Third Session - Thirty-Eighth Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Legislative Affairs

Chairperson
Mr. Daryl Reid
Constituency of Transcona

Vol. LVI No. 6 - 6:30 p.m., Thursday, June 2, 2005

ISSN 1708-668X

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Eighth Legislature

Member	Constituency	Political Affiliation
AGLUGUB, Cris	The Maples	N.D.P.
ALLAN, Nancy, Hon.	St. Vital	N.D.P.
ALTEMEYER, Rob	Wolseley	N.D.P.
ASHTON, Steve, Hon.	Thompson	N.D.P.
BJORNSON, Peter, Hon.	Gimli	N.D.P.
BRICK, Marilyn	St. Norbert	N.D.P.
CALDWELL, Drew	Brandon East	N.D.P.
CHOMIAK, Dave, Hon.	Kildonan	N.D.P.
CULLEN, Cliff	Turtle Mountain	P.C.
CUMMINGS, Glen	Ste. Rose	P.C.
DERKACH, Leonard	Russell	P.C.
DEWAR, Gregory	Selkirk	N.D.P.
DOER, Gary, Hon.	Concordia	N.D.P.
DRIEDGER, Myrna	Charleswood	P.C.
DYCK, Peter	Pembina	P.C.
EICHLER, Ralph	Lakeside	P.C.
FAURSCHOU, David	Portage la Prairie	P.C.
GERRARD, Jon, Hon.	River Heights	Lib.
GOERTZEN, Kelvin	Steinbach	P.C.
HAWRANIK, Gerald	Lac du Bonnet	P.C.
HICKES, George, Hon.	Point Douglas	N.D.P.
IRVIN-ROSS, Kerri	Fort Garry	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
JHA, Bidhu	Radisson	N.D.P.
KORZENIOWSKI, Bonnie	St. James	N.D.P.
LAMOUREUX, Kevin	Inkster	Lib.
LATHLIN, Oscar, Hon.	The Pas	N.D.P.
LEMIEUX, Ron, Hon.	La Verendrye	N.D.P.
LOEWEN, John	Fort Whyte	P.C.
MACKINTOSH, Gord, Hon.	St. Johns	N.D.P.
MAGUIRE, Larry	Arthur-Virden	P.C.
MALOWAY, Jim	Elmwood	N.D.P.
MARTINDALE, Doug	Burrows	N.D.P.
McGIFFORD, Diane, Hon.	Lord Roberts	N.D.P.
MELNICK, Christine, Hon.	Riel	N.D.P.
MITCHELSON, Bonnie	River East	P.C.
MURRAY, Stuart	Kirkfield Park	P.C.
NEVAKSHONOFF, Tom	Interlake	N.D.P.
OSWALD, Theresa, Hon.	Seine River	N.D.P.
PENNER, Jack	Emerson	P.C.
REID, Daryl	Transcona	N.D.P.
REIMER, Jack	Southdale	P.C.
ROBINSON, Eric, Hon.	Rupertsland	N.D.P.
ROCAN, Denis	Carman	P.C.
RONDEAU, Jim, Hon.	Assiniboia	N.D.P.
ROWAT, Leanne	Minnedosa	P.C.
SALE, Tim, Hon.	Fort Rouge	N.D.P.
SANTOS, Conrad	Wellington	N.D.P.
SCHELLENBERG, Harry	Rossmere	N.D.P.
SCHULER, Ron	Springfield	P.C.
SELINGER, Greg, Hon.	St. Boniface	N.D.P.
SMITH, Scott, Hon.	Brandon West	N.D.P.
STEFANSON, Heather	Tuxedo	P.C.
STRUTHERS, Stan, Hon.	Dauphin-Roblin	N.D.P.
SWAN, Andrew	Minto	N.D.P.
TAILLIEU, Mavis	Morris	P.C.
WOWCHUK, Rosann, Hon.	Swan River	N.D.P.

LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LEGISLATIVE AFFAIRS

Thursday, June 2, 2005

TIME – 6:30 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Daryl Reid (Transcona)

VICE-CHAIRPERSON – Mr. Andrew Swan (Minto)

ATTENDANCE - 11 QUORUM - 6

Members of the Committee present:

Hon. Messrs. Mackintosh, Robinson, Selinger, Smith

Messrs. Dewar, Dyck, Faurschou, Goertzen, Reid, Reimer, Swan

APPEARING:

Hon Jon Gerrard, MLA for River Heights

WITNESSES:

Bill 9–The Manitoba Centennial Centre Corporation Act

Mr. Keith Hildahl, Chairman, Manitoba Centennial Centre Corporation

Bill 38–The Residential Tenancies Amendment Act

Mr. Martin Boroditsky, Private Citizen
Mr. Walter Trafton, Gateway Enterprises Ltd.
Mr. Shaun Parsons, President, Professional Property Managers Association
Mr. Avrom Charach, Vice-President, Professional Property Managers Association
Mr. Brian Pannell, Housing Co-ordinator, Young United Church
Mr. Dave Angus, President, Winnipeg Chamber of Commerce

MATTERS UNDER DISCUSSION:

Bill 9–The Manitoba Centennial Centre Corporation Act

Bill 11–The Provincial Court Amendment Act (Justices of the Peace)

Bill 24–The Consumer Protection Amendment Act (Cost of Credit Disclosure and Miscellaneous Amendments)

Bill 37–The Municipal Assessment Amendment Act

Bill 38–The Residential Tenancies Amendment Act

WRITTEN SUBMISSIONS:

Bill 24

Mr. Paul Griffin**,** Director, Western Region, Canadian Bankers Association

Bill 37

Mr. Ron Bell**,** President, Association of Manitoba Municipalities

****

Mr. Chairperson: Good evening, everyone. Will the Standing Committee on Legislative Affairs please come to order.

The first order of business is the election of a Vice-Chairperson. Are there any nominations?

Mr. Gregory Dewar (Selkirk): I would like to nominate Mr. Swan, MLA Minto.

Mr. Chairperson: Mr. Swan has been nominated.

Are there any further nominations?

An Honourable Member: No.

Mr. Chairperson: Seeing no further nominations, Mr. Swan is elected as Vice-Chairperson.

This evening the committee will be considering the following bills: Bill 9, The Manitoba Centennial

Centre Corporation Act; Bill 11, The Provincial Court Amendment Act (Justices of the Peace); Bill 24, The Consumer Protection Amendment Act (Cost of Credit Disclosure and Miscellaneous Amendments); Bill 37, The Municipal Assessment Amendment Act; Bill 38, The Residential Tenancies Amendment Act.

We do have presenters registered to speak to bills 9 and 38. It is the custom to hear public presentations before consideration of bills.

Is it the will of the committee to hear public presentations of these bills? *[Agreed]*

Thank you. I will then read the names of the persons who are registered to speak, to make presentations this evening.

On Bill 9, we have Dr. Keith Hildahl, Manitoba Centennial Centre Corporation.

Bill 38, The Residential Tenancies Amendment Act, we have registered to speak Martin Boroditsky, private citizen; Walter Trafton, Gateway Enterprises Ltd.; Shaun Parsons, Professional Property Managers Association; Brian Pannell, Housing Co-ordinator, Young United Church; Dave Angus, Winnipeg Chamber of Commerce; and Stavros Chatzoglou, private citizen.

If there are any other presenters that would like to make a presentation this evening, please see the Clerk at the back of the Chamber and have your name registered to speak.

Those are the persons and organizations that have registered so far, and, of course, anybody else wishing to may just register with the Clerk. Just a reminder to those members of the public who are with us here this evening that wish to make a presentation, 20 copies of your presentation are required. If you require assistance with photocopying, please see the Clerk at the back of the committee room.

I would also like to inform presenters that, in accordance with our rules, the time limit of 10 minutes has been allotted for presentations, and 5 minutes for questions from committee members. As well, in accordance with our rules, if a presenter is not in attendance, their name will be dropped to the bottom of the list. If the presenter is not in attendance when their name is called a second time, their name will be removed from the presenters' list.

I would also like to inform the committee that written submissions have been received for bills 24 and 37; from Paul Griffin**,** Canadian Bankers Association, written submission to Bill 24; and Ron Bell**,** Association of Manitoba Municipalities, written submission to Bill 37. Copies of these briefs were made for the committee members and distributed at the start of the meeting.

Does the committee grant its consent to have these written submissions appear in the committee transcript for this meeting? *[Agreed]* Thank you to committee members.

Also, in accordance with our rules, there are fewer than 20 persons registered to speak at 6:30 this evening. The committee may sit past midnight. As at 6:30, there were seven persons registered to speak; therefore, this committee may sit past midnight to deal with the business before it.

Just prior to our proceeding with public presentations, I would like to inform members of the public of the process when it comes to questions from committee members on your presentation. The proceedings of our committee meetings are recorded in order to provide a verbatim transcript. Each time someone wishes to speak, whether it be a member of the committee or a presenter, the Chair, myself, I first have to say the MLA or the presenter's name. This is a signal for the Hansard folks sitting behind me here to record by turning on and off your microphone.

Thank you for your patience. We will now proceed with public presentations starting with Bill 9.

Bill 9–The Manitoba Centennial Centre Corporation Act

Mr. Chairperson: Bill 9, The Manitoba Centennial Centre Corporation Act. The name of the presenter we have for us this evening is Dr. Keith Hildahl, Manitoba Centennial Centre Corporation.

Doctor Hildahl, are you in attendance this evening? Please come forward, sir.

Good evening, sir. Do you have copies of your presentation?

Mr. Keith Hildahl (Chairman, Manitoba Centennial Centre Corporation): I certainly do. To whom–

Mr. Chairperson: We will distribute first to the committee members.

Mr. Hildahl: Some are for the committee, the rest are not.

Mr. Chairperson: Thank you, Doctor Hildahl. You may proceed when you are ready, sir.

Mr. Hildahl: Thank you, Mr. Chairman, and thank you for inviting me to this committee. I appreciate the opportunity to speak on behalf of our corporation.

Our board came to government about two and a half years ago to raise the issue of updating the legislation which directs our corporation. It was then some 32 years old, now some 35 years old, and we felt as a board that it did not reflect the realities of working in a modern world. Appreciate that our board is about five years old now, and when we came to our board, to our responsibilities, five years ago, we faced a corporation that had run a $200,000 deficit every year in the 1990s. I think it is very clear that you cannot continue as an operation in that mode.

In the summer of 2000, when we took over the corporation, they did not have computers. The accounting system was still being done by hand, so we faced a very formidable task of trying to modernize. We would not take a position that our act is the problem, but we would take a position that the act, like many things at the corporation, was severely out of date.

***** (18:40)

We did a number of things, working with government. We cut back on our staffing; that is not an easy thing to do, but we did that. We reduced our expenses, and we started to address our revenue lines. I think I can say with some satisfaction that the last three years we have run a surplus, and we think we have a corporation now that is moving forward.

As part of that, in 2001, government insisted that we be included under The Crown Corporations Accountability Act. From our point of view, that looks pretty good, considering the week that is going on around here. We report in every year to the Crown Corporations Council. They read our minutes monthly. They review our financial statements monthly, and we think that we have been very fortunate to get out in front of it.

So, given that we did not think the act reflected the current economic conditions, we wanted it modernized, we wanted to be able to work within a modern community, and we wanted to bring, really, the best management practices that we can to the corporation. We have had a lot of stakeholder input into this. We have had a lot of help from legal services here in the Leg. The Department of Culture has been really helpful and has worked hard with us to make this happen, and we think that because of that, we now have a comprehensive, modern act in front of you.

The highlights. The removal of the section, "shall manage and operate . . . as a self-supporting business." I suspect that lasted less than six weeks in 1970. Our current budget is two-thirds government operating grant and one-third revenues from the Concert Hall. If we were to act like this, we would bankrupt every cultural organization in the city. I think we have what we see as a very fair deal with the Province, and certainly, by bringing in modern business practices, in fact, we have been able to live within our means and, indeed, turn it into a surplus situation.

The act facilitates us by giving much more clear direction from government on such things as parking development, naming rights. We turned this corporation around partly by putting good business models in place, and things like parking support the arts. It is an easy sell in our organization. We have land; we have parking. We have done pretty well in parking. But we want to have the ability to really meet with government and talk about developing ancillary revenues so that we are not coming, cap in hand, to government all the time, asking for more.

We wanted to have financial flexibility by having at least some ability to co-sponsor some events within our centre. It seemed really sensible to put the mandate or the purpose of the corporation right into the act. I think that is probably just good governance.

The ability to borrow money with the approval of the Lieutenant-Governor-in-Council would give

us some flexibility in our business model to do things like develop parking structures and things that have long-term revenue generation ability. There are lots of opportunities in the waterfront area now and in that area for parking, and we have lots of ability to create win-win situations with daytime parking for businesses and people in the area, evening parking for people attending cultural events, at either the concert hall, the theatre centre, the Warehouse Theatre, the Pantages, and overnight parking, of course, for people who are living in those new waterfront condominiums that somebody is building down there that should be wonderful living space.

We have been working hard with the department about increasing our board's skill base. I think, when you see a move in our board members to 15, we are really talking now about a base of 12, not a base of five. Well, Mrs. Steinkopf just died two weeks ago, the widow of Maitland Steinkopf**,** of course, who was really the driving force. Mrs. Steinkopf was at our last board meeting and had been a driving force for our board, and we will miss her.

We have added an accountant over the past year. We have added a person with facility management experience over the past year. Now, I have been talking over the last three months with the department about adding a lawyer to our mix. So that, I think, represents a need for us to increase our board size and increase some of our skill bases.

The issue of compensation and remuneration for board members comes out of the Crown Corporation Council of recommendations and our inclusion within that act, and within the responsibilities, and within the reporting lines that come out of that. Their position is that we are the only Crown that is not remunerated, so that is what has come forward.

So, with that, I will stop my presentation. I am conscious that you have a lot of things to listen to tonight, but I would be happy to answer questions. I have been the chair of this board since the summer of 2000.

In my other life I am the chief executive officer of a small hospital, Manitoba Adolescent Treatment Centre. I manage about 100 employees and a budget of about $8 million. I am also the medical director for Child and Adolescent Mental Health services for Winnipeg, which is my professional hat. I am putting the first one forward just to say that on our board we have some skills. Certainly, I have experience in a corporation that is roughly the size of this branch, a bit bigger, and even though I am a doctor, I have more than a passing interest in management and fiscal responsibility and budgets. I will take questions.

Mr. Chairperson: Thank you, Doctor Hildahl, for your presentation this evening.

Hon. Eric Robinson (Minister of Culture, Heritage and Tourism): First of all, Doctor Hildahl, allow me to thank you on behalf of the government to yourself and to your board for your commitment, the hard work you have done in the last five years in eliminating the annual operating losses of the corporation. I think that is to be commended. I know that yourself and your board have been providing excellent service to clients and thousands of Manitobans that use the facility. I want to just convey and say thank you for the hard work that you have demonstrated. I am sure that I speak on behalf of many Manitobans in congratulating you in doing that.

Mr. Hildahl: Well, thank you, Mr. Minister. Of course, the board does not really take the credit. It is the management and staff that have worked their butts off to turn this corporation around, so I think they deserve the credit.

Hon. Jon Gerrard (River Heights): I want to thank you as somebody who gets to the concert centre from time to time because I think you are, clearly, doing an admirable job.

Perhaps you could just give us some indication of the size and the scope of borrowing that you might be anticipating in the future.

Mr. Hildahl: We did not come forward with a particular number or scope in mind. I think that what we wanted to do was have an ability to assess business plans as they are presented to us and have an ability to borrow. As an example, if the Manitoba Museum was to decide to expand next year onto the Rupert Street parking lot to build another building, at this point in time–and that parking lot is a revenue stream for us–we would want to sit down with the museum, develop a plan which included a parkade integrated right into their building, and we would want to assume the financial risk with that, and take on the long-term profits that are coming out of that.

It is that kind of an opportunity that right now we would not have. So we do not have a plan to borrow even a penny, and that may never come to fruition. The issue for us is, at this point in time, we do not have even the ability to sit down and try and create a win-win with anybody building in the area. So that would be one example.

