First Session - Thirty-Fifth Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

LAW AMENDMENTS

39 Elizabeth II

Chairman
Mr. Jack Reimer
Constituency of Niakwa

VOL. XXXIX No. 2 - 10 a.m., THURSDAY, DECEMBER 13, 1990

MG-8048

ISSN 0713-9586

Printed by the Office of the Queens Printer, Province of Manitoba

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fifth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, December 13, 1990

TIME — 10 a.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Jack Reimer (Niakwa)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Mr. Ducharme

Messrs. Alcock, Helwer, Lamoureux, Martindale, Reimer, Mrs. Render, Messrs. Rose, Stefanson, Mrs. Vodrey

SUBSTITUTIONS:

Ms. Friesen for Mr. Dewar

WITNESSES:

Bill Norrie, Mayor, City of Winnipeg

Julie Van De Spiegle, Landowners' League of Manitoba

Jim Linton, General Manager, Winnipeg Hydro

Lillian Zagonchuk, Winnipeg Housing Concerns Inc.

Linda Williams, Winnipeg Housing Concerns Inc.

Henry Elias, Private Citizen

Lewis Rosenberg, Professional Property Managers Association

Richard Swystun, Private Citizen

Frank Cvitkovitch, The Mortgage Loan Association of Manitoba

Written Presentation Submitted:

Reg Loeppky, Private Citizen

MATTERS UNDER DISCUSSION:

Bill 13, The Residential Tenancies and Consequential

Amendments Act

Bill 25, The Ombudsman Amendment Act

* * *

Mr. Chairman: Could I call this meeting to order, please?

* (1015)

Committee Substitution

Mr. Doug Martindale (Burrows): I move, with the leave of the committee, that the Honourable Member for Wolseley (Ms. Friesen) replace the Honourable Member for Selkirk (Mr. Dewar) as a Member of the Standing Committee on Law Amendments effective today with the understanding that the same substitution will also be moved in the House to be properly recorded in the official records of the House.

Mr. Chairman: Is there leave? Is it agreed?

Hon. Gerald Ducharme (Minister of Housing): It is because of the Bill we are dealing with No. 25, that we did not know we were going to be dealing with today, it is the Ombudsman Bill that came onto us right now. The Member for Wolseley is the critic on behalf of the City of Winnipeg, so that is why that is being done.

Mr. Chairman: It has been agreed? (Agreed)

* * *

Mr. Chairman: Okay, will the committee on Law Amendments please come to order? Bill 13, The Residential Tenancies and Consequential Amendments Act, and Bill 25, The Ombudsman Amendment Act, are to be considered today.

Before we proceed, can we agree to an adjournment time this morning? Past Manitoba practice normally sets the time at 12:30. What is the will of the committee?

Mr. Reg Alcock (Osborne): There are an awful lot of presenters, I notice, and we are not going to get through all of them. I would be prepared to sit till one o'clock and just take a brief break before we go back into the House to accommodate as many people who are here this morning as possible, and then we will try to do the rest of them this evening.

Mr. Chairman: Is there agreement? One o'clock? It is our custom to hear briefs before consideration of

Bills. Is this the will of the committee? Is that agreed? (Agreed)

BILL 25—THE OMBUDSMAN AMENDMENT ACT

Mr. Chairman: I have a list of persons wishing to appear before the committee to Bill 25, wishing to make presentations. Mr. Norrie, the Honourable Minister would like to make a short statement.

Mr. Ducharme: I will just make a statement that we will deal with Bill 25 and deal through the whole Bill, because he is the only delegation that is appearing on behalf of that Bill.

Mr. Chairman: Is that agreed? (Agreed)

Mr. Norrie (Mayor, City of Winnipeg) : Mr. Chairman, Mr. Minister, Members of the committee, my presentation actually will be quite brief, and you have a large number of delegates following on the other Bill, so we do not want to take up too much of your time.

Mr. Douglas Buhr is with me from the City of Winnipeg Law Department. Basically what we would like to comment on is the provision in Bill 25 before you, which is an amendment to The Ombudsman Act, and as you are aware, legislation under this Act requires the City of Winnipeg to provide ombudsman services.

As you may remember, the original Bill was in its first instance permissive, which was actually the preference of the City of Winnipeg. Now it is mandatory, which makes us the only municipality in Canada that must provide these services. It has not been possible to date to actually provide them. What the Bill does and what we are supportive of, is that it gives us the flexibility of entering into an arrangement with the provincial Ombudsman to provide the services for the City of Winnipeg.

We would prefer that the Ombudsman's Office assume that responsibility, but the process we are in now is one of negotiation to see whether the Ombudsman will take it over, what the fee would be, and whether or not it would be more economical for the city to have the Ombudsman provide that service, or whether it would be more economical for the City of Winnipeg to provide its own service. So, we are in that process.

This amendment before you, which we support, actually gives us the jurisdiction to do that. We are supportive of it, and we would like you to proceed with it. Our only preferential position would be to make it permissive as opposed to mandatory, and we would be very supportive of that as well.

The other problem that I want to point out to you, however, is a little more complex, and that is that technically speaking, under the previous legislation, we were required to provide the service by November 30. It was one year after the passage of the legislation. Because we have been in negotiation with the provincial Ombudsman and have not as yet concluded our negotiations, that date has come and gone.

What we would ask you to do is to extend the time under The City of Winnipeg Act legislation, which provides for the November 30 date, to maybe six months, June 30. That will give us time either to conclude our negotiations with the provincial Ombudsman's Office or to advertise and make an appointment of a civic ombudsman standing alone at the City of Winnipeg.

* (1020)

Those are the submissions, Mr. Chairman, simply in support of your amendment to Bill 25, and a request that you would extend the date allowing the procedure to not be required until possibly June 30, six months.

If there are any questions, I would be glad to respond.

Ms. Jean Friesen (Wolseley): Thank you very much for coming, Mayor Norrie, and for making the presentation. I do not want to take too much of your time, but I did speak on the Bill yesterday and we do have some concerns about it. We very strongly support the principle of an ombudsman for the City of Winnipeg, as you know from the Cherniack report in particular. I think you are right that this is a flexible amendment and one that does give the city a number of choices.

There are some advantages I think in having the provincial Ombudsman initially start the service for the City of Winnipeg, particularly the immediate nature of the requirements and also the French language capabilities that the provincial Ombudsman has.

I had a couple of questions yesterday, and I wondered if you could help me with some of the answers. One of my main concerns is the city archives, records management and the city archivist. The provincial Ombudsman works in a system with quite an extensive records

management program in the provincial Government that has been certainly speeded up within the last few years, a large staff of archivists. Freedom of information, for example, depends a great deal upon access to good archival records.

I have toured the city archives, met the former city archivist, and I think the general feeling in the city and in the province is that there is a long way to go there yet. Do you have any sense of that, of how the provincial Ombudsman or your ombudsman, whichever route you choose to go—how are you going to be able to cope with that?

Mr. Norrie: I think that is a very appropriate question, Mr. Chairman, and Ms. Friesen has a legitimate concern, as we do. The archives of the city I think have not been given the attention they should have been given. We have had a archivist, but we have not in my view really established a full-fledged department or an operation that would certainly be comparable in our own sphere to the provincial archive system, and so that is requiring attention.

The main problem we have with respect to that is the cost, and as you know, to do it right is a very expensive proposition. We are under some very severe budget constraints, as the province is this year as well, and we have to make some choices. We may move more slowly than we would like to, but we all agree I think without exception that the goal is to provide a first class archival operation.

Probably in terms of the access to information, the provincial Ombudsman's Office would be more adept at that at the present time. However under our information by-law which is in the process in council, the ombudsman, whoever he or she might be individually, whether it is the provincial Ombudsman or a city ombudsman, becomes the appeal officer for that process. That would be something that would be tied in when this appointment is made or the contract is agreed on.

The only other comment I would make is that, in view of the fact that really the ombudsman concept is being imposed on the city, we would be happy if the Ombudsman's Office of Manitoba would assume the responsibility financially as well, and you might take that under consideration.

Ms. Friesen: What I am trying to get at is the nature of the task that the Ombudsman is taking on in the city, because part of the success of an ombudsman is the ability to access well-organized records. I am not sure that the city ombudsman, whoever he or she is, is going to really have an easy task there.

I particularly wanted to ask you about electronic records. Much of the modern material—the last five, 10 years particularly, personal records are stored electronically. What kind of management system is there at the city for these kinds of records which are so easily destroyed?

Mr. Norrie: We have a very substantial computer department, as you know, and it seems that every committee meeting we are getting more and more requests from various departments to computerize, to put records on the electronic storage process, and my sense is and the information I have is that is going reasonably well.

* (1025)

We have appropriated large sums of money to the computer department, much more than some councillors think we should have, but in any event that is the process we are going through. I think in that sense, records, access to information in terms of departmental matters is in reasonably good shape.

It is the historical archives that are a concern to me that really are not in the shape they should be, but I think on the day-to-day management process we are doing well.

Ms. Friesen: I am sure that is something the Ombudsman will be reporting on as well. The second concern I had was on the reporting line of this ombudsman, should you choose to have access to the provincial Ombudsman. Have you given any thought to that, and have you discussed that with the provincial Ombudsman yet? The provincial Ombudsman reports to the Legislature. How is that going to—

Mr. Norrie: Yes, the obvious route would be ultimately for the Ombudsman to report to City Council. I have not been a party to the negotiations between the Ombudsman's Office and the city. Our Chief Commissioner, Mr. Frost, has been conducting those, and I suspect in that process there were discussions relative to how the reporting mechanism would be finalized, but I cannot help you on that at the moment, other than to say that the statutory requirement for the Ombudsman's report would indeed be followed, and that would be directly to council. How it gets there I am not entirely sure.

Ms. Friesen: The Ombudsman's statute implies that he reports only to the Legislature and that he is an officer of the Legislature.

Mr. Norrie: Oh, you mean if there were an agreement?

Ms. Friesen: Yes, if you took a provincial Ombudsman, what is the reporting line going to be?

Mr. Norrie: Mr. Buhr is helping me here. Section 66(4) of The City of Winnipeg Act provides and reads as follows: "The ombudsman shall report directly to council." There is a provision for that reporting directly.

Ms. Friesen: Is that not in conflict with provincial Legislation? I am directing now to the Minister. What is going to happen in that case if a provincial Ombudsman is used, and the provincial Ombudsman reports to the Legislature?

Mr. Ducharme: He can still report. I guess it would be in writing, and he can still make his report to the City of Winnipeg. There was nothing in the Act that prevents that.

Mr. Norrie: I suspect it would be part of the contractual arrangement that because he is doing the Ombudsman function for the City of Winnipeg, in that contract he would comply with the provision of the City of Winnipeg Act, which is (66)4, and he would report directly to council with respect to that function and report to the Legislature with respect to his legislative function. I do not see any conflict there.

Mr. Ducharme: It has just been referred to me that they can refer to the City of Winnipeg. They do not have to report the city information to the province as long as they report as suggested in that section the mayor alluded to.

Ms. Friesen: Again to the Minister, the Ombudsman also makes recommendations. Is that the same line of reporting that recommendations will be made by a provincial Ombudsman to City Council rather than to the Legislature?

Mr. Ducharme: My understanding is they make the recommendations to the City Council. The recommendations will be a separate report to City Council.

Ms. Friesen: My last question was on the nature of the ombudsman's service that the city anticipates purchasing should it choose to go with the provincial route. I am concerned that the city not look at this simply as a complaints officer, but that the whole ombudsman package, particularly the educational role of an ombudsman be seen as part of the kind of service that an ombudsman should provide. I wondered what comments you might have on that.

Mr. Norrie: I suspect quite frankly if you ask a majority of councillors they would be just as happy not to be involved with the process at all, because as I indicated at the outset, we are the only municipality in the country that has this process. Given the fact that it is legislatively sanctioned, I think that in the initial stages we would be probably looking at the traditional role of the ombudsman, and that would be to respond to complaints, investigate them, make recommendations and so on.

Again it would be determined, I think, with respect to the services that the provincial Ombudsman was to supply, if we moved away into educational matters and other broader aspects, there would be an additional fee charged by the provincial Ombudsman. What we would want to do initially is to maintain our costs at the lowest possible level and still provide the service legislated, and in terms of broadening it out, that would be something we would have to investigate in the future.

Ms. Friesen: That is one of the reasons we have suggested an amendment that would evaluate whatever process is put in place at the end of five years, because I think when a provincial Ombudsman was appointed, we were looking at the Ombudsman not just as a complaints officer. If you look at the kind of reports the Ombudsman makes, he does see his role in a much more holistic way. From our perspective, that is the kind of role that we would like to see them play within the city as well, but we will see.

Mr. Norrie: Would you include other municipalities in that picture?

Ms. Friesen: That is one of the questions I asked in the Legislature too. It is an obvious question, is it not? If Winnipeg, why not Brandon, particularly if Brandon is going to be included in other provincial legislation? This is another reason for an evaluation of the process after—

Mr. Ducharme: These questions were asked some time ago by the Government when we discussed making it permissive, so we did discuss the same questions that the Member for Wolseley is asking now.

Mr. Norrie: I remember the discussion well.

* (1030)

Mr. Chairman: Thank you, Mayor Norrie. I have a list of persons wishing to appear before this committee. Should anyone present wish—you are going to do Bill 25 now? Okay, we will proceed with Bill 25 then.

Mr. Ducharme: I understand one of the amendments that is going to be proposed and the one there has been an agreement on will have to be done in French and English, so I would suggest we wait until later on today to deal with the rest of Bill 25. Let us go on to the delegations.

BILL 13—THE RESIDENTIAL TENANCIES AND CONSEQUENTIAL AMENDMENTS ACT

Mr. Chairman: I have a list of persons wishing to appear before this committee. Should anyone present wish to appear before this committee, please advise the Committee Clerk and your name will be added to the list. Does the committee wish to impose a time limit on the length of public presentations? Is there agreement? What is the wish of the committee?

Mr. Alcock: I do not think there is any desire to limit the presentations. There is a reasonable list here. I think we can get through them all and give them all an opportunity to say their piece.

Mr. Chairman: Is that the will of the committee? Agreed.

