you're trying to protect that is going to be affected by higher costs in the long run.

If this legislation is being instituted because of complaints against certain industries, then it should be directed to only those industries. Our industry has been relatively free of business failures and complaints. One can distort and manipulate figures and we still defy anyone to show any minus for our industry. Why put the good and the bad apples in one basket?

While the idea of holding trust funds in limbo may be a good idea for some industries where goods are bought and sold in the same condition and resaleable, we think it is unfair to restrict us in that fashion by including us with questionable operators.

We strongly recommend that this legislation be directed to those industries that have faltered. Would it not solve the problem by making the buyer a secured creditor in the event of bankruptcy, or looking at this bill, Section 120, would that not protect everybody that has a deposit? Thank you for your time.

MR. CHAIRMAN: Are there any questions for Ms. Juravsky? Ms. Phillips.

MS. M. PHILLIPS: Thank you, Mr. Chairperson. Did I understand you correctly that you thought this section said you could not collect a deposit of more than $50.00?

MS. S. JURAVSKY: No. What I'm concerned with is the use of the deposit.

MS. M. PHILLIPS: So you weren't confused about that?

MS. S. JURAVSKY: No, I'm not confused about that. I understand - and correct me if I'm wrong - that you may ask for deposit of whatever, but you can only keep $50 of it and the rest has to be in a trust account.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: It's my understanding, Mr. Chairman, and I think maybe the Minister should clarify that, is that if a deposit is in excess of $50, the whole deposit has to be kept in trust. Not - let's say the deposit is $500 - that $450 is kept in trust, the whole works is kept in trust, is that not right?

HON. J. BUCKLASCHUK: The way I interpret Section 119(1) would be that the whole deposit would be put into trust.

MS. S. JURAVSKY: It's even worse.

HON. J. BUCKLASCHUK: I'd like to thank Ms. Juravsky for her submission. The trust provision, assuming that there is interest on the deposits in a trust account and that interest accrues to the business, would it be that serious of a matter as you had outlined before?

MS. S. JURAVSKY: Yes it would. There's not enough interest that the deposits will generate. You have to remember, sir, that 100 percent of our product is custom-made. It is not transferable; it is not of any use to anybody else besides that purchaser. Now the markup on our product is not all that great.

HON. J. BUCKLASCHUK: I guess I didn't make myself too clear. Let's say the monument that had been ordered was $1,000 and the person ordering that monument put down a deposit of $500 and you put that into a trust account, until such times as the goods were delivered - or whatever the wording is in Section 119(2) - that $500 would be drawing interest, wouldn't it?

MS. S. JURAVSKY: Yes, it would. But how much interest, 10 percent?

HON. J. BUCKLASCHUK: Oh, but you're saying that's not enough. I see.

MS. S. JURAVSKY: That's $50 a year. If it's in there six months, it's $25.00. That's not an awful lot of money. You have to remember that this is a one-sided legislation also. — (Interjection) — That's right. This is a one-sided legislation. We sell our product under a conditional sale agreement. That product is ours until such time as it's fully paid for, however, what are you going to do with a monument that has somebody else's name on it? Are you going to be able to sell it to your neighbour? I mean it's a chance that we take.

We have recourse to the courts; we do not like to take that. It's our customers; we're very fortunate in respect that we do not have all that much trouble collecting accounts, but there are always a few a year. We do not like to take our customers to court. We are in a stressful business where we don't want to put our customers under any more stress than they are. We have, I think, a lot of compassion for our customers and sometimes people are a little slow in paying and we allow that.

Now, we don't have a business where people walk in off the street and pick up something and walk out with it and give you X number of dollars. We have no product whatsoever like that. Between a sale and a delivery in the summertime may be two months, in the wintertime it could be six months. Now there's no way that a business can operate without a cash flow and if we revert to bank loans, which some of us do have, and it's going to be more, that's just going to increase the price to the consumer. They're going to pay in the long run. Now, it seems to me that Section 120 of this bill would protect the consumer in any way, in every way. I also agree with an insurance. The construction industry uses performance bonds all the time.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Mr. Chairman, I was just wondering - Ms. Juravsky asked the question of the Minister as to how the trust account would be administered and under what manner would it be audited and so on. Since those questions were also asked in second reading debate, I wonder if the Minister has anything that he wants to share with the people who are here, who I am sure are interested in it.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: On a point of order, when delegations are being received, I don't think that members question the Minister.

MR. CHAIRMAN: The purpose of public hearings is to question the members of the public to clarify their positions, Mr. Filmon.

Mr. Mercier.

MR. G. MERCIER: Ms. Juravsky, you mention that if the $500 used in the example cited by the Minister were deposited in trust, that you might get interest at 10 percent which would be rather high nowadays.

MS. S. JURAVSKY: Yes, it would.

MR. G. MERCIER: Assuming it was 10 percent, would you not probably be required on that basis to be borrowing money at 13 percent . . .

MS. S. JURAVSKY: Absolutely.

MR. G. MERCIER: . . . because you have to pay out the cost of preparing your product.

MS. S. JURAVSKY: I'd like to know where you can get money at 13 percent.

MR. G. MERCIER: Or interest at 10. How much would it cost to prepare a small monument commemorating the defeat of this government?

MS. S. JURAVSKY: No comment.

MR. CHAIRMAN: Are there any further questions for Ms. Juravsky?

Seeing no further questions, I would like to thank you, Ms. Juravsky, for coming tonight.

MS. S. JURAVSKY: Thank you for the opportunity.

MR. CHAIRMAN: Is Margaret Pommer here tonight? Mr. Garth Steek.

MR. G. STEEK: Good evening, Mr. Chairman, ladies and gentlemen. My name is Garth Steek. I'm here representing Steek's Furniture. For those of you who are not aware of who we are, we're furniture retailers here in the city.

May I first preface my remarks by stating that I think the idea of consumer protection is definitely laudable and, under the circumstances of the last two years where we've seen a couple of catastrophic bankruptcies and we have seen small creditors badly hurt, there is no question there is need for consumer protection.

However, I believe that the proposed legislation, the amendments to The Consumer Protection Act here will have far more detrimental effect than beneficial effect. The initial questioning - I'm sorry, I didn't notice who Mr. Bucklaschuk was when he was answering. Could I just see who he is, please? Thank you.

I received, courtesy of Mr. Bucklaschuk's office, the following News Service, and I would simply like to read this, stating that it is wrong in principle for business to use deposits for general cash flow purposes. Mr. Bucklaschuk said, "The greatest danger of consumers losing their deposit is where a firm requires deposits to keep one step ahead of its most pressing financial obligation. Such apparent cases of undercapitalization should not be rectified in whole or in part by third persons who have no knowledge of possible financial difficulties of a particular firm."

I couldn't agree more with the latter portion of the statement. However I think it's naive to believe that any small business today, particularly where it's a custom order house, can operate without deposits. Let me explain to you why.

Many of you here, I know, have legal backgrounds. If you take a look under The Federal Income Tax Act, Section 12.1(a), all deposits that are held are taken in, I believe, as income. However, I believe under Section

20(1)(m), etc., they go out as a reserve. In other words, the Income Tax Department recognizes the fact that you had those funds to use in the interim period. They are non-taxable, and what those funds constitute quite simply, ladies and gentlemen, is interim borrowing. There's no question about it.

As a matter of fact, I note, when the recent budget came down from this government, probably the most salient feature of it was the staggering deficit and what we did is we went and borrowed. What forced borrowing will do - and that's what you're asking the independent businessman to do, you're asking him to go to the bank. Some of us can go to the bank and some of us can get the funds. The government, be it provincial or be it civic level, I understand, borrows at prime. Some of us had the good fortune to borrow at prime-and-a-half. Others that are higher risks are not as fortunate.

The net result, of course, is that at the end of the year, all that interest is an expense. It's written off, therefore, reducing the corporation taxes; corporation taxes, I would suggest, that are paid both provincially and federally. We have had the good fortune, the 20 years that we have been in this province, to pay corporation taxes every year, pay them heavily as well as personal income tax. It's a pleasure to pay them. It means that what we're doing, we're doing well.

The representation that's here - and I'm not sure exactly who is behind us now - reflects a very small part of the business community, the reason being - and let's be honest - there's a minimum of publicity about the nature of this event. Many of us are intimidated to appear in front of you, and we're in a very very difficult situation. Our primary concern is keeping our own operations going.

In the course of today, and this is just by chance, I happen to be in the process of building a home. I spoke with a mason this morning. Because I bought the bricks, the mason didn't want a deposit. If the mason bought the bricks, he had to have the deposit up front to know I was going through with it.

I happened to walk into Hanford Drewitt to buy a suit. Has anybody tried to buy a custom suit without leaving a deposit? I would suggest, it would be very very difficult for this gentleman to fit into a suit that's made for Mr. Bucklaschuk. When they order the fabric, Mr. Bucklaschuk, it comes; their terms are net 30 days. They pay on it immediately. Once the customer has the goods and he's satisfied with it, he may pay in 30 days. In the interim period, there are a plethora of ongoing expenses to keep a business running: administration, occupancy, etc., etc.

What I would simply suggest is this, ladies and gentlemen. There is no question the consumer needs to be protected. However, there is a very small segment that are coming here for a custom order. When people want a custom order, they are asking the independent retailer to order something that is right for that individual party only, whether it be a cabinet maker, a clothier, a florist. All these people - and believe me, these people aren't represented here tonight because they didn't know about this. Everyone of them is affected. The net result is simply this: Where the purchaser does not want to leave a deposit, I would suggest that the purchaser not order custom goods. A purchaser can come into our store and choose from a host of other designs on the floor, many that are applicable, and take it away right then and there.

