LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Tuesday, January 23, 1990

TIME — 8 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Parker Burrell (Swan River)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Connery, Cummings, Ducharme, Penner

Messrs. Burrell, Kozak, Maloway, Minenko, Patterson, Taylor, Uruski

WITNESSES:

Mr. Ken Mathews, Private Citizen

Ms. Jennifer Hillard, Consumers' Association of Canada

Mr. Dale Mulhall, Private Citizen

Mr. Les Stechesen, Private Citizen

Mr. Brian Lutz, Private Citizen

Mr. Brian Kelly and Peter Ramsey, Manitoba Chamber of Commerce

Mr. Lefty Hendrickson, President, Manitoba Motor Dealers Association

Mr. Art Elias, Private Citizen

Written Presentations Submitted:

Mr. Sanderson Layng, Director, The Children's Broadcast Institute

Mr. Bill Stokes, Private Citizen

APPEARING:

Hon. James McCrae (Minister of Justice and Attorney General)

Mr. Jay Cowan (MLA for Churchill)

Legislative Counsel Staff:

Ann Bailey, Amendments Drafter

Michel Nantel, Translator

Isaac Silver, Drafter

Rob Walsh, Monitor of Amendments and Adviser to Committee

MATTERS UNDER DISCUSSION:

Bill No. 63—The Consumer Protection Amendment Act

Bill No. 64—The Business Practices Act

Bill No. 83—The Ozone Depleting Substances Act

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* (2005)

Mr. Chairman: The Committee on Law Amendments is called to order. Bills Nos. 63, 64 and 83 are to be considered this evening. It is our custom to hear briefs before consideration of the Bills. What is the will of the committee? Is it the will of the committee to hear the briefs before—Mr. Taylor.

Mr. Harold Taylor (Wolseley): Mr. Chairperson, I wonder what the views would be of my colleagues on the committee about hearing the briefs.

Mr. Chairman: Mr. Taylor, would you cinch up your mike? The Hansard people are complaining.

Mr. Taylor: All right, is that better?

Mr. Chairman: Thank you.

Mr. Taylor: My question would be to the other Members around the table as to what their views would be to hearing this evening briefs on all three pieces of legislation that are on the Table. We have two consumer Bills and an environmental Bill.

Mr. Chairman: That is the customary practice.

Mr. Taylor: We will hear for all three then?

Mr. Chairman: That is correct.

Mr. Taylor: Thank you very much. That is fine.

Mr. Chairman: Providing we get through all of the list, is there any will on the part of the committee to set a deadline for sitting tonight, or did you want to sit all night?

Mr. Taylor: I would suggest, Mr. Chairperson, that we review the situation at ten o'clock to see where we are. If we can finish it tonight, fine. If not, we will do it Thursday night.

Mr. Chairman: Is it the will of the committee to review at eleven o'clock and see where we are at? -(interjection)- Ten o'clock? -(interjection)- Is it