The committee has a lengthy list of members of the public who wish to make public presentation to Bill 13. How does the committee wish to deal with the list? Shall we hear from a certain number of presenters this morning and the rest in the evening meeting at 5:30 p.m.?

Mr. Alcock: I would hope we can get through as many as possible so people do not have to come back again. Let us just go until one o'clock and see how many are able to be accommodated.

Mr. Chairman: That is the will of the committee? Okay.

Persons wishing to make presentations, there are 30 people. Julie Van de Spiegle will make a presentation on behalf of the Landholders' League of Manitoba and as a Private Citizen; Paul Kammerloch with the Winnipeg Regional Housing Authority; Jim Linton with Winnipeg Hydro; Linda Williams and Lillian Zagonchuk, Winnipeg Housing Concerns; Henry Elias, Private Citizen; Lewis Rosenberg, Professional Property Managers Association; Richard Swystun, Private Citizen; Frank Cvitkovitch, The Mortgage Loan Association of Manitoba; Herbert William Cooper, Private Citizen; William Snell, Private Citizen; Karen Tjaden, United Church (Conference of Manitoba and Northwestern Ontario); Richard Morantz, Globe General Agencies; Denis Souchay, Royal Realty Services Ltd.; Edith Lipson, Private Citizen; Daniel Akman, Private Citizen; Reg Loeppky, Private Citizen; Laurie Peterson, Professional Property Managers Association; Peter Sanderson, Orange Properties Ltd.; Heather Talocka, MPC Property Management; Sara Wollmann, Sunridge Management; Marion Minuk, Professional Property Managers; Michel Mignault, Private Citizen; Sandy Shindelman, Shindico Inc.; Harold McQueen, The Social Assistance Coalition of Manitoba; Stan Fulham, Kinew Housing Company; Peter Warkentin from Dart Holdings Ltd.; Laurie Bell from Logan Community Committee—I believe there is a name change on that one; Ken Campbell with Sussex Realty; Ruth Rattai, Kraft Holdings; John Boer, Private Citizen; Jack Van Dam, Private Citizen; and Helen Peterson, Private Citizen.

I would ask Julie Van de Spiegle if you are making a presentation on behalf of the Landholders' League of Manitoba or as a Private Citizen.

Ms. Julie Van de Spiegle (Landholders' League of Manitoba and Private Citizen): With the permission and indulgence of the committee, I, on behalf of the Landholders' League of Manitoba, request that our submission be postponed. The Bill was not available until the latter part of November. There has been insufficient time to properly review, meet, deliberate and prepare an appropriate submission along with 15 copies. Bill 13 could very well be a bad-luck Bill. Today is the thirteenth. January 13 is still too soon, but that would be a minimum amount of time required to even present a half-quality type of brief.

Mr. Ducharme: I am sure the presenter—to be fair in this, let us not talk about time. Maybe for the record you could tell the committee how many hours my staff and this Minister spent with your particular association. Could you put that on the record?

Ms. Van de Spiegle: That was Bill 42; we are dealing with Bill 13 which was available only in the latter part of November. Bill 42 is dead. We have not had an opportunity to review Bill 13.

Mr. Ducharme: For the record, so that it stays on the record, in excess of 20 hours was spent with this association on behalf of the staff and the Minister reviewing Bill 42 and Bill 13, and we did give a copy of our presentation outline in all the areas of Bill 13.

Ms. Van de Spiegle: Can we have at least until tomorrow, because we are the first ones up. Can we buy down?

Mr. Ducharme: We are hoping to finish this Bill today.

Ms. Van de Spiegle: Eight o'clock tonight?

Mr. Chairman: What is the will of the committee?

Mr. Martindale: I would suggest, in order to give the delegation more time, that she be invited to come back tonight, that her name be on the bottom of the list, and if they are ready when the name is called, they be allowed to present, just like anyone else.

Mr. Chairman: Is that the will of the committee? Eight o'clock tonight then. Ms. Van de Spiegle, pardon me, you were down here as presenting as a Private Citizen and as Landholders' League of Manitoba.

Ms. Van de Spiegle: Yes, one of the problems we had is that we did not, because we have not had sufficient number of meetings—

Mr. Chairman: As a Private Citizen, will you be making a presentation now?

Ms. Van de Spiegle: Right now? I probably will not be—

Mr. Chairman: Would you then like to be put on at eight o'clock this evening also?

Ms. Van de Spiegle: That is right, yes. One individual who was probably going to be our official spokesman could not be here this morning because he had a court hearing at 10 o'clock. We have had less than 24 hours notice that we had to appear, and our office has been flooded with calls about people who have said that their schedules for today and tomorrow have all been set and that they cannot even appear.

I think that a Bill so important that deals with the shelter of Manitobans and deals with everyday kinds of things that people have to live by is too important to just slough along because Members of the Legislature want to get away for Christmas.

Mr. Chairman: You will be making a presentation at 8 o'clock then this evening? I will remind you that we would like a written presentation also at that time, if she has it.

Ms. Van de Spiegle: Okay.

Mr. Chairman: Paul Kammerloch, with the Winnipeg Regional Housing Authority. Is Mr. Paul Kammerloch here? We will proceed to Mr. Jim Linton with Winnipeg Hydro. I believe you have a written presentation also.

Mr. Jim Linton (Winnipeg Hydro): Yes I do, Mr. Chairman. The Clerk has copies.

* (1040)

My name is Jim Linton. I am the General Manager of Winnipeg Hydro. I am appearing here today representing the City of Winnipeg water and hydro utilities.

It recently came to our attention that Bill 13, Amendments to The Landlord and Tenant Act has some serious implications for this city's utilities. The utilities, upon being advised of this major change, met with the director of Landlord and Tenant Affairs to address the proposed Sections 60(2) and 60(3) which were of serious concern.

The director of Landlord and Tenant Affairs agreed that these amendments as written could have serious implication insofar as the large volumes of notices which would have to be handled by each of the utilities as well as by the office of Landlord and Tenant Affairs. It was confirmed by the director at that time that the amendments to the Act were intended to formalize the existing procedures. Unfortunately as far as we are aware no changes have yet been made to this Bill.

The Bill as written means a 5,000 percent increase in the number of notices which would have to be issued to the director. Specifically, Subsection 60(2) requires a notice for any potential disconnection for a residential complex or residential unit. There is no qualification as to who is the owner of the property or who is responsible for payment of the account.

At the present time we are only reporting in situations involving large residential complexes where it is obvious that the owner is responsible for paying the account. Under this situation, approximately 15 referrals per week are made by each of Winnipeg Hydro and water utilities. The clause as written would require 750 notices from the Hydro utility and 525 notices from the water utility each week. This increase occurs because the

utilities are unable to determine if the customer is a tenant or the owner. The director has assured us that this is not the intent, but it is our interpretation of the proposed legislation.

The implications of this change are significant from an administrative point of view both for the city and for the Landlord and Tenant Affairs office. In a time of restraint at both the city and the provincial levels it is difficult to understand why such a change would be contemplated.

Subsection 60(3) effectively provides that no utility can disconnect service until approval of the director has been received. This provision has two specific problems. First, there are delays with the present level of activity which sometimes results in delays in disconnection action for periods of six months. With the enormous increase in reports being required, our expectation is that the delays will increase significantly unless the staff of the department is increased proportionately.

Secondly, it is expected that the level of uncollectable accounts will increase as a result of this Bill. This increase will be brought about because of the increased time which will allow three things to happen: (a) the customer will disappear; (b) the individual or company will be in bankruptcy or receivership; and (c) disconnection action will not be possible at that time because of the self-imposed winter disconnection rules. In combination, these three effects will have a significant increase in uncollectable amounts. This is a cost of business which must be borne by other customers which has a detrimental impact on those who pay their bills.

The disconnection notice procedures used by the city have been developed over many years and have been reviewed on many occasions by City Council. These procedures take into account the safety and economic capability of the customer. Both utilities work very closely with the social service departments of the city and the province to ensure that the interest of the customer and occupant is protected.

The following statistics reflect the actual disconnection process of the two utilities: Winnipeg Hydro in 1989, there were 36,000 disconnection notices issued. Of this total, there were 2,779 services disconnected for non-payment. The customer is given at least 90 days to pay the Hydro bill before a disconnect order is issued and acted upon. Winnipeg Hydro's uncollectable accounts for 1989 were $561,000.00.

Water utility in 1989: there were 31,633 disconnection notices delivered. Of this total, there were 6,166 services disconnected for non-payment. The customer is given at least 63 days to pay the water bill before a disconnect order is issued and acted upon. Water utilities uncollectable accounts for 1989 were $70,000.00. In addition, over $350,000 had to be transferred to the tax roll to achieve collection.

The city, through its official delegation, has attempted in the past to reduce the uncollected amounts by proposing amendments to The City of Winnipeg Act. Those amendments would have improved the city's power of collection. Specifically, a request was made to improve the city's priority position with respect to other creditors. A second request was made to allow Winnipeg Hydro to add outstanding amounts to the tax roll. To date the province has not seen fit to make these changes.

In conclusion, Mr. Chairman, the city is confident that the notification process that is presently used is fair and efficient. We have volunteered to assist the office of Landlord and Tenant Affairs in carrying out their function. We are not aware of any difficulties that exist with the present process. Therefore we do not believe it is reasonable to increase the workload, the risk of collection, and the resulting increase in expense. We have no objection to formalizing the present arrangements in the Bill, but we must object to the unnecessary expansion in the notice process. I would be pleased to answer any questions that any Member of the committee has.

Mr. Alcock: I just have one quick one. Mr. Linton, you have a different notice period for water versus hydro, 90 versus 63 days. Why is that?

Mr. Linton: The reason for that is that the hydro bills are billed on a monthly basis; the water bills are for a quarterly basis. A water customer is actually consuming service for 90 days before they receive a bill, and then it is 63 days after they get that bill before any action is taken.

Mr. Chairman: I will now call on Linda Williams and Lillian Zagonchuk with Winnipeg Housing Concerns. I believe you have a written brief. Thank you. It would help me if you would identify yourselves, please.

Ms. Lillian Zagonchuk (Winnipeg Housing Concerns): My name is Lillian Zagonchuk, I am

here with Winnipeg Housing Concerns, and this is Linda Williams with me. I rise in support of the Housing Bill 13 on behalf of Winnipeg Housing Concerns.

For your information, Winnipeg Housing Concerns was incorporated in 1982 for the purpose of providing housing and advocacy for low-income tenants. To date, we have over 200 members. The majority of these members are core area tenants, of which I am one.

Since our inception we have presented briefs to the Law Amendments Committee of the Manitoba Legislature, held annual public meetings with over 100 tenants in attendance, represented individual tenants at rent increase hearings, co-sponsored a housing clinic with Legal Aid, monitored City By-Law Court, and represented low-income tenants in the media. In the past year we have been holding "Fight for Your Housing Rights" workshops in core area schools and agencies on a regular basis.

Winnipeg Housing Concerns was also involved in public demonstrations which led to the recent review of The Residential Rent Regulation Act, The Landlord and Tenant Act, and their respective administrations in August 1985.

* (1050)

Winnipeg Housing Concerns had representatives on the Minister of Housing's Review Committee which led to the development of Housing Bill 13, which is the reason we are here today.

I am going to briefly describe some of the reasons we need effective housing legislation in Winnipeg. Throughout this brief I am referring to the aberrant landlords who flaunt the laws, not to landlords who obey the laws. Unfortunately, strong laws are necessary for those who break the laws and not for those who conduct their business in a humane and equitable manner. The specific landlords I am referring to are named in the attached list as "Appendix A".

The landlord business, like any other, must be guided by legislation which works towards establishing standards. This is important for individuals and neighbourhoods as well. In particular older decaying neighbourhoods are preserved by strong housing by-laws and legislation. Homeowners often assume responsibility for maintaining their neighbourhoods, and so must landlords who may not live in the area. This means providing decent, safe and habitable rental units to tenants. These units must be well-maintained and in keeping with the general overall appearance of the neighbourhood. Not only absentee landlords are concerned about housing costs and prices. Homeowners who live in the area are also dependent on the general aesthetic appearance of the neighbourhood for the same reasons. Housing legislation affects everyone.

Housing is a basic need, like food, water and clothing. These needs must be met before people can grow to their full potential. Everyone has the right to a standard of living adequate for health and well-being. Developing effective housing legislation is both vital and life sustaining. People have the right to demand that there be adequate housing standards in this city.

It is inhumane to allow landlords to rent cockroach-infested slums with not enough heat, faulty wiring, no fire alarm systems, ripped and sometimes rolling floors, broken fridges and stoves, inadequate plumbing, and the list goes on and on.

Young children are most susceptible to illnesses like pneumonia from lack of heat, and people of all ages have been known to die from faulty wiring and heating systems. See Appendix B. It is crucial that standards in housing be enforced by strong by-laws and housing legislation.

Unfortunately, poor housing conditions are often interrelated with other social and personal problems. That is, poor housing conditions may contribute to emotional and physical health problems as well as to frustration and family violence including sexual abuse due to overcrowding in the home.

With improved housing conditions and a more stable home life families do not move as often, and their children's educational performance is interrupted much less frequently. Over the years the Winnipeg School Division has conducted periodic in-depth research among its core area schools which conclusively links poor school performance with frequent changes in the family's address.

It is not unusual for some core area families to move six to eight times within the school year. Needless to say, this has a very negative and disruptive impact on their children's educational performance. Futhermore, we have recently been informed that a study soon to be released by the Social Planning Council of Winnipeg reveals a direct

relationship between poor housing conditions and high migrancy rates.

Strong housing legislation is also necessary to prevent homelessness. In the City of Chicago, housing officials have informed us that not one by-law housing infraction was enforced in their courts in 1988. Housing inspectors in Chicago refrain from enforcing standards in housing because owners have been permitted to deteriorate and abandon their buildings. Boarded up buildings stretch many city blocks in Chicago. There were 4,000 homeless minors in Chicago in 1988, and 27 people died that winter.

In the summer of 1989, there were pictures in the Chicago daily newspapers of desperate families living in their cars. Civil disobedience has caused some of the boarded-up buildings to be reopened, and homeless people have demanded the reinstatement of the old Squatters' Rights Legislation of 1871.