However, if any of you come in, order a special piece, then elect not to take it, in the meantime we have paid the supplier; we then have to put the goods on the floor at a reduced retail; and have to clear the item. The net result all the way down the line is the loss to the retailer.

Finally, and as has been very eloquently noted by Mr. Ritcher, I think the bottom line of this is by having to set up trust funds, there is an incredible cost factor here. Mr. Bucklaschuk, have you been in private business?

HON. J. BUCKLASCHUK: No.

MR. G. STEEK: Fine, you're not aware of the host of administrative tasks involved in simply maintaining simple accounting, let alone looking after trust funds. The lawyers here will verify what it takes to look after a trust fund. The net result is a tremendous cost increase.

There is one of two avenues, ladies and gentlemen. The cost goes on to the price of the goods; and believe me, if you have been watching the marketplace in Manitoba for two years, we cannot afford more expensive goods. Mr. Ritcher isn't pulling your legs when he tells you the retailer does not want to increase the price of goods. So it leaves us one final solution. As expenses rise, we all have to trim. Where do we trim? Finally with staff.

Within the last year, year-and-a-half, we, in the private business level, have been forced to absorb a 1 percent increase in the sales tax; and, finally, the 1.5 percent payroll tax. We have been in the city for 20 years; we have always been profitable; we employ between 20 and 25 people. Many of those people have been with us from the day we opened. We have a moral obligation to keep those people on during very very difficult times and rest assured, we have never been in difficult times like we are now. However, you are pushing us to the nth degree with this kind of legislation. We need those funds to operate. The net result is that there are going to be layoffs.

Finally, I find that incredibly ironic for this government, which has numerous placards all over the city, citing the fact, "Jobs don't happen; they are created." God, there is nobody more creative in this economy than the small independent businessman. Believe me! You don't know what it takes to try and attract customers into a store today. People are scared to death about mortgage rates going back up to 20 percent. They're scared because of the fact that there are massive layoffs throughout this province. You are throwing every obstacle in our way to bring the consumer back into the store.

I would suggest finally this: The people that are represented here tonight are people that are very very concerned about their own individual enterprises. They are people that take pride in their operations; they have been in business for a long time. Now, I would be interested in hearing if anybody here has had specific complaints. I would suggest that, yes, it's laudable that we're protecting the consumer; finally one solution to do it.

Lord knows, we are inundated with constant pieces of paper from every form of government. We are just

getting pamphlets now out on the French issue. Surely, with all the administrative tribunals that have just been dismantled - among them, the Artifical Insemination Board - there must be some dollars left over someplace to send out a simple consumer protection brochure, simply telling the consumer, "If you don't feel that you've got trust in the retailer you are dealing with, don't put down a deposit; buy stock." It's as simple as that. It may be the last alternative is simply this, under the guise of creditor's rights, perhaps a simple amendment whereby a small independent creditor comes in line with secured creditors. Surely, there are other avenues to follow.

Thank you for your time.

MR. CHAIRMAN: Are there any questions for Mr. Steek?

Mr. Bucklaschuk.

HON. J. BUCKLASCHUK: Yes, Mr. Steek, your last comment about our perhaps spending some money on brochures for the consumers, providing some consumer advice, and you had indicated sort of inform the consumer as to how he should deal with his deposit. My question is this: how does the consumer have any idea of what the financial status is of the firm that he is dealing with?

MR. G. STEEK: I think the answer is very simple, Mr. Bucklaschuk. We have Chambers of Commerce, we have Better Business Bureaus - simply pick up the telephone and if you are at all nervous, Mr. Bucklaschuk, it's just like you going down to buy a red Camaro. Maybe rather than waiting and bringing it in with air conditioning, you'll take it right off the floor just with automatic transmission because you see the car and you can give the dealer cash - bang! Simple as that! Pick up the telephone and ask.

The people that you're dealing with are long-standing members of the community. Please, before anything further goes through on this legislation, take into consideration the number of businesses that are being affected. I know there's a scant representation here tonight, but think of the people in your own community that are small people.

Now, in our own particular case, our business was started from scratch in 1964. It was $25,000 borrowed. Today it is a very very healthy vibrant business. As a matter of fact, we have extensive property holdings in the city. We pay heavy retail tax, we pay heavy sales tax, heavy property tax, and it's a pleasure to pay it, but don't put us out of business so we can't pay it. I can't be anymore blunt than that.

I want to read this one more time and please let it sink in. "It is wrong in principle for business to use deposits for general cash flow purposes." The statement is the statement of somebody who has never been in business, and I reiterate that. You don't have a clue as to what it takes to run a business if you make a statement like that.

Thank you.

HON. J. BUCKLASCHUK: I did have one more question.

It may surprise you to note that we have also received letters from the business sector confirming that was a very valid statement. So, apparently there is some division of opinion within the business community.

MR. G. STEEK: I'd be very interested in seeing those letters or hearing about them.

MR. CHAIRMAN: Thank you, Mr. Steek.

Mr. Victor Steek.

MR. V. STEEK: I am Victor Steek, the founder of Steek's Fine Furniture.

You just heard from Garth, who is president of Steek's Interiors, two distinctly different firms.

Now, I just want to wake some of you people up here, because I notice the sarcastic looks being passed among some of the people at the table here. I'm not near as damned charitable as these young people are that have been up here. I've had a hell of a lot more experience, and I'm fed up to here with the treatment that we're getting as independent businessmen, and I'm laying it on the line and you'll want to know about it; you're going to hear it. You may not like it, but you're going to hear it.

Now, first of all I'd like to acknowledge with thanks to the media for at least alerting us to this reprehensible act that you're anticipating passing here. On the other hand, I'd like to say thank you for the opportunity of coming here to address you to express our views whether you agree with them or not. I'd like to know, and I haven't heard - I think I'm pretty close to what's going on - I've never heard of a public clamour requesting a trust fund for deposits. Can you tell me where that came from, Mr. Bucklaschuk?

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: I think we should be clear that, as you've said before, the purpose of public hearings is to hear representations and to have those views clarified. It is not in this process in any event . . .

MR. V. STEEK: We cannot question the members, eh? All right, I wasn't aware of that, thank you.

I think this act, if it's passed, is devasting in its implications to the independent ticket man, the businessman. I think it'll cause irreparable harm to the independent businessman. I think it's probably the most discriminatory business legislation that's been considered in a long time. It's specifically discriminatory to the big ticket merchant, the people that sell furniture, automobiles, the people you've heard from here tonight. It doesn't apply to the little grocery store, doesn't apply to the major chains. The very major chains like Eaton's, the Bay, Sears, they have their own sources of revenue, they can go to their shareholders. We don't, we have to go to the bank, we operate out of our profit, and our growth has shown that we're doing something right, and we have to operate out of the deposits that we're getting from customers.

I personally find this a very repugnant reprehensible bill, and I'll tell you why. It infringes on all our rights as independent businessmen. The government is not only interfering in what we're doing. They are downright coming out by direct implication, and this is what they're saying about this sector of the business community,

the section that we're talking about, the big ticket people. Put it in every man's language when you hit the newspaper with this. This is what they're saying. This sector of the business community simply can't be trusted. It's just that simple. They can't be trusted. Don't leave your deposit with them. Why? Because we don't think you're intelligent enough to manage your own affairs. Let us, in our wisdom as the Provincial Government, tell you how to handle your money. Hell, you've only worked and broken your back to earn it. Let us tell you how you're going to spend it though.

What you're doing, if you pass an act like this, is you're undermining a very vibrant dynamic sector of the business community. Gentlemen and ladies present, believe me, it takes a lot of intestinal fortitude to be in business today and make it work.

I can't ask you a question so I won't, but it would be interesting to me to know how many of you have sat in the office on a business basis with your bank manager trying to hammer out a deal? How many of you employ 20 to 25 people and have never missed a payroll in 25 years? I will just reiterate what Garth says, you're saying jobs aren't made, they're created. Your damn right they're created and they're created by the ingenuity of individual business people like ourselves.

I think the act is a blatantly ill-conceived, ill-thought out piece of legislation. So what? What profession or business doesn't have some unscrupulous practitioners - tell me one. You've got them in business; you've got them in the law practices; you've got them in clubs; you've got them in churches. People are people and no matter what you're going to try and legislate in this thing it's not going to make a damn bit of difference.

Why would you penalize the entire community of a business sector simply because there are a few bad actors in it? Ask yourself that. We have a firm in the city here - 100 years of integrity - a fine competitor of ours, Wilson Furniture. Why would you penalize people like that? Why would you penalize people like Steeks and Roche Bobois, and the cemetry monument people here. Why? Does it make sense? I haven't heard a clamour that there has to be some sort of legislation. I think somebody's trying to earn brownie points for themselves.

Who reimburses a retailer? I shouldn't ask the question, so I'm going to tell you the way I interpret your act here. When you talk about the customer can rescind the order. Okay. What does that mean to you? It means to me you can revoke or cancel it. Does that take precedent over our conditional sales agreement? Does that automatically make a conditional sales agreement nil and void? By what prerogative has the customer the right to cancel once she has taken your time; you've paid the commission to your salesman; you put a credit through; you have to take the credit away. My God, in our particular type of business I've seen people were virtually weeks with customers to wind up a big order. Are they supposed to be penalized because some woman doesn't know whether she wants ruffles with bells on them? Ask yourself this.