***** (18:50)

By and large, the only thing I can think of that our board would even consider borrowing for would be a capital asset that made money. So that is, I think, where we are heading. We have spent an enormous amount of energy over the last four years, but we did not think we would make payroll in 2000. So we spent an enormous amount of time over the last four years creating a business model that is viable. I think I speak for my board 100 percent, every one of them, they would say, "We are never going back there." It was a long year. There were people on my board that did things that they never thought they signed on for, and they were making hard decisions about people's lives.

So that is the kind of thing we are talking about. We are not talking about going out and borrowing money to bring the Rolling Stones in. I do not believe that makes money anyway. Maybe I should, but I am not.

Mr. Kelvin Goertzen (Steinbach): Well, Doctor Hildahl, we also want to thank you for coming and making a presentation and the fine work that you do at the facility. Please pass on our best wishes to all members of your board as well for the work that they continue to do.

I know you said there has not been a particular business plan brought forward, but, obviously, some of these changes will allow you to capitalize on revenues that have not been forthcoming or that have not been built in, whether it is parking or naming rights or other promotional responsibilities. Is there a sense, on the revenue side, how much revenue you will be able to garner as a result. I think you mention in your presentation, it is about a two-thirds, one-third split in terms of money that comes from the government as opposed to that which is self-realizing. Is there a sense that that ratio will change with the new ability to bring in revenues?

Mr. Hildahl: When we took over as a board, we brought in new management: Bob Sochasky, Laura Proulx, who is our new financial person. They spent the last four years straightening out our revenue streams. It is because of that that we have moved from $200,000 a year deficit in the nineties to, I should not say it out loud, but we have made significant surpluses the last couple of years.

I do not know how much upside there really is. You know, our primary mission is to support culture. It is to manage a world-class facility. When I say we took money out of it the last couple of years, I also want to say that, with working with the department, we are reinvesting the money we have made in our sound system because the sound system had not been updated and the sound board probably dates back to when I was still young.

So I am not anticipating a model where we get down to 50-50. I think we are hoping to have money to continue to reinvest in our product, but I think that my board would fire me if I started to promise to run it as a profit-making business. I think that really we have to keep focussed, that our primary purpose is to maintain a world-class facility for the arts in Winnipeg.

So I think our management is doing a great job about maximizing, but I am not going to be out there competing with a bid. I am a doctor. We are not business people. We are not trying to get into competition with the private sector.

I think our real task is to make sure that our employees, right from the top and right down to the bottom–and you will appreciate the kind of turnaround we did in there. We had to get buy-in, not just from our managers, but also from the people who clean, from the people who do our parking. You know, you have to get buy-in through the whole organization. So, in that sense, I think we got buy-in. Bob probably comes forward now, and in the first year every month he had an idea to make us more money, now maybe every three months. We are in that kind of a cycle.

Mr. Chairperson: Any further questions from committee members? Seeing none, thank you, Doctor Hildahl, for coming forward this evening, for your presentation. Good evening.

That concludes the names on the list of presenters I have before me with Bill 9 this evening.

Are there any other members of the public who wish to make a presentation to Bill 9? Seeing none, we will close public presentations on Bill 9 and proceed to Bill 38.

Bill 38–The Residential Tenancies Amendment Act

Mr. Chairperson: Bill 38, The Residential Tenancies Amendment Act. We have registered to speak, the first individual would be Martin Boroditsky, private citizen. Please come forward, sir.

Good evening, Mr. Boroditsky.

Mr. Martin Boroditsky (Private Citizen): Good evening, sir.

Mr. Chairperson: It has been some time.

Mr. Boroditsky: Yes, it has been a while. How are you doing?

Mr. Chairperson: Mr. Boroditsky, anytime you are ready to proceed, you may start.

Mr. Boroditsky: Thank you very much, Mr. Chairman. Good evening, members. My name is Martin Boroditsky. I operate Broad Range consulting, and I work for clients that include the Province of Manitoba Department of Culture Heritage and Tourism, film and publishing interests in Los Angeles and Vancouver for live event promotions across North America, and as a legislative and privacy analyst in Manitoba and British Columbia.

A rental property owner I know came to me two years ago with concerns about the practices of the Residential Tenancies Branch when it came to the subject of acquiring a correct rent roll. He required an improved rent roll to ensure he could sell off his apartment block. This is a standard part of the due diligence process required by an interested buyer. His observation was that landlords like him were being put in a position where small technical breaches of the act were being used by RTB to create a situation where large sums of backdated refunds were demanded before a rent roll would be approved. In his case, even though his rents were lower than any other comparable block in the West Broadway area, he was being accused of having gouged the tenants on their rents. Worse yet, he would be liable for two years of so-called overcharges incurred by the property management company he had bought the building from, even though he had never profited from the collection of these so-called overcharged rents.

I thought this all sounded strange. It is not like legalized extortion, but then he said that the RTB told him that besides requiring him to refund monies to his current tenants, he had to try to find tenants who had moved out. And if he could not find those tenants, he had to give their refunds in trust to the RTB. His problem was magnified when RTB told him the rents had to be rolled back to the last know approved rent which was 1987. Let me repeat that for all of you. He was being told that his rent was going to go back to the amount charged 15 years ago. He was told he had to repay $40,000 in refunds.

This, I thought, was impossible for any agency to impose on a businessman, as that rent level would result in the bankruptcy of the building and the tenants would end up tossed onto Broadway. But that was not all. The owner who approached me said he did not believe that any of the money he was being told to place in the hands of the branch would ever find its way into the hands of the intended beneficiaries, the old residents of the apartment block. I made a few suggestions to him about the need to conduct a record search for rent rolls, but what really got me interested was the question of what would happen to all that money landlords were being told to give in trust to RTB.

I filed two Freedom of Information requests on October 7, 2005. As you can see, the response to the requests–I just want to explain–is attached to the end of my speech. As you can see, I asked in one application for statistical information from RTB about the number of orders issued mandating repayment of overcharged rents from 1992 to 2004, the number of appeals of those orders and their disposition on appeal, and the number of cases where the director used his discretion to amend, forego, or otherwise change an order, or the decision to issue an order.

I wanted to find out how often this kind of order was made, how often the order survived the appeal process intact, and for any indication the director used the discretion allowed him in the act to vary or change orders that, based on the case brought before me, would create a hardship for both landlord and tenant if they were imposed.

I though that such tracking of the activities of the director was routine. I learned it was not. The response I got on November 5 said, "The Department of Finance does not compile statistics/information on the requested items."

In my second application, I asked for the dollar amounts of overcharged rents returned to tenants, and for the dollar amount of such monies not refunded to tenants directly and deposited by RTB into whatever fund, such as a consolidated fund or damage deposit fund. I was looking for statistical information to measure the economic impact in our community of the overcharging of rents by landlords.

To hear landlords tell the story, RTB tells them tenants are being gouged for many thousands of dollars each and every year. RTB responded that they have no statistical record of the dollar amount landlords are ordered to repay tenants. RTB said they had no record for tracking refunds made by landlords directly to tenants to satisfy those orders, but, incredibly, they also admitted in writing that they cannot account for the exact amount of overcharged rent money RTB itself has refunded to tenants from the trust fund to satisfy those orders.

To be clear, RTB says they do not compile records of how much overcharged rent is ordered to be owing, or is actually refunded to tenants from any source, be it from RTB coffers or from landlords directly.

***** (19:00)

I called the writer of the letter, Erroll Kavanagh, and asked him if I should go to the Auditor General to ask why RTB did not keep track of the disposition of monies refunded under order, or voluntarily, and, particularly, rent refunds that were held in trust for tenants. I told him that my own experience as a government contractor was that meticulous records were required to be kept and I could not understand how RTB said they do not keep statistics to allow for the public to assess the impact of the legislation.

Kavanagh suggested that I meet with him and the director, Roger Barsy, to perhaps clarify my questions and their responses. I attended a meeting just before Christmas with him, and I explained, all I am trying to do is track the dollars as they flowed from out of the pocket of the landlord to their trust fund and, finally, to the tenants it was collected for.

By the end of the 90 minutes, my head was reeling. Here was the director telling me that landlords were always in agreement with the amounts they had to repay, that if they appealed they learned why they were wrong, that the system was fair. This is a sign of a bureaucracy that cannot see past the end of their own desks. They have no accounting for how many dollars are turned over by landlords to RTB for security deposits, for overcharged rent or for any other specific financial category. It goes into one big pot for RTB to hold in trust for two years. This is considered an acceptable accounting practice. To find the information I wanted would cost me $100,000.

There is no way to measure the performance of RTB or the functionality of these laws without knowing how many landlords are paying, how much they are paying, what purpose they are paying the monies for and how much money actually gets back to the tenants. I asked directly, "What effort does RTB make to get the trust monies for overcharged rent back into the hands of the intended recipients?" I was told, straight to my face by the director, "None." They tell landlords, "You have to give us the refund money for tenants you cannot locate." Landlords are told, and I quote, "if we are unable to locate the tenant," the money goes into the consolidated fund, yet RTB admitted they conduct no outreach, no advertising or other methods to communicate with or find tenants on whose behalf they hold monies owing. They expend zero dollars and zero effort and admitted it. I asked the director, "How is this possible?" He claimed they had no money to pay for one of their 55 staffers to trace intended recipients from their trust account, that the taxpayers would not accept such a cost. Then Roger Barsy tried to convince me The Privacy Act somehow prevented him from informing tenants not yet located of their windfall.

Given the lack of commitment by RTB to get the money to the tenants, I am very concerned about what I next discovered. By the end of the meeting, I learned the security deposit fund is actually capped at $30,000 that is the required minimum. I was originally told that after two years the overcharged trust monies were deposited to the security deposit repayment fund. However, they did not tell me the whole story, and I learned the truth only through persistent questioning. Any monies that come out of trust after a two-year hold that were not refunded to tenants, and that if the positive would exceed the

$30,000 cap or, instead, put into the so-called education fund, the truth seems to be that all the money emerging from trust, above the $3,000 to $7,000 annually required to prop up the security deposit fund to the $30,000 level goes into the RTB education fund. So, in fact, RTB officials have resources to underwrite a search for the tenants they claim to be protecting for having been gouged for rent. They just do not bother.

RTB lied to me about it when I first raised the question and said they did not have any resources to find the disadvantaged tenants. Maybe $5,000 a year goes into the security deposit fund, and no one will tell me how much more money ends up being siphoned off into the education fund, what it does, who is hired as a result of the activities of the education fund. I want to know how much money has gone into the education fund after tenants did not materialize to claim the refunds they never knew they were entitled to.

Well, I wonder what else should RTB be doing with this education fund money, if not educating current and former tenants that there may be money held in trust for them, waiting to be claimed. I have asked for further data on their funds, the amounts they have received in trust and how this money has been moved around. In five months, I have not gotten a single phone call or letter, despite my repeated reminders I am waiting for answers. I can only conclude that the concept of protecting tenants has been used as leverage to strong-arm landlords into forking over monies under false pretences.

If I collected a supposed debt owing citizens and did nothing to get it back to them, but instead waited until the time limit expired so I could put it in my bank account, I would expect to be charged with fraud. The act and regulation should function to protect tenants from being gouged, not used as a bludgeon to force landlords to repay monies that, in some cases, they never pocketed on the premise that it is for tenants who will never receive it, all as a pretence to prop up a slush fund out of the government's control. The proposed amendment to grant the director discretion on matters of approving technically incorrect rent increases is a smokescreen, designed to cover up for the bullying attitude and other dubious tactics of the past. He has always had this discretion, and did not use it, preferring instead to grind landlords into secretly funding RTB's mysterious education fund.

I cannot help but think that if Walter Trafton and Gateway Enterprises had not fought with them over their abuses, and that I had not conducted my inquiries and FOI filings, RTB would never have been forced to admit their interpretation of the notice of rent increases was unfair. My experience has been that they also do not respect the right of landlords to view their compliance files, nor do they conduct any due diligence in searching for old rent rolls, whether in their own files or from CMHC. It was only after Mr. Trafton conducted his own FOI request on CMHC that the records emerged, saving him over $16,000 in rent overcharge refunds. Had he paid the original $40,000 demanded, he would have had no recourse and been ripped off for $32,000.

This lack of proper investigation and documentation by RTB must also be addressed by legislation, as they clearly have no respect for their responsibilities to the landlords or tenants of Manitoba.

Mr. Chairperson: Thank you, Mr. Boroditsky. Questions of the presenter? Mr. Minister?

Hon. Greg Selinger (Minister of Finance): I will wait for others.

Hon. Jon Gerrard (River Heights): What you provide us with is some rather startling information on practices. What I would ask you is what changes do you think are critical in terms of the act so that these sorts of practices can be drastically improved upon.

Mr. Boroditsky: What changes, Doctor Gerrard, can be made to any act when the bureaucracy, and this is something I have encountered not only in RTB, but in other government departments since my return to Manitoba, when they are so entrenched? They do not care about The Privacy Act. They do not care about due process. They do not care about what the Ombudsman says. They do not care about what Mr. Selinger or Mr. Robinson tell them about adhering to these acts. They do what they want.

In terms of the act itself, I think that the act has to ensure that the search is conducted to get the tenants their money. I personally think that if tenants cannot be located, after that two-year period, if the property owner who the money has been taken off of, if they still own the building, that money should be refunded to them so they can put the money

specifically into safety improvements in the property. With the example of the property on West Broadway, let us say he still owns the building in two years. There is still $5,000 or $10,000 or $15,000 kicking around that was held in trust. Give it back to the landlords. Let them put up better lighting. Let them improve the landscaping. Let them clean up their properties. Let them put new locks on everybody's doors.

It makes no sense to take this money. That should be used to benefit the community and the tenants. Instead it is being used to fund something that, in five months, nobody will tell me what it does or what they do with the money, let alone how much money has gone into it. There are better uses for the money than to fund the bureaucracy. But how you solve that legislatively, you ladies and gentlemen are more so the experts than myself. Personally, I think the act could be amended to provide for a procedure to search for tenants. I think there is already the proposal to amend the act to provide the director with discretion for cases where somebody is about to get hammered when it was not their fault or where the increase was not bad.

As a matter of fact, I will tell you members something that I have stumbled upon that I have not done anything with. The Health Sciences Centre operates a couple of residential apartment blocks on Emily Street, by the hospital there, right on Notre Dame. Their forms are not in compliance. I have seen their rent increase forms. Do you think they have a hope in hell of finding every doctor, nurse and student that has gone through those buildings in residency in the last 15 or 20 years? No.

I have done some mathematics. You would end up with $75,000 or $80,000 that somebody, I do not know who, Minister of Finance or Minister of Health (Mr. Sale), has to give money to Health Sciences to give back to RTB in the end? That is what that would amount to because they are never going to find all those doctors. They are practising in Thailand or in India or in Africa, or they are saving lives in Norway House or Cranbrook or someplace. You are never going to find all these doctors. But this technical breach of the act where they nail people because the notice did not say, "If this notice does not give you 90 days' notice it is invalid," even though the person was given more than 90 days' notice, is being used by the bureaucracy as an excuse to pad some fund. There is no other conclusion I can draw because I can tell you their answers were either incomplete or evasive.

Mr. Kavanagh admitted to me, when I started asking him, well, how do you come to this conclusion? What do you mean you do not keep track? He agreed that it was not really satisfactory, and he is an accountant. It was honestly based on Mr. Kavanagh's sincerity that I did not go to the Auditor General with this. I mean, he is obviously very busy with bigger matters, but it does not make sense to me that a citizen cannot go to a department and ask, "You got money from so-and-so," not from so-and-so in terms of a person, but, "You got this money, where did it go?" It makes no sense.

As a researcher, trying to figure out how much overcharged rent is out there, are people being ripped off in the community for millions of dollars a year or millions of dollars over five years in overcharged rent? That is the track I was on, thinking maybe I am onto something here. Maybe this needs a different kind of legislative correction because it is so rampant. I could not even get to step one in my first theory because what I found was such a curve ball.