Housing officials in Chicago readily admit that an absence of comprehensive housing policies and effective legislation caused this crisis. Evidence of a housing crisis can also be found in other large American cities like New York and St. Louis. Surely we do not intend to wait until our housing situation in Winnipeg reaches catastrophic proportions before we realize the importance of supporting strong and effective housing legislation in Winnipeg.

As previously mentioned, over the past year Winnipeg Housing Concerns conducted "Fight for Your Housing Rights" workshops in core area schools, agencies and community organizations throughout the inner city.

These information sessions outlined landlord and tenant rights and responsibilities including condition reports, security deposits, evictions, rent raises and information about government services which dealt with housing issues. Audio-visual presentations were also available for tenants who have English as a second language and limited reading and writing skills.

These workshops were well received by tenants. Many tenants expressed how helpful the information and material presented were in their everyday living. See Appendix C. Gaining access to this type of information proved to be quite beneficial for both tenants and landlords alike.

Therefore we urge the new Residential Tenancy Branch to provide public education sessions on an ongoing basis. These sessions should be presented in a clear and concise manner with appropriate audio-visual material available for people who have limited language, reading and writing skills. Winnipeg Housing Concerns workshops "Fight for Your Housing Rights" taught us that the old adage "an ounce of prevention is worth a pound of cure" is very accurate.

In conclusion I want to commend everyone involved in the development of Housing Bill 13. I want to point out that the development stage is only a prelude to having effective housing legislation in Manitoba. The next stage is implementation. The new Act must be interpreted and implemented in an appropriate and equitable manner. The staff at the new Residential Tenancies Branch must be properly trained and fully aware of the implications and legalities surrounding their legislation. In accordance with this, members of Winnipeg Housing Concerns plan to monitor the implementation of the legislation and be available to assist wherever possible in this process.

Mr. Ducharme: Thank you first of all for the brief. You did explain in your brief though in regard to education, you understand that under the Bill 13, Section 33(3) there will be the forfeiture to the Crown on any unclaimed security deposits, and the interest on some of those will gradually work into an education fund that will be established under Section 36(1). Were you aware of that?

Ms. Linda Williams (Winnipeg Housing Concerns): Pardon me. We are trying to encourage and support that.

Mr. Ducharme: Okay, so you were aware of that clause in there, and you were also aware of Section 191 which would set up in Bill 13 the advisory committee which will have on that committee both landlords and tenants, you are aware of that also?

Ms. Williams: Yes.

Mr. Martindale: I would like to thank Ms. Zagonchuk and Ms. Williams for their presentation, especially Ms. Zagonchuk. It is probably the first time she has made this kind of presentation, and I know it takes a lot of courage. I was in your position on behalf of the Housing Concerns group in July 1982, and I know it is kind of an intimidating job to stand up in front of MLAs and the Minister's staff in this room, so thank you for being here and making a presentation.

* (1100)

I have a couple of questions based on my knowledge of some of the lobbying that the Housing Concerns group did in the past year or two on Bill 42 and Bill 13, things that were not in your brief. Perhaps you could explain why you decided not to include them, and I am thinking specifically of two items: one is a requirement that all security deposits be held in trust by the Province of Manitoba, and the other is a request that condition reports be made mandatory.

I know there are arguments pro and con on those two items. Maybe you could indicate to the committee why you decided not to recommend those two things that in the past the Housing Concerns group had been requesting.

Ms. Zagonchuk: I think it was because there were so many other things we wanted to include in there. That is why we did not include the condition reports.

Ms. Williams: I think also we would be willing to go with mandatory condition reports if there could be an officer of the Rentalsman present for each and every condition report made in the City of Winnipeg.

Mr. Ducharme: I will go back to the other question about security deposits. I guess your main concern was, as our department and this Government was, that as long we have control over the security deposits why would the province hold them in trust. I think that is the whole idea when you were doing your concerns in regard to the security deposit.

Ms. Williams: That is part of it; the other part is we assume that the penalties will be enforced without delay.

Mr. Alcock: I wonder if, Ms. Williams, you could clarify your last statement though. You are saying you are not supportive of mandatory condition reports unless there is an officer from the Tenancies Branch present at the time that they are recorded?

Ms. Williams: I think that it is fair the way it is. People should have the opportunity to have mandatory condition reports if they want it.

I also believe that oftentimes when a person comes into a rental unit and it is new to them, they do not see everything that is there. It takes some time to notice some of the idiosyncrasies of that unit, whereas, the landlord probably always has the upper hand. What we want to do is ensure that somebody is there at all times, and if they can have a Rentalsman officer present, then we will go with it.

Mr. Alcock: Does this represent a change in the position of the Housing Concerns group from the original brief and the work that was done on and in preparation for Bill 42, where there was a strong—I think Mr. Martindale referenced it—interest in seeing that the condition reports were mandatory? You are now saying you do not feel that they need to be mandatory?

Ms. Williams: I think that they need to be completed, there is no doubt about that, and that was our concern. It was also a concern to educate people that these condition reports do exist, and it is their right to ensure that they should be completed. Actually, we do it with a witness most of the time.

Mr. Alcock: But you are now satisfied with the changes that have been made and the way that issue is dealt with in Bill 13?

Mr. Ducharme: Just further to that again, I think the mandatory condition reports were first suggested only as a way of dealing with the delays and what you have with security deposits. I think under the new structure that has been suggested with the commission, et cetera, and the time that we set up, let us try that process. That is why we suggested this way right now in Bill 13.

Ms. Williams: That is fine. What I see is hopefully we can have some input as the legislation unfolds as well. We would very much like to comment from time to time on the unfolding of legislation.

Mr. Martindale: My understanding of Bill 13 is that security deposits must be held in a trust account, but that the change from Bill 42 is that the requirements or the conditions of holding the security deposits in trust have been moved to the regulations, as opposed to being part of the Act, which they were in Bill 42.

Do you have any concern about this change? Are you satisfied that putting the requirements into regulations as opposed to the body of the Act is sufficient or an adequate protection for tenants' security deposits.

Ms. Williams: I do not really know. I am not sure how the regulations are going to work, but I am hoping that the regulations will allow us to have some input as they go along. It would seem to me that you can make—correct me if I am wrong—changes to the regulations quicker than you can to the Act.

Mr. Ducharme: Just to explain that. The details of the process of the accounting of those security deposits will be in the regulations. That is the only part that will be in the regulations, the details. It is still mandatory on the legislation to have security deposits, so you are right. That is why it has been put that way.

Mr. Martindale: You heard the Minister comment on the existence of an advisory committee. Will the housing concerns group be suggesting names so that they might be represented on the Minister's advisory committee?

Ms. Williams: Yes, we will.

Mr. Chairman: Are there any other questions of the presenters? Thank you very much.

I will now call upon Henry Elias, Private Citizen.

Mr. Henry Elias (Private Citizen): My name is Henry Elias, and I thank you for allowing me to make a presentation. I have some very specific recommendations. I have both the proposed Bill 42, and I also have Bill 13, but I have been unable to obtain the regulations to Bill 13. I am wondering where those regulations are obtainable.

Mr. Chairman: We will answer your questions at the end, if you wanted to get into your presentation.

Mr. Elias: I just wanted to put that question, because I have been unable to find them so far. Anyway, my specific recommendations to these—I will just read it the way I have written it here so that you can follow it.

I recommend the following amendments to Bill 13 to this committee:

Under Part V, under the heading of "Tenant's obligation" that the following section be included, namely Section 44 of the previous Bill 42, which was not proceeded with by the previous Session of the Legislative Assembly of Manitoba or the Government of Manitoba, whichever term is correct. I have an attached photocopy of that Section 44. This is left out of Bill 13; I cannot find it in Bill 13, this particular section that has been left out, Section 44. It reads as follows:

"Illegal activities

44 A tenant shall not carry on or permit to be carried on an illegal activity in the rental unit or the residential complex which is likely to affect adversely or the repetition of which is likely to affect adversely

(a) the enjoyment for all usual purposes by the landlord, the landlord's representatives, a tenant or occupant of the residential complex, or any person permitted in the residential complex by any of those persons; or

(b) the enjoyment of adjacent property for all usual purposes by occupants of that property."

Just the other day, the Minister of Health (Mr. Orchard) had a news release about drug use and fighting the drug war. I can tell you something from experience about this. You will never fight the drugs. I know a lot about the drug system. I have been fighting it. I lived in the downtown area at 448 Sherbrook Street, and I know a lot about what goes on there. I have lived there for four years, and this section should absolutely be included. I do not want to go into details; I do not want to take a lot of your time, but I believe it is absolutely essential to include that section. I will just go on. If you want questions, we can do them later.

Also included in this section under "Tenant's obligations" should be section 95(4) and (5) of the present Landlords and Tenants Act, which is Chapter L70, except where the word "provincial judge" appears, the word "director" or "rentalsman" should be substituted. I will read this section:

"Offence and penalty for creating nuisance or disturbance.

95(5) Where the provincial judge—now that should be "where the director"—who hears an information laid under subsection (4) finds that a nuisance or disturbance was caused as alleged and that the tenant or person failed upon request by the landlord to discontinue the nuisance or disturbance, the tenant, or the person who caused the nuisance or disturbance is guilty of an offence and on summary conviction is liable to a fine of not less than $25". Now that should be eliminated; that should be at least $100, so those words should be "liable to a fine of $100 for a first offence". Then there are some other words "and not less than $50"—that should be omitted—and "$200 for any subsequent offence committed on the same premises."

I have looked at the offence section in Bill 13; I am not happy with it. The point I am trying to make is that it is unfair to make landlords liable to heavy penalties but to include no penalties to the tenant. The other point is I am not sure who would proceed

with the complaints from the wording of this "under the offence" section in here. I am not sure how the complaint would be laid or who has the duty to enforce the sections. Continuing on page three. Also included in this section under "Tenant's obligations" should be Section 105(1) under the present Landlords and Tenants Act, which is Chapter L70, immediately after the above previous section which I just read:

* (1110)

"Claim for arrears and compensation.
105(1) The application of the landlord may also include a claim for arrears of rent and for compensation for use and occupation of the premises by the tenant after the expiration or termination of the tenancy."

I would reword that to say "for non-payment of rent" or "for arrears". The point I am trying to make is that sometimes in this time of recession, many good long-term tenants may become unemployed or laid off for various reasons and they may temporarily be unable to pay the rent. The way this stands now, immediate action has to be taken the way Bill 13 stands, if I read it correctly. I may be wrong. On the other hand, some may take advantage of good landlords and try to get away without paying arrears. That is why I would want a section or something like that to be included in this Bill 13. Anyway, that is the end of my submission.

Mr. Ducharme: Just a question, the most important thing you discussed about regulations. You do not draft regulations until you know whether your legislation goes through. There is no use going through the whole process knowing how the legislation is to be completely written. You draft your regulations after the legislation goes through. That is the normal procedure. Those regulations will be available to the public after they are drafted.

Mr. Ellas: I understand this, but I also understand that the regulations have the force of law, and that there are no public hearings in connection with it. They are just published in the Gazette, right?

Mr. Ducharme: Yes, but what I am saying is you have to draft your legislation before it can be made public.

Mr. Ellas: I understand that.

Mr. Ducharme: We have a system in this one that we have an advisory committee we have set up that will include landlords and tenants, so that they can advise the Minister. This has never been done before, and that is the process we will use when we are drafting regulations.

Mr. Alcock: I just have a question relative to your first recommendation, Mr. Elias, and I understand the intent of what you are trying to do, but what this provision seems to be saying is that a tenant should not carry on or permit to be carried on an illegal activity. Well, surely that is the law, and simply because they were not adversely affecting somebody else would not then make it okay to carry on an illegal activity. I am not certain if we are not creating some sort of conflict if we try to say one more time that people should not do illegal things.

Mr. Ellas: It is not that easy to prove. Do you know how small these drugs are, particularly hash? The police come in, they can break up the whole house. They have the authority to do that without a search warrant, without anything. That is not the problem. The problem is the caretaker or the landlord, if he lives there, is in the best position to know what is going on. There is no way of—how shall I put it—terminating that because what are you going to do? How are you going to deal with that situation? I have been in that position. I know I have been in both positions. I have been the tenant and I have been the caretaker. I learned about drugs the hard way. I have lived downtown for over four years. I know what drugs are. I could tell you so much about drugs, it would astonish you. You have to have a provision that you can deal with that situation.

Mr. Alcock: I see, you are suggesting this as a causal provision to allow eviction then.

Mr. Ellas: That is correct. You cannot evict them at present, the way the thing stands, unless you have proof that stands up in a court of law.

Mr. Alcock: Surely that would still be the case. You cannot evict somebody on a suspicion of illegal activities. Presumably they have to be charged and convicted of some sort of illegal activity before the courts.

Mr. Ellas: It should be taken to a rentalsman or whatever. You cannot clutter up the courts of law with the amount of illegal drugs that are around in the downtown area. There is no way. No courts could deal with all that.

Mr. Ducharme: There is a provision now that you are going to have the director in there to deal with it very quickly. Just to answer the question, the reason we are taking the clause out of the Bill is simply that, would you consider someone defrauding their

income tax disturbable to the rest of the people? He is doing an illegal activity.

Mr. Ellas: I have trouble understanding the way you speak.

Mr. Ducharme: What I am asking you is that the way the clause was written, someone defrauding the income tax is not disturbing the rest of the public, and it is an illegal activity in a suite. What we are saying is now, if the tenant is disrupting, through the process, the director will have those powers.

Mr. Ellas: I would suggest there is a big difference. If someone was cheating on income tax, he would be very quiet about it. If you know anything about drugs, I will tell you that they are not very quiet. Do you understand what I am saying?

Mr. Lewis Rosenberg (Professional Property Managers Association): Mr. Chairman, Members of the committee, the Professional Property Managers Association welcomes this opportunity to present its views on Bill 13, The Residential Tenancies and Consequential Amendments Act.

The Professional Property Managers Association represents 31 member companies, with over 2,000 employees in the Province of Manitoba who have responsibility for approximately 35,000 rental units.

> The Preamble to Bill 13 sets out the goals for the legislation:
>
> To respect the rights and obligation of landlords and tenants;
>
> To preserve harmonious relationships between landlords and tenants;
>
> To resolve any disputes in a manner that is informal, accessible, inexpensive, expeditious, and amicable.