Another thing is - why should a customer if she spent all sorts of time, she's had fine professional advice, she's bought it - for whatever reason she decides she doesn't want to accept deliver when it gets there? My God, we got a $15,000 dining room set sitting on that truck. Are we as retailers supposed to absorb that? Tell me does it make sense?

What about personal bankruptcies? They're on the increase. Are we supposed to absorb that? You haven't said anything about the protection we get from personal bankruptcies. Is the government going to pick up the tab? Are you going to buy the insurance that was suggested, and I think is a hell of a fine idea. The retailers will pay the extra $2 or $5 if you're so damn concerned as to where the money's coming from. You're not concerned when you rent a car that you're buying extra insurance for it.

You know the Federal Government recognizes deposits as an important and legitimate source of funding for businesses. You don't pay income tax on it. It's not part of your assets. It's not taken into your income. Why would the Provincial Government invade that right?

You know the Americans, the NHFA, we belong to that because unfortunately the Canadian Furniture Industry is not big enough to have an association like this. We get all sorts of statistics from them. I'm not tooting our own horn, but in most cases we out perform the American statistics. True, they're just a guideline but we work awfully damned hard for what we get and what we do. I would defy anybody in this room to tell me of one instance in the last 20 years where they've heard any derogatory comments about the way we operate business, and you're going to penalize us for being good citizens. The Federal Government recognizes it as a legitimate source of business, but for some reason the Provincial Government doesn't want to.

There was quite an extensive article in the NHFA, National Home Furniture Retail Association publication in the last few months. The Americans are having the same problems with funding as we are, and one of the big strong points in this article was that a lot of retailers, in this tight money market, are overlooking a very important source of funding. Many of them were still working on a 5 percent and 10 percent deposit. They encouraged the customers to go as high as 50 percent because of the increased costs. Sales have been at an established level for about the last four years, but by God you can't say the same thing about the expenses.

We're proud to say that we have not in these difficult times, I repeat, we have not laid off one single solitary person, period. We don't want you to force us into it, because by God we will. We're fed up to here. As Garth said, there's the extra 1 percent sales tax. Sure you need revenue sources. I'm digressing for a moment, you don't have to answer because I can't ask you a question but ask yourself. Why would you put on a 1.5 percent payroll tax? You know what you're doing? Have you thought about it really? You're penalizing individuals like Vic Steek, and all these other people represented here tonight. You're penalizing us for the privilege of employing people on our payrolls. Think of it. You're penalizing us for the privilege of employing people. You talk about creating jobs, my God.

If somebody doesn't take delivery - I say we've got a $15,000 dining room suite sitting out on that truck right now, it costs us $50 for a delivery each way, whose going to pay for the delivery? Whose going to pay for the merchandise? Because we have to pay the factory thousands of dollars for that same merchandise. Are we supposed to absorb the difference? Let's be reasonable!

I'm going to read you a portion of a letter that I wrote to Mr. Bucklaschuk, just the closing paragraphs, and I think it pretty well sums up what I have to say.

"Perhaps as a government you can devote your talents and energies to creating jobs and to encourage the smaller independent businesses rather than create one obstacle after the other. I'd rather create a business climate which can help the community to flourish and have stability.

Major firms are afraid to move in here right now but you know that because nothing is happening. I'm sure you are aware that more new jobs are created by the independent business community than the larger conglomerates. Why then would you create one obstacle after another for this important dynamic group of employers? Why would you?

In closing - and everybody likes to hear a closing - I'd just like to tell you a little story, if you pass this legislation - it's a corporate story about a wily old devil who had been very greedy all his life, but he'd had a super banner year and he decided he was going to share the benefits with his staff. So he called them together and he said, "staff, it's been a banner year for us. It's a flag ship year. I don't know whether we'll ever surpass it. It's been a super super year and I know you sometimes think I'm an old skinflint and I don't do this or that or the next thing, but I want you to know that I appreciate the job you've done. I've instructed the Accounting Department to make sure that there is a bonus cheque in every envelope." And he got nothing but accolades - hurray, hurray, everybody's happy. Then the wily old devil concluded with, "And if business is as good last year as it was this year, I'll sign the cheques."

That's it folks, any questions?

MR. CHAIRMAN: Are there any questions for Mr. Steek? Mr. Mercier.

MR. G. MERCIER: Mr. Steek, thank you for what I think is an excellent presentation. Let me, and I'm just throwing this out as a suggestion, I'm not an author or a proponent of this legislation, Mr. Steek.

MR. V. STEEK: I would hope not.

MR. G. MERCIER: There have been some cases in the travel industry in particular in which customers have lost their deposits. One way of dealing with this, I think, is to amend The Federal Bankruptcy Act to give greater priority to a deposit by a consumer. I would hope the Minister would follow that up.

With respect to this legislation, what would you think if a consumer were given the right to request the retailer to hold a deposit in trust and then it was up to the retailer to either agree or disagree. If he didn't want to deal on that basis, he wouldn't have to, and he might on that basis be entitled to increase the charges to cover his extra costs of holding that money in trust. It would be more on a voluntary basis.

MR. V. STEEK: There would be no problem. In our stores - and we learned from the big boys down east. The Art Shop in Toronto is the largest fine furniture store in Canada, bar none. I spoke to Marty Hoffman at a dinner about it about two years ago. At that time we were extending terms - 30, 60, 90 days interest free. Now two years ago when rates start moving up we took a look at it and I said, "Listen, we just can't go on like this. It's monstrous." You know we were paying 17 to 18 percent at the bank at that time. I asked Marty Hoffman, what he did, and he's a man about 10 years my junior, so it makes him about 22. Anyhow, he said, "You know, Vic, ever since I've been in business," and he's a legal man who has left the legal business to pursue the family business, eminently respected across Canada, he said, "When I came into the business, we were on a C.O.D. basis and maybe you should be too." We said, "Listen, there is just no way we can go for a C.O.D. basis." He said, "Not only that, we're getting a 30 percent deposit."

So, about 20 months ago we implemented a policy of requesting a 25 percent deposit. If the customer doesn't give us the deposit, we do not order the merchandise, and as God is my witness - and I don't say that lightly - we have not had a customer defer a purchase because of that policy. So, what's the big hassle about? We're getting C.O.D. now, and you know what that has done for us? And we pride ourselves on our service, that's one of the things that has built our company. Our logo on our letterhead and advertising is, "Our reputation is your guarantee." It's not an arrogant slogan. It's something everybody on staff is reminded about regularly and we do our damnedest to live up to it.

When I see what we're doing, I feel we should be doing three times the business we're doing, when I see how we coddle our customers. However, it has not made any difference to them. We want 25 percent deposit, balance, C.O.D. There is absolutely no problem in getting it from the customer because our customers are intelligent customers, they are business people, they are professional people, they know what the money market is. In many many cases, customers simply say, what are your terms and they pull out their cheque book. Now that may not be the case with everybody, but that's the way it is with our clients. That's a long explanation to a short answer.

HON. R. PENNER: Just one question, Mr. Steek. You were concerned about the possibility as you read the legislation of a customer simply in effect saying that they don't want the goods and you've paid the delivery charges back and forth and you take the loss. Are you not aware that the term "rescinded" as it appears in 119(2)(b) is a legal term which means, only the courts can order rescission of a contract?

MR. V. STEEK: This is a question I was wanting to ask you, but wasn't permitted to ask, Mr. Penner.

HON. R. PENNER: I helped you out.

MR. V. STEEK: No, I wasn't aware of that. Now would you mind giving me the explanation again.

HON. R. PENNER: Rescission is a court remedy. Only the courts can order rescission. You cannot, a customer cannot . . .

MR. V. STEEK: I wasn't aware of that because Webster '82 says, it's to revoke or cancel, and I'm not a legal mind.

HON. R. PENNER: Neither is Webster. Thank you, Mr. Steek.

MR. CHAIRMAN: Are there any further questions for Mr. Steek? Seeing none, I would like to thank you on behalf of the committee for coming here tonight, Mr. Steek.

Mr. Jim Band.

MR. J. BAND: Mr. Chairman, ladies and gentlemen. I'm No. 8, and I'll be very very brief because my predecessors have summed it up very well. I feel that I really can't do much more or say much more because I agree with everything they have said 100 percent.

I represent a company called the House of Teak. We have been in business for nearly 20 years and have established an excellent reputation with our many customers. We resent that fact that our deposit cash flow is being jeopardized. Cash flow is a very important part of doing business. If this bill is passed, it will considerably reduce our cash flow and increase our costs because we will have to go to the bank for more money. I don't know whether you people go to the bank very often for money, but it's not that easy. It will also increase the paper work which is already getting out of hand. We have been forced to absorb the payroll tax, which is a tax on business for creating jobs. Now we are going to have to have our costs increased again.

Each business has a different way of operating. We have never made a deposit a condition of sale. We have always refunded deposits if the customer has changed their mind. If a customer has had a bad experience or if there is a lack of trust because they might not know us, they might be from out of town, we will proceed with the sale without a deposit. In other words, it's trust both ways. We know that people have lost deposits, and I'm convinced that in many cases operators have deliberately milked their companies of operating funds. We resent paying for the sins of a small majority.

That's all I have to say, ladies and gentlemen. Are there any questions?

MR. CHAIRMAN: Are there any questions for Mr. Band?

Seeing none, I would like to thank you on behalf of the committee, Mr. Band.

MR. J. BAND: Thank you very much.

MR. CHAIRMAN: Are there any other people present who would like to make submissions on this bill?