***** (19:10)

The act, perhaps, has to be amended to ensure proper due diligence is required of the branch, that they conduct it, that when they say that records were destroyed, they really were destroyed. You know, I ended up taking on Walter Trafton as a client, and I solved his problems in very short order. If he had caved in at first, out of desperation to sell his building for $400,000, if he had just caved in and signed the cheque for 40 grand, Mr. Barsy told me that if somebody signs over money and, you know, you get new information later, they could not have refunded him his money from any source. They could not have done anything to correct him, and he would have been beaten, by their own admission today, because he only ended up paying $8,500. He would have been beaten for $32,000. The majority of those dollars would have gone into trust. The majority of that money would certainly–because nobody is just stumbling in off the street to RTB going, "Hey, am I out some money from my old landlord?"

It did not strike me as being too difficult for RTB, and this was the excuse they had. I was flabbergasted. My reputation around this building for

having some common sense is well known, as is the reputation of many of you members. Is it not common sense that RTB pays $400 to the *Free Press* and *The Winnipeg Sun* and runs an ad that says, "Hey, if you lived at 123 Gerrard Street, or 345 Robinson, or 526 Reid, we may have monies owing to you from your tenancy there. Please contact us." That does not violate The Privacy Act because the owners of those buildings refunded the money. You are not exposing any great public secret.

But, meanwhile, Joe Six-pack out there who maybe was gouged for rent, maybe there is a case there. Well, they could use the money and it is sitting there, and RTB holds it and admitted to me they did nothing to get it back to Job Public.

I have got to tell you it disturbed me. It really disturbed me that they could say this to my face and think that I was going to accept this as right, as a justifiable practice or as good public policy. If you have to do the thinking for these bureaucracies, go ahead and do it because my experience with this–like I say, I thought I was onto one thing, and I stumbled into something where I cannot estimate how much money has gone into that education fund. But it is clearly not what the act was intended to do. That is very obvious.

I have met other landlords who have been put in the same position of pay so they can get a rent roll and sell their building, or end up going through a very demeaning process, because what I saw at RTB in the way that the landlord, Mr. Trafton, was talked to, was not professional and not a good way of developing a positive relationship between the department and the agency and the public as a whole. Among landlords, not the PPMA necessarily, but small landlords, there is a perception that RTB are bullies, and this should be addressed.

Mr. David Faurschou (Portage la Prairie): I appreciate your concerns without question and have had opportunity to question the minister in committee of Estimates. It drew concern by all persons who were on committee at the time of hearing some of the requirements the RTB calls upon rent landlords and yet no accountability. To have the rent roll records go missing and not have them accountable is of significant concern. So you have proposed through your presentation here this evening a greater disclosure and annual auditing and that all monies that are controlled by the branch should in fact be accounted for.

Floor Comment: In essence–

Mr. Chairperson: Sorry, sir, I have to recognize you first for the Hansard.

Mr. Boroditsky: In essence, although I had not thought of it in those terms, sir, yes, whether it is an annual audit–you know, I leave a lot of the expertise, again, up to the ladies and gentlemen of the House. But it just makes no sense to me that they tell me, "Oh, it goes into one pot and we do not know how much was for a rent refund and how much was for a security deposit or how much was for whatever else."

That is impossible in this day and age with what we have seen in Question Period on TV every day for the last two or three months around here. That is impossible. But it is this kind of slack sense of responsibility among the bureaucracy, and I am starting to understand, you know, ministers are very busy. They cannot hyper-analyze everything, but in the end it is very embarrassing to the members of the House, whether they are ministers or in opposition, that this is what you end up having to spend your time on, these bureaucrats that have common sense but do not exercise it because either it is going to rock a boat or it is going to discontinue their funding for the education fund, or I do not know what else.

An annual audit, I think that is a great idea. I think at the end of the two years, as I said, if they conduct a search for tenants and you cannot find Mary Smith and give her a refund, government, the House as a whole, should seriously consider what benefit to the housing stock can these monies do. Because right now what you are doing is you are taking money for rent overcharges, and when you do not find the people, you put it in the security deposit fund. This is like taking something that is intended to compensate one guy who was ripped off one way and then using the money to compensate somebody else who was ripped off a different way.

That concept was very bizarre. Originally, I started looking at that and I could not even think my way through how stupid that was. "Oh, well, you were robbed, Mr. Gerrard, so we are going to get some compensation money for you." Then we cannot find Jon Gerrard, so, "Mr. Doer, your car was stolen, here is some money." That does not make sense to me. I am sure somebody was well-intentioned. Maybe, if this was written in the seventies or eighties, it made sense then, but, in 2005, that

premise, I am not so sure is a hot idea, either. It seems ludicrous, honestly, but on top of that, once the fund is capped at 30 grand, you have got a lot of money bouncing off the top of that fund, going somewhere where I cannot get it disclosed where, for what or for how much.

Mr. Faurschou: I do want to thank you for your due diligence in this regard. I am certain that this has been enlightening for all committee members here this evening.

Mr. Chairperson: Mr. Boroditsky, thank you very much.

Mr. Boroditsky: Thank you, Mr. Reid.

Mr. Chairperson: Next presenter we have on our list here this evening for Bill 38 is Walter Trafton, Gateway Enterprises. If you are here, sir, please come forward. Good evening, sir.

Mr. Walter Trafton (Gateway Enterprises Ltd.): Good evening, Chairman.

Mr. Chairperson: Do you have copies of your presentation?

Mr. Trafton: I would not be able to give my presentation at this time because of my health, but I would like my co-ordinator/producer to do the reading for me. I presently have a heart condition and this is not something I should be dealing with at this time. Is that acceptable?

Mr. Chairperson: Is it the will of the committee to let Mr. Boroditsky make the presentation on behalf of Mr. Trafton? Agreed? *[Agreed]*

You may proceed, then. You may proceed, Mr. Boroditsky, on behalf of Mr. Trafton, when you are ready, sir.

Mr. Boroditsky (On behalf of Mr. Trafton): Thank you, Mr. Reid.

"My name is Walter Trafton. I own Gateway Enterprises Ltd., and have owned a number of rental properties in Winnipeg. Previously, I worked as a civil servant with the federal government. I have taken pride in restoring distressed properties, offering clean accommodation and fair rents. I have never been subject to any order from the Residential Tenancies Branch, or other agency.

"In reviewing the proposed amendments to the act, they do not address the past wrongdoings of RTB and the abuses that have been imposed on dozens, if not hundreds, of landlords like myself. This includes falsely asserting records of approved rents were destroyed, having no evidence a search was ever made for the records, ignoring the record found after I made a simple search request of CMHC and refusing to allow me to see my file and evaluate the conduct of the case.

"I wanted to sell my apartment block on West Broadway, and in November 2002 went to RTB to get an approved rent roll. At first, Ernest Gagnon**,** the RTB manager, claimed the last known rent roll meant I owed $40,000 in rent refunds. The last known approved figures in his files were from 1987. He did not care that it would bankrupt me or make my tenants homeless. When I protested that in the 1990s the building was subject to a federal RRAP grant and that CMHC had to have records of the approved rents from that time period, he told me and my lawyer the records had been destroyed. Yet later Gagnon managed to find CMHC-approved rents from 1992 in the RTB files somehow. He had the nerve to insist I still had to pay over $25,000. Since many of the proposed refunds were for tenants from the 1990s, eight years or more after I bought the building, he would have to accept our monies for them in trust. I engaged a consultant, Martin Boroditsky, who was already conducting an FOI inquiry. He found that RTB, deliberately, did not compile any statistics that would allow for the Legislature to examine how many landlords were affected, and how much money was demanded from landlords like me, under the pretence of searching for the tenants whom the money was collected in trust for.

"Meanwhile, I continued to fight RTB about the rent refund amount, and was treated with contempt and disrespect. Then, on December 2, 2004, Gagnon wrote, claiming he had made one more attempt to get information from CMHC. Without addressing why he previously said the records were destroyed, he sent yet another set of calculations on a Schedule A, claiming I still owed over $20,000, all without sending the CMHC records he had uncovered. I made my own application for CMHC for the records for this building and learned they had no record of any inquiry by Ernest Gagnon before October, 2004. There was no record anyone had ever been told the records were destroyed. I learned they had a chart of

all approved rents from 1988 to 1994, and, based on that record, the last approved rents were more than I was charging 10 years later.

***** (19:20)

"Remember, he had said the records did not exist, yet Gagnon still ignored this material in his calculations when they were found. I also got one document from CMHC he never asked about, which proved that hydro was added to the rents in 1994, the cost of hydro, which was a sticking point in the previous discussions with RTB about an approved rent. Here was the proof of approved CMHC rents supposedly destroyed. Here was the proof hydro was included in the rent. Here was the proof the rents I charged were less than what was the legal threshold. Yet Gagnon continued to try to extort over $20,000 from me in the guise of making me conform to the law.

"Mr. Ernest Gagnon told me that even though the monies were calculated and received by RTB, tenants would be required to produce massive documentation, including rent receipts bracketing the period of residency, to get their money. He wrote to me, quote, 'If we are unable to locate the tenants.' Yet his boss, Roger Barsy, told my consultant, Mr. Boroditsky, that RTB did nothing. Absolutely no effort was made to find the people whom I was to fork over refunds for. They had no intention of finding the tenants whose rent refund I was to hand over to them. They wanted to make tenants jump through bureaucratic hoops to get their cheques. This is, in my opinion, criminal behaviour all fuelled by arbitrary decisions, poor recordkeeping, no proper record searches being conducted, all the while abusing me for asking questions, wanting answers, and searching for the truth.

"At least two offers to buy my building walked away, costing me thousands of dollars, huge lawyer's bills, severe stress, and even a trip to the emergency room for a heart problem because RTB refused to approve a legal rent roll and instead wanted me to pay thousands of extra dollars I did not truly owe destined for their secret slush fund.

"Many victims like me were small businessmen and women and did not have the clout, deep pockets or connections like members of the PPMA to cut deals. I think it is possible that the amount of money RTB kept for their so-called education fund may have exceeded $50,000 a year based on a mere 10 landlords a year being bullied into having to give RTB $5,000 each to hold in so-called trust. For how many years? It goes back to the 1980s at least. Millions of dollars may have gone into this bottomless pit.

"The proposed amendments do nothing to ensure RTB is required to search for tenants to get them their rent rebates. It does nothing to ensure proper due diligence is done by RTB before they start threatening landlords with orders and demanding outrageous sums that, if not paid, basically mean that we cannot sell our holdings to interested buyers. It is like RTB knows that in a $400,000 sale, someone, whether it is the lawyers, the real estate agents, the buyer or the owner will fork out their blood money to get the deal done. This is not right.

"I am also aware that RTB supports their managers when they ignore the requirements of the privacy legislation. I was obstructed in my right to examine my files for accuracy and completeness. I certainly had good reason to ask and was treated like a troublemaker. I asked repeatedly to see a copy of their access policy and got no response.

"It is no wonder Roger Barsy supported Ernie Gagnon in fighting my attempt to see my file because Martin Boroditsky and I had uncovered their scam. When I was finally allowed to see my file, Gagnon had no idea we had gotten CMHC records from Ottawa and he demeaned and insulted me. "What do you know about CMHC?" he thundered.

"I then found out, when I got out of the meeting, Gagnon had violated my privacy rights the day before. He told the lawyer for an interested purchaser that I owed $20,000 and an order was going to be issued, so either I would pay or they would have to pay if they bought my block. That lawyer called my lawyer and said this served to quash their interest.

"I landed in the hospital when the $425,000 offer disappeared. When I went to the minister's office the next day, I was told quote, 'Mr. Barsy said Mr. Gagnon had been perfectly fair and that he was very co-operative with you and that the file was impeccable.' I immediately gave a transcript of the purchaser's lawyer's phone call to the minister's office saying Gagnon had told him an order was imminent and they were pulling out their offer to purchase.

"I filed a formal complaint, as you can read in the attached e-mails. Alex Morton of the department has refused for months to give me a clear, transparent investigation process, insisting instead someone named Mr. Bryans will look into my complaint, based on totally unknown and undisclosed criteria, will be making a process up as he goes along, and will give me a censored report when they are ready.

"It may also interest the members to know that when Gagnon was replaced on my file and it was reviewed, the CMHC records were accepted as accurate and my total rent refunds were not $40,000, not $25,000. They were $8,500. This could have been done two years ago if RTB were staffed by honest, competent people.

"Lastly, Bill 38 does not address the most obvious injustice I have ever seen that if someone buys a building and the previous landlord was in non-compliance with the regulation, we, the new owners, are liable to pay for the two years of so-called overcharges. Let me be clear. Even though the RTB knows exactly who owned and sold the building and who pocketed these supposedly illegal rent monies, innocent parties who did not profit from this conduct whatsoever or have any knowledge of it are required in the act to pay.

"The provision that we could pay and take the old landlord to court to recover was a sham. That provision made no consideration for the legal fees and time incurred for us to recover those monies from the previous owners. When, like myself, you want to sell your property and are told to pay for the guy I bought it from with $400,000 or more on the line, what choice are we faced with? Yet the money would have ended up in a slush fund. How can any member of the House say this is a fair practice?"

Mr. Chairperson: Thank you, Mr. Boroditsky, on behalf of Mr. Trafton. Mr. Faurschou, a question.

Mr. Faurschou: I would like to ask Mr. Trafton, in regard to the scenario to which you have obviously lived, you say that the potential purchaser of your property was made aware that they would have to pay up.

Floor Comment: They were being made aware by Mr. Gagnon–

Mr. Chairperson: Mr. Trafton, I have to recognize you first, sir, to allow the Hansard recording.

Floor Comment: Excuse me?

Mr. Chairperson: I have to recognize you first before you answer to allow the Hansard to turn on your microphone. Mr. Trafton?

Mr. Trafton: Okay. What did happen was that he called the office. The gentleman who was to purchase my building called the office to speak to the manager there, a Mr. Gagnon, to give him information that there was money owed on the building, that there would be a $20,000 payback and, possibly, an order issued. He called my lawyer and, of course, the deal was quashed because of that alone.

The following day we asked him a question, did he speak to this lawyer, I will not give his name, and he said that he did not. That consists of our complaint to the minister's office as well.

Mr. Faurschou: Well, I am wondering, were you afforded the same courtesy when you acquired the property, that these monies were potentially owed.

Mr. Trafton: At that time, no. I did not know there were any monies owing when I–it was a foreclosure when I took over the building, and then there are different regulations surrounding foreclosure.

Mr. Gerrard: I am sorry to hear what you have been through. I hope that the government will provide you with an apology for what you have had to suffer.

I would ask the same question asked of Mr. Boroditsky, and that is in your recommendation, based on the experience you have been through, what do you see as the critical changes to the act that now we need to make to ensure that this sort of thing does not happen again.

Mr. Trafton: We have to be fair about gathering information like that. The information they give to the landlord or tenant should be accurate information and done in a timely manner. For instance, information that should have come from CMHC should have been gotten in a reasonable length of time, not a two-year period. When information does not come forward and the person, like myself, has to gather the information, that maybe is not the right process. That is probably the job of the government. But in the end, they are still asking for money that they cannot really prove that I owe. So it is a complicated system that I cannot give a two- or three-minute answer to.

Mr. Gerrard: Thank you.

Mr. Faurschou: Let me ask then, Mr. Trafton, are you then and now 100 percent satisfied with the $8,500 that you have been told is due and owing, and that figure is completely documented and accurate to the best of your knowledge?

Mr. Trafton: No, I am not entirely happy with that situation, but it had to happen because I had a buyer at the time. I had to hire a different type of lawyer to deal with this, and Mr. Gagnon was taken off the case. Mr. Barsy is on a type of sick leave or something. I did not get a chance to speak to him, so my lawyer did the best he could. They just did not want to listen to our presentation and somehow came up with an $8,500 figure. It goes back to what Martin Boroditsky had said earlier on, that whatever figures that they come up with, you just deal with them. They do not have to justify them. They just tell you what they are, and if you do not like them, well, I guess you do not sell your building. That is basically what happened.

So I have a complaint with the minister regarding the entire process and what I went through, and paying attention now because the deal has been completed and so on, but there is still a lot of background. There has been no response from my complaint. They will not tell me what the procedure of the complaint is, and how they are going to go about it, and what I am going to hear about it, and that is where I am at right now.