We share these goals.

Our comments in this brief are aimed at ensuring that those goals can be met in the most practical manner.

As professional property managers, we know that the vast majority of landlord-tenant relationships are amicable, mutually satisfactory and without dispute.

The legislation that governs landlord-tenant matters should therefore ensure that its provisions do not make simple matters unnecessarily complex, while at the same time ensuring that real disputes can be dealt with properly.

In other words, the rules that govern this process must, above all, be practical for both landlords and tenants.

This brief deals with a number of sections in Bill 13. In most cases, our comments do not take issue with the intent of those sections, but rather with the practicality of some of the proposed wording, time frames or methods for carrying out that intent.

Security deposits are an accepted part of the landlord-tenant arrangement. They are limited to a modest one-half of one month's rent, and interest on security deposits is paid to tenants. In most cases, security deposits are received, held in trust, and returned to tenants, without dispute.

* (1120)

We understand that the provisions in Bill 13 are aimed at ensuring that security deposits are collected fairly, held in trust, and disbursed within a reasonable time when a tenancy ends.

However, some of the wording in Bill 13 may end up having the opposite effect.

We would like to raise four practical issues with respect to the Bill's wording on security deposits:

1. The financial vehicle to be used for maintaining the security deposit in trust;
2. The need for clarity with respect to the legislation governing those trust funds;
3. The need to allow payment of security deposits when a tenancy agreement is signed;
4. The need to make more practical the provisions governing the return of security deposits.

Section 29(5) of Bill 13, states that a landlord shall keep a security deposit ". . . deposited in a security deposit trust account in the province used exclusively for security deposits."

In this provision, the words "account" and "used exclusively" could have the effect of narrowing the options for holding security deposits in trust, with the result that insufficient interest will be earned to cover the cost of administering the security deposit and to pay interest to tenants.

Currently, a number of professional property managers group trust funds so that they can use financial instruments that will provide an adequate return to cover administrative and interest obligations. If the word "account" means that a

current account must be used, and if the wording also means that funds cannot be grouped, then the interest that will be earned on those security deposit trust funds will be much lower and could be insufficient to pay tenants the interest they are required to receive when security deposits are returned.

We believe there is a straightforward way of clarifying the language in Section 29(5) by adding a Subsection 6 with the following wording:

> "A landlord is deemed to be in compliance with the provisions of the Act if he maintains in a bank, trust company or credit union a trust term deposit or other similar cash security, clearly identified as security for security deposits, and in an amount equal to, or greater than, the total of security deposits paid to him by tenants."

We believe this wording would preserve the intent of the Bill and would represent a more practical approach to the question of holding security deposits in trust.

A number of landlords are also licensed real estate brokers, and their trust funds are currently audited and monitored by the Manitoba Securities Commission under the provisions of The Real Estate Brokers Act and its regulations.

The provisions of Bill 13 and The Real Estate Brokers Act should be harmonized so that landlords are not placed under competing obligations created by two separate statutes.

The current legislation allows for payment of the security deposit at the time the tenancy agreement is signed. However, Section 29(2) of Bill 13, states that security deposits are to be paid at the time a tenancy begins. We believe this is impractical.

For example, if a tenancy agreement is signed by a tenant in August for a tenancy that will commence in October, the landlord should be able to request the security deposit at the time the tenancy agreement is signed. Without such consideration, there is no binding contract.

If that is not allowed, it is possible that the new tenant may choose not to occupy the unit on the specified date. In practical terms, that means that the tenant could refuse to honour the agreement without any real penalty, while the landlord would incur considerable costs in having to rerent the unit.

This subsection should be amended to conform to the current legislation.

Section 31(1) should also be amended to require the payment of interest from the date the security deposit is received.

There are a number of provisions in Bill 13 dealing with the return of security deposits, the time frames by which deposits are to be returned in specific circumstances, and the involvement by the Director of Residential Tenancies.

Generally, we believe the time frames specified in these provisions in Bill 13 are too short in relation to the practical requirements for notifying tenants and resolving outstanding issues.

If the time frames are too short for resolution between the parties, then too many minor matters will become the responsibility of the Director of Residential Tenancies and the personnel in that office. That will create the potential for backlogs in the process, and the ultimate effect will be to make for longer waits for tenants to receive their refunds.

With that in mind, we would make the following suggestions:

a) In Section 32(2)(a), the time limit should be changed from 14 days to 28 days;

b) In Section 32(2)(b), the time limit should be changed from 21 days to 45 days;

c) In Section 33(1), the time limit should be changed from 14 days to 60 days. (Many tenants leave at the end of their tenancy agreement and do not return to claim their security deposits for three to six weeks. Sending these people to the director on the 15th day after the end of the tenancy would create unnecessary confusion for tenants and a greater workload for the director.)

Similar time limits are contained in those sections of the Bill which refer to the return of security deposits held in trust by the Director of Residential Tenancies. For practical administrative reasons, consideration should be given to lengthening those time limits as well.

With respect to all of these time limits, we would stress that the security deposits would continue to be held in trust and interest would be paid based on the full time until the security deposit or portion thereof is returned.

Overholding: Section 37(1) of Bill 13 states that in the case of a tenant who continues to occupy a rental unit after the date of termination, the date of

termination is deemed to be the day the tenant ceases to occupy the rental unit.

However, Section 56 requires a landlord to give vacant possession to the tenant of a rental unit on the date the tenancy begins.

Thus, it appears that a landlord could be caught between a tenant that refuses to leave, and a new tenant that cannot take occupancy because the previous tenant has not left.

This causes a chain reaction in the entire rental process and creates unnecessary hardship for new tenants and for landlords.

We believe that provisions should be drafted to make overholding more difficult. Those provisions could range from a section that would deem an overholding tenant to be renewed for the same length of time as the just-expired lease, to provisions that would make overholding a breach of the Act, with certain penalties, in some circumstances.

* (1130)

Caretaker units: Sections 97(1), (2) and (3) contain provisions for termination of tenancy for caretaker units. However, Section 97(4) does not allow for termination of tenancy when the caretaker was a tenant of that rental unit prior to being employed by the landlord.

That exception could create real problems. It is not uncommon for tenants to become caretakers in buildings in which they have resided before going to work for the landlord. What would happen if a tenant becomes a caretaker and then after a year or two decides to change jobs, or if the person's performance as a caretaker is unsatisfactory?

If the building is full and the caretaker in question can continue to occupy his or her rental unit, then how can the landlord provide an on-premises caretaker for that building? If such a service cannot be provided, all of the other tenants could suffer.

Clearly, the practical solution to this matter is to have the termination of tenancy provisions apply to all caretakers, whether or not they were tenants before being employed by the landlord, and that should be made clear when caretakers are hired.

Rent regulation: We are concerned with a number of the provisions in Sections 125(3) and (4) of Bill 13, particularly as they may impact on the ability of landlords to pass on rent increases for improvements to buildings.

We believe it should be a goal of legislation to encourage buildings to be improved and kept to the highest standard. However, by providing for a three-year "look-back," the Bill creates uncertainty and may remove the incentive for a landlord to purchase and upgrade older housing.

Under current legislation, the director may consider past rent and expense experience going back two years, and that provision is often used to challenge expenditures based on what the director perceives might have been done in the prior period.

If this time period is extended to three years, and if the three-year "look-back" also applies when buildings are sold, then the practical impact will be to create uncertainty for a longer period of time and to discourage needed repairs.

We would also like to note our disappointment that Bill 13 contains no specific provisions covering the installation of energy-saving equipment even though such provisions were unanimously recommended by the Landlord and Tenant Review Committee in 1987.

Without such provisions, the legislation may actually penalize landlords for installing energy-saving equipment.

We have a number of practical concerns about some of the powers granted to the Director of Residential Tenancies and about some of the rules within which the director will work.

The constitutional question: Bill 13 proposes to place into the hands of the director and staff powers presently exercised by judges in the Manitoba Court of Queen's Bench.

In the late 1970s, the Ontario Legislature enacted The Residential Tenancies Act of 1979, a statute containing provisions very similar to those found in Bill 13, to come into effect on proclamation.

Concerns were voiced regarding, among other things, the Legislature's ability to make orders evicting tenants from residential premises, and to require landlords and tenants to comply with certain obligations under the Act.

In response to those concerns, the Ontario Cabinet referred two questions dealing with these issues to the Ontario Court of Appeal. That court concluded that it was not within the authority of the Ontario Legislature to make written orders and compliance orders as provided in the Act.

As a result, the Ontario Government found that it could not delegate the power to make such orders to its appointed officials; such powers were held to be exclusively within the jurisdiction of superior courts.

An appeal of this decision was taken to the Supreme Court of Canada. In a 1981 decision, the Supreme Court came to the same decision as the Ontario court.

With that in mind, it may be prudent for the Government of Manitoba to refer the relevant provisions in Bill 13 to the appropriate court for review.

In the absence of such a review, all of the landlords and tenants affected by those provisions in Bill 13 will face the uncertainty that flows from legislation that may be open to challenge in the courts on constitutional grounds.

Sections 154(1) through 157(2) outline a number of procedures for the director and a number of areas in which the director may take action. However, notably absent from these sections are specified time frames within which the director is supposed to act.

Without specific time frames, the process will be one of extreme uncertainty for both landlords and tenants, and a real economic hardship could result.

While the Bill itself contains a number of very important provisions, the full shape of the legislation governing landlord-tenant arrangements will not be known until the regulations have been drafted and circulated.

Those regulations could have a direct bearing on a number of the issues raised in this brief. For example, Section 194(c) refers to regulations "respecting the manner in which security deposit trust accounts are kept and accounted for."

We believe this process would be improved if the draft regulations could be considered along with the Bill.

We agree there should be penalties for those that contravene the provisions of an Act of the Legislature. However, the penalties outlined in Part 14 of Bill 13 appear to be out of proportion with the types of offences that might occur.

A fine of $20,000 for an individual, or $50,000 for a corporation, appears out of proportion as a penalty for, say, not returning a security deposit on time.

We would suggest that the penalty provisions be reconsidered.

In closing we would like to say that Bill 13 is basically a balanced piece of legislation. However we feel that the major practical concerns we have raised should be rectified in order to make this Bill function as it should in the administration of residential tenancies.

Mr. Ducharme: I know Lewis and I have been through this many times. We have discussed this quite a bit. First of all, you brought up some good points. The one in regard to the repair of buildings and cash flow back, as you can probably appreciate, we are covering that, we will be covering that in the regulations.

Capital write-offs have usually been dealt with that way, and it is the intent of this Government to have them in the regulations. Again, regulations are more adaptable to change, and you can do them. I know I am going to have some arguments because we had this at Housing Estimates the other day. We had a good discussion on the capital write-offs. However we feel that they have more flexibility when they are in the regulations.

The other point you did make was the signing of the lease or the agreement. Consideration could be given. I am sure before we are finished today that there will be some discussion in regard to the time of the deposit being given to the landlord, and you have one very good point there.

The other one again is the one that you mentioned in regard to the legislation as it is in Ontario. As you know, it was a few years ago. We are setting up a commissioner which is a little bit different. However we feel that our opinion is that it will survive in the courts.

Mr. Rosenberg: Our concern is that this system will be put in place, we will all start to function under it, then there will be a court challenge, the system will be shut down, and we will be left in limbo. That is our major concern. We do not have a problem with the system other than the fact there are no time frames in it. Our major concern is that somebody, maybe the first aggrieved party, whether it is a tenant or a landlord does not agree with it, will make a court challenge to it and throw the system into chaos.

Mr. Ducharme: Of course, a court challenge will not shut down the system immediately. There is always

that time frame that is involved, quite a period of time frame.

The other thing I would like to mention would be the option to terminate the caretaker early. Remember that, in the Act now or in the Act where the caretaker is hired and then fired, notice is required for at least one month, unless varied by the director. I guess what we are trying to attempt in here is that if a caretaker is the original tenant, then he should go back as the original tenant.

* (1140)

Mr. Rosenberg: The problem, Mr. Minister, with that is oftentimes it happens that a tenant with appropriate qualifications asks to be considered to become the caretaker of a building he is residing in. He is given the job, and even in these high-vacancy-rate times there are a number of buildings that have no vacancies.

If that tenant decides to quit or he becomes unsuitable as caretaker and is terminated and given proper termination under the Act—we are not disputing that—and decides to stay in the building, we have absolutely no place to put a caretaker.

I guess the question is: Are the rights of this one person, do they override the rights of the 99 percent of the other tenants in the building, who require an on-site caretaker, moved into a building with an on-site caretaker, and we would not be able to provide that until a suite became vacant. We cannot evict another tenant in order to make room for a caretaker.

It is a straight practical problem whereby we want to be able to continue to provide caretaking in a building. The solution we see to this is that when a person is hired as a caretaker who resides in the building, they be given in writing notice that if they are terminated they may be required to give up their suite and move out of the building, so that we can continue to provide caretaking to the rest of the building.

Mr. Alcock: Just on the concerns you raised relative to trust funds, you are essentially supportive of the Bill and the changes that have been made, and the recommendations, as I understand them, that you are making there are to harmonize them with the Manitoba Securities Commission regulations under The Real Estate Brokers Act. You are just talking about changes in the way the monies are held; you are not challenging the question of a trust fund and the time frames for repayment and all of those kinds of things.

Mr. Rosenberg: Not at all, Mr. Alcock. If we read the legislation the way it is written, it appears that we are required to keep this money in current accounts for each building. There is no way on earth, and there may be some bankers here that will wish to speak later, that we can earn enough interest on that type of account to pay the prescribed rate to the tenant, so if it remains this way, it will have the net effect of lowering what kind of interest the tenants can get. Currently under the regulations of the Securities Commission we are allowed to bulk this money up into one large vehicle in order to earn the type of interest required. We feel this is a reasonable approach in order to keep the interest payments the way they are to tenants.

Mr. Martindale: Beginning with regulations, Mr. Rosenberg, I wonder if you assume that when the regulations eventually appear they will look like the regulations in Bill 42. Would that be a reasonable assumption?

Mr. Rosenberg: I have no idea what the regulations are going to look like.

Mr. Martindale: In this we are probably in agreement. I was hoping that the regulations would be left in the Act as well, even though we might not have agreed on the content.