Seeing none, that concludes public presentations for the bills to be considered for Law Amendments tonight. What is the will of the committee on how to proceed?

Mr. Penner.

HON. R. PENNER: Maybe you could proceed with my bills first.

MR. G. MERCIER: Mr. Chairman, on a point of order.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: You asked if there was anybody here wanted to make representations on this bill and then concluded public representation. There are other people here. I'm just wondering if they heard you and whether there are any individuals here who want to make representations on any of the bills before the committee?

MR. CHAIRMAN: Are there any members of the public present who would like to make representations on any of the bills to be considered tonight?

Seeing none - Mr. Penner.

HON. R. PENNER: Well, I was just, in a fit of selflessness, going to propose that you take the Bills 62, 98, 99, 100, 101. — (Interjection) — No, 14 we're not going to be dealing with. — (Interjection) — Yes, but leave 112; 112 is the one that's going to take a lot of time.

MR. CHAIRMAN: Is the order again 62, 98, 99, 100, and 101?

Mr. Mackling.

HON. A. MACKLING: Let's take it from the top and work down.

MR. CHAIRMAN: Starting with Bill 14?

Mr. Penner.

HON. R. PENNER: Bill 14, we're not ready to proceed with tonight.

BILL NO. 62 - THE PROVINCIAL COURT ACT

MR. CHAIRMAN: Starting with Bill 62 from the top.

HON. R. PENNER: Bill 62.

MR. CHAIRMAN: Bill No. 62, The Provincial Court Act. What is the will of the committee? Page by page?

Mr. Penner.

HON. R. PENNER: I'd just point out that I believe there's one amendment, perhaps two; one major one. Proceed page by page.

MR. CHAIRMAN: Page by page.

Page No. 1—pass. Page 2 - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, in Section 3(1), the appointment of judges - this is perhaps to the Legislative Counsel - does that include part-time judges?

MR. CHAIRMAN: Mr. Tallin.

MR. R. TALLIN: Yes, all types; both part time and full time.

MR. CHAIRMAN: Page 2—pass. Page 3 - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, in Section 6(1), a judge who resigns or retires remains seized of any matter, etc., for a period of 12 weeks, may, within those 12 weeks, etc., continue to hear further evidence or argument and give judgment.

I just wonder really if 12 weeks is sufficient. I know it certainly would be an ideal or an objective, but it would appear to me that a longer period of time might be more appropriate; perhaps something like six months.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: I wonder if Legislative Counsel could comment on this, I don't have the current provision before me.

MR. CHAIRMAN: Mr. Tallin.

MR. R. TALLIN: I don't have them before me either, but I think all the provisions of this act of that nature are pretty much the same as they were in the previous act. I don't know that there's ever been any difficulty, because I don't think any judge has ever retired with cases left over in which he's reserved judgments.

MR. G. MERCIER: Well, perhaps Legislative Counsel could look at it and consider whether or not an amendment is appropriate, or the Attorney-General can do so.

HON. R. PENNER: Yes, we'll look after it.

MR. G. MERCIER: I'd prefer Legislative Counsel.

MR. CHAIRMAN: Page 3—pass. Page 4 - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, on Page 4, Section 7(b), that wording seems awkward. I wonder is that just a continuation of what was in the act before?

MR. CHAIRMAN: Mr. Tallin.

MR. R. TALLIN: Yes, it is.

MR. CHAIRMAN: Page 4—pass. Page 5 - Ms. Phillips.

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

THAT subsection 8(2) of Bill 62 be amended by adding thereto at the end thereof, the words "and shall perform such administrative and other duties as the Minister may direct."

MR. CHAIRMAN: Any discussion of the motion?
Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, is that wording in the current act?

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: Yes, I believe it is, but when we went through redraft, if I'm not mistaken what happened is that it was taken out because of suggestions that were made by some association of provincial judges. Subsequently, the chief judge argued for its reinstatement, and that's what's happening here.

MR. G. MERCIER: Well, Mr. Chairman, I can understand the concern that some judges would have with that wording, that the Minister shall direct the chief judge in administrative and other duties. There's fundamental separation of powers between the executive and the judiciary, and I would go on record as supporting those who would say that this type of wording shouldn't be included in the legislation.

HON. R. PENNER: Well, as I say, those words are the words presently found in the act. Basically, this act is a re-enactment of the existing act with some changes. It was on the basis that you suggest thought the better part of policy to remove those words "some representation having been made," but the Chief Judge cited a number of examples where he thought that indeed was appropriate. They clearly do not relate to the judicial function, but only to administrative, and I would take it then, the other duties are analogous to a . . . I suppose, with administrative duties.

MR. CHAIRMAN: On the motion of Ms. Phillips, is it agreed? (Agreed) Pass.
Ms. Phillips.

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

THAT Section 8 of Bill 62 be amended by adding thereto at the end thereof the following subsections:
Investigation of fitness of judges, etc.
8(3) The Chief Judge shall conduct an investigation respecting the fitness of the judge, magistrate or justice of the peace where

(a) he considers that an investigation is required; or
(b) he is directed by the Attorney-General to conduct an investigation.

Report on investigation.
8(4) On completion of an investigation under subsection (3), the Chief Judge may

(a) take any corrective action that he considers necessary using the powers given to him under this act; or
(b) file a report thereof with the Judicial Council which shall receive the report as the report of an investigation on a complaint referred under subsection 29(2), and shall submit to the Attorney-General a written report setting out the nature of the investigation, the relevant facts, his findings, any corrective action taken and whether or not he has filed the report with the Judicial Council.

MR. CHAIRMAN: You've heard the motion. Is there any discussion?
Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, later on in the act, on Page 14, "The function of the Judicial Council is to receive and deal with complaints respecting conduct unbecoming a judge . . . " Complaints are to be made to the Chief Justice of the Court of Queen's Bench.

I find something wrong with the principle that the Attorney-General should direct investigations into the fitness of a judge or the conduct of a judge. It seems to me that if there is a complaint, either by a citizen or perhaps even by the Attorney-General, that it should be made to the Judicial Council who should carry out that investigation.

HON. R. PENNER: Okay, first of all and by way of background, these provisions are found in other acts of this kind. I have in front of me, for example, The Provincial Court Amendment Act, 1981 from B.C., from British Columbia where that provision is found.

What it is, it's different from, although related to, the steps which may lead to a hearing by the Judicial Council where Judicial Council, in fact, is looking into matters pertaining to conduct unbecoming. This deals with situations in which there have been no public complaints that might require the more awesome route of invoking the full panoply of powers of the Judicial Council and all of the high and mighty people that make up the Judicial Council.

Where concerns have been expressed by colleagues, by perhaps some members of the bench, and before the judge is put into the very difficult situation of a formal appearance before the Judicial Council, the Chief Judge looks into the matter. On the basis of doing that, where he considers it appropriate, he then may, following his looking into the matter, take some corrective action which might be quite simple and humanitarian - you're working too hard, take a rest, take six months off - or if he feels that it is more serious than that, indeed it amounts to something that ought to be looked into by the Judicial Council, then refers it to the Judicial Council. It is really designed to be of assistance, not so much to the Chief Judge, although it is that admittedly, but of some assistance to the judge about whom questions are being raised.

There have been instances since I've been in office in which some questions have been raised with me, and I have simply asked the Chief Judge to look into the matter. The Chief Judge has, but the concern of the Chief Judge is whether or not he really has those statutory powers that allow him to do that. Presently the Chief Judge is, by the terms of current legislation, substantially an administrative officer who has exercised de facto some such powers as are here suggested, but it has not been in clear that, in fact, de jure has those powers, and now we're filling in that gap.

MR. G. MERCIER: Mr. Chairman, I appreciate what the Attorney-General has said, but the part of the amendment of 8(3) that I find offensive is (b), the Attorney-General directing an investigation. Surely on the basis of what he has said, you could simply delete (b). If the Attorney-General has a concern, he could express it to the Chief Judge. If the Chief Judge is satisfied that the concern should be investigated, he can make the decision, but I don't think he should be directed by the Attorney-General to make the decision. I don't think there should be that type of interference by the executive with the judiciary.

I would suggest to the Attorney-General, we could leave out (b).

HON. R. PENNER: We've had circumstances as recently as the last few months in which concerns have been expressed by members of the public, others, to me. Certainly agreeing here with the Member for St. Norbert, I felt it inappropriate for me to conduct any investigation or inquiry or to purport to do something about a mere allegation. I have written and/or called the Chief Judge and said, here is the concern expressed, I think you should look into it.

I don't think there is any difference effectively between asking someone to look into something and to investigating. It's not envisaged that this is a formal investigation or hearing. It's, I think, just the term best describing, would you look into this complaint and see what it's all about?

MR. G. MERCIER: I'm opposed to (b).

MR. CHAIRMAN: Are you ready for the question? On the proposed motion of Ms. Phillips, is it agreed? (Agreed)

MR. G. MERCIER: On division.

MR. CHAIRMAN: On division. I declare the motion passed. Page 5, as amended—pass. Page 6 - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, in Section 11(1), it may be in the act now, but I would like some clarification. Does a new judge, for example, come into the system as a new employee?

For example to say, "Every judge appointed on a full-time basis is entitled to observe the same holidays as a Manitoba government employee." As I understand it, a Manitoba Government employee is entitled to a variable number of weeks of vacation, depending upon his years of service. A new judge is obviously, if he's compared as a new employee, is only entitled to the minimum vacation period. I'm wondering how is a new judge to be treated under this legislation.