Mr. Goertzen: Thank you for your presentation. I think that you have probably brought forward information–well, I know you have brought forward information that not all of us have fully understood before. Certainly, I know I have not, but the minister has been listening attentively, and you have a complaint in with the minister's office, I understand you have just mentioned. I certainly hope and would ask the minister that a response comes forward quickly, and one that is appropriate and satisfactory because I am sure there are other people who have gone through, or could go through, the same situation, and it seems to need addressing quickly. Thank you.

Mr. Trafton: I have been asking for it for the last four months. It just does not want to–they say they will appoint somebody to look into it and let us know the results without telling me how they are going to do it; when they are going to do it; if they are going to do it. There is no information available. That is the part that concerns me.

Mr. Gerrard: You have asked, it would appear from the documents you have provided to the Minister of Finance (Mr. Selinger), for legitimate information, but you do not appear to have received back reasonable responses in terms of the procedure and what needs to be done and so on. Can you give us a little bit more of an explanation? I mean, it sounds very puzzling. We would expect that the Minister of Finance would be on top of this and be able to provide this sort of information very quickly, and it is puzzling for us to hear this kind of problem arising.

Mr. Chairperson: Mr. Trafton, did you wish to respond, sir?

Mr. Trafton: Well, the main problem is that they want me to sign off and allow them to continue and involve other people in the investigation process, and I will not do that until I find out what the actual procedure is. That is the problem we are having at this point.

I do not know how it is going to resolve. A number of e-mails and letters went back and forth. But they still insist they do not have to give us a procedure. Maybe one does not exist. They are not saying that but I would think there should be.

Mr. Chairperson: Time has expired, but I will allow one short question, if we can keep the answer and question both short, please.

Mr. Faurschou: I just want to confirm that you say it was $8,500. Now, have you signed off on that figure, or that figure has been explained to you, or is this, you are still waiting for an explanation? I just want to understand that completely.

Mr. Trafton: That procedure is over with, and that deal has been taken care of. The $8,500 has been explained, not to my satisfaction, but that is the way the deal had to go in order for the deal to go.

Mr. Chairperson: Thank you, Mr. Trafton, for your presentation here this evening, sir.

Mr. Trafton: Thank you.

Mr. Chairperson: The next individual we have registered to speak to Bill 38 is Shaun Parsons,

Professional Property Managers Association. Good evening, sir.

Mr. Shaun Parsons (President, Professional Property Managers Association): Good evening.

Mr. Chairperson: You have copies of your presentation for committee members?

Mr. Parsons: I am sure they have a copy.

Mr. Chairperson: One moment. We will distribute your presentation and then we will proceed.

You may proceed whenever you are ready, Mr. Parsons.

Mr. Parsons: Sir, I would like to ask that my counterpart, the vice-president of the Professional Property Managers Association, be allowed to stand with me in order to answer your questions in due time. His name is Avrom Charach.

Mr. Chairperson: Is it the will of the committee to allow an additional person to assist with the questions? Agreed? *[Agreed]*

You may proceed.

Mr. Parsons: Sirs, Mr. Chair and the honourable members, Professional Property Managers is 21 years old. It was established over garbage issues some time ago. We directly represent 57 000 apartments in the province of Manitoba.

The position of the association is that the rent control issue needs to be significantly reworked. It has, and looks to be, not keeping pace with the times. It is our position that we need to open up that thing up for a full review.

Mr. Vice-Chairperson in the Chair

Having said that, the PPMA appreciates being involved and the co-operation shown by Alexandra Morton, Roger Barsy and Laura Gowerluk, who worked diligently with our organization in an effort to bring forward clarity with the intent of amending The Residential Tenancies Act. Moreover, the members of the PPMA have been sensitive and measured towards the minister's, Mr. Selinger's, need to provide a balanced approach with respect to these amendments.

For the most part, our association, our members of our association, are not objecting to Bill 38. However, there is considerable concern where an act may be amended to include new legislation supported by absent regulation. Therefore, it is impossible to fully support Bill 38. Consequently, the Professional Property Managers Association will remain guarded, understanding that the legislation is required, prior to setting in motion the development of the regulation, which will steer the outcome of voluntarily vacated, and rehabilitation of distressed, properties.

We have a list of concerns, gentlemen. Compensation for undue delay, abatement, there is no policy to discern the compensation or values at this point. Again, getting back to the fact that that means legislation to develop the regulation, there is the advocation of subsection 1, which is voluntarily vacated units, the rehabilitation of distressed units, there is no regulation at this time, so we are unclear as to where this may go after, or if, this amendment is made.

Incorrectly administered by this government is section 91 of The Residential Tenancies Act. This is a program wherein a landlord makes an application for above guideline. It is taking in excess of 12 months to administer and get a decision on above guideline. During that time, once a guideline is made known to the government, to the Residential Tenancies Branch, a letter has gone out to our tenants. The letter advises the tenants of our application. In the past, two years ago, the act was administered in such a way as that, once a decision was rendered by the director with regard to successful challenge by tenants of the above guideline application, a tenant could give two weeks' notice, or 14 days and terminate their lease.

Now, the change has now allowed tenants to take–or to, once the notice has been provided to the tenant, the notice which is now issued, the tenant can give two months of notice and terminate the lease at any given time up until a decision is rendered in the 14 days period. So we are seeing decisions, as mentioned, taking 12-plus months and during that period of time, a tenant can give us notice. It sort of fundamentally erodes the issues of having leases. Attached to your submission is a letter I submitted to the Residential Tenancies Branch last year, outlining our position and the reasons why we have made that submission and why we think it is incorrect.

In conclusion, gentlemen, the PP may respectfully solicit assurance from this government and the minister's office that it will continue and increasingly use the Professional Property Managers Association as a resource in an advisory capacity, respecting the apartment industry and related matters in an effort to bring forward meaningful change to all stakeholders. Thank you.

Mr. Vice-Chairperson: Thank you, Mr. Parsons.

Mr. Selinger: Thank you, Mr. Parsons, for your presentation and thank you for working with my office and the officials in the going-forward on this legislation. I noted in your conclusion you wanted to have some assurance that you would be consulted in the development of the regulation. I want to assure you that you will be, in fact, consulted, and your organization, you and your organization, will be consulted in the development of the regulation, as we have done in the preparation of the bill, to make sure everybody understands what is going on.

Mr. Parsons: We respect that. Thank you. Yes.

***** (19:40)

Mr. Faurschou: Yes, I have a couple of questions.

I find within the act here reference to compensation for unreasonable delay. There have been concerns raised, as well, that there is no identification or definition of the deficiencies which need to be compensated for. We are all aware that there is a great deal of interpretation for repairs, from a cosmetic crack in the wall to a leaking toilet, for instance, that could cause structural damage. Is this a concern of yours in my reading of your presentation tonight?

Mr. Parsons: Sir, I would like to defer to Mr. Charach to answer that question as he is privy to more detail on that.

Mr. Vice-Chairperson: Mr. Charach, go ahead.

Mr. Avrom Charach (Vice-President, Professional Property Managers Association): The short answer to the question is that we had great concern at the original drafting stages that this may not be workable. However, the way it has been presented appears workable. The only concern we have at this point is not that there will not be due process to decide when damages should be considered such that compensation is granted. Our only concern is there appears to be no guideline yet as to what value of compensation will be granted.

So we are not concerned with the way it is presented in the wording here. We are concerned, as we said earlier, and as the minister has assured us we will be involved in helping with the regulations, we are concerned that, when the regulation point comes, that it is dealt with fairly. We hope that it will be.

Mr. Vice-Chairperson: Mr. Faurschou, on a supplementary question?

Mr. Faurschou: Yes. On this compensation for unreasonable delay, the development of the regulations and that, there are other acts of the Legislature that have been written for passage by the Legislature that require public consultation to take place regarding a regulation prior to its implementation. Are you comfortable with the minister's commitment tonight, or are you looking to the minister to have that fixed in the legislation, that regulations will seek out public consultation prior to implementation?

Mr. Charach: I think that the government has shown good faith to this point in working with us. Our only concern is, and we have been assured that they will not stop showing good faith, that they will not continue working with us. But they have assured us publicly that they will.

If other members of the public think that this is important, perhaps they should say that it is important. Again, we represent a fair majority of the rental units in the province and we have members who range from 20 apartment units to many thousands of apartment units. So we do kind of represent the whole gamut from small owner to large owner.

Mr. Gerrard: Yes. I would like to raise a couple of points and maybe you can comment. One is you have said that, you know, waiting more than 12 months is totally unacceptable, and that that would seem reasonable. Can you give us what would be a reasonable time period and could that be put in the act so that this would be, you know, a time when you would be assured that you would get a response?

Second, there have been some concerns raised by Mr. Boroditsky and Mr. Trafton about

the Residential Tenancies Branch. Have you had concerns raised by other members of the Professional Property Managers Association?

Mr. Parsons: Thank you. The answer to your first question is time frame. I think 90 days is sort of the mandated time frame that we have been sort of used to or have been sort of promised into the future. I think that, to date, has not happened. We would like to see it happen for obvious reasons.

The answer to your question is that we have heard of the issues which Mr. Boroditsky has mentioned. I would have to say to you that our members are not affected by that situation. Due diligence is part of what we do. I think that comes with what being part of our organization allows the understanding for.

So, no, I cannot say that our members have experienced that, per se. But I can say there has been much talk of the past. So we do due diligence through requesting, what is it, a rent status report, and that is something your legal side of your purchase should be doing for you. So, yes, that is my answer to your question, sir.

Mr. Gerrard: Just very quickly, in other circumstances in other jurisdictions, I know that the law is sometimes worded to the effect that if there is not a reply in 90 days, then the rent increase is granted. I mean, it would be another way of providing an assurance that you would get the reply within the 90-day period.

Mr. Charach: I will gladly answer that one. That does not seem unreasonable. Again, we have been told that it will be sped up with the new computerized system the government has. We are taking a wait-and-see attitude. That system is two or three months old. We would not be averse to something like that being placed in the legislation, Doctor Gerrard.

Mr. Faurschou: Yes. I would like a little further explanation about the voluntarily vacated units for rehab, or distressed units that you refer to here. That is section 90 that you are referring to–

Mr. Charach: No.

Mr. Faurschou: Or as the notice. I am a little confused as to page 1 versus page 2 of your presentation tonight. Could you please elaborate as to what the "no regulations" point that you have made refers to?

Mr. Charach: The paragraph 91 issue is an issue with the timing. It is a very separate issue. The idea of voluntary vacate and distressed property rehabilitation is the current attempt of the provincial government to reform the rent control legislation and allow for some raising of rents under certain circumstances. They have told us that they are going to work on regulations which will show us that this will be done in a fair manner throughout the province, et cetera, et cetera. The problem is we have not seen the regulations, and, without seeing the regulations, we are not sure what they are going to look like. So they are two separate issues.

But we certainly would like to see the regulations. We certainly would like to ensure that the regulations do not set up a system whereby, perhaps, one geographic region is favoured over another or one type of structure is favoured over another, although with distressed properties, that is a specific type of structure. That is our great concern, is that the regulations will come out and, for the sake of argument, they say that any blue building will be able to do this, but any red building will not be able to.

Mr. Vice-Chairperson: One further question.

Mr. Faurschou: Supplementary to that, then, I ask the question once more. Would you, if the legislation were to be amended to effectively require that the regulations before implementation takes place, be awarded or provided with public input, consultative process?

Mr. Charach: We would not be averse to that. Again, that is something if the rest of the public does not feel comfortable with representatives of the majority of our industry working with government, and I know they work with other individuals as well, including their landlord and tenant advisory committee, which consists of members, some of whom are not members of the PPMA, and some of whom are tenants who have no relationship to us, who work on these matters as well.

The only concern I have, and I am a very pragmatic person, is the more hearings that are held, the longer it takes for things to get done. You know,

I am not averse to having hearings. I am averse to delaying something that probably should have been done 10 years ago and that the government has decided to take action on now. We are happy to be taking some action, although in our opinion not quite enough action yet.

Mr. Vice-Chairperson: Okay. Mr. Parsons and Mr. Charach, thank you very much for your time this evening.

Mr. Chairperson in the Chair

Mr. Chairperson: Brian Pannell? Good evening, Mr. Pannell. Good to see you again.

Mr. Brian Pannell (Housing Co-ordinator, Young United Church): Nice to see you all too.

Mr. Chairperson: It has been a number of years.

Mr. Pannell: It has been.

Mr. Chairperson: Well, when you are serving in the Legislature for a long time, you get to meet a lot of Manitobans. I think you may proceed when you are ready, sir.

***** (19:50)

Mr. Pannell: Thank you for having me this evening. The presentation I am making is, significantly, in my role as housing co-ordinator for Young United Church. I also happen to be on a number of other housing bodies, including being the president of Kíkinaw Housing Inc., an organization partly established by the church. My task this evening is to give you a little bit of background and a little bit of detail about our position with respect to section 140.0.1. I will be not following my text with respect to background, but I will be with respect to the proposed section.

Young United Church has a fairly significant history in housing. When the church burnt and was rebuilt, there were 13 units that were built into it for people with HIV, so there are actually housing units in the building that the church resides in as well. There are probably about 100 units that we are either involved in, planning, managing or assisting in some way at this time, but our office does more than that. We assist both tenants and landlords in the West Broadway neighbourhood to try and make their life easier in some way, so it often means that we are actually moving people out of difficult housing situations, that is usually tenants, and it sometimes means we are helping landlords in difficult circumstances, such as circumstances you have heard this evening in relation to The Residential Tenancies Act. So we play those roles, as well, and then that we have a policy role which you have seen me involved in this evening.

One of our projects, to give you some sense of things, is the Kíkinaw Housing Project**.** In that project, two apartment blocks have recently been purchased with various levels of government assistance for the rehabilitation of those buildings, for which we are very pleased and thankful. This project is designed to take people, really, who would otherwise be in a rooming house situation and give them a greater sense of the possibilities of life. So, instead of having one room and shared bathrooms, these people will obtain a kitchen, a bedroom, living room, washroom, and we will also put in a used computer into the suite. We will have a dental program for these tenants. There will be lots of bells and whistles for the people in these blocks, and we will make sure that most of the units have rent lower than or at social assistance rates, so that all of these benefits come at a rate they can afford.

There will be no drugs or alcohol on the premises. There will be a support program for the individuals living there and eventually it is our hope that we will convert the facilities into a for-profit co-op, so that we can have them acquire an equitable interest in the premises and get the sense of ownership and the sense of control over their lives that ownership sometimes adds to the equation.

So this gives you some sense of the housing basis from which we come, when we are speaking to you this evening. So I would like to turn, then, to the issue of the proposed section 140.0.1, and here I am going to follow my text fairly closely, because I think it gives you a really good picture of the situation as it stands now and I will, you know, take away the mystery and say we are very much supporting the introduction of this section.

Essentially, section 140.0.1 augments the powers of the director of the Residential Tenancies Branch to retroactively waive certain inadequacies in landlords' notices to tenants of rent increases and you have heard examples already of what these

inadequacies can be, but I have listed two that they fail to include in their notice, that the tenant has a right to object to the increase to the Residential Tenancies Branch, or that they do not register the notice of increase at all.

In these cases, the rental rates within many buildings are to become partially illegal and when they do it is technically beyond the power of the Residential Tenancies Branch to ignore the illegality. You have heard a lot of strong emotions this evening and you have heard the difficulties they have engendered. I find, personally, these are less issues of individuals and more it is the statute, it is the legislation, that constrains decision-making, which is, I think, why the section has been introduced.

So this business of it being technically beyond the power of the Residential Tenancies Branch to ignore does not mean they do not practically ignore it. I use the word technically because the modest enforcement capacity of the branch toward illegal rents when combined with the sheer volume of landlords who do not comply results in the fact that such infractions are ignored in virtually all cases. Unless there has been a complaint or, in the case you have heard this evening, a sale that prompts someone to look closely, these things just simply do not get picked up.

Registered rents can and frequently have continued for more than two decades. Practically speaking, at present there are at least four methods of assisting compliance in the cases of unregistered rent. All of these methods are problematic, and I will only describe three of the four because suing your lawyer is so obvious.