Mr. Rosenberg: Yes, we would have hoped that the regulations would have been included, as we have said in our brief, so that we could adequately assess the entire impact of this Bill.

Mr. Martindale: On page 12 of your brief in the discussion about penalties, you obviously feel that the penalties are too severe. However since we were both on the Landlord and Tenant Review Committee, even though the committee meetings finished over three and a half years ago, I am sure you will remember the discussions quite well, especially about security deposits, because there were clear splits between the landlord representatives and the tenant representatives. In fact, there was a split between the property managers and the other landlords.

If I recall correctly, the professional property managers said that they did not think that there needed to be a tightening up on provisions on security deposit accounts because you already kept your security deposits in an account.

However I am sure you will remember the discussion on the part of the civil servants which I thought was quite helpful, especially in supporting the case of the representatives of low-income tenants, namely, that a considerable amount of civil servant staff time is taken up just tracking down security deposits. If I remember correctly, I think they said that a third of all the staff time was spent just finding or locating the security deposit before even beginning the process of mediating a dispute. Personally, I think that this is a good provision, because it means that then landlords are going to take the security deposits very seriously, they are going to put them in trust accounts, and they are going to make sure that they are turned into the department after 14 days if there is a dispute because of the penalty that could be imposed.

Do you remember the discussion? Do you think that the penalties will clean up the act, if you will, of those landlords who in the past have not turned in the deposits when requested?

Mr. Rosenberg: Mr. Martindale, I think to some degree these penalties will have the opposite effect of what we tried to obtain in the committee we sat in. I believe in the penalties, and I believe they should be there for material breaches, people who are attempting to thwart the system, people who are attempting to defraud the system.

The net effect of this Bill is that on the twelfth day or the fourteenth day, I and everybody else in my organization and their member companies will instruct their accounting departments to cut the cheques for security deposits for tenants who have not shown up and put them in the mail to the director. I do not think the department has any idea how many people do not actually show up to get their deposit until the second week, third week, fourth week. We have tracked it in my own office because it is inefficient. It takes up disc space on the computer, and we are trying to get rid of them.

Approximately a third of the security deposits are returned after 14 days because the tenant has not given us a forwarding address. By the end of eight weeks, 99 percent of them are dealt with. It is not just a fear. We know that the director is going to be deluged with security deposits of people who have not shown up who are going to come into our offices on the fourteenth day, we are going to say because of the penalties they are in the mail to the director, and the tenants are going to end up with a royal runaround before the director deposits that cheque and cuts a new one.

Given our experience in the business and its practicalities of these kinds of things, we figure that the director will have to add another 10 or 15 staff people just to turn around security deposits that are not picked up within two weeks. It is silly. It is a silly waste of their time and resources when it is much better spent resolving disputes. This is money held in trust, it is earning interest, it is not going anywhere, and we are just going to be shipping it off to the director for him to turn around and cut new cheques and ship it off to the tenant. It is blatantly silly.

Mr. Martindale: If your assumptions are correct and the department is deluged with security deposits, then they should also earn a considerable amount of interest on them between the 14 days and the eight weeks, which is your experience. That interest will go into the education fund, so it seems like a benefit to me.

Mr. Rosenberg: I guess it is a benefit if you want a larger and larger housing department, but I was under the understanding that in administering this Bill, at least when Bill 42 came out, the size of the Department of Housing would not be increased to administer this Bill.

Mr. Martindale: The other benefit is that which is going to accrue to tenants, because the Housing Concerns Group and others have been alleging for the last eight years that some landlords have been making their profit margin on keeping security deposits and not returning them, and using security deposit money as part of their cash flow, and I have intervened personally on behalf of many individual tenants who did not get a security deposit returned, so the benefit is going to be that the people who deserve to get them back, who are entitled to get them back, and who under the law should have been getting them back are much more likely, under the new Bill, to get them back. Therefore they will not be faced with the kind of hardships that they are when they are not returned.

I know about that from my experience with people coming to me and to my former employer, North End Community Ministry, and asking for food. When we asked them why they did not have food, they said they used food money to pay for their next security deposit, because the landlord did not return it.

I think this is going to be a major benefit to people who need that security deposit as soon as possible

for their next place to live, so that they do not have to use food money to provide that.

* (1150)

Mr. Rosenberg: Mr. Martindale, I am not disputing the return of security deposits within 14 days when we can find the tenant, when they have given us a forwarding address. I am not disputing that at all.

If these people do not have enough money for food, it is probably because their welfare payments are too low. That is another issue that I do not think I can deal with. What I am stating is that, given our experience in people's lack of interest in giving us a forwarding address, we are just going to create unnecessary backlog in the director's office for no reason. The interest does accrue under this Act. I am not disputing that. I am not saying that people should not get their deposits back. I am saying that the time frames are silly, given the way people come in and give us their forwarding addresses.

Mr. Martindale: I think we will have to agree to disagree on this one, and I will continue. Are you suggesting to us that landlords and property managers cannot find an interest-bearing account that earns at least 8 percent interest? I believe that is the amount that has to be given to tenants, 8 percent on security deposits.

Mr. Rosenberg: The interest right now is 9 percent, and in a small current account, if you can find me 9 percent interest where we can write cheques on it, please let me know, because I would be happy to take it. It does not exist.

Mr. Martindale: I will check into that. It is an interesting challenge. Page 8, under Rent Regulation, you alleged that if the time period for reviewing rent increases is extended to a three-year "look-back", the implication is that it creates uncertainty and discourages needed repairs. I would suggest that on the contrary, the way the current rent regulation Act is, and my understanding would be that Bill 13 would continue this, the regulations are quite generous in terms of passing on especially capital costs to tenants in the form of a rent increase. I and other MLAs are getting complaints from tenants who are having 20, 30, even 40 percent rent increases which are legal, because as long as the landlord can justify their cost, they can pass them on. In fact, we really do not have a rent control system, we have a rent pass-through system, which I think is the reason the Premier (Mr. Filmon) can promise Manitobans during an election campaign that he would keep rent control, because it is an easy promise to keep.

Landlords know that they can recover their costs; landlords are basically happy with the status quo on that regard. The system works quite well for them. They know that if they spend the money, they can get it back in a new rent increase, and what happens is tenants get a new rent plateau, a higher one, and when the improvements are paid off, the rent does not go down again. The new rent increase of 3 or 4 percent or whatever is predicated on the higher plateau. I really do not see what the problem is that you are alleging with this legislation. I think there is a lot of room for increasing rent under the current system, and I do not see that the new Bill is going to change that substantially.

Mr. Rosenberg: Yes, we went through this in committee, Mr. Martindale. There are a number of issues here. First of all, the current regulations do not allow for interest. They do not allow for the cost of money. If one were to take the one-sixth provision—and to add, say, for a new roof on a building, which obviously everybody agrees they have to have—and with current prime rates of 13 or 14 percent, when you factor in the interest rate, the payback on the amount of money you receive from the tenants is about 40 years. A roof lasts 10 to 15 years. There is no money in these kinds of capital expenditures. However, it is not draconian enough to prevent us from keeping our buildings fixed up.

If you want the situation that you have in Toronto where they have draconian rules and regulations regarding the repair and maintenance of buildings, you will find thousands and thousands of suites built 25-30 years ago where the balconies are substandard, the roofs are substandard, the hallways are substandard. I believe that the housing stock in Manitoba, because of this legislation and because it is relatively fair, has kept our housing stock up.

The Housing Concerns Group was talking about Chicago and New York. New York has been studied 1,000 times, as has Paris, under rent controls, and in Sweden they removed rent controls. The reason for this is that a draconian rent control system turns buildings into slums. People will not invest their capital. Pension funds, including your own legislative pension fund, will not invest money anymore in residential properties with rent controls.

The capital comes from the system we live in. We have a surplus of housing in this province because we have an open system. I do not understand whereby we are putting in a receiver-manager situation to deal with slums—which we happen to agree with because we do not believe that slums should be allowed to exist in the province—yet on the other side of the legislation the Government is tightening up the rules by increasing uncertainty for people to fix up their buildings in a legitimate manner.

It just does not make sense to tighten up the regulations for fixing up buildings on one side, and then once they become slums, having rules and regulations for fixing them up after the fact. We certainly do not understand why, when somebody buys a building with good intent to fix it up because it has not been maintained properly, he now has to wait four years before he can do it because there is now a three year "look-back" provision. We have no idea what that means or what it impacts, so when you buy a building and decide to fix it up, you have to wait four years, the tenants have to live in it for four years, until you can fix it up because you have no idea what the director or his employees are going to rule regarding your repairs to the building.

Mr. Martindale: I disagree with the delegate. I think we have anything but a draconian system; in fact, we have a system that is too loose. I would like to see changes in the amortization period to change the payback period for landlords.

Mr. Rosenberg: To more than 40 years?

Mr. Martindale: No, if you are here at 6 a.m. when we are moving amendments, you will hear my amendment. It is not very often that legislation comes forward, so there are not many chances to amend it, and I really do not expect that we will see any amendments to Bill 13. If we get another kick at the can some time in the future, one of the things I would like to see changed is provisions governing caretakers.

I have had a tenant who has made repeated presentations to me about problems that she and others have had in their apartment block where there was a break and enter by a caretaker who left the country and then came back and never did face any charges. Now there are allegations that the manager wants the tenant out of the suite because the rent is so low, and the caretakers are being instructed to harass the tenant. They have a key to the suite, so they do things like come in without giving 24 hours notice. This person has suggested, and I think it is a good suggestion so I would like your comment, that perhaps caretakers should be bonded. What do you think of that suggestion?

Mr. Rosenberg: We have a blanket bond on our caretakers. However—how do I put this? We are a professional company. All of our members are professional companies. We have the ability to get fidelity bonds. You are going to exclude a lot of small landlords from having caretakers if you put something like that in, and you are going to exclude a lot of caretakers from being employed as caretakers because of past histories and problems. We have to realize that caretaking is a job that does not always attract the best educated and most highly skilled people. Bonding requirements are quite stringent, and I think you are going to end up creating more problems by bonding everybody than the few isolated incidents you are talking about. I think the new Bill allows the director to address something like that anyway.

Mr. Martindale: On the other hand, caretakers are in a position of trust, and they have keys to people's suites. It is highly desirable that these people do have a good record and can be trusted, so maybe there are other arguments to be used.

Mr. Rosenberg: That brings me to another point where we are talking about caretakers, and we actually did not mention this. We had asked that there be a provision for us to be able to remove a caretaker from the building immediately for cause, and perhaps Mr. Martindale can put this amendment forward, because we have had incidents where the caretaker has done something illegal in the building, has done something detrimental to the building, jeopardized the safety of the tenants, and we want to be able to remove them immediately from the building and replace them.

They do have keys; they know the buildings intimately, and they are in a position of trust. If they are physically removed from the building, then we know they are not supposed to be there. If they are allowed to stay for a month, and they have done something illegal like that, they should be removed from the building immediately. We would like that provision.

* (1200)

Mr. Martindale: I am glad to hear that you do bond your caretakers, and your suggestion that maybe

they be removed immediately for cause sounds reasonable. However, I do not think I am prepared to make an amendment on that today since I would like to do more research, and I would also like to find out how such a provision would be drafted so that it would be fair and reasonable, et cetera.

Mr. Ducharme: First of all, I do not agree with the Member for Burrows (Mr. Martindale) that the Premier (Mr. Filmon) was able to promise rent regulations because of your capital costs. When you look at the record of the previous administration in 1982-83 when they allowed rent regulation guidelines to be 8 and 9 percent, I would wonder who the friends of the landlords are. Under this system if you take the last couple of years, one year it is 7 percent, the other year it is 5 percent if you take a look at the average, how it has worked out across the market, including the appeals.

However, in fairness to the representation I still suggest it be left in regulations. It is more flexible the way it is. We did have quite a discussion about this in Housing Estimates the other day, and I could have sworn you were in the same room as us.

You have to remember that it is a partnership between landlords and tenants, and we feel that we can come up with some type of regulation so that you do have that incentive for those landlords who are repairing those buildings. There has to be an incentive there. You are not going to turn around and include the capital costs in the general increase. You have to have incentives.

If you look at some of the housing stocks—I know even in my constituency, walking, from 1980 when I was first door-rapping in some of those areas to what it is now—there is a vast improvement in some of those stocks.

I want to ask Mr. Rosenberg again, has he something against it being in regulations and allowing it to be more flexible that you do not have to enter into legislation every time you want to make some of those changes?

Mr. Rosenberg: No, I do not have an objection, Mr. Minister. It is just that we wish that the regulations or a draft formula of the regulations were available so that we could assess what that impact would be.

Mr. Ducharme: As you are aware, under the new Bill you and landlords and tenants will be part of an advisory that you have not been before, and I think this is a step forward to helping with that housing stock. It benefits both the tenants and the landlord.

Mr. Rosenberg: I think the committee that advises the Minister is a very welcome change.

Mr. Alcock: There are two issues. The first is the question of regulation versus legislation. The image that is put forward that legislation cannot be changed as easily as regulation, while there is some substance to it, in fact we do bring in statute law amendment Bills every session, so it is quite possible to amend legislation on an annual basis. The process is to do that with certain kinds of legislation. The advantage of doing that is the debate then comes to the Legislature rather than it being a debate in Cabinet. There is some value in enshrining certain portions of the regulations in legislation, and it does not freeze them in quite the same way.

I do not think anybody I have spoken to, Mr. Rosenberg, objects to the need of landlords to receive some kind of payback for capital improvements. They object to two things. They object to what they feel is too short an amortization period, and you have addressed part of that, also this sense that once the tangible good is paid for through the rent increase, that rental change is not then deducted from a future application for a rental increase. You made some comments about there being a forty-year payback. Could you clarify that for us?

Mr. Rosenberg: Under the current regulations, the cost of money, as we all know, is an important issue; it slows down or heats up our economy. When repairs are made, that money is borrowed. That is not allowed as a consideration in the cost of the project. If you spend $100,000 on a new roof, you are allowed one sixth of that cost to be passed through. That is about $16,000 or something like that.

At current interest rates, the interest charged on that would be about $14,000. Therefore, you have $2,000 left over to retire the capital expenditure in the first year. It is a straight amortization table. Into about the twelfth or fifteenth year, you are going to need another roof. You have not paid for the old one yet, so I do not see how this can come out of the schedule.