HON. R. PENNER: I think I'll ask Legislative Counsel to deal with that; (a), of course, deals with holidays. But I think your concern is with the vacation period is it not, and (b)?

MR. G. MERCIER: Well, the concern is with respect to all of the items, but maybe an answer on vacations would clarify it.

HON. R. PENNER: My understanding is that a judge, when appointed, comes in as if that judge was a new employee of the government. That's simply to provide the basis upon which benefits of the kind here noted are calculated. They are not, of course in the ordinary term, "civil servants" and I of course have had representations from the Provincial Judges' Association. They would like to have their benefits, pensions and so on calculated on a completely independent basis. That's something that is being considered. Here, we're re-enacting the present provisions, which have been in force for some time and simply provide a measuring basis for calculating the benefits including holidays, vacation, sick leave and so on.

MR. G. MERCIER: So the answer is they are to be treated as a new employee without any seniority.

HON. R. PENNER: Yes.

MR. CHAIRMAN: Pages 6 to 12 were each read and passed. Page 13 - Ms. Phillips.

MS. M. PHILLIPS: I move:

THAT Clause 27(1)(b) of Bill 62 be struck out and the following clause substituted therefor:

(b) three judges, one of whom may be the Chief Judge, designated by the Attorney-General.

MR. CHAIRMAN: Is there any discussion of the motion? Is that agreed?

Mr. Mercier.

MR. G. MERCIER: Well, the intent here is to increase the Judicial Council.

HON. R. PENNER: To increase the representation of Provincial Judges on the Judicial Council it was felt, and I think appropriately, that the composition of the Judicial Council as it was, was unfair in that it had a provision with respect to the Chief Judge and I think that was all. This increases the number of Provincial Court judges who, in this context, add to the total numbers of the council.

MR. G. MERCIER: Is the Attorney-General using the same criteria as for the appointment of the Law Enforcement Review Board?

HON. R. PENNER: To what criteria do you have reference?

MR. G. MERCIER: It's interesting and it's analogous. When we discussed the Law Enforcement Review Board this morning, their limitations were distinct limitations on police officers serving on the Law Enforcement Review Board. But in this situation - and I'm not disagreeing with this particular situation, it's the other situation I'm disagreeing with - where there is to be a board, called a Judicial Council, to deal with complaints againsts judges. We have at least four judges on the Judicial Council.

HON. R. PENNER: Well, first of all, the model that was looked at in this instance was closer to the federal Judicial Council than a body like the Law Enforcement Review Agency. The fact of the matter here is that if you look at the total composition you have in addition to the three judges, who are Provincial Judges, a Chief Justice of the Court of Queen's Bench, and that's from the Superior Court which traditionally has some supervisory powers over the inferior courts, and then you have another five persons who come not from the ranks of the judges. So that it's quite different than the situation with the Law Enforcement Review Board.

MR. G. MERCIER: Mr. Chairman, it is not quite different. You have four out of nine people who are judges. The Law Enforcement Review Board - you can only have I think either one or two out of five who can be policemen.

HON. R. PENNER: It's not only a numerical question. There's another difference, and that is one of the concerns about police officers judging themselves, is that they work together as teams day in and day out. They call themselves seat mates in the cruiser car or on an investigating team. There's a kind of closeness in the working relationship, the kind of a dependency one upon the other, which arguably may lead to some bias in judging the case in that instance. It is not true, it's not the same in this kind of situation.

MR. G. MERCIER: I have to agree to disagree.

MR. CHAIRMAN: You've heard the motion. Are you ready for the question? Pass. Page 13, as amended—pass. Page 14 - Ms. Phillips.

MS. M. PHILLIPS: I move:

THAT subsection 27(4) of Bill 62 be amended by striking out the word "Four" in the 1st line thereof and substituting therefor the word "Five."

MR. CHAIRMAN: Any discussion of the motion? Is it agreed? Pass.

Page 14, as amended—pass; Page 15—pass; Page 16—pass; Page 17—pass. Page 18 - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, Section 39 says that where the Judicial Council suspends a judge from office and the time of suspension expires, the Lieutenant-Governor-in-Council, that is, the Cabinet, may remove the judge from office. Should there at least not be a requirement that that is the recommendation of the Judicial Council? What if the Judicial Council considers the suspension to be an adequate penalty? Why should the Cabinet have the right for what may be partisan reasons to get rid of a particular judge? Should not the Cabinet in this situation only be acting upon the recommendation of the Judicial Council?

HON. R. PENNER: The point is well taken and I'm going to look into that. It seems to me it relates to the particular powers of the Judicial Council. — (Interjection) — That's right. Because the person is appointed by the Lieutenant-Governor-in-Council, all the Judical Council can do is suspend, they cannot revoke and the suspension is in effect their way of saying this person should be revoked, but formally the revocation must be that of the Lieutenant-Governor-in-Council. But I'll make sure of that.

MR. MERCIER: I think you should.

MR. CHAIRMAN: Pages 18 to 24 were each read and passed. Title—pass; Preamble—pass. Bill be Reported, as amended.

Bill No. 72, Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, I wonder if I could ask leave of the committee just to ask the Attorney-General one question. Section 50, Page 20, says, "No judge or magistrate shall engage in any manner whatever in partisan political activities." Does that include part-time judges?

HON. R. PENNER: Yes, it does.

MR. G. MERCIER: And part-time magistrates?

HON. R. PENNER: Yes.

BILL NO. 72 - THE WILD RICE ACT

MR. CHAIRMAN: Bill No. 72, Mr. Mackling. Page by page?

HON. A. MACKLING: Yes, except that I have some amendments that are being distributed, if we could just hold it a second.

MR. CHAIRMAN: Mr. Tallin.

MR. R. TALLIN: The French version of those amendments to The Provincial Court Act were made available. Is it all right if we make the equivalent amendments in the bill, in the French version of bill, in accordance with those French version amendments? (Agreed)

HON. A. MACKLING: Mr. Chairman, while they are being distributed, let me explain that there are two amendments of principle involved. There are a couple of technical amendments there. The two amendments in principle arise from the submissions that were made to the committee at our previous sitting. You'll recall that we had representation by legal counsel on behalf of treaty Indian bands represented under Treaty No. 3. We also had representation from council and from the chief of a treaty Indian band in Manitoba, in which essentially they indicated concerns about treaty rights, in the case of Treaty 3; and in the case of the Manitoba bands, a concern about aboriginal rights in respect to wild rice.

Basically, you'll recall that the Treaty 3 submission was that while they didn't want in any way to interfere or take away rights which they knew had for some time been exercised by treaty Indian people in Manitoba in the Whiteshell and Nopiming Park areas, they were concerned about the possible ramification of an act passed by the Legislature since it might affect their aboriginal and their treaty rights that they believe they could establish. Again, a similar concern on the part of the treaty Indian people from Manitoba who spoke to the committee.

As a result of those submissions, I have had staff consult with the treaty Indian bands in their council, and we have come up with two amendments, which I think essentially state that the act is not designed to be administered or will not be administered so as to abrogate or derogate from any aboriginal or treaty right that an Indian band may have in respect to wild rice.

Now that wording is carefully framed so that it is not saying, declaring a right, nor is it disputing a right. It is saying that the intent clearly is not to take away any rights that may exist.

MR. CHAIRMAN: Excuse me, Mr. Mackling. Perhaps we could deal with this in a more methodical manner and . . .

HON. A. MACKLING: Well, I'm just giving an overview of the two changes and then when we get to the particular pages, I will move the amendments or I'll have the amendments moved.

Essentially, that covers the concerns that were made by the Indian groups that appeared.

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: Before getting into the bill itself properly, is the government presenting these amendments as having been agreed to by the Indian bands in question, particularly Grand Chief Kelly, who appeared before us with legal counsel when last we dealt with this bill at this committee?

HON. A. MACKLING: I haven't personally talked with counsel on behalf of Treaty 3, but staff have and have indicated the nature of the amendments that we are proposing. I believe the last word that we had from them is that they didn't want to see implementation of the act because of their concerns as to the possible denial of their right to be involved in the sale of wild rice. I have indicated that we do not intend to implement the act for this wild rice season. It's too late to have all of the administration organized for the actual implementation of the act in this season. I think there will be ample opportunity therefore to review administrative regulatory arrangements pursuant to the act.

MR. H. ENNS: Mr. Chairman, I'm advised that the kind of amendment that is before us is in fact not acceptable to the Indian bands involved with Treaty 3. I'm not a constitutional lawyer. I find the amendment really not saying a great deal of anything.

On the one hand, we are passing legislation that will regulate wild rice, and the Indian bands involved have indicated that they have no objection to - indeed they recognize the need for regulations, conditions being there to better manage, better harvest and better market the product of rice. My information is that the specific objections raised to this committee when we last dealt with this bill are not being met by these amendments. I find it difficult therefore to support the passage of the bill under these terms.

I'm disappointed, Mr. Chairman, through you to the Minister, that having had now some two or three weeks, I believe that the matter was last before us on or about June 28th, 29th, the better part of a month in any event, for the government and/or their senior staff people to sit down and meet and work out some of the concerns that the Indian bands expressed to us when this committee last met. I'm told that they were invited to submit to the Minister, in writing, their specific concerns and objections. This was done, but not answered to or replied to by this government or by this Minister. As late as this afternoon, I was informed that the objections that were raised before this committee on June 28th or 29th, whenever that date was when we last heard this bill, those objections still stand.

MR. CHAIRMAN: Ms. Phillips, on a point of order.