The first is the general approach contained in the act. If the notice of rent increase is contrary to the requirements of the act and/or not registered with the Residential Tenancies Branch, then the rent increase is illegal. The illegal portion of the collected rents are, pursuant to the act, to be returned to the tenants. This is true in cases where the rents have been not registered for however long, and I have seen lots of cases of decades.

A landlord may fail to comply with the act due to ignorance, sloth or decision. In many cases, the issue really raises its head at time of sale, as we have heard. Usually, the purchaser's lawyer will identify non-compliance with the act. Determination of unregistered rents can result in withdrawal of the offer, as you have heard, in particular cases. In the unlikely event that the investigation into the rental status in relation to a sale prompts the involvement of the branch, rental overcharges can easily become $75,000, $100,000 or more. It does not take those levels before people who are owning buildings essentially keep their heads down and remain unregistered.

Another approach to deal with unregistered rents is to go and get a grant application. If you receive a significant rehabilitation grant from Manitoba Housing and Renewal Corporation, and that agreement for the grant includes rent levels specified in the agreement, then those rent levels will replace the jurisdiction of the Residential Tenancies Branch. This is one way of getting your unregistered rents registered, to get a grant. But there are not that many grants to go around and, compared to the number of landlords, it is infrequent.

Then there is the quiet approach. If a landlord who has not been registering his rent increases, for whatever reason, wants to begin to, and no tenant complains, the branch will not complain to itself. So, say 10 years have gone by, and a person wants to begin registering rent, they will send in the notice of the rent increase. It is patently illegal because it is based on the rent that is being charged today, which incorporates the last 10 years of rent increases that were not registered, but no one will say anything.

The process is not sanctioned by the act. But as each year passes, so the likelihood declines of the tenant being sufficiently sophisticated and aggressive so as to complain that the whole rent structure for the building is based on many years of illegal registration of rent. That is both with respect to the base rent and the increases annually.

The problem with this approach, in terms of the approach of telling people about this quiet registration way of trying to get back into compliance, is that the branch cannot be too direct about it. They kind of have to hint at it. They kind of have to encourage without saying too much. They certainly cannot tell the tenants.

This business of encouraging the landlords, without letting the tenants know of their rights, is essentially a way of putting the whole law into disrepute. Moreover, you have to convince the

landlords it will work, and that is hard because you cannot be certain it will. You know, any tenant who comes along and actually knows what is going on and makes a complaint, the whole pile of cards falls to pieces.

So, essentially, this whole system has problems for not just tenants but landlords and the administrators of the program. That is why we are so supportive of the discretion contained in section 140.0.1 because it allows new discretion to allow people back into compliance and ends this difficulty that everyone is suffering from.

The overall result is that a very large number of residential units are not registered with the Residential Tenancies Branch. In such cases, tenants are at least technically charged illegal rents, but no one tells them. The illegal status works against the promotion of entrepreneurship by increasing risk, reduces success in the transfer of units, makes returning to compliance with the act complex or expensive to the point of practical impossibility and helps maintain an adverse image of landlords.

***** (20:00)

In the meantime, this unhappy administrative system interferes, due to surprising complexity, with the government programs which fund residential rehabilitations. So, if you actually get a grant but your building has this unregistered rent problem, it is a surprise to the grant makers, and they have to deal with it themselves as well. I can tell you this is a regular problem.

So you have a policy of supporting the rehabilitation of declining housing stock and a policy on the RTB. and they clash quite dramatically from time to time. In the case of buildings such as the Kíkinaw buildings, our lawyer identified unregistered rents going back as far as 20 years before we purchased the building. And we went ahead with the purchase. We only had two choices. Either we got the vendor to eat our two-year liability for the illegal rents, which was $27,000, and they would do that by reducing the purchase price, or we would have to pay it ourselves. In the end it became a bit of a saw-off.

However, once we purchased the buildings, we knew we would have to be in compliance. We are a church, after all. We cannot go around doing any of these things that I am talking about. We have to be in compliance, so we have tenants now getting rent as low as $70 a month, reflecting unregistered rents for more than 20 years. And that is not exactly a good and healthy situation, either. So that will end when construction begins in July on the building, so the beneficial tenant arrangement will end for that particular tenant and a number of others, I might say, as well.

I think that is essentially my story. I would say that section 140.0.1 is a very, very useful addition. It gives this branch's director the capacity, on a one-time basis, effectively, to take any person who has not been complying with the law, and has not been registering their rent, and bring it up to today, and that is to say if that landlord has not been increasing the rent more than the legislation allows on an annual basis, but has only failed to register the documents, then they can be brought into compliance and you can see how all of these issues begin to evaporate, just by this change alone, and for that I think the minister and the department are to be congratulated and I hope all the opposition parties will see the usefulness in this. Thank you very much.

Mr. Chairperson: Thank you very much, Mr. Pannell, for your presentation.

Mr. Selinger: Yes, thank you, Mr. Pannell. That was a very well-written brief. I enjoyed reading it and the thinking that you put into this approach.

I just have one question. This approach requires that we have–what we are really doing in this approach is we are giving some discretion to the director of the branch to use good judgment on reviewing these applications that may be technically illegal, but substantially correct in their intent.

I take it from your presentation that you are comfortable it will solve a lot of problems that have, in the past, put people technically offside in a legal sense.

Mr. Pannell: Yes, I am. Notwithstanding the case we heard this evening, it is my experience that the branch really tries their best, and they are very handcuffed by the absence of discretion today.

Notwithstanding that, they will try and look after people as best they can. They are human beings. They are not out to really hurt anyone. They are

dealing with a very tough piece of legislation with very limited discretion, and giving them discretion, I think the people who are employed there are–in my experience, they have treated me very well, and I suspect that with the discretion granted they would treat me even better.

Mr. Selinger: Thank you for that answer and I take it you are aware that if somebody is not just satisfied with the decision made by the director, the discretionary decision, you are aware that there is an appeal of that decision.

Mr. Pannell: Yes.

Mr. Selinger: Thank you again for your presentation.

Mr. Pannell: You are very welcome.

Mr. Gerrard: Your information which you provide provides a better understanding of some of the problems that were outlined in the first two presentations. Certainly, you have, I take it, not run into the problem where rents had actually been registered but the records had not been kept, as was reported in the first two presentations.

Mr. Pannell: Well, the obligation for recordkeeping actually falls principally on the landlord, and if the landlord does not have the records, then that presents a significant difficulty, and often they do not. If you have not been registering your rent, then you have not really been keeping records, have you?

I mean, you can raise your rent merely by telling your tenant that the rent is now higher and collecting a higher cheque. And then there is no record. And the branch is in a dilemma. What can they do? They are not the record creators, and if the record creator has either not created a record or kept a record, they are in a significant dilemma in terms of dealing with the file. So you will find in many, many, many cases of where there are unregistered rents, there will be spotty, incomplete or no records whatsoever of the increases.

Mr. Faurschou: Thank you ever so much for a well-researched presentation here this evening, and it, I believe, is based upon first-hand experience. I feel, though, that you have indicated tonight that there is a very, very high degree of non-compliance. Is it perhaps a time to go the other direction insofar as to acknowledge rent controls are not working and that we should perhaps abandon altogether and let things go to the free market situation, which you have indicated perhaps actually exists today by the majority?

Mr. Pannell: That is a very wonderful invitation to discuss a much wider-ranging topic than I have authority to comment on tonight.

Mr. Chairperson: Any other questions for the presenter? Seeing none, thank you very much, Mr. Pannell, for your presentation this evening, and for coming out, sir.

Next presenter we have on the list is Mr. Dave Angus, Winnipeg Chamber of Commerce. Good evening, sir. Good to see you again.

Mr. Dave Angus (President, Winnipeg Chamber of Commerce): Good to see you.

Mr. Chairperson: You look better without a helmet. Inside joke; we play hockey together. I hope you have got your elbow pads on.

Mr. Angus: It depends on how this goes, how aggressive I will be the next game. I want you to know that.

First of all, thank you very much, ministers, members of the Legislature, ladies and gentlemen. My name is Dave Angus. I am President of the Winnipeg Chamber of Commerce. I brought with me Chuck Davidson, who is Director of Public Affairs for the Winnipeg Chamber of Commerce, and he is the one that cleverly crafted the document that you see in front of you in response to Bill 38.

The Chamber's mission is to foster an environment in which Winnipeg business can prosper. We have over 1650 members, 2700 representatives representing over 75 000 employees in Winnipeg, making us the largest business association in the city. That is who we represent here tonight.

Now, we have changed the way we develop policy at the Chamber. They used to have standing committees that meet to discuss the issues of the day and work towards developing policy. We now have a task force format, which has allowed us to quickly react, based on member need and member issues within the business community and, frankly, within

the community, period, and has allowed us, in a timely fashion to develop policy for the Chamber. It was that process that was undertaken when the Chamber identified, our members, frankly, identified the need for policy to be developed on the issue of rent control, because we did not currently have policy on rent control.

A task force was established of Chamber members, and through a three-meeting process, the issue was researched, presentations were made and the policy was developed. The policy that we are presenting here tonight is endorsed, not only by the board of directors in Winnipeg Chamber of Commerce, but also by the board of the Manitoba Chamber as well.

***** (20:10)

One of the main reasons our members asked us to tackle this issue is that we see rent control as a real barrier to growth of both business and community development, and that is the context upon which we will have our presentation tonight as it relates to the overall policy framework of our province and our ability within that framework to grow economically. We see the current rent control policy here in Manitoba as an element that truly restricts and will continue to restrict our ability to grow as a province.

I guess one of the underlying messages that we want to make is that we are great champions and advocates for economic growth and all of the measures that go into facilitating that particular growth. We commend this government for its immigration policy and initiatives. It is an element that has added truly to our province in terms of the Provincial Nominee Program. The challenge is that if we cannot accommodate these new Manitobans with a long-term housing strategy, with a policy framework that is going to invite investment, and provide the housing units that new Manitobans will need, that will restrict, certainly, our economic growth.

Again, our mission is to foster an environment in which Winnipeg business can prosper, and we feel this certainly hurts our environment. The inability of rental properties to produce a return on their investment has led to a decline in their value, and with the result that assessments for apartments have sunk relative to owner-occupied houses. The inability to raise rent to meet the cost of inflation has led to a renovation deficit. Certainly, if you look over the last number of years, in terms of tracking inflation and tracking allowed rent increases, the inflationary elements have far outweighed what has been allowed in terms of rent increases, and we have fallen behind in terms of the ability to be able to reinvest back into these properties.

So that overall, in terms of our renovation deficit, has had a huge impact on the quality of housing stock in Winnipeg and that is certainly not in our community interests. On top of that, the vacancy rate for apartments in Winnipeg has dropped steadily over the past decade, as has the number of residential apartment units available. We see this as really limiting options, limiting options for Winnipeggers, for Manitobans, and for new Winnipeggers and Manitobans coming into our province, and really our inability to accommodate the growth that we seek. We shoot ourselves in the foot in terms of seeking that growth, achieving some results but having restraints on our ability to accommodate it over time.

The Chamber views rent control as a part of a larger problem. While the provincial government has put in place a successful immigration strategy, again that we commend and support, we do not seem to have a plan as to where these new Manitobans will live. We currently have had discussions around single-family development around Waverley West. It is the same issues around that element, in terms of not having enough new development in the city to accommodate the growth that we certainly should anticipate. We certainly see the shortages when it comes to rental properties, as well.

The Chamber views a growing population not as a problem but as an opportunity, but if the government does not create the right environment to accommodate that growth, another province will. According to the Manitoba Home Builders' Association, there are approximately one- to two-year supply of residential lots for the entire city of Winnipeg available in the short term. The increased housing demand in Winnipeg is due to both the growth in population and the continued shift in demographics. According to the City of Winnipeg's planning and land use division, even with zero population growth, a decrease in household size of 0.1, which is projected, frankly, over the next decade, would require 10 460 additional households.

I guess the long and the short of it is, it is great to have an economic development strategy, and we certainly want that and pursue that and we will work

with you on that, but with that has to come a long-term housing strategy, as well. And what we are saying is our current rent control policy runs and is a barrier to our ability to be able to accommodate a growth that any economic strategy would pursue.

While we have increased demand for living space, we see an insignificant increase in supply. There has been no substantial rental construction, frankly, in the past 20 years. The vacancy rate for apartments in Winnipeg has fallen from 6 percent more than a decade ago, to 1.1 percent in 2004, according to CMHC. There is a chart in our cleverly crafted submission that really, I think, speaks for itself. When you look at seven centres and you look at from 1995 in terms of what the vacancy rate is to 2004, the two centres that have decreased dramatically and the only two centres that have decreased dramatically are currently in jurisdictions that currently have rent control.

It is clear that there is a correlation between the vacancy rates and the implementation of rent controls and jurisdictions that have rent control measures in place have experienced declining vacancy rates. CMHC has also indicated that in 2004, there were 600 apartment units removed due to conversion to condo or another form of living or moved because they were boarded up. The 2003 figures show 369 apartment units removed due to conversion, and 117 units were boarded up.

The combination of a tight housing market and low apartment vacancy rates restricts choice for the low-income segment of the population, keeping them locked into poor condition housing. We support measures for increased affordable housing and for creative projects like the one we just heard from the previous speaker. We believe there are other ways in which we can accommodate better solutions for low-income segments of our population.

Meanwhile, CMHC figures show that Saskatchewan and Ontario, our two neighbours, have seen rapid expansion in new construction and multi-family residential and rental properties in the past five years. Winnipeg saw no new apartment construction between 1985 and 2002. There were less than 500 new units built in 2003, and there appear to be less than 500 unit starts in 2004. Regina and Saskatoon have each seen more than 600 new units in 2004. The combined population of these two cities is approximately 70 percent of Winnipeg's population, yet they have built more rental units in each city in the past year alone.

In summary, the rent control policy in Manitoba has resulted in increased demand for a dwindling and deteriorating supply. Vacancy rates in Manitoba are well below the Canadian average. Our policy, as endorsed by our board of directors and by the Manitoba Chamber of Commerce, is simply three points.

We recommend that the Province abolish rent controls, which do not offer any incentive for the private sector to invest in the development of residential rental units and limits the availability of safe, affordable housing that provides a level of quality that Winnipeggers deserve.

Secondly, we urge the provincial government to establish a long-term economic strategy for the province which would include a long-term housing strategy. The two are definitely linked.

Lastly, we would urge the government to publicly review the issue of rent control in Manitoba. This is an important enough issue for us to have broad public discussion and to search for solutions for a better way that are going to serve us, not only today, but over the next 20, 30, 40 years.

In response to Bill 38, The Residential Tenancies Amendment Act, the Chamber views this bill as nothing more than minor tinkering that will do nothing to stimulate new apartment growth in the province and will, in turn, halt potential growth in the province as well. It really does nothing, we believe, fundamentally to stimulate growth and investment in apartments in Winnipeg and in Manitoba.

The reality is the investors and developers have options, and those options are not always here. They will place their money in places where they can get return in the long term. Even 20-year protection is not enough when you are looking at it because all of these investments are in the long term, knowing that, as you get close to that 20 years, the value of your property is about to decrease.

So, when there are other options and are other choices to invest money, we have to make sure we provide the best case for Winnipeggers and for Manitobans, and we do not believe the current rent control policy does that.

That concludes my comments. Open for questions, Mr. Chairman.

Mr. Chairperson: Thank you, Mr. Angus, for your presentation.

Mr. Selinger: Yes. Thank you, Mr. Angus, for your presentation. I would like to invite you to meet with the officials in the department responsible for rent controls, so we can compare notes on the data you have presented because our data varies somewhat with yours. For example, I have information that since '02 there have been 1100 starts of various forms of rental housing, almost as many as the 1244 in the 10 years prior to '02.

I have further information that rent controls have been returned, not necessarily in the same form as ours, in the jurisdictions of Ontario and British Columbia. So I think we could probably focus our dialogue by sitting down together and looking at the data and seeing if there are any discrepancies we can clear up and then move from there to the main policy issues which you have raised.

Mr. Angus: Thank you. We will compare our data because I am familiar with your data. I know the reasons for the differences, and I think it is important for us to identify areas of what we are counting that are most important. I agree in terms of looking at other jurisdictions, and I know that Ontario is having the discussion around revisiting rent control.