If you allow interest, if you allow the cost of money, and you take a different type of amortization period over the length of time the thing is supposed to last, say, a new roof over 10 years plus the cost of money, then yes, I can see it, and it is probably

easier to explain to the tenants. The current system does not allow whatsoever for the fact that this capital has to come from somewhere and somebody wants to get paid for it.

Mr. Alcock: Another suggestion relative to that was the sense that landlords might be allowed a one-time adjustment to build a small amount into monthly rents that would be then part of an accrual that would be used for capital improvements, and therefore no adjustments to the base rent would be allowed for capital changes into the future. Can you comment on that?

Mr. Rosenberg: Yes, I have often gone to hearings in upscale buildings where the tenants are intelligent professional people who in their own businesses understand that they have to accrue for major capital expenditures as they come along. That is basically the premise that they bring to the hearing, and they are furious that we are getting these kinds of increases 18 months after spending the money.

When they find out that we are not allowed to build up reserve funds for major capital expenditures, as prudent managers would do in running businesses, they are flabbergasted, but it is not allowed for in the way the regulations are set up in this Act or in the present Act. The system is purely historical. You spend the money and then we will talk about your getting a recovery on it. There is no budgeting, there are no sinking funds, there are no reserves.

Mr. Alcock: Another item that was discussed during Estimates, and in a sense it relates to capital because it relates to the level of gross profit that is considered to be acceptable under this legislation. The department has a guideline they use of some 45 percent, whether it is 45-point-something or whatever, that they deem to be an appropriate amount of gross profit. That is, one would have to pay for one's financing and return on equity out of that in a given building, and the concern that has been identified in certain buildings is, as these rent capital changes are passed through, you see that gross profit moving from 45 percent to 50 percent to 52 percent to I think we were up as high as 60 percent in one of the buildings we looked at. The questions are: Is the 45 percent figure the department uses appropriate and acceptable and would, as an alternative, some measuring of that gross profit and controlling of that be a better way to deal with this?

Mr. Rosenberg: If the department is prepared to shore up our earnings in the buildings where we lose money, where we do not obtain those kinds of profits, then it perhaps would be appropriate. However, I believe in the free market system of providing housing that works in this province and has created a surplus. The gross profit at 45 percent is too low. It is realistic. It does not take into account the cost of new construction. Most new buildings are in a deficit position.

* (1210)

That our gross profit goes up once we make one of these applications is not accurate. It may go up in the first year, but under the current guidelines that we have been getting from the government, it has not taken into account all of the inflation that we suffer. It has not kept our margins equal.

It used to be that the economic adjustment factor was 45 percent of the rent which would take into account keeping your gross profit at the same rate. The economic adjustment factor, I believe, is now down to 20 percent or 25 percent of the rent increase, therefore we are getting the money back on the expenditures, but our gross-profit margins are shrinking every year.

Mr. Alcock: Actually I think, Mr. Rosenberg, you might want to stick around, because I think you will hear a presentation that suggests something different, at least in some buildings. We will leave that one for a little bit later.

Just a final question: When landlords apply for a rental increase above guidelines they make available to the department all the background information that supports that demand and a lot of financial information. Tenants are then allowed to go into the office and to review that information as they are building their counter case. They are able to take notes and do whatever they like, but they are not able to photocopy the file or to take actual copies of the information that is provided, despite the fact that they are given access to it and allowed to take whatever written notes they wish. Do you have any objection to them being given photocopies?

Mr. Rosenberg: Yes, I do. We also are not allowed to photocopy the information. This is sensitive financial data. You have to remember that we are in businesses where we buy and sell and trade these buildings, that we get financing based on the performance of these buildings, et cetera. This is

confidential financial data, and I do object to it being passed around, to being photocopied.

We are the only industry in the province that is controlled in this way other than public utilities, but they have monopolies granted to them. We are the only free-market business that operates in the marketplace that is subject to these kinds of controls where we have to reveal our deepest financial secrets to the public.

I really do resent the idea that they could be photocopied and passed around to our competitors. If you were to ask Eaton's and The Bay to do that, to justify the price of a sweater, which is exactly what we are talking about—I mean, you are asking us to justify the price of our commodity or our goods, and then you are asking us to publish this information to the public. It is not reasonable, given that we are still in a free-market system.

Mr. Alcock: But is that not in effect what happens? It is not photocopied, but the information is made public or at least made available to persons who live in the building who can then go out presumably with handwritten copies of it. I mean, you have not met your goal.

Mr. Rosenberg: They can go out with handwritten copies; they cannot go out with actual photocopies of our data. It is not a perfect system. In a perfect system we should all be back in the free market as far as I am concerned. As Mr. Martindale (Burrows) has certain wishes the other way, I have those wishes. It will not happen, but I really would object to having our financial data photocopied and passed out where there is no control on it.

Mr. Martindale: There is really no control on people being able to handcopy things. For example, I have a brief here on a rent appeal by tenants. What they have done is they have written down all the costs, then they have typed it up and made it into a brief with tables. It is about 10 pages long and it is typed, so the information is easily reproducible, but not when you are at the Landlords and Tenants Affairs Branch. That is where the difficulty is.

I would like to go on to a couple of other questions. Did you say the gross profit for landlords is 45 percent and that it is too low?

Mr. Rosenberg: No, I said in theory it is 45 percent, and I said the theory is too low. There are hundreds of buildings in the portfolios of the members of our organizations that are currently losing money.

Mr. Martindale: Is gross profit the same as or different than return on equity, and if not, what would your return on equity be or return on investment?

Mr. Rosenberg: It is a different scenario. Our gross profit does not take into account financing costs and the cost of building the building and paying for it. Return on equity is a different situation, and that varies from building to building.

Mr. Ducharme: Just to clarify what Mr. Rosenberg is saying, out of the 45 percent they have to provide for the financing and the mortgaging of the building.

Mr. Martindale: What would you consider an average or suitable return on equity?

Mr. Rosenberg: The same as one would get in a GIC or T-Bill at any given time.

Mr. Martindale: Going back to the reserve fund, a reserve fund and being allowed to put aside money as a legitimate means of operating a business seems to me like a good idea. I have experience with this, having been on the board of directors of a housing co-op where it is a normal practice to put aside, I believe, 3 percent of rents for a reserve fund in order to establish a capital fund to save up for a new roof or whatever major expenses are needed in the future.

Would you recommend now or at some time in the future that the legislation be changed to allow landlords to set aside a certain percentage of income for a reserve fund?

Mr. Rosenberg: I definitely would. I would prefer to go to these hearings with tenants in buildings that understand these things and be able to say yes, we have planned for this, and we are only here because we have an extraordinary expense that could not be planned for.

Mr. Chairman: We will call Richard Swystun, Private Citizen. We have a copy of your presentation.

Mr. Richard Swystun (Private Citizen): Mr. Chairman, I am shown on your list as a private citizen, but if you have my brief you will know that I am a practising lawyer in town. I have been called upon to assist the association that Lewis Rosenberg just spoke on behalf of, to assist the association in the presentation of their brief and specifically to deal with matters of legal concerns. I have prepared and provided you with my own brief, in which I have attempted to address specifically matters of a legal nature.

Mr. Rosenberg has covered the matters of practical concern in his report, and I have tried my hardest not to step on his toes and to avoid any overlap between his brief and mine. In my brief I go through the Act, sometimes on a section-by-section basis, to point out perceived problems in the drafting of the various sections. I do not propose right now to just read through this at this time.

What I would like to try and do is touch upon two matters of major concern to the association that are not addressed fully in this brief. I, like most of the people here, was only advised of this hearing yesterday at noon. I had to jump through a bunch of hoops to cancel a court appearance at ten o'clock this morning, so please accept my apologies for the rustiness of my oral presentation.

The two areas of major concern I would like to address are the areas where there are constitutional concerns, and the area of the procedural concerns related to the court process that is now replaced by the provisions of Bill 13.

Again I have to apologize. I know Lewis has touched briefly on the constitutional concerns; I would like to expand on that just a bit.

As most of you probably know, in the late 1970s the Ontario Legislature tried to pass legislation very similar to this. They took their rent regulation statute and combined it with their landlord and tenant statute insofar as it affected residential tenancies, combined them and created a commission to resolve or hopefully resolve landlord and tenant disputes quickly.

Questions arose as to whether or not the Legislature had the constitutional power to delegate certain powers to the commission to give out eviction orders and things, which were referred to in that case as compliance orders, orders that would require a tenant or landlord to comply with the provisions of the Act.

* (1220)

In response to those concerns, two constitutional questions were referred on a reference to the Ontario Court of Appeal by executive council. These two questions were: Was it within the legislative authority of the Legislative Assembly of Ontario to empower the residential tenancy commission to make an order evicting a tenant? The second question: Was it within their legislative authority to empower the residential tenancy commission to make orders requiring landlords and tenants to comply with obligations under that Act?

Those two questions went to the Court of Appeal, and the Court of Appeal came to the conclusion that it was not constitutionally within the power of the Legislature to do that, and it was appealed again. It went, as most of you probably know, to the Supreme Court of Canada and in 1981, the Supreme Court of Canada ultimately rendered their decision in which they expanded upon the law and basically relied upon a three-step test to determine whether or not the constitutional power existed.

The first step was to go back in time to the date of Confederation and make a determination whether or not the power in question was a power that was at that time exercised by a Superior, District or County Court judge. In this case, they looked at the eviction order provisions and the compliance order provisions, went back in time, and they said yes, they were.

That caused them to then go to the next step.

The second step was to make a determination whether or not these powers were judicial-like powers, powers that judges would normally be called upon to exercise. They also determined that was the case, that they were indeed judicial powers.

The third test is the more difficult hurdle to overcome, and that involves an analysis of the power in question to see if the power in its institutional setting has somehow changed its character as part of a broader scheme, and because it is part of that broader scheme, has it somehow changed its character sufficiently to negate the requirements of conformity with the Sections of 96 that give powers to Superior Court judges and so forth.

In that case, they did a lengthy review, and they determined that on balance it was not a case where the character of the function had changed, and they ruled that power to make evicting orders and compliance orders was unconstitutional, and as a result the Province of Ontario could not go through with the Act which they had proposed to pass.

My understanding is that in Ontario now they have a system similar to ours where you still have to go to a Queen's Bench judge to get orders of eviction and so forth.

Subsequent to the Supreme Court case in the Ontario situation, a case out of Quebec came before the Supreme Court, very similar facts, and the court

being consistent applied the same two tests. In that second case out of Quebec, however, they went back in time to the date of the Confederation, and they found that in Quebec these powers were not necessarily powers carried out by a Superior, District or Country Court judges, so they ruled differently in that case. So we have two decisions decided differently, but the same principles applied.

Subsequent to that Quebec case, a case came out of the Province of Saskatchewan. It went all the way up to the Supreme Court of Canada, known to most of you, I would suppose, as the Sobey Stores case. It dealt with labour relation powers, and again the question came up: Could the Government of Saskatchewan delegate certain powers to make judicial-like decisions in the labour arena? This matter went to the Supreme Court of Canada and again the same three-step test was applied, this time with a different result.

They modified the first step, they did not go back in Confederation and look only at a single province's situation, but they looked at the four originating confederating provinces to see what the situation was. They found that the labour legislation power under review was in fact one that had been exercised by Superior and District Court judges and so forth.

They then moved to the second step; again they changed it a little bit, tweaked it and came to the conclusion that the powers under consideration in that case were judicial-like powers insofar as they were exercised by the commission.

In that case they also had a regime similar to what is being proposed in Bill 13 where there was a director who was empowered to investigate, mediate and so forth. Then there was a right of appeal to a second tribunal that the court ultimately held did carry out a judicial-like power.

The court said that the first decision of the director may not be judicial-like, because there are these provisions which enable the director to investigate, mediate and so forth, which makes it unlike a judge type of power.

The end result was in the Sobey Stores case, applying the same three-step case with a few modifications, the court said well, here we are dealing with a situation where the character of the power has changed. It is part of a much broader policy rule, it is something more than simply a court-like function, and they authorized that power as constitutionally valid.

When one walks through the proposals in Bill 13, it is quite obvious that the sections in here where powers have been given to the director in the commission, have been specifically designed to mirror the types of powers that were found in the Sobey Stores case with the effort to make this immune to constitutional challenge.

With respect, I would submit that it is not necessarily enough to merely mirror the powers and make the functions similar and try and create a regime where there is a broader policy base. We have the problem here where, in the Sobey Stores case, they were dealing with labour legislation. Here we are dealing with landlord and tenant legislation, two fundamentally different types of powers. We have a decision of the Supreme Court of Canada in the landlord and tenant arena that says you cannot do it, so we are concerned, and when I say we, I am speaking for the association.

We do not know the answer. We have not had the time to prepare a lengthy and comprehensive constitutional brief, but we have concerns that this may be attacked fearfully after implementation. It will no doubt take a lot of time, money and effort to implement the provisions of Bill 13, to get into place a mechanism where the director can operate and the commission can operate. Everybody will be geared up for it, and we are fearful that might be done and then somebody might take a challenge and have the whole thing come crashing down in utter chaos.

We think that the decision that was made in the Ontario case was a wise one, namely, to make the reference in the first place. We do not know whether the decision would be the same today, but we think it would be prudent to have a seal of approval placed on this legislation before it is enacted, so that we do not find ourselves in a situation where we are geared up to deal with a situation that disappears on us. That is the first major point I would like to make. I do not think I can emphasize it enough; we have these concerns, and we would like to see that seal of approval in place before the legislation is approved.

The second area of major concern that I would like to address is the area of the procedure that is proposed in the new Bill regarding the resolution of landlord and tenant disputes, specifically disputes

related to arrears of rent, nuisance and disturbance, in cases where orders for possession might issue.

Presently, as most of you probably know, the situation is rather a dismal one. We have to resort to court process to obtain orders for possession. It is a lengthy, a time-consuming and expensive process, and landlords and tenants alike do not like it very much.

There was the joint recommendation of landlord and tenants put forward in 1987 that reference has already been made to in which both landlords and tenants agreed there was a problem with the procedure, that it took too long, that it cost too much. How can we revise it?