MS. M. PHILLIPS: Mr. Chairperson, the Minister has made an opening statement and the opposition member has replied. I think the proper procedure would be to go through the act and when we get to that particular amendment there would be plenty of time for discussion on that particular amendment.

MR. CHAIRMAN: Is that agreed? (Agreed) Page by page.

Page 1 - Ms. Phillips.

MS. M. PHILLIPS: I move:

THAT the definition of "buyer's permit" in Section 1 of Bill 72 be struck out and the following definition substituted therefor:

"Buyers permit" means a permit for the purchase of wild rice.

MR. CHAIRMAN: Any discussion on the motion? Is that agreed? (Agreed) Pass.

Page 1, as amended—pass; Page 2—pass. Page 3 - Ms. Phillips.

MS. M. PHILLIPS: I move:

THAT Section 2 of Bill 72 be amended by adding thereto immediately after subsection (3) thereof the following subsection:

Aboriginal and treaty rights.

2(4) This act shall be administered so as not to abrogate or derogate from any aboriginal or treaty rights an Indian band may have relating to wild rice.

MR. CHAIRMAN: Any discussion? Mr. Mackling.

HON. A. MACKLING: Well, I just want to indicate to the Honourable Member for Lakeside that our staff have been endeavouring to obtain from legal counsel for Treaty 3 the documentation they referred to. As of this date, I don't believe that documentation has been provided for us so that we can sit down and examine their claims. That I don't believe has taken place, but what we have indicated is clearly this, that if they have treaty rights, if they can establish those treaty rights, then they can be established to our satisfaction or if we're not satisfied the court is going to deal with it. If we refuse to accept their rights, the court is there to protect them.

What we are stating here, unequivocally, is that if there any rights, then this act will not be administered to derogate from those rights, if they haven't been established yet. If they are established to our satisfaction, of course we're going to have to take those into account. That's clear.

MR. CHAIRMAN: On the motion, Mr. Harper.

MR. E. HARPER: I would just like to say that this is consistent with the present Constitution that we have, the Canadian Constitution I'm referring to, in relation to the treaty and aboriginal rights. Those yet have to be defined and for this section to mention that, I think it's consistent with our present Constitution.

I've checked this evening with several the members, and the regulations will be dealt at a later date because this act wouldn't come into force until later when it's proclaimed.

MR. CHAIRMAN: Any further discussion on the motion of Ms. Phillips? Is is agreed?

Mr. Enns.

MR. H. ENNS: I simply want to register my objection to the amendment, as not being the kind of amendment that is acceptable to the Indian bands involved with Treaty 3.

MR. CHAIRMAN: On division?

SOME HONOURABLE MEMBERS: On division.

MR. CHAIRMAN: I declare the motion passed. Page 3, as amended—pass. Page 4 - Mr. Lecuyer.

MR. G. LECUYER: Motion:

QUE l'article 6 du Projet de Loi 72 soit amendé par la renumérotation de l'article qui devient le paragraphe (1) et par L'insertion, aprés l'article ainsi renuméroté, du paragraphe suivant:

Secteurs désignés pour les bandes indiennes.

6(2) Nonobstant les articles 4 et 5, un Indien inscrit ou une bande indienne peut se livrer à la récolte du riz sauvage à des fins domestiques sans détenir une licence ou un permis dans les secteurs de terre domaniale que les réglements désignent.

MR. CHAIRMAN: Any discussion of the motion?

A MEMBER: Do we want in en Anglais?

MR. CHAIRMAN: We can do it in either language. Is that agreed? (Agreed) Pass. Page 4, as amended—pass; Page 5 through 10 were each read and passed. Page 11 - Ms. Phillips.

MS. M. PHILLIPS: I move:

THAT Section 31 of Bill 72 be amended by renumbering Clauses (a) to (f) thereof as Clauses (b) to (g) respectively, and by adding thereto immediately before Clause (b) thereof as renumbered the following clause:

(a) designating areas of Crown land for the purposes of Section 6.

MR. CHAIRMAN: Any discussion of the motion? Is that agreed? (Agreed) Pass. Page 11, as amended—pass; Page 12—pass; Title—pass; Preamble—pass. Bill be Reported.

French and English versions equally valid? (Agreed)

BILL NO. 98 - AN ACT TO AMEND THE QUEEN'S BENCH ACT and to repeal THE COUNTY COURTS ACT, THE SURROGATE COURTS ACT and THE COUNTY COURT JUDGES' CRIMINAL COURTS ACT and to amend THE MUNICIPAL BOUNDARIES ACT

MR. CHAIRMAN: Bill No. 98 - Mr. Filmon.

MR. G. FILMON: Before we continue on a numerical basis through these bills, it's my impression that there are people from the public here waiting to hear the discussion on certain bills, and in particular, the ones I'm aware of are people here to listen to the discussion on Bills 102 and 110. I'm wondering if it might not be appropriate to have those proceed, so that we don't keep the people here unnecessarily late. I promise in saying that, that I will not excuse myself earlier should we consider those bills first, I'll continue right through to the end of the committee sitting tonight.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: Well, it's my understanding that 98, 99, 100 and 101 are not going to take long at all.

MR. CHAIRMAN: What is the will of the committee? Bill by bill in order? (Agreed) Bill No. 98.

HON. R. PENNER: Page by page.

MR. CHAIRMAN: Page by page with amendments. Page 1.

HON. R. PENNER: Have you got the amendments?

MR. CHAIRMAN: Whose got the amendments?
Page 1—pass; Page 2—pass. Page 3 - Ms. Phillips.

MS. M. PHILLIPS: I move:
THAT the proposed Clause 6(1)(b) of The Queen's Bench Act Act as set out in Section 3 of Bill 98 be amended by adding thereto at the end thereof the words "and who shall be the Senior Associate Chief Justice."

MR. CHAIRMAN: Any discussion of the motion? Is that agreed? Page 3 - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, Section 6(2), I think, does not exist in the present Queen's Bench Act. Could the Attorney-General indicate the reason for putting this in the new act?

HON. R. PENNER: Yes, in effect, of course, it's only enabling in this sense that unless the Federal Government appoints pursuant to The Federal Judges Act, and thereto they have their sort of yearly quotas, you can't appoint, but in the event that the Federal Government is prepared to appoint - let's use as an example the creation of something like a family division or where you might want to expand. Let us suppose you've created the family division - this would be a better example - and you want to expand the number of judges because the workload is far heavier than anticipated, and the Federal Government is prepared to appoint, this just enables the Lieutenant-Governor-in-Council to increase the number of judges of that court that we, of course, can't appoint.

MR. G. MERCIER: Mr. Chairman, perhaps to Legislative Counsel, I don't think there was any similar provision in the existing Queen's Bench Act. How have we managed to get along without this?

MR. CHAIRMAN: Mr. Tallin.

MR. R. TALLIN: That's correct, there is not a similar provision. This is a provision which we've borrowed from several other provinces who have put it in. In the past, when the number of judges in the court was to be increased, the Federal Government always waited until The Manitoba Queen's Bench Act was amended to increase the number, then they would go to The Federal Judges Act, and amend The Federal Judges Act.

MR. CHAIRMAN: Page 3, as amended—pass. Page 4 - Ms. Phillips.

MS. M. PHILLIPS: I move:
THAT the proposed subsection 6(6) of The Queen's Bench Act as set out in Section 3 of Bill 98 be struck out.

MR. CHAIRMAN: Any discussion of the motion? Is that agreed?
Page 4, as amended—pass; Page 5—pass; Page 6—pass. Page 7 - Mr. Lecuyer.

MR. G. LECUYER: QUE le paragraph 12(3) de la Loi sur la Cour du Banc de la Reine, tel qu'énoncé à l'article 3 du projet de loi no 98, soit amendé par la suppression des mots "selon les exigences de la Cour" et leur remplacement par les mots "selon ce que décide le Juge en chef de la Cour du Banc de la reine ou un juge que ce dernier désigne."

MR. CHAIRMAN: You've heard the motion, is there any discussion? Is it agreed?
Page 7, as amended—pass; Pages 8 to 20 were each read and passed. Page 21 - Mr. Mercier.

MR. G. MERCIER: Section 109(3), Mr. Chairman, why when it is simply for a matter of procedure would you require the pleadings to be amended - and it's not a matter of substance? All you're doing is increasing the cost to the litigants which will probably not be recoverable in the action. It's technical, and procedural only and not substantive, and will only increase the cost to the parties.
I wonder if the Attorney-General would undertake to perhaps review that with the Legislative Counsel and perhaps even the Chief Justice, who I know has an interest in this act, to determine whether or not it really is appropriate.

HON. R. PENNER: We'll have a look at that.

MR. CHAIRMAN: Pages 21 to 25 were each read and passed; Title—pass; Preamble—pass. Bill be Reported. English and French versions equally valid—pass.

BILL NO. 99 - THE COURT OF QUEEN'S BENCH SMALL CLAIMS PRACTICES ACT

MR. CHAIRMAN: Bill No. 99, are there amendments? No amendments. Page by page; Pages 1 to 7 were each read and passed. Page 8 - Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, in 12(3), Line 5 says "The action shall thereafter be conducted in accordance with the rules of the court which are not applicable to actions and proceedings under this act." Should not the word "not" be deleted? I don't know how you conduct an action in accordance with the rules which are not applicable?

MR. R. TALLIN: I don't know whether this is going to be of any help or not. Actions under this act are actions

of small debt in the first instance. Actions not brought under this act are actions which for any amount are just brought under the ordinary rules of the Queen's Bench. This does not say that the action is not an action under this act, but in this case the procedure will be the same as for actions which are not brought under this act.