***** (20:20)

I will make you a deal. We will sit down and discuss rent control if we can get from this government an open mind to looking at possibly some other solutions, because I think that is worth a discussion as well. The challenge that I have is when the door is closed specifically on any other discussion, any other solutions that might be worthwhile, that might serve us well and might serve all Winnipeggers well. I think we close the door on some potential solutions that are out there. So I would like to engage in that discussion as well.

Mr. Selinger: Yes. Thank you for your offer to meet and discuss the data and any other policy solutions you might have. If you have other proposals that you wish to bring forward, we would be happy to receive them.

Mr. Faurschou: I appreciate, Mr. Angus, your presentation this evening. It is indeed looking to the future, from my perspective, with vision and anticipation. The government, currently, and you alluded to it in your final, closing comments that 20 years is enveloped in this legislation as being currently occupied after the beginning of this year, March 7, 2005, will be exempt from rent regulation for 20 years.

The government indicates that, essentially, 20 years is far enough out that there is no impact of rent controls on new construction. What would you say if you were to put a particular year down, would it be 25, 40, that would really be an absolute figure that would be no impact on seeing construction happen?

Mr. Angus: The reality is we would just eliminate rent controls. I mean, putting a 100-year limit on it is–you know, why would we? Let us just eliminate rent controls and come up with some better solutions. The reality is, you know, we are going from 15 to 20, and we do not believe it is going to have an impact. We do not believe the 15 years has had much of an impact either because the reality is these are long-term investments, you know, particularly for some of the larger investments. These are long term. These are beyond 20 years.

With every passing year that you get closer to that magical 20-year mark, if you are looking to sell your property, and the potential buyer knows that in 10 or 5 years from now they will be under rent control, what kind of dollar are you going to be able to ask for that particular property? That is why, when you have these kinds of rules around those types of investments, a case can be made for the investor to place their money someplace else, because why would they do that on what would likely be a descending value of that particular property. So that is our concern.

Mr. Chairperson: Mr. Faurschou, on a supplementary?

Mr. Faurschou: Yes. Thank you. There is a section in here that it is proposed that compensation be provided for unreasonable delay in repair of rental properties. Do you see problems as this section is written with this legislation?

Mr. Angus: I do not think we have a particular problem. We have had discussions around that

particular part of the act, and we do not particularly have a problem with that change.

Mr. Gerrard: Thank you for your presentation. Now, in '95, the vacancy rate in Saskatoon was 1 percent, and now it is 6.3 percent. Did Saskatchewan have rent controls at one point which were removed, and in which year did that happen? Can you tell us what has happened since then? Can you tell us whether there are, not rent controls, but some other, you know, things in the law which would allow for assessment of what was happening after rent controls?

Mr. Angus: Well, I will comment on Saskatchewan because they did have rent controls. They eliminated them in the early nineties; I think it was '91. The impact was minimal. I always like to look at things in the long term. I have another chart, which I did not include in the report, but if anybody is interesting in getting the numbers, we would certainly provide them to you. It is the average rent by city, and we have six cities listed. The average rent in Regina, in 2004, was $602; in Saskatoon was $580; and in Winnipeg is $664.

So, obviously, the market came to bear within Saskatchewan. Certainly, as representatives of Winnipeg Chamber of Commerce, we do have faith in the market, and we do have faith in the market also controlling rents. It, obviously, has worked in Saskatchewan. I do not see a lot of differences between Manitoba and Saskatchewan. We believe that the same kind of market control will exist here. We do not see the rents skyrocketing.

Can I make one other point? Because maybe this is the reason why we should get together is because last year, in 2004, Winnipeg, the only jurisdiction with rent control of the six–and we have Calgary, Regina, Saskatoon, Toronto and Vancouver–had the highest percentage increase in rent, with rent control. To me, that underlines the fact that it is just not working. Calgary had 0.2% increase and the others had much less, frankly, than 2.9. So, a policy that we have in place in order to control rents is not doing that, and so there are issues with the current policy that we need to address. The reality is that the reason why is that the stock is deteriorating; landlords are going for exemptions, and they are being granted because they have a case; and the rents, frankly, have been going up because of the extra costs involved to try and bring them up to speed.

So, you know, we have a situation here that we have an objective, in terms of this rent control policy that is not being achieved, and I think that is why we need to have, as part of our recommendations, a public review of the rent control policy.

Mr. Chairperson: Mr. Gerrard, on the supplementary?

Mr. Gerrard: Just briefly, you said that removing rent controls did not have any impact, but I think that what I understood you to say, the first part was that, in fact, it had a big impact in increasing construction of rental units.

Floor Comment: Right. I was referring to the rent.

Mr. Chairperson: Mr. Angus? Sorry, I need to, for both of you, I need to recognize so that Hansard can turn on and off your microphones.

Floor Comment: Is this when I should put on my helmet?

Mr. Chairperson: I think so.

Floor Comment: Sorry, Mr. Chair.

Mr. Chairperson: Mr. Angus, please proceed.

Mr. Angus: I apologize, and I am not, obviously, when you take a look at the vacancy rate–and things happen in the long term, and that is the mistake we often make. If we got rid of rent control tomorrow and the next year, we are not going to see a bonanza of new investment. What we have seen, I think, in Saskatchewan is, over this period of time, increased investment in rental properties to the point where their vacancy rate is increased from 1-and-change to 6 percent; to me, 5% vacancy rate, I think, is very healthy.

Mr. Gerrard: Just one quick supplementary. You would argue, I think is what I am hearing from you, that when you have rent controls and not much new construction, you limit the availability of rental units, that the scarcity drives up prices. That, in fact, removing rent controls allows for new construction, and the surplus of available units actually keeps prices lower. Is that right?

Mr. Angus: Yes, that is absolutely correct. Supply responds to demand, which creates competition, which drives down rates.

Mr. Chairperson: Any other questions of the presenter? Seeing none, thank you very much, Mr. Angus, for your presentation this evening and for coming out, sir.

Mr. Angus: I appreciate it. Thank you.

Mr. Chairperson: The next presenter we have registered to speak to Bill 38 is Stavros Chatzoglou, and I hope I have pronounced that name right, and my apologies.

It appears that he is not here, and I will call for a second time, Stavros Chatzoglou.

Perhaps, I am not pronouncing the name right.

An Honourable Member: Steve, you here?

Mr. Chairperson: Seeing no presenter for that name, then, I would like to ask the audience if there are any additional presenters, members of the public who wish to present on Bill 38, The Residential Tenancies Amendment Act, before we close public presentations.

Seeing none, then we will close public presentations on Bill 38.

Bill 11–The Provincial Court Amendment Act (Justices of the Peace)

Mr. Chairperson: We will inquire of the audience if there are those that wish to make presentations to Bill 11, The Provincial Court Amendment Act (Justices of the Peace).

Any members of the public that wish to present to Bill 11?

Seeing none, we will close public presentations on Bill 11.

Bill 24–The Consumer Protection Amendment Act (Cost of Credit Disclosure and Miscellaneous Amendments)

***** (20:30)

Mr. Chairperson: Bill 24, The Consumer Protection Amendment Act (Cost of Credit Disclosure and Miscellaneous Amendments).

Any members of the public wishing to make presentations to Bill 24?

Seeing none, we will close public presentations on Bill 24.

Bill 37–The Municipal Assessment Amendment Act

Mr. Chairperson: Bill 37, The Municipal Assessment Amendment Act.

Any members of the public wishing to make a presentation to Bill 37?

Seeing no members of the public for Bill 37, we will close public presentations on Bill 37.

*** * ***

Mr. Chairperson: That concludes the public presentation portion.

Is it the will of the committee to proceed with detailed clause-by-clause consideration of Bill 9, Bill 11, Bill 24, Bill 37 and Bill 38? Agreed? *[Agreed]*

Then we will proceed in numerical order, starting with Bill 9.

The will of the committee is to proceed with Bill 11 first? Okay. That is The Provincial Court Amendment Act. *[interjection]*

Is it the will of the committee to proceed with Bill 9?

An Honourable Member: Exactly. That is exactly what we said.

Bill 9–The Manitoba Centennial Centre Corporation Act

Mr. Chairperson: Does the minister responsible for Bill 9 have an opening statement?

Hon. Eric Robinson (Minister of Culture, Heritage and Tourism): Yes, Mr. Chair, I do, briefly. Bill 9 replaces and modernizes The Centennial Centre Corporation Act. This act regulates the Manitoba Centennial Centre Corporation, the entity responsible for managing the Centennial

Concert Hall and other properties forming Winnipeg's permanent arts centre.

Our staff and the Manitoba Centennial Centre Corporation staff have been in discussion over many months regarding these changes to the legislation. The Manitoba Centennial Centre Corporation was established in 1968 for the development and management of the permanent arts centre for Manitoba in the city of Winnipeg. The permanent arts centre is the province's principal memorial of the centennial anniversaries of the Confederation of Canada and the inclusion of Manitoba as a province of Canada.

The MCCC is responsible for the operation of the Centennial Concert Hall buildings and four parking lots. The MCCC also serves as landlord for other properties identified in the legislation comprising the Manitoba Museum and Planetarium; 11 Lily Street, which houses the museum's extension services; Artspace; the Manitoba Theatre Centre; and the MTC Warehouse Theatre.

The modernized act is an opportunity to clarify the mandate and statement of purpose of the Centennial Centre Corporation. Many of the changes in the new act are minor in terms of impact and include current legislative language as well as the renumbering of existing provisions.

Mr. Chairperson: We thank the honourable minister for the opening statement.

Does the critic for the official opposition have an opening statement?

Mr. Jack Reimer (Southdale): I just wanted to thank the minister and his staff for the spreadsheets and the briefing that we had on the bill. We seem to have covered everything in that briefing, and there were no questions that I really had that were not answered. There were a few areas of concern, but I think that those just have been expressed before in the House in talking about the bill.

So, with that, Mr. Chairperson, I am willing to proceed with the passing of the bill.

Mr. Chairperson: We thank the critic for the official opposition for the opening statement.

During the consideration of a bill, the table of contents, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to pose. Is that agreed? *[Agreed]*

Clause 1–pass; clauses 2 through 4–pass; clauses 5 through 7–pass; clauses 8 through 13–pass; clauses 14 through 17–pass; clauses 18 through 20–pass; clauses 21 and 22–pass; clauses 23 through 28–pass; table of contents–pass; enacting clause–pass; title–pass. Bill be reported.

Thank you to members of the committee.

Bill 11–The Provincial Court Amendment Act (Justices of the Peace)

Mr. Chairperson: We will now be dealing with Bill 11. Does the minister responsible for Bill 11 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Well, perhaps if we can just defer to if there are any questions, be prepared to address any, and just to let the members know that we have one amendment as a result of some concerns from the judges in terms of a definition, just to ensure that the intent was rightly set out in the legislation.

An Honourable Member: Which clause was that?

Mr. Mackintosh: That was in clause 65(3) and clause 9.

Mr. Chairperson: I thank the minister for the opening statement.

Does the critic for the official opposition have an opening statement?

Mr. Kelvin Goertzen (Steinbach): Thank you very much, Mr. Chairperson. It is a pleasure to speak at committee this evening on Bill 11. Certainly, I think the minister and I have had some dialogue on this bill in terms of a briefing, but also I guess in terms of some media discussions that the two of us have had on a number of issues. We understand the genesis for this legislation and the rationale in

terms of the independence of what was at one time called magistrates, now judicial justices, and two other levels of staff justices and community justices. We understand the independence process and the need for it, coming out of a decision by the Supreme Court of Canada. We respect that and the decision, and we respect the need for that independence.

Where we have raised some concerns is in regard to the qualifications for judicial justices that are set out within the act itself, within the written legislation of the act. I suspect that the minister might suggest that his qualifications are not significantly different than what has happened in the past. It is just simply formalized by being written into the legislation. But, in fact, the entire act is different, in the sense that the judicial justices now will have independence of tenure effectively because they will only be removed by a judicial process and they will have independence of salary. So the concerns that we have raised on this issue, and we recognize that judicial justices will be doing a very quasi-judicial, high-end function within the court system, to being able to affect people's liberties and people's rights, people's ability. Judges, of course, will be able to give search and seizure warrants, interim releases, a number of things, contested motions, those sort of things that most people, I think, would be expecting a very high level and a competent hearing justice before them.

I suspect that a lot of people who go into the court process would not know, other than perhaps the colour of the robing, the differences between a justice, a judicial justice and a regular judge. But, with that in mind, of course, with the independence that is provided in the act, as a result of the Supreme Court of Canada, we think that there is a greater onus now to ensure that those people who are being appointed to judicial justice positions have, in fact, the qualifications, because it is more difficult to see them removed and the independence with salary is provided by the legislation.

***** (20:40)

This issue was raised, I know, in the act. It is 18 years old and resident in the province of Manitoba as the qualifications. I know that the nominating committee will have some ability to put forward other regulations. Even within the context of the discussion that we had through the media, there seemed to be some confusion there. One report indicated that, in talking with Justice officials, the additional qualifications would be analytical skills and the ability to learn on the job, which, I suspect, if one would survey the want ads in virtually any paper, 75 percent of the jobs would probably list those same qualifications.

So we thought it was a little vague. I know the minister has given some assurances that they might, in fact, be people who will have experience within the justice system, perhaps as probation officers or other roles. But we would like to see that formalized because we do think that the appearance of independence is important, not just for the individuals who come before the court.

That is important for somebody who walks into a court on a contested issue or on a liberty issue that they know, in fact, that the system is independent and have that trust and do not believe that the person who is hearing their particular concern has, in any way, received their position by anything other than their qualifications.

But it is also important for those individuals who are appointed into those positions that they have that confidence going forward, that they received their position as a result of their qualifications, as a result of the experience and the work and their proven track record in one form or another.

We have not suggested that the individual be a judge, though I do understand that in other jurisdictions, Alberta and Nova Scotia, if I am correct–or be a lawyer, I am sorry–that they in fact have to be lawyers of five-year tenure from the bar, but we do think that there should be some higher qualifications set out other than being able to learn on the job and being analytical, being 18 and living in the province of Manitoba.

The other issue that was raised to some extent, and I will raise it with the minister, is in regard to the composition of the nominating committee in which two out of the three individuals will be members who are appointed by the minister directly. There, again, I think, in combination. We do not look in isolation at the individual qualifications of a judicial justice; we look in terms of both of them together.

Now knowing that a judicial justice has a very low bar in terms of the qualifications and, in fact, that the Minister of Justice (Mr. Mackintosh) will

be able to put two out of the three individuals on the nominating committee, there, again, is the appearance, I think, that there is not that kind of vetting, proper vetting in terms of qualifications, and there is not that appearance of independence. Those things are all important.

We bring these issues forward because we think that it is important to warn and put that caution out to the minister in advance. We have seen the unfortunate, and I say it is an unfortunate, situation recently where there were media reports that questioned, in editorials–and I commented on it, and I think others commented on it–about the appointment of a judge in the province. Well, in fact, I believe it was in Brandon, in the Brandon media. The Member for Brandon West (Mr. Smith) no doubt read the article where they questioned the fact that a relative of a member of Cabinet was appointed as a justice. Certainly, I do not think they raised issues of qualifications of the individual, and I did not. It was simply a process issue, but I do know other members of this Legislature did raise qualification issues. That, certainly, was not my view of it. It was more simply process and the insurance that there is seen to be independence.

So, with that background, to some extent, these are the reasons we have raised cautions with Bill 11. I do not gather from the brief comments by the minister about his amendment that that amendment will deal with any of those concerns, but it is important to have those concerns on the record.

Thank you for the opportunity to make an opening statement.

Mr. Chairperson: We thank the critic for the official opposition for the opening statement. Honourable minister, to respond?

Mr. Mackintosh: Yes. I think it is important that we put a response on the record to the two issues raised.

The first, in terms of qualifications, I think, can be explained in several ways.

First of all, the eligibility requirements are set out in 41(1), which, of course, are just the very bare minimum of age 18 and residency in the province. Of course, 41(2) goes on to talk about the ineligible persons. The ineligible persons list was expanded somewhat from the earlier legislation from the late nineties to disqualify elected persons.