The joint recommendation that came out of that report was to try and put some time limits, some procedural time limits on the length of time it takes to get an order for possession or a dispute of that nature resolved for both sides. The recommendation, I believe, was that a 30-day time frame be placed on judges to come up with decisions in these areas with some right to get extensions where appropriate.

The thrust was, let us get these things resolved within a month; that was the proposal. In reply to that, Bill 13 comes along. We are taken out of the court arena and placed into a situation where the director is entitled to investigate, mediate and so forth, and the overwhelming concern the association had is that there is a lack of time frames, a lack of time constraints, the very concern that was voiced back in '87.

We do not know whether it has been addressed here. It might. We are not sure. Certainly this Bill comes with the promise that things will be carried out more efficiently and more inexpensively, but we do not know that because we only have half the answers.

We see that applications are to be made in many circumstances, not just applications for order for possession but an application for any number of things. Any contravention of the Act basically can come before the director by application. We do not know how it is to be made. It does not say in this section that it is an application similar to the one we have under the present Landlord and Tenant Act.

Happily, today under the present Landlord and Tenant Act, the Act is quite explicit and dictates the contents of the affidavit that has to be filed in support of an order for possession. It is not ideal, but at least people have an idea of what they are supposed to be doing.

Under this regime, an application is to be made. I do not know whether that is by telephone or by letter or by formal application that is going to be prescribed under the Act. The answer is not there. It is not something that is going to be hard to correct, but the answer just is not there today.

* (1230)

The other major concern is that the thing comes into the director's hands, whatever it is, some form of complaint. If the director is, at first instance, obliged to investigate, mediate and endeavour to mediate the thing, and if not create an order—but as I mentioned already, there are not any time constraints placed on the director. It may be that the director's turnaround time will be quicker than we presently experience in the Court of Queen's Bench. If that turns out to be the case, I think everyone will be happy, and the association would applaud any effort to speed up that process.

The problem we are faced with is, by reading the legislation, we do not necessarily know whether that is going to be the case, because we do not have the time frames. Administratively, we do not know how many people are going to be assigned to this task; the workload we have no estimates on, no projections.

We are really left with a bunch of unanswered questions, and our concern is: How do we know whether what we are getting under this Bill is better than we have already? If it is not, why have it? If it is going to be better, fine, let us go forward with this thing and pass it and make sure that the procedures are put in place to make it work, but we only have half the answers. The concern today is that we have only a relatively short period of time to deal with the matter.

It is a substantial piece of legislation; it affects thousands of people in this province. For those of them who are tenants, possibly on a day-to-day basis it will be affecting them. It is a substantial piece of legislation in which we have only half the answers. We would urge your committee not to pass this Act in haste, but to look at the practical and legal concerns arising out of the new procedure that has not been tried before and to make sure it is going to work before we put it into place and then scramble to try and make it work, and that is our concern.

I have specific concerns to address on the procedural problems that I see arising out of the sections with specific reference to section number in my brief. My brief is not very long but it makes terribly boring reading, and I think it might be more appropriate if I left it with your committee Members over the lunch hour and attended after lunch to either walk through it generally or answer any questions that you might have. I look for your guidance on that.

Mr. Alcock: We have copies of the brief. My question is: Have the concerns that are laid out in some detail in this brief been shared with departmental counsel, Legislative Counsel?

Mr. Swystun: No, due to the late timing I was only able to distribute it this morning, so I have not. I would appreciate it if he did receive a copy and he could partake in the process.

Mr. Ducharme: That is why I wanted to stress that point. As you can probably appreciate, Mr. Alcock, you could turn around and get another lawyer in here with another opinion, and then get another lawyer with another opinion. I am not disagreeing, because we had those concerns a couple of years ago in regard to how it could be handled through the courts. We have our own opinions that it is a Bill that would be properly handled and acted upon, so we will just see.

That was one of our first concerns before we even got involved in drafting the Bill. Before finalization for even presenting it to Cabinet, we wanted to make sure we had our opinions from our legal counsel dealing with constitutional matters, et cetera, to handle this. We have gone through that—just to outline to you that there had been consultation, especially to the Members of this committee.

Mr. Alcock: Yes, just for the Minister's benefit, I was not referring to the constitutional arguments. There is a rather lengthy brief here with all sorts of very specific amendments that deal with process matters and other less weighty concerns than the constitutionality, and I was just wondering whether there was an opportunity for Legislative Counsel to review those, as they do not seem to be as contentious as perhaps the broader one.

Mr. Ducharme: In fairness to the people, there has been lots of consultation; it was also in on Bill 42. I think property managers consulted with their legal. We have not had a chance. We did not look at your proposals on your questions on the Act, but there are some items you have mentioned that have been reviewed by our legal counsel.

Mr. Swystun: The only comment I can make is to try and reflect what I believe is the tone of the presentation already presented by Mr. Rosenberg. We see this as what appears to be a balanced and fair Act, one which tries to address concerns of both sides and which is really trying to create a system which is going to work better than what we have already.

We do not know if it will, and I have some specific concerns regarding sections, as to how they are drafted and how they might work. I would like to have the opportunity to comment on those somehow. I do not want to bore you with my reading through the entire brief, and again I would ask for your directions on how it would be best to deal with that.

Mr. Ducharme: First of all, thank you for your brief. Just to mention that when Bill 13 was looked at originally, and we are going back a long way, we felt it fits in with public administration, which as you said has to be a Bill that works with both landlords and tenants, is accountable to the Minister, the Bill. We tried to address that.

We did address the advisory committee to monitor the Bill and monitor the regulations. We will have the Annual Report and we also—landlords and tenants will both sit on the commission, unlike a court. Both landlords will sit with the commissioner, and we felt that was an appropriate way to make sure that it is on our legislation. Any legislation can have a hammer; however, you have to have co-operation between the landlords and tenants. We tried to bridge that by the formation of the commission with the tenants and landlord reps on there.

Mr. Alcock: Just in answer to Mr. Swystun's question though, if what you are asking is: Will the issues raised in this brief be considered during the clause-by-clause review of the Bill before us or should you read them, I think you provided a very detailed brief with section references, and we can undertake to see that they are considered as we are going through this Bill clause by clause.

Mr. Swystun: If I might try to answer to both questions or comments at the same time, please do not get me wrong, this Bill is not intended to attack the philosophy and to second-guess the thoughts that went into setting up the commission and the rest of it. The points made in this Bill are directed to the

specific sections on the assumption that this Bill is going to be passed. We see some flaws in drafting that maybe did not come to the attention of the draftsperson, that we want to bring to the attention of this committee, and yes, I do want it considered when the committee reviews this Bill. Each of the points in here is very important, and if there are any questions arising after it is read, I would like to have the opportunity to address them. I just again asked the question whether it is appropriate to go through it section by section, or come back to it in a more summary fashion.

Mr. Ducharme: Mr. Swystun, if you could leave a number where you could be contacted sometime during the course of today, we will have our legal counsel look through your information and look at the points you have made, and when we reconvene—I imagine we will reconvene later on this afternoon—I will give him something to do very busy over lunch hour in those two or three hours that we are going to allow them, but they could briefly look at them. I can appreciate they are legal, and it would take a lot longer than that, but they will look over them and maybe they could give you a call if they have some questions in regard to your interpretation.

* (1240)

Mr. Swystun: I think that would be ideal. Even without questions, I would like to have the opportunity to just come back and make one final comment if need be. The report seems long, but in many cases there is just a comment to say we do not have any problems with this section, and most of the comments made in here are not too technical, I do not believe, and the recommendations that I make are fairly straightforward.

Mr. Chairman: Thank you for your presentation. I would like to get some direction from the committee. We have a breaking from the committee at one o'clock. If the next presenter is willing to make a presentation or to come back at five—

Mr. Frank Cvitkovitch (The Mortgage Loan Association of Manitoba): Mr. Chairman, I would like to make a presentation now if I could. It is fairly short. You have it in writing. It is simply three pages.

Mr. Ducharme: Just remember that the rest of us have to go to Question Period. We have to be back in the House, so we have to leave by one o'clock. If you want to come back at 5:30 when we reconvene, we will give you as much time as you want, but you are going to have to finish by one o'clock.

Mr. Cvitkovitch: I have some other representatives from The Mortgage Loan Association and they cannot come back, and that was my concern.

Mr. Ducharme: So long as you know that we are not trying to cut off your presentation. What you will do is you will have to reconvene at 5:30 if you run out of time.

Mr. Cvitkovitch: My notes said good morning—good afternoon, Mr. Chairman, ladies and gentlemen. My name is Frank Cvitkovitch. I am the legal counsel for The Mortgage Loan Association of Manitoba and with me this morning has been our president, Mrs. Daphne Termeer of the Mutual Life Assurance mortgage department, and our past president Rob Paulus, of the mortgage department of Great West Life.

Those who have heard me before, this may be a little bit redundant, but the association which I might mention just recently held its 82nd annual meeting, represents over 40 institutional mortgage lenders. They are banks, credit unions, life insurance firms, mortgage corporations and trust companies. I think it is fair to say the majority of commercial lending institutions in Manitoba are members.

As an association we work with and relate to other industry organizations such as the Winnipeg Real Estate Board, the Homebuilders, the Manitoba Real Estate Association, and I might comment that Canada Mortgage and Housing Corporation and your own department, Mr. Minister, Manitoba Housing, both maintain an active interest in and relationship with our organization as a representative of the industry.

First of all, our association would like to express its appreciation to the Government for the consultative process which the Government has followed in drafting this legislation. We have been involved for a number of years in making representations to Government on legislation, and it is always very worthwhile if you are permitted, particularly with legal counsel—I have just heard that exchange with Mr. Swystun and the Legislative Counsel—that obvious drafting things or practical concerns can be discussed informally in advance.

It is important, as I indicate here, and democratic that the laws before they are enacted be previewed by the persons or industries which will be affected

by their implementation. Undoubtedly the Government has accepted some of the consultation and improved on Bill 42 of the previous Session. Unfortunately as far as our concerns as a mortgage lender are, the main point we previously raised has not been addressed by the Government.

Bill 13 has made some changes, and in the area that we are mainly concerned about, the changes seem to be simply that Section 141 which establish certain lien rights and Section 167 which establish certain rights regarding tax authorities have now been changed to Section 156 and Section 183. Your advisers have made some changes in the words so, for example, you see changes like in Section 141(1), "all money expended" was the previous expression. Now it says, "money that is advanced." It is obvious that there has been no substantial change in those sections that deal with our concerns.

In order to try to highlight our concern, the expression we use is "uncompensated expropriation of the mortgage lender's investment." That is the result of those two particular sections. I point out as one of the speakers before me, that in terms of where your MLA pension funds may be invested, the mortgage lenders are financial institutions which are investing your insurance premiums, your RRSPs, your pension funds. They are governed by both federal and provincial regulators, and those financial institutions are restricted as to the type of investment, so that your funds will be protected.

Is this uncompensated expropriation necessary for the Government to achieve the admirable intentions expressed in the Preamble? We say no, that certainly is not necessary. It has been placed in the legislation to guarantee the Government the cost of repairs where either the owner will not pay or effectively the repairs are not viable for the mortgage holder to proceed with same.

Maybe I could digress for a moment in terms of making sure that the Members of the committee know the sections I am talking about. I am talking about the section that says there can be a lien for repairs when the director orders that repairs have to be done, then the draconinan—we heard that word earlier today—part of the legislation is where it says that can then be collected as a tax, as if it was ordinary realty tax. The draconian part about that is that immediately throws out the window the system that we have benefited by in Manitoba since confederation, of land holding and land registry which recognizes the priority of registration. That is where the danger is.

This dangerous remedy which the Government proposes to implement is to add these repairs to the realty tax bill and have the city or municipal government enforce their collection through tax sale. By decreeing that something other than ordinary municipal taxes shall become a tax, the Government is undermining the right of private land ownership in the province of Manitoba. It is weakening the land registry system of Manitoba which has since 1870 been based on the priority of registration and is setting a precedent which could lead to further deficiencies. In turn these could lead to the need for private title insurance and the additional cost which all Manitoba tenants and owners would be forced to pay.

I am not sure how familiar the Members of the committee are, but in Manitoba I think in a sense we are blessed with our current system, and it is only in the rare commercial transaction where we are involved with private title insurance, but in many states of the U.S. and in some areas in Canada, title insurance is a cost of owning land. We are protected against that in most instances because of the security of the title that the Government issues, and that is based on this priority. If you start to undermine that priority and have another level of Government, the city or the municipal authority adding on to their tax bill, then you are jeopardizing that system.

What will the lender do or what will the owner do? He will insure himself against that, and in insuring that he will have to insure not just on the buildings where repairs are needed, but he will have to insure all buildings. Suddenly there is another cost in terms of shelter that people are going to have to bear across the board.

* (1250)

Our association accepts that a lien right is reasonable, and likewise that a decision of the director may have the effect of a court judgment. We are not entirely agreeing with the property owners, although I understand the property owners or property managers are talking about a potential constitutional challenge, but I think in terms of the lender we could buy the fact that the department may decree that type of an order that would become a lien, but it would not then have a priority.

Those liens that are involved for repair, for example, should not take priority over others who

have in good faith supplied their work. We have not represented that because we do not represent the builders, and in one way I am not sure whether they are aware of this. Technically, by coming on the tax bill with that repair bill, if there were previous bills that were unpaid and someone had done work or supplied materials and had a lien on that property, that lien would be secondary to this repair lien now. That is the same situation for mortgages. It is draconian, I think, in terms of putting it on the tax bill, because it does not then become aware to the public at large or to the industries that deal with housing that this is undermining their position, but it certainly would be.

This Bill shows that there has been some recognition by the Government of the side effects. I notice that you have added in the title "and Consequential Amendments." That is a pretty wordy expression, because I think it is there in almost every bit of legislation that is passed, that there are consequential amendments, but I think there should be a recognizing by this committee of the consequences of Section 183(1)(b) and 2.

The way to recognize the consequences in terms of what it will do to our basic system of landholding in Manitoba is to simply amend the Bill to delete those subsections from the Bill, and that is subsection 1(b) of Section 183 and subsection 2 of 183. If you delete those, what will be the consequences? Tenants will still be protected and owners will still be accountable. The land registry system, the security afforded to investment in Manitoba, will not be eroded. If these sections are not deleted, Manitoba, to the best of our belief, will stand alone in Canada with this unfair tax.