MR. CHAIRMAN: Pages 8 to 13 were each read and passed; Title—pass; Preamble—pass. Bill be Reported.

BILL NO. 100 - THE COURT OF QUEEN'S BENCH SURROGATE PRACTICE ACT

MR. CHAIRMAN: Bill No. 100, are there any amendments? No amendments? Page by page. Page 1—pass; Page 2 - bill by bill? Bill 100—pass; Title—pass; Preamble—pass. Bill be reported.

BILL 101 - AN ACT TO AMEND VARIOUS ACTS OF THE LEGISLATURE TO FACILITATE THE REORGANIZATION AND EXPANSION OF THE COURT OF QUEEN'S BENCH

MR. CHAIRMAN: Any amendments? Mr. Penner.

HON. R. PENNER: With 101, Legislative Counsel has just brought to my attention - Page 12, I would draw the Member for St. Norbert's attention to Sections 3(1) and 4. You will recall that at one time I was considering with respect to The Judgment Act changing the limits from $40 to $500.00. In anticipation of that, these two sections include the $500 figure. We didn't proceed with that change to The Judgments Act. Accordingly, 3(1) and 4 should have the figures, $500, replaced by the figures, $40.00. Have we leave to proceed with that without a written amendment?

MR. CHAIRMAN: Agreed and so ordered. Page 12 - Mr. Penner.

HON. R. PENNER: Accordingly, I would move:

THAT Section 3(1) of Bill 101 and Section 4 of Bill 101 be amended by substituting the figures $40 for the figures $500 where they appear in each one of those paragraphs.

MR. CHAIRMAN: By leave, a verbal amendment—pass; bill, as amended—pass; Title—pass; Preamble—pass. Bill be Reported.

BILL NO. 102 - THE TEACHERS' PENSIONS ACT

MR. CHAIRMAN: The next order of business, is that 102?

Are there any amendments? No amendments. Page by page or bill by bill? Bill by bill. Bill 102—pass; Title—pass; Preamble—pass. Bill be Reported. That was easy, Maureen.

The next bill to be considered would be what, Mr. Penner? Any suggestions?

HON. R. PENNER: Is there any reason why we can't do 104? It's a one-pager. Bill by bill.

BILL NO. 104 - AN ACT TO AMEND AN ACT TO INCORPORATE THE SINKING FUND TRUSTEES OF THE WINNIPEG SCHOOL DIVISION NO. 1

MR. CHAIRMAN: Bill by bill? Pass. Title—pass; Preamble—pass. Bill be Reported.

HON. R. PENNER: We're on a roll here.

MR. CHAIRMAN: Mr. Bucklaschuk, are you ready?

BILL NO. 110 THE CONSUMER PROTECTION ACT

HON. J. BUCKLASCHUK: There are some amendments to Bill 110.

MR. CHAIRMAN: Amendments to 110.

HON. J. BUCKLASCHUK: As I indicated previously, I have brought in an amendment to delete Section 118 of Part XIV. That's the section dealing with the restriction on the amount of the deposit.

With respect to the trust provisions, I did listen carefully to the briefs that were presented, and there is no doubt in my mind that the concerns that were expressed were sincere. Certainly it was not intended that this bill be considered as an anti-business bill, but certainly pro-consumer. By instilling consumer confidence, it would have been my hope that it could also be seen as being pro-business.

The concerns that brought about this section are certainly not frivolous concerns, as the department has had quite a number of inquiries from persons who have made deposits on goods and have lost their deposits. It was thought that this proposed legislation would deal with the situation. I note from reading Hansard that my critic also felt that it was "the cleanest and simplest and easiest method of dealing with this situation."

However, having said this, I am quite willing to explore any other options that may be available to deal with this situation. In view of that, we will have an amendment that will leave the proclamation of that section to a later date, so that it can facilitate any discussions with those in the retail industry that are concerned with myself and my deputy. If there is a more acceptable and equally effective way of dealing with the situation, we are certainly willing to take a look at it and not proclaim that section, and introduce relevant legislation in the next Session.

So that is where we're at with this bill.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Thank you, Mr. Chairman. I want to say, firstly, that I appreciate the Minister's opening the door to some alternative suggestions. As a former Minister of Consumer and Corporate Affairs, in speaking to this on second reading, the major concern that I had was with respect to the very damaging aspects of limiting deposits to 5 percent which would have, as the Minister knows, been very harmful to businesses.

With respect to the trust provisions, the position that I took at that time was that I couldn't come up with any alternative suggestions. In speaking with a number of merchants who called me, wrote to me on the matter, my suggestion to them was that since there was a move afoot to try and instill consumer confidence in the protection of their deposits because of having faced a number of situations of bankruptcies that caused losses of consumer deposits in recent years that this was an objective that we supported in principle, but we wanted to ensure that it was the simplest and cleanest method that we possibly could come up with.

Having listened to the positions put forward by the people who made very good presentations this evening, I am persuaded that we ought to try a little harder to find perhaps a less onerous method of dealing with it. Mr. Chairman, I have a suggestion which will take perhaps a few minutes to describe, but I think it may have some merit to be looked at in this case.

As I see it, what we're attempting to do is ensure that deposits are held in trust, or there is an alternative, where we cannot hold it in trust, for someone to be able to reclaim their deposit. In other words, the aspect of the liability that is shown in Section 120 that says that where a loss occurs, "The owner where the seller is a sole proprietorship," the partners or the directors are to be liable in the case of a loss for which there are no funds available to cover.

So the business that I am familiar with, being my own, has a situation under government regulation in which we are required to put forth a surety bond. That surety bond is because of the fact that trade schools have tuition paid in advance which, in effect, is unearned tuition that they hold in trust for students until that tuition is earned in accordance with the services provided. The bond that they are required to put up reflects the approximate or is, in order of magnitude, the amount of money that they should have in unearned tuition on an ongoing basis. It has moved up as time goes on. During my time in the field, it has moved up from $2,000 to $5,000 to $10,000, and probably will continue to be moved up as tuition rates go up.

What I am suggesting here, Mr. Chairman, that the Minister look at is the possibility of putting in a clause that says that the merchant is required to maintain a surety bond. The amount of that surety bond is to be fixed by regulation. I say, just off the top of my head, that it could either be in various steps that reflect a percentage of the approximate volume that the merchant does, or it could be a requirement that he declare what the maximum amount of deposits he had in the last year was. The next year he has to be bonded to that amount in a surety bond.

I say that knowing that, (a) having to go for a surety bond is one thing. It establishes that the business is stable, because he wouldn't be able to obtain a surety bond in an amount, let's say, a $10,000 bond for a business that does $1 million volume. That may be a reasonable amount in reflection of deposits. So (a), it would establish that the business was stable, because he could obtain that bond, or would have to put up some cash bond in lieu; and (b), it would establish that if you add a second clause to it that said - instead of Clause 120 - the following persons are liable to the purchaser for any loss he occurs as a result of insufficiency of the surety bond to cover the amount of deposits held by the merchant.

So you're now saying that if he is under-bonded that these people that (a) (b) and (c) of Clause 120 are now liable for any insufficiency of the bond.

So it would do two things in my mind. It would establish that the business is stable and could be bonded, and secondly that if the business is insufficiently bonded you now have the mechanism for establishing that those people behind the business are still liable for the deposits which should be held in trust. I think that would establish the principle that we're after in giving some assurance to the customer that they are dealing with a sound stable company. It would eliminate all the red tape of the audits, and the separate accounts, and that sort of thing, and it would also allow the merchant, if he's a stable good merchant, to continue to use those deposits for cash flow, which I'm persuaded from the discussion, is a valid proposition.

Now I say that having had no opportunity to run that by the merchants, and so I leave that for the discussion of the Minister with the merchants at a later time as a possible solution to it.

HON. J. BUCKLASCHUK: Yes, I'd like to thank the member for that suggestion. It's certainly something worthy of consideration. I'll follow up on Hansard and we will certainly discuss this with the business community.

The only problem I can see is that by the type of legislation we propose we had, in fact, looked at a minimum of, shall we say, government intervention. I'm not so sure that the plan that the Member for Tuxedo has proposed wouldn't require some sort of continuous auditing or whatever. We will certainly consider that, I think it's worthy of merit.

MR. G. FILMON: Mr. Chairman, it could require an annual declaration on the part of the merchant with respect to what the amount of his bond should be, and that is to reflect his last year's maximum amount of deposits he had at any given time.

Secondly, I know that the bond requirement that we have, for instance, for a $10,000 bond costs something like $100.00. You obtain it from an insurance company, like Canadian Indemnity or something like that, so it is a minimal cost to the merchant, and yet it achieves by having the bond backed up by the liability clause, it achieves, I think what you're after in protecting the deposit.

I leave it for further discussion amongst the legal minds of the government and the merchants.

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

Mr. Enns.

MR. H. ENNS: Mr. Chairman, I have some difficulty in accepting the Minister's proposition of passing the bill, accepting for a moment his good will in saying that he won't implement a particular section. But I don't really think that's fair to pass a bill with that section in place. The industry, the business sector involved never knows from day to day when it should occur to the Minister to implement a section. I don't want to overly press, or doubt the Minister's good intentions here but if the Minister is prepared not to implement this section then why don't we just drop the section?

Bills of this nature can be brought before another Session, can be amended, can be changed. I just don't think it's particularly fair to the business sector, who have voiced strong opinions about this section, to leave it hanging that way. The Minister wants to give himself more time, and I believe in this particular instance the Minister could do with a lot of time in consulting with people that have to work with governments in this case. Why not simply drop the particular offending section?