But what is, I think, more relevant, under 42(4), Duties of nominating committee takes the legal qualifications to a new level and beyond the former administration's bill on this one. It says the nominating committee must establish criteria respecting the assessment of the experience, knowledge, community awareness and personal suitability of candidates and the diversity of Manitoba society.

Now, what is in the legislation is just very basic qualifications and disqualifications, and on top of that, just by practice and experience, Manitoba Justice has built criteria that are set out in the ads, of course, against which candidates are assessed. For example, the qualifications will be experience in interpreting and applying legislation; demonstrated knowledge and understanding of judicial independence; a demonstrated ability to effectively deal with people in a fair, courteous and diplomatic way; strong analytical skills, with a proven ability to make decisions using sound judgment and the ability to exercise discretion effectively; demonstrated effective communication and listening skills; experience with keyboarding and court system computer applications; working knowledge of court monitoring machines, video link technology, recording devices, facsimile machines, photocopier and computers. Experience with Microsoft Office would be an asset. Classified driver's licence and able to travel. And then there may be some language qualifications, depending on the location.

So those are the practical applications of qualification criteria and, of course, this is by way of advertisement and then application, short-listing and competition. So we think, as a result of the combination of the legal, the practical and then the process, that excellent candidates can be both attracted and nominated to the position of judicial justice of the peace.

I might say that I think there is some symmetry across the country in terms of the basic legal requirements, but like in any statute, we do not set out in detail the qualifications that are pursued from candidates to positions. That would be very rare. So this is really just the bottom line, if you will, that is set out in the bill.

The second issue, in terms of the nominating committee and its composition, that is the same as the former government's approach to that. The ministerial designations, it has always been contemplated and would continue. I think it is important that there be a civil servant and a community representative. There may be some circumstance where you would want some flexibility in that, where perhaps you want a representative from both a municipal council and a First Nation community. So that is why there is some flexibility there and why there is not a required qualification or characteristic of the appointees of the minister.

Mr. Chairperson: I thank the honourable minister. Any further comments before we proceed?

During the consideration of a bill, the table of contents, the enacting clause and the title are postponed until all other clauses are being considered in their proper order. Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses, where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Thank you. We will proceed with clauses.

Clauses 1 and 2–pass; clauses 3 through 7–pass; clause 8–pass; clause 9–

Mr. Mackintosh: I move

THAT the proposed subsection 65(3)–

That is a large clause–

as set out in Clause 9 of the Bill, be amended by replacing the first sentence with the following:

When holding a hearing to adjudicate a charge against a judicial justice of the peace, the hearing judge has the same powers that the council has when it adjudicates a charge against a judge.

***** (20:50)

Mr. Chairperson: It has been moved by the Honourable Mr. Mackintosh

THAT the proposed–

An Honourable Member: Dispense.

Mr. Chairperson: The amendment is in order.

Mr. Mackintosh: This amendment, as I said earlier, is proposed on the recommendation of the judges of the Provincial Court who reviewed the bill. The wording is being changed somewhat to more clearly reflect the intent that in the complaint process the hearing judge has the same powers when adjudicating a charge against the judicial justice, as the judicial council would have when adjudicating the charge against a Provincial Court judge.

I mean, the context here is that there is symmetry between how a complaint is dealt with against a judicial justice of the peace and the Provincial Court judge.

Mr. Chairperson: I thank the minister. Any other comments, questions?

The amendment is in order.

Amendment–pass; clause 9 as amended–pass; clauses 10 and 11–pass; clause 12–pass; clauses 13 through 16–pass; clauses 17 and 18–pass; clauses 19 through 22–pass; clauses 23 and 24–pass; table of contents–pass; enacting clause–pass; title–pass. Bill as amended be reported.

Thank you to members of the committee.

If it is the will of the committee to proceed with Bill 37 to allow the remaining two bills which have the same minister, then we will proceed with Bill 37. *[Agreed]*

An Honourable Member: He is not here.

Mr. Chairperson: We will do bills 24 and 38.

Bill 24–The Consumer Protection Amendment Act (Cost of Credit Disclosure and Miscellaneous Amendments)

Mr. Chairperson: We will start with Bill 24. We will proceed with Bill 24.

Does the minister responsible for Bill 24 have an opening statement?

Hon. Greg Selinger (Minister of Finance): No.

Mr. Chairperson: We thank the honourable minister.

Does the critic have from the official opposition have an opening statement?

Mr. David Faurschou (Portage la Prairie): No.

Mr. Chairperson: We thank you, Mr. Faurschou.

During the consideration of a bill, the table of contents, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Shall clauses 1 through 3 pass?

Some Honourable Members: Pass.

Mr. Chairperson: Clauses 1 through 3 are accordingly passed. *[interjection]*

Well, then, we will have to revert back. The minister has amendments on clause 3.

Clauses 1 and 2–pass. Clause 3?

Mr. Selinger: I move, Mr. Chairperson,

THAT Clause 3(2) of the Bill be amended in the proposed definition "non-interest finance charge" by adding "if the borrower is not a beneficiary of the insurance," *after* "title insurance" *in the part before clause (a).*

Mr. Chairperson: It has been moved by the honourable Mr. Selinger

THAT Clause–

An Honourable Member: Dispense.

Mr. Chairperson: The amendment is in order. Any comments, questions?

Mr. Selinger: It amends the definition of "non-interest finance charge" to clarify that a non-interest finance charge does not include title insurance where the borrower is a beneficiary.

An Honourable Member: I am looking for an explanation.

Mr. Selinger: Where the borrower is a beneficiary of title insurance, it is not a non-interest finance charge. Okay, so it just excludes that specific type of title insurance where the borrower is a beneficiary. For further clarification to the member of Steinbach, these are technical amendments. The next four amendments are technical amendments requested by the Canadian Bankers Association *[interjection]* and it was simply because of technical concerns they had.

Mr. Chairperson: Any other comments on the amendment?

Seeing none shall the amendment pass?

Some Honourable Members: Pass.

Mr. Chairperson: The amendment is accordingly passed. Clause 3 as amended–pass; clauses 4 and 5–pass. Shall clause 6 pass?

An Honourable Member: Amendment? No Amendment?

Mr. Selinger: Yes. It is on page 10 of the bill.

I move

THAT the proposed clause 4(3)(a) as set out in Clause 6 of the Bill be amended by adding "– other than a Crown corporation or agency prescribed by regulation –" *after* "agency".

and the explanation of that–*[interjection]*

Mr. Chairperson: It has been moved by the honourable Mr. Selinger

THAT the–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Mr. Selinger: Yes this amends the proposed new subsection 4(3)(a) to allow us to designate by regulation CMHC and any other Crown corporation or government agency that insures or guarantees consumer mortgages or other consumer loans.

This will ensure that CMHC insured mortgages and similar transactions are not exempted from this act.

Mr. Chairperson: Any comments or questions on the amendment?

An Honourable Member: No.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: Pass.

Mr. Chairperson: The amendment is accordingly passed. Shall clause 6 as amended pass?

An Honourable Member: No, another amendment.

Mr. Selinger: Yes, on page 17 of the bill.

I move

THAT the proposed clause 14(2)(b), as set out in Clause 6 of the Bill, be amended by striking out "a credit card" *and substituting* "open credit".

Mr. Chairperson: It has been moved by the honourable Mr. Selinger

THAT the proposed clause 14(2)–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Comments, questions regarding the amendment?

Mr. Kelvin Goertzen (Steinbach): There is no change in the definitions of the main act, or is "open credit" defined in the main legislation?

Mr. Selinger: Well, I will take the opportunity while we are just–it is defined. This amendment to replace "credit card" with "open credit," this more accurately reflects the current situation. National consultations are ongoing to develop ways to determine the APR or the method of calculation for interest for open credit, but we do not expect this successfully to conclude any time soon. So it just reflects the current situation, and the concept of open credit is defined in the bill.

Mr. Goertzen: Maybe the minister then could, just because this amendment was brought forward to us without warning, just to read into the record the differences between the definition of a credit card and the open credit.

Mr. Selinger: What it essentially means is open credit is like a line of credit and what it in effect means is that a line of credit is treated similar to how you treat a credit card. Once again, there is a piece of correspondence for members, if they are interested, from Paul Griffin at the Canadian Bankers Association, dated April 25, which sort of gives an overall explanation for all these proposed amendments.

An Honourable Member: Did you table that?

Mr. Selinger: Yes. It is in your package.

Mr. Chairperson: The question before the committee is the amendment moved by the honourable Mr. Selinger

THAT the proposed clause 14(2)(b) as set out in clause 6 of the bill be amended by striking out–

An Honourable Member: Dispense.

***** (21:00)

Mr. Chairperson: Dispense.

Is it the will of the committee to accept the amendment? *[Agreed]*

Mr. Selinger: Yes, I would like to move to page 45 of the bill, and I am proposing, if I might, to Mr. Chairperson,

THAT the proposed subsection 35.9(2), as set out in Clause 6 of the Bill, be amended by adding "unauthorized" *before* "use".

The effect of that amendment would be that it amends–

Mr. Chairperson: It has been moved by the Honourable Mr. Selinger

THAT the proposed subsection–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense.

Mr. Selinger: It amends the proposed new subsection 35.9(2) to reflect that pre-authorized charges on a credit card can continue to accrue after it is surrendered. So, if you had a pre-authorized charge and you surrender the card, the charge can continue to accrue if you are entered into that transaction, as long as it is authorized.

Mr. Chairperson: The amendment is in order. Any further comments or questions?

The question before the committee is the amendment moved by the Honourable Mr. Selinger

THAT the proposed subsection–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense.

Is it the will of the committee to accept the amendment? *[Agreed]*

The amendment is accordingly passed.

Mr. Selinger: Yes, I am now asking members to turn to page 54. Two more and then we are finished. They are all from the same source. The next two are from the Registrar of the Property Registry.

I move

THAT Clause 6 of the Bill be amended by adding the following after the proposed section 45(3):

Notice to persons other than the borrower
45(4) In addition to giving a notice to the borrower under subsection (2) or (3), the credit grantor must, at least 20 days before selling the collateral, give a copy of the notice to each person who

(a) has registered a financing statement in relation to the collateral in the registry established under *The Personal Property Security Act*; or

(b) has an interest in the collateral and has given a written notice of that interest to the credit grantor.

Mr. Chairperson: It has been moved by the Honourable–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Comments? Questions?

Mr. Selinger: This amends the section that I have just identified. This amendment was developed in consultation with the Registrar of the Personal Property Registry, and it is for the better purpose of meshing with The Personal Property Security Act.

Mr. Peter Dyck (Pembina): Does this then absolve the purchaser from doing the search through the registry department?

Mr. Selinger: No.

Mr. Chairperson: Any further?

Mr. Selinger: Everybody would continue to be served that is registered, and anybody that has given notice that they have an interest would also be served.

Mr. Goertzen: Was there consultation done on this amendment with any banks or credit unions?

Mr. Selinger: This is a highly arcane technical amendment, just to ensure that this legislation lines up with our existing PPSA legislation, and the lawyers from both the Property Registry and the Ministry of Justice have agreed that this amendment keeps these two bills in sync with each other.

Mr. Chairperson: Any further questions on the amendment. The question before the committee is the amendment moved by the Honourable Mr. Selinger

THAT Clause 6 of the Bill be amended by–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. Amendment–pass.

Mr. Selinger: I have one final amendment of clause 6, and this would be the final amendment for the entire bill. I am now on page 57 of the bill, if those of you are interested.

I move

THAT the proposed subsection 51(3), as set out on Clause 6 of the Bill, be amended

a) in the section heading, by striking out "to borrower"; *and*

b) in the part after clause (c), by striking out "to the borrower" *and substituting* "in accordance with subsection 60(2) and (4) of *The Personal Property Security Act*".

Mr. Chairperson: It has been moved by the honourable–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Comments, questions?

Mr. Goertzen: I guess that, maybe, the minister will explain what subsection 60(2) and (4) of the PPSA are?

Mr. Selinger: Well, first of all, as that information comes forward, it is simply, again, the lawyers agreeing to mesh the two pieces of legislation together to make sure they are saying the same thing in those particular sections referred to. These sections relate to distribution of surplus after the collateral is disposed of, and if any appeal goes to court.

Mr. Chairperson: Any further comments or questions?

The question before the committee is the amendment moved by the honourable Mr. Selinger that the proposed–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense.

What is the will of the committee?

Amendment–pass; clause 6 as amended–pass; clauses 7 through 11–pass; clauses 12 and 13–pass; clauses 14 through 16–pass; clause 17–pass; clauses 18 through 21–pass; clause 22–pass; clauses 23 through 27–pass; table of contents–pass.

Shall the enacting clause pass?

Mr. Faurschou: If I could, perhaps–I waited until the title came along, but I do want to ask the minister, having first reviewed the correspondence as provided for presentation tonight by the Canadian Bankers Association, they have listed 19 points by bullet identification. I have been able to asterisk only three of the 19 bullets as being addressed by amendment.

I would like to ask the minister was he not concerned with the other bullets that were not addressed by amendment tonight, or is there further dialogue, or how has the minister responded to the Canadian Bankers Association as per their request should any of the above concerns not be able to be addressed.

Mr. Selinger: Yes. The amendments we put forward were those essential to meeting the technical concerns raised by the bankers association. Many of the other points they made were satisfactory to them upon clarification. The bill already had covered them. There are a few remaining points that will be dealt with when we bring forward the regulation. So I suspect that we will meet most of the items raised, if not all of them, when we finalize the regulation. If there are any further concerns, we will hear from them.

Mr. Faurschou: Thank you very much. By the correspondence, there certainly is an interest by the bankers association. Were they in the consultative loop for development of the legislation?

Mr. Selinger: Yes. That is why they responded with this detailed letter.

***** (21:10)

Mr. Goertzen: The minister indicates that some of the points that were raised by the Canadian Bankers Association were dealt with in amendments, and some of the points were, I think, dispensed to their satisfaction after discussions, but he says that others will be dealt with in regulation. Can he identify which points need to be addressed yet through regulation to the CBA's satisfaction?

Mr. Selinger: Mr. Chair, 7, 8 and 16. We are just checking to see if there are any others, but those are the three that we have identified. There were other points where there is just simply a disagreement with the Internal Trade Agreement template for this type of legislation, and we have clarified that with them.

Mr. Goertzen: I just want to make sure because the bullets are not numbered, so I want to make sure that I remember them properly. Mr. Chair, 7 would be the paragraph that starts with subsection 12, or section

12(3), 8 subsection 12(4), and then 16 subsection 35.8(1)?

Mr. Selinger: Correct.

Mr. Goertzen: Thank you.

Mr. Faurschou: This legislation, I understand, is the type of legislation that is being passed by other jurisdictions because of the new market trend in payday loans and other money marts and outlets for credit and cash advancement. Is this legislation harmonious with other jurisdictions, so that payday lenders operating on a national basis are not having to school themselves in Manitoba because we are significantly different from, say, Saskatchewan or Alberta or Ontario?

Mr. Selinger: The Consumer and Corporate Affairs officials that worked across Canada developed a template that would be applied in common across the country. So, yes. The short answer is yes. These regs and this legislation would be more harmonious than it has ever been across the country.

Mr. Goertzen: Well, I just want to make a point on number 7. I think that the banking association makes a good point about the ability for the poor and the purchaser or the vendor to make an agreement to consent on the two-day waiver period. I hope that the minister takes that under consideration when he is drafting regulations.

Mr. Selinger: Well, our note on that is that we have provided for a reg-making power that will allow a waiver for that, for a waiver that may be similar to the Bank Act regulation until such time as the ongoing discussion between the federal and provincial governments is resolved. So there is some sinking that has to be done until everybody gets on the same page. Well, we will not put any of our people at a disadvantage.

Mr. Chairperson: Any further comment, question?

Enacting clause–pass; title–pass. Bill as amended be reported.

Thank you to members of the committee.

Bill 38–The Residential Tenancies Amendment Act

Mr. Chairperson: We will now proceed with the Bill 38.

Does the Minister responsible for Bill 38 have an opening statement?

Mr. Selinger: No.

Mr. Chairperson: We thank the honourable minister.

Does the critic for the official opposition have an opening statement?

An Honourable Member: No.

Mr. Chairperson: No? Thank you.

During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee, the chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose.

Is that agreed? *[Agreed]*

Clauses 1 through 4–pass; clauses 5 through 7–pass; clauses 8 through 11–pass.

Shall clause 12 pass?

Mr. Selinger: Mr. Chairperson, I move

THAT Clause 12 of the Bill be amended by renumbering it as subclause 12(2) and by adding the following as subclause 12(1):

*12(1) Clause 116(2)(c) is amended by striking out "*clause 134(2)(b)*" and substituting "*subsection 134(2)*".*

Mr. Chairperson: It has been moved by the Honourable Minister Selinger

THAT Clause 12–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Mr. Selinger: I have a very detailed explanation for this for the members. This amendment corrects a reference to a subsection.

Mr. Chairperson: Any further comments, questions on the amendment? The amendment is in order.

What is the will of the committee? The question before the committee is the amendment moved by the Honourable Mr. Selinger.

Amendment–pass.

Thanks to members of the committee.

Clause 12 as amended–pass; clause 13–pass; clauses 14 and 15–pass; clause 16–pass; clause 17–pass; clause 18–pass.

Shall clause 19 pass?

Mr. Selinger: Yes, I would like to move–yes, last one–I move

THAT Clause 19(2) of the Bill be amended

*(a) in the heading, by striking out "*8, 15 and 17(1)*" and substituting "*7, 14 and 16(1)*"; and*

*(b) in the subsection, by striking out "*8, 15 and subsection 17(1)*" and substituting "*7, 14 and subsection 16(1)*".*

Mr. Chairperson: It has been moved by the Honourable Mr. Selinger–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order. Comments? Questions?

Mr. Selinger: Another profound explanation: The coming into force of subsections 5, 7 and 14, and subsection 16(1) of the bill, 38, is delayed to allow time to prepare for implementation, including the making of regulations. This amendment to the bill corrects the section references.

Mr. Goertzen: Well, I will just say for the record that, I mean, there are a lot of amendments that are happening with the minister's bills this evening. Normally, I do not think members on this side would be so lenient, but, seeing that the minister is dealing with a scandal in his department with Crocus, I can understand why his mind was diverted and these things have slipped through. For that reason alone I think we will give the minister a little bit of slack on this issue while he tries to sort out the Crocus scandal that is happening in his department.

Mr. Chairperson: Any further comments or questions?

Mr. Faurschou: I know that I am holding committee members here a little bit longer this evening, but I do want to suggest to the minister that he follow in the footsteps of other Cabinet colleagues and recognize the importance and the value of the public input on the crafting of regulation. Other departments have engaged the public. Seeing that there are areas within the legislation where regulation will be an important part of defining this legislation and its implementation, I would suggest perhaps to the minister that, even at reporting stage or third reading, what the minister has acknowledged at committee table here this evening, there perhaps be a place in the legislation that the public will be engaged in certain parts of his legislation before the regulatory development.

***** (21:20)

Mr. Selinger: Yes, the member from Portage la Prairie will know that I gave that undertaking for proper consultation, and we will follow through on that, as we have in the preparation of this bill.

Mr. Faurschou: While I appreciate truly the honourable nature of the Minister of Finance, there are circumstances in which personnel do change responsibilities within Cabinet, and it would be certainly nice to see in legislation that this consistency and an air of co-operation would be continued to those that would occupy his position in the future.

Mr. Selinger: I take the member's point, but the PPMA itself indicated that they wanted to move forward on this, that it had been a long time coming, and I am sure the members will remain vigilant with any new ministers and assure that they do proper consultations.

Mr. Chairperson: Is the committee ready for the question?

An Honourable Member: Question.

Mr. Chairperson: The question before the committee is the amendment moved by the honourable Minister Selinger

THAT Clause 19(2) of the Bill be amended

(a) in the heading, by striking out "8–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Amendment–pass; clause 19 as amended–pass; enacting clause–pass; title–pass. Bill as amended be reported.

Thanks to members of the committee.

Bill 37–The Municipal Assessment Amendment Act

Mr. Chairperson: We will now proceed with Bill 37, The Municipal Assessment Amendment Act.

Does the minister responsible for Bill 37 have an opening statement?

Hon. Scott Smith (Minister of Intergovernmental Affairs and Trade): I do very quickly, Mr. Chair. I know that there was a considerable amount of time with the critic going over some of the changes that were introduced, and came to quite an agreement that this was a good change in the legislation. In the Explanatory Note that we have all got in our bill, I think it does it quite well: "*The City of Winnipeg Charter* currently enables regulations to be made authorizing council to vary the percentage of assessed value for prescribed classes of assessable property for the purpose of determining portioned value."

This bill moves that provision to the other 198 municipalities that are under The Municipal Act and makes it applicable to all municipalities providing a further tool, a management tool, for all municipalities in the province of Manitoba.

Mr. Chairperson: We thank the minister for the opening statement. Does the critic for the official opposition have an opening statement?

Mr. Kelvin Goertzen (Steinbach): Thank you very much, Mr. Chairperson. In fact, the critic for this role was not able to be here tonight because of a significant conflict that he had. The Member for Arthur-Virden (Mr. Maguire) was not able to be here. I did have a chance to talk to the Member for Arthur-Virden, and he certainly spoke at length about this bill. I know that he has put some words on the record already in second reading, and I suspect that he may want to put further comments on the bill in third reading.

He did want me to pass along, certainly, remarks about the very good work that all municipal governments are doing in our province. The councillors who are elected to municipal governments, we know, are working hard in the situations that they are in, and there are very different situations for municipal councillors across the province. Some are dealing with growth; some are dealing with depopulation. So, whatever their challenges are, we do, I think, on this side of the House, the members of the Manitoba Progressive Conservative Party, salute and applaud those municipal councillors who are doing the work on a daily basis at the local level.

Mr. Chairperson: We thank the critic for the official opposition for the opening statement.

During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order.

Clause 1–pass; clause 2–pass; clause 3–pass; clause 4–pass; clause 5–pass; enacting clause–pass.

Shall the title pass?

Mr. David Faurschou (Portage la Prairie): I would like to take this opportunity to–

Some Honourable Members: Oh, oh.

An Honourable Member: Sing us a song, David. Sing us a song.

Mr. Chairperson: Mr. Faurschou, you have the floor, sir.

Mr. Faurschou: Thank you, Mr. Chairperson. I just wanted to recognize the staff and the work that went into this in the consultative process, and to say: "Job well done," and thank the staff's involvement.

Mr. Smith: I would just like to thank Mr. Faurschou for that. I would also just like to thank the maintenance staff that we have here in the Legislature that will come along and fix the dealings that Mr. Faurschou has dealt us here tonight.

Mr. Chairperson: Title–pass. Bill be reported.

What is the will of the committee?

Some Honourable Members: Rise.

Mr. Chairperson: Committee rise, the time being 9:26 p.m.

COMMITTEE ROSE AT: 9:26 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

RE: Bill 24

I am writing to provide you with the banking industry's commentary on Bill 24, The Consumer Protection Amendment Act (Cost of Credit Disclosure and Miscellaneous Amendments). The bill's explanatory note states that the purpose of the bill is to amend The Consumer Protection Act (the "Act") to add a new Part II about cost of credit disclosure, which is modelled on the Agreement for Harmonization of Cost of Credit Disclosure Laws in Canada ("Harmonization Agreement") agreed to by the federal, provincial and territorial governments.

While banks are federally regulated and are governed by the Cost of Borrowing (Banks) Regulations (the "Bank Regulations"), the industry has been following provincial efforts to harmonize cost of credit disclosure laws in Canada. To this end we have, in the past, provided our comments in respect of various proposals. We believe that both credit grantors and consumers will benefit when the federal, provincial and territorial laws mirror each other closely, and we support the harmonization process. We believe that amendments could be made to this bill to enhance harmonization.

We highlight below some of the issues that a review of Bill 24 has raised.

• The definition of "borrower" in subsection 1(1) is broader than the original definition set out in the Act. The current definition specifically excludes a buyer of goods or services on credit where such goods or services are used primarily for the purpose of carrying on a business. It is not clear under Bill 24 whether businesses are excluded from the application of the Act. Subsection 4(1) says that Part II applies to credit agreements that are entered into by individuals primarily for personal, family or household purposes. However, subsection 4(4) deals with credit agreements for business purposes. We submit that cost of credit disclosure legislation should be limited to consumer transactions.

• The definition of credit card which is to be added to subsection 1(1) of the act defines a credit card as a "card or device used to obtain advances under a credit agreement for open credit." This broad definition could encompass cards used to access other forms of revolving credit such as a line of credit. This will lead to confusion in the interpretation and application of the act. This definition makes it unclear as to whether the provisions which relate to maximum liability for lost or stolen cards, would apply to lines of credit or whether the provisions which relate to the disclosure for applications of credit cards, would apply to lines of credit that are accessed with a card as opposed to cheques. This confusion will inevitably lead to inconsistent application of the act and differences in the content of disclosure between federally and provincially regulated lenders.

• The definition of "person entitled to disclosure" includes the borrower, as well as the person whose consent is required under The Homesteads Act (i.e., spouse or commonlaw partner). The Harmonization Agreement and the Bank Regulations require that disclosure be provided to the borrower.

• Subsection 4(3) provides that the cost of credit provisions of the act do not apply to a credit agreement in which any of the borrower's obligations are guaranteed by a Crown corporation. This would suggest that mortgages that are insured by Genworth Mortgage Insurance Corporation, but not mortgages insured by the Canada Mortgage and Housing Corporation, are covered by the act. A patchwork of different disclosure requirements may result for different types of mortgages. We submit that all consumer mortgages should be subject to the same disclosure regime.

• It does not appear that charges for overdraft, penalty charges for prepayment, fees to discharge security and default charges are included in value received by the borrower under subsection 6(1). The cost of credit is defined as the difference between the value received by the borrower and the value given by the borrower. These charges are viewed as value received by the borrower in the Harmonization

Agreement and the Bank Regulations as they are not included in the cost of borrowing for a loan.

• Subparagraph (iii) of subsection 6(1)(e) states that a premium for title insurance is considered to constitute value received by the borrower "if the borrower is a beneficiary of the insurance and the property is insured for its full insurable value." In contrast, the Bank Regulations consider charges for insurance against defects in title to be value received by the borrower if the insurance is paid for directly by the borrower.

• Subsection 12(3) provides that the two-day waiver period for mortgage disclosure may be waived in a manner specified by the regulations. The Harmonization Agreement provides that the initial disclosure timing requirement for mortgage loans can only be waived where the borrower has obtained independent legal advice. Delays and inconveniences caused by this requirement will ultimately be detrimental to consumers who must complete transactions on a timely basis, and sometimes on short notice. In those circumstances, the credit grantor will not be able to meet the two business days prior disclosure requirement. Accordingly, our view is that the waiver process should be simple in order to facilitate these types of transactions. Subsection 7(2) of the Bank Regulations provides that the two-day period does not apply if the borrower consents to same. We recommend that the government adopt a provision which mirrors the Bank Regulations.

• Subsection 12(4) does not include title insurance as a disbursement charge that would not trigger the disclosure time period for a mortgage. Title insurance is considered a disbursement under the Bank Regulations.

• Subsection 14(2) provides that if interest will be payable for a period if certain conditions are not met (grace period), an advertisement must disclose those conditions and the APR for the period or the annual interest rate in the case of a credit card. Sections 35.1 and 35.2, which deal with disclosure for advertisements and the initial disclosure statements for open credit, do not currently require an APR to be disclosed for any type of open credit. We submit that an accurate calculation of an APR for open credit is not possible. Therefore, we recommend that this provision state that the annual interest rate (as opposed to the APR) for the period be disclosed for all open credit.

• Sections 14(3) and 15 of the Act, applicable to interest-free periods and invitations to defer payment, respectively, state that where the advertisement offer does not clearly disclose the required information or whether or not interest will accrue during the period, the credit grantor is deemed to waive the interest that would otherwise accrue during that period. These provisions go beyond their counterparts in the Bank Regulations and the Harmonization Agreement, which do not provide for any particular penalty, and will create uncertainty among consumers.

• Subsection 17(1) states that if there is an inconsistency between a disclosure statement and an agreement, the information in the disclosure statement becomes the term of the credit agreement where it is more favourable to the borrower. This provision should be deleted as it is inconsistent with the Harmonization Agreement.

• Subsection 34.2(1) provides that for an advertisement of fixed credit that states an interest rate or a payment amount, the APR and the term of the loan must also be disclosed. The Bank Regulations also require such disclosure if there is a representation regarding a non-interest charge. We submit that the section be amended to be consistent with federal rules.

• Section 34.7 deals with renewals for non-mortgage loans, which are not provided for in the Harmonization Agreement or the Bank Regulations.

• Subsections 34.8(4) and (5) permit a borrower who has not received a new disclosure in accordance with the requirements of that section to prepay his mortgage loan in full without penalty. This provision creates an unduly harsh consequence for failure to comply with the strict wording of the legislation. This particular provision is not provided for in the Harmonization Agreement or the Bank Regulations. The Bank Regulations, for example, provide for the continuance of the borrower's rights under the old agreement until the later of the date specified for its renewal and 21 days after the borrower receives the statement (paragraph (b) of subsection 14(2)).

• The "trigger" in section 35.1 is broader than the Bank Regulation's "a representation of the annual interest rate, or the amount of any payment or of any non-interest charge". We submit that the section should be amended to be consistent with federal rules.

• Subsection 35.8(1) provides that where a credit card is lost or stolen the card holder is liable for not more than $50 for debts incurred through unauthorized use. Subsection 35.8(2) states that certain transactions may be exempted by regulation. The regulations should provide that the maximum liability provisions do not apply to the use of a credit card in conjunction with a PIN. A PIN is a complete substitute for a signature for card use in a particular transaction. If a card holder discloses their confidential PIN deliberately or carelessly, the card holder is enabling a third party to use their card and thus commit fraud. In such circumstances, we see no reason why the card holder should not be liable for that debt.

• There are other provisions dealing with credit cards which have no corresponding provisions in the Harmonization Agreement or the Bank Regulations. Subsection 35.8(3) provides that a card holder is not liable for the unauthorized use of their credit card if the card holder notifies the card issuer within thirty days of receipt of the statement which includes this debt. Subsection 38(5) puts the onus of proof with respect to a dispute over whether a debt was authorized by the card holder on the issuer of the card.

• Subsection 35.9(2) provides that the credit card holder is not liable for any debt incurred through the use of a credit card after he or she has surrendered it to the issuer or an agent of the issuer of the card. There are many instances where valid, authorized charges will post to an account after such a card has been surrendered. If a credit card holder has automatic payments charged to their credit card (e.g. utility payments) and subsequently cancels the card without notifying the merchant, then the credit card holder continues to remain liable for those charges despite the card being cancelled. According to credit card association rules, the credit card issuer cannot simply reverse the charge to the merchant in situations where the card holder has not advised the merchant to cease putting through the authorized debit. If the charges are authorized, they should be payable.

• Numerous, important items are left to regulations. The CBA would appreciate being consulted on the content of these regulations.

Thank you for providing the CBA with the opportunity to provide the banking industry's comments on Bill 24. We ask that the concerns raised in our letter be taken into consideration. In that regard, if you have any questions or would like to discuss any of our concerns in greater detail, please do not hesitate to contact me.

Sincerely,
Paul Griffin
Director, Western Region
Canadian Bankers Association

*** * ***

Re: Bill 37

The Municipal Assessment Act is of obvious importance to municipalities, and, therefore, the AMM would like to put its comments on record regarding Bill 37, The Municipal Assessment Amendment Act.

Bill 37 will allow municipalities, through by-laws, to vary a percentage of assessed values that apply to classes of property for purposes of determining portioned values within a fixed range. This option is already available to the City of Winnipeg, and the rest of Manitoba's municipalities will benefit from being granted the same opportunities.

Bill 37 will allow all municipalities to benefit from this option, and the AMM is pleased to see this authority extended to all municipalities through The Municipal Assessment Act.

Ron Bell
President
Association of Manitoba Municipalities