If I could just digress, in our previous consultations I understand that this idea comes from Boston, and we have heard earlier this morning different people making different representations about what is happening in the U.S. My understanding is that there is no other place in Canada where people are investing your pension funds or your RRSPs, et cetera, where the repair of the building can be added onto the tax bill and take priority over any other claims. The cost of protecting this claim will be added to all commercial residential loans. The law will have a retroactive effect which makes it impossible for the lenders to protect your investment funds against these costs.

Again I think at one stage of our discussions with the department we had suggested the possibility of grandfathering existing loans in terms of the matter of priority, but there is no provision in this Bill for that, so that at least a lender acting in good faith now would probably have to have a very thorough inspection made of the building, of the heating system, engineering reports, et cetera, to determine in advance what risk he might be exposed to, and then determine how much equity the owner will have to have in the building. Our members, many of them have long-term loans. As individuals, you may be aware that with residential loans, you might have a six-month, or a three-year, or a five-year, there are all kinds of different options out there.

Much if not all of commercial lending is on a longer term basis, 10, 20, 25-year loans, and in that situation some of the lenders will be faced with buildings that are coming very close to the time where they need major repairs, so their security in those buildings could be in jeopardy. We therefore ask or suggest that surely the Government does not want to penalize all tenants by legislation which has been proposed to assist the tenants in need.

Mr. Martindale: I think the crucial part of your presentation is, is this uncompensated expropriation necessary for the Government to achieve the admirable intentions expressed in the Preamble, and you conclude "no." Another way of saying this, to borrow the language of the Charter of Rights and Freedoms, would be is it justifiable in a free and democratic society, taken out of legal context but a similar phrase to the one that you have used.

I ask myself why is this provision in Bill 13 necessary? It is necessary for landlords who refuse to do repairs, even when there are, for example, City of Winnipeg repair orders put on them as is the present case. They pay the fine or they continually get deferrals and they continue to rent run-down properties, or as in the case of the present time they buy and sell their properties to their friends so that the repair orders lapse.

Who are we talking about here? Why are these provisions necessary? We are talking about slum landlords basically who allow their buildings to run down and make a quick profit as they do so. How many are we talking about? I think we are talking about a very small number. We might be talking about one percent of the rental market, so although according to you it may sound draconian, I believe it is necessary in order to force that small number of slum landlords to do the repairs when currently they

will not, even though there are City of Winnipeg by-laws and Health Act regulations by which they are supposed to keep their properties in a state of good repair. I am wondering if you have some other suggestion, an alternative way of forcing landlords who will not do repairs to do them and to meet provincial and city regulations.

Mr. Cvitkovitch: Yes, Mr. Martindale, I am not here to defend slum landlords, and in terms of the association we like to think that possibly we do not have any borrowers who are slum landlords. Our suggestion is not to deal with enforcement of the repair, our suggestion is to deal with the enforcement of the collection of the cost of that repair ahead of anyone else who has registered interest in that title. The "anyone else" as I have pointed out could be simply the person who has painted those suites three months before, has not been paid a bill, put his builders' lien on that, and he is not going to get paid because the City of Winnipeg is going to collect that tax.

They are going to try to collect it from the owner. The owner does not have any equity—we are speaking of slum landlords here. The person who has invested that money that initially helped him buy that property is then going to be faced with having to pay that bill in order to get a clear title. What the investor does at the outset when he advances money, he will get the owner to pay him on a monthly basis one twelfth of the taxes, so when the regular tax bill comes due, he knows that he has collected enough money to get it, but how does he collect in advance for this repair bill when he does not know when it is coming?

My understanding in discussions with the department is that the number of units they think will be affected and the cost of repairs might be something like $600,000. Our presentation to them has been "My God, if it is going to cost $600,000, let the Government absorb that $600,000 of uncollectable repairs rather than destroy our system, our credibility for investment, because now when a solicitor reports that you have a good investment in terms of "you are on the title to this property and the money is advanced properly," he gets a certificate from the City of Winnipeg that says the taxes are paid. That certificate is going to be worthless now, and what will happen is the solicitor will say, "Well, the regular taxes were paid, but in terms of your security, I do not know what the liability will be for future taxes for repair." That is every transaction. That is not just on the slum landlord houses, that is every real estate transaction deal. It is the typical you are using a shotgun to kill a mouse, and the flack is creating problems for the whole system.

* (1300)

I am not saying there is anything wrong with trying to twist the owner's arm as far as you can, and you can do that if you put a lien on the property and if he has any equity. If he does not and Government has decided that property should be repaired for the tenants, then they should repair it. In many instances, as the Minister and his department know, what will happen is the lender will step in and do the repairs, because the rents are not coming in either. They know that our members work very often in co-operation with the department, but in some areas there are going to be situations where they do not want to do any repair, and they are going to lose part of their investment, because it is going to become part of the taxes.

Mr. Ducharme: I am trying to make sure because I know this is a very important part of the Bill and a very important part for your industry. Are you going to be coming back at 5:30?

Mr. Cvitkovitch: I could certainly come back at 5:30. I was concerned if there were any questions because—

Mr. Ducharme: The Member for Osborne (Mr. Alcock) I know has some questions for you. I have a couple. I will let mine go for him if you want. I have had some of mine answered.

Mr. Cvitkovitch: I would like to make sure that our point got across, and from that point of view I do not have a difficulty about coming back. I was concerned in terms of the industry, actual representatives, if there was anybody who had any questions of them, that they were here. I can certainly come back.

Mr. Alcock: I would encourage you to come back, sir. I do have a couple of questions. Just in the one minute left though, if I understand things correctly, both you and Mr. Martindale (Burrows) are saying that the level of problem that we are trying to address through this is relatively small. Mr. Martindale puts it at one percent of landlords, and you give it a numerical amount of some $600,000. You are saying that to correct that problem we are going to penalize in effect all tenants in the province?

Mr. Cvitkovitch: There will be an additional cost in terms of the lender either charging a higher interest rate to cover additional risks that he is going to have or requiring additional insurance on the part of the lender, and that insurance will be passed on to the tenant as an additional cost, all tenants.

Mr. Chairman: It is the understanding that you will return at 5:30?

Mr. Cvitkovitch: Yes, Mr. Chairman.

Mr. Chairman: After that, we will hear a joint presentation by Herbert Cooper and William Snell. This meeting is recessed until 5:30.

COMMITTEE ROSE AT: 1:02 p.m.

WRITTEN SUBMISSIONS

Reg Loeppky (Private Citizen)

Introduction

Good morning, ladies and gentlemen. My name is Reg Loeppky and I have been a resident at 2610 Portage Avenue for just over a year. In that time I have gained a quick education of the process of rent regulation and its shortcomings.

I come before you this morning not as a representative of the tenants at 2600 and 2610 Portage Avenue but as a neighbour. Nonetheless, I am sure many of my neighbours would agree with what I have to say this morning.

I have rented other apartments in Winnipeg and have never before experienced rent increases such as those at 2610 Portage.

The Issues

Since 1985 the landlord, Lakewood Agencies (Ladco), has asked for rent increases well in excess of the guidelines in all but one year. (I have included a table and graph of this information.) Each year the Rent Regulation Officer reduced the request, and with the exception of last year's appeal panel, the Officer's recommendation was upheld at the appeal stage.

Last year 109 of the 113 tenants appealed the increase. At the appeal hearing a number of interesting issues arose.

First, the statements submitted by the landlord contained important, yet basic addition errors. Simple columns of numbers were inaccurately totalled. On the surface it looked like an oversight but this sort of thing had happened before. The previous year's financial statements had also contained similar errors. When you think about it, it is hard to believe that a professional management firm such as Lakewood could make such errors accidentally. The intent of these errors was even more of a concern because they inflated the total expenses shown in the statements.

Second, the landlord's agent admitted at the appeal stage that some invoices for elevator servicing included repairs not only for 2600 and 2610 Portage but also for Birchwood Terrace, another Lakewood property at 2440 Portage Avenue.

Third, an invoice was questioned regarding concrete used to repair a sidewalk and curb. The invoice was for a quantity of concrete much greater than required for the repair referred to.

When for clarification by the tenants' representative and the Appeal Board the landlord's agent could not offer any further explanation, he said that he would have to check with the foreman of the crew that did the job.

Fourth, other items were also questioned and in almost all cases the landlord's representative was also unsure of what had actually happened. He offered to check and get back to the Rent Regulation Office. This had the effect of removing the tenants from the discussion of many relevant items. The tenants never had their questions answered and when the Appeal Panel increased the Officer's recommendations, no explanations were given. The "open" process of the hearing had been effectively moved "behind their backs." Hardly a fair and accountable situation, I would think.

There were a number of items which the landlord considered to be operating expenses and not capital expenses. Further, with regard to operating expenses, a number of the expenses could be said to have been "non-recurring or extraordinary" and should not have been included.

In the end the total operating expenditures were reduced by $30,767.00. Why such a difference?

Of capital expenses, one-third, one-quarter, or one-sixth of the cost can be included in the calculation of the rent increase. This, in effect, makes the tenant pay for the repairs. If the tenant stays for only a short while or if they are a long-term tenant this becomes particularly unfair. Why is the rent not correspondingly reduced after three, four or six years?

If a landlord does not perform any significant upgrading or repairs for many years and then in the period of a few years carries out a number of repairs the existing tenants carry the burden. In addition, one year's increase for capital expenses becomes the "base rent" for the next year's calculation of an increase. Is that really fair?

I would suggest that the amortization process be lengthened. Further, that the landlord be required to reduce the rent by the applicable percentage after the pay back period has expired.

Summary

In our block there are many tenants who still have the original carpet in their suite from when the blocks were built over 18 years ago. In some cases, the rug is burned or stained and should have been replaced years ago. I know of cases where these tenants have asked that the flooring be replaced and the landlord has claimed that the "budget" for that year's replacements has been spent. The suites that are repaired in most cases are those which have become vacant. In order to attract new tenants they are repaired, while existing tenants have to live with their older flooring.

The majority of the residents in the two buildings are senior citizens and many have lived in these blocks since they opened. Others, like my wife and myself, are young families. The rent increases, which we all must bear, really hurt. To a certain extent, the older residents are being held for ransom. They are not as mobile and are more attached to their residences than their younger neighbours. Just a few months ago we lost two neighbours who were also young and fed up with the increases.

When we moved into our suite just over a year ago we were paying $463 per month for a not-so-large one-bedroom apartment. This past spring we had to start paying $487.00. Last Thursday, we received notice of a proposed increase to $536 beginning next May. Why, when vacancy rates are so high, are landlords allowed to seek such increases?

Finally, our landlord applied for rent increases about three months earlier than last year. I have to wonder why. I would like to know if there is some big advantage to regulation process under the existing legislation?

Thank you for your consideration of this matter. I would hope that you could address these real concerns regarding excessive increases and the amortization of capital expenses.

HISTORY OF RENT INCREASES FROM 1985 TO PRESENT
FOR 2600 AND 2610 PORTAGE AVE.

	1985	1986	1987	1988	1989	1990	1991
GUIDELINES	5.00%	3.00%	3.00%	3.00%	3.00%	3.00%	4.00%
INCREASE REQUESTED	8.00%	3.00%	8.00%	7.00%	6.00%	8.60%	10.00%
RENT REGULATION OFFICER'S RECOMMENDATION	6.00%	3.00%	4.85%	4.70%	6.00%	4.00%	
APPEALED BY	Landlord and 13 Tenants	N/A	57 Tenants	Landlord and 6 Tenants	108 Tenants	Landlord and 109 Tenants	
DECISION OF APPEAL PANEL	6.00%	N/A	4.85%	4.70%	6.00%	5.00%	
PERCENTAGE OVER THE GUIDELINES	1.50%	N/A	1.85%	1.70%	3.00%	2.00%	

**RE: 1985 APPEAL PANEL DECISION = INCREASE REQUIRED TO 4.5% FOR THE 13 TENANTS WHO HAD APPEALED.

STATEMENT OF INCOME & EXPENSE
AS REPORTED BY LAKEWOOD AGENCIES
TO THE LANDLORD & TENANT AFFAIRS OFFICE
PERTAINING TO 2600 & 2610 PORTAGE AVE.

	Period Ending July 31/90	Period Ending July 31/89 Original	Period Ending July 31/89 Revised*	Difference Between July 31/89 Original and Revised	Difference Between July 31/89 Revised and July 31/90
INCOME	$667,321.00	$631,599.00	$631,599.00	0.00	$35,722.00
OPERATING EXPENSES					
Advertising & Leasing	$ 3,453.00	$ 1,954.00	$ 1,469.00	$ 485.00	$ 1,984.00
Insurance	7,245.00	7,245.00	7,245.00	0.00	0.00
Maintenance	65,182.00	84,186.00	55,231.00	28,955.00	9,951.00
Property Management	33,366.00	32,925.00	31,580.00	1,345.00	1,786.00
Property Taxes	164,109.00	128,592.00	127,055.00	1,537.00	37,054.00
Resident Manager	29,807.00	26,833.00	28,388.00	(1,555.00)	1,419.00
Capital Tax	7,150.00	7,150.00	7,150.00	0.00	0.00
Utilities	90,952.00	89,309.00	89,309.00	0.00	1,643.00
TOTAL	$401,264.00	$378,194.00	$347,427.00	$30,767.00	$53,837.00

EXPENSES AS AT JULY 31/90 $401,264.00
EXPENSES AS AT JULY 31/89 $347,427.00 DIFFERENCE $53,837.00
REVENUE 667,321 X 1% ECONOMIC ADJUSTMENT FACTOR 6,673.00

CAPITAL EXPENSES		
Sewer & Water Mains	570.52	
Flooring	$1,080.25	
Carpets	$2,277.25	
Drapes ($2517.00 X 33%)	$830.61	
Durite Caulking	$315.01	
Intercom Repair	$711.62	
Emergency Generator	$902.75	
TOTAL	$6,688.01	$6,688.01
GRAND TOTAL		$67,198.01

*REVISED BY APPEAL PANEL
(REVISED AMOUNTS NOW FORM THE BASIS FOR 1990 CALCULATIONS)