HON. J. BUCKLASCHUK: As I indicated it was my intention to leave that in, and consult with the business community, and on the provision that there could be a more acceptable solution, or resolution, which was equally effective in terms of protecting the consumer's interests, then we would not go ahead with that legislation. But I would like to keep that in just in the event that there is no better solution.

MR. H. ENNS: Mr. Chairman, you know I just simply, from my lay experience and an observer of what's been going on, I find that the one area that has regrettably come up, from time to time, occurs in the travel industry and we're not touching that at all with this bill. So we're being doubly unfair to the business representation that we've had before this committee, you know, in singling them out for a penalty.

We are not in any way addressing the problem that, to the best of my mind, has not frequently but too frequently come up where people who have put aside money, or put money down for travel plans, and then have had them lost. We are not dealing with that particular thing, and I kind of think that a lot of this action on the part of the Minister stems from those kinds of situations and stories.

Well, Mr. Chairman, you have the numbers, the Minister has the numbers, their will can prevail but I voice my objection to it and would like to do it on division.

MR. G. MERCIER: Well, Mr. Chairman, I would want to join with my colleague. This section is not in the interest of consumers. If anything has been made clear from those who have made submissions to us tonight, these sections are bound to result in an increase in the cost of goods to consumers, or a lack of available goods from retailers in this province.

On the basis of the representations which are being made to us tonight, not by, you know, large employer organizations but dedicated, determined, successful, small businessmen. As they indicated many, many small businessmen are not aware of the provisions of this section, otherwise we would have many, many more people here this evening. There's simply no basis upon which the Minister can ask this committee to pass Secton 119, and say that he'll withhold proclamation.

In questioning one of the business people who made a submission, one clear remedy is to request the Federal Government to amend The Bankruptcy Act to give higher priority to a person who has made a deposit, and that is something that the Minister should be acting on. I asked him to consider that last year during his Estimates, or perhaps it seems that long ago, perhaps it was earlier this year during his Estimates some four or five months ago. He should be consulting with his fellow Ministers in other provinces, and seeking out an amendment by the Federal Government to The Bankruptcy Act first of all. But we shouldn't be passing legislation which has the potential to adversely affect small business in this province and the consumers.

MR. CHAIRMAN: Mr. Kostyra.

HON. E. KOSTYRA: Mr. Chairman, while I can appreciate the concerns of some small business with regards to this proposed amendment, and I can somewhat appreciate the concerns of some of the members who have spoken in opposition to this issue on the basis of the representation that was made to the committee, I would just remind members of some situations that have arisen in the past year, year-and-a-half, that I'm aware of, and unfortunately we don't have the benefit of representation from those people that were affected by those situations.

There were a number of situations over the last two years, that I'm aware of, where people had put substantial deposits down on the basis of receiving goods from a number of companies, and because of the situation with those particular companies when they closed their doors, went bankrupt, whatever, found themselves in a situation in not having those goods. I recall - I don't have the specifics - a situation of a person who paid all of the cost for a motorcycle from a motorcycle company in the City of Winnipeg, and as a result of that company closing its doors, that person lost all of the money, he paid all of the money for that motorcycle on deposit and he lost every penny.

Mr. Chairman, when we say that on the basis of the representation here that we ought not to proceed with any protection such as contemplated here, I think we have to remember some of the situations that gave rise to this amendment and look at the situations where individuals, who in good faith put substantial deposits on goods with companies, lost every penny and those were substantial financial losses to those individuals. I would just ask members to think of those people that were not able or were not aware, and did not come and make representation about their situations wherein they lost considerable funds because of lack of any kind of protection.

MR. CHAIRMAN: We've had the opening statements, would you like to proceed now page by page?

Mr. Bucklaschuk.

HON. J. BUCKLASCHUK: I'd just like to make two comments in response to the issue that the Member for Lakeside raised about the travel industry.

I'm well aware of the problems that the travel industry has faced. We have been working with the industry for the past year-and-a-half or so to come up with appropriate legislation. They have undertaken themselves to come up with some legislation or some sort of insurance or protection for the consumer, and we are waiting a reply from them.

With respect to the comments from the Member for St. Norbert, and I did mention this in my closing debate on Second Reading, The Bankruptcy Act has been under revision since 1979, and we're still waiting. I presume we would be waiting for a number of years

before that act would pass through the Federal Parliament to protect those consumers that are being hurt today. Unfortunately, I don't have my files here, but I can assure all members that we have on many occasions received letters and inquiries from consumers who have lost considerable thousands of dollars in deposit that they placed with businesses in good faith, not knowing what the financial background of those firms were and learning that there was nothing to recover after the firm went into bankruptcy.

As I indicated, I will be inviting the business community to come up with suggestions - certainly we've heard some tonight - that would be equally effective, and if they're less onerous on the business community so much the better, but I would like that latitude to be able to proclaim that section should no appropriate resolutions be provided within a given period of time. I'm looking at three or four months down the road.

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: Mr. Chairman, I appreciate the Minister's comments with respect to the way he's moving with the travel industry problems. I simply ask him why not move the same way in this case, but he isn't.

Leave aside the issue involved in this amendment completely, the one thing that the people of Manitoba, businesspeople or other people, should at least know is what kind of law they're working under; good or bad. They can make further representations that are open to them from time to time.

It's simply bad practice as lawmakers to pass legislation that then leaves what the Minister calls latitude - I call it arbitrary power - at his own discretion. You know, drop the sword, which can have significant impact on how this particular business section operates.

As I say, Mr. Chairman, if we pass the legislation, then pass the legislation the way it's going to be enforced without giving this kind of latitude to this particular Minister.

MR. CHAIRMAN: Ms. Phillips.

MS. M. PHILLIPS: Yes, Mr. Chairperson, I guess my concern with the suggestion from the Member for Lakeside is the fact that in this bill there are several amendments dealing with many other issues such as advertising and licences for direct sellers and collection agents, etc. I would hate to see all those provisions that have not been objected to in any way shape or form be held up because of the member's concern about the last section or on Section 119 — (Interjection)—

A MEMBER: Pass all except the . . .

MS. M. PHILLIPS: His suggestion of pulling the whole bill, I don't think is a valid suggestion.

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Well, Mr. Chairman, I just wanted to make the point that a portion of the bill could be held in abeyance, subject to proclamation. The whole bill is not turned down. — (Interjection) — I gather from my colleague that she thought that the whole bill would have to be aborted. I'm simply making a point.

MS. M. PHILLIPS: I thought that's what the Member for Lakeside was saying.

MR. CHAIRMAN: Order please. One at a time.

Page by Page? Mr. Filmon.

MR. G. FILMON: I think what the Member for Lakeside is suggesting is that only Part XIV, the part that's being added with respect to deposits, not be proceeded with at the present time until something can be put in its place; something better hopefully.

MR. CHAIRMAN: Page by page? Page 1—pass; Page 2—pass; Page 3—pass. Page 4 - there are amendments? Who has the amendments?

Ms. Phillips.

MS. M. PHILLIPS: I move:

THAT proposed Section 118 of The Consumer Protection Act as set out in Section 12 of Bill 110 be struck out.

MR. CHAIRMAN: Any discussion? Is it agreed? (Agreed) Pass.

Page 4 - Ms. Phillips.

MS. M. PHILLIPS: I move:

THAT proposed subsection 119(1) of The Consumer Protection Act as set out in Section 12 of Bill 110 be amended by

a) adding immediately after the word "seller" in the 2nd line thereof the words "from a purchaser"; and

b) adding immediately after the word "be" in the 2nd line thereof the words "held in trust and."

MR. CHAIRMAN: Any discussion of the motion? Is it agreed? (Agreed) Pass. Page 4, as amended - Mr. Mercier.

MR. G. MERCIER: Well, Mr. Chairman, I move:

THAT the proposed subsection 119 as set out in Section 12 of Bill 110 be struck out.

MR. CHAIRMAN: That motion is on the floor. There is a motion on the floor in respect to - no, we just passed 119(1). Would you like to write that down or would the committee like to grant leave?

HON. R. PENNER: Let's just take a vote on it . . .

MR. CHAIRMAN: Question? On the proposed motion of Mr. Mercier. — (Interjection) — Yes, we did. All those in favour? All those opposed? In my opinion, the nays have it. On division? On division. Page 4, as amended—pass. Page 5 - Ms. Phillips.

MS. M. PHILLIPS: I move:

THAT proposed Section 120 of The Consumer Protection Act be amended by striking out the figures

"119" in the 3rd line thereof and substituting therefor the figures "118."

MR. CHAIRMAN: Is that agreed? Pass.
Ms. Phillips.

MS. M. PHILLIPS: I move:
THAT proposed Sections 119 and 120 of The Consumer Protection Act as set out in Section 12 of Bill 110 be renumbered as Sections 118 and 119 respectively.

MR. CHAIRMAN: Any discussion? Is that agreed? Pass.
Ms. Phillips.

MS. M. PHILLIPS: I move:
THAT Section 13 of Bill 110 be struck out and the following section be substituted therefor:
Commencement of Act.
13 This act, except Section 12, comes into force on Royal Assent and Section 12 comes into force on a day fixed by proclamation.

MR. CHAIRMAN: Discussion? Is that agreed? Pass. Page 5, as amended—pass; Title—pass; Preamble—pass. Bill be Reported. On division? On Division. Pass.
Any more bills?

HON. R. PENNER: Committee rise.

MR. CHAIRMAN: Committee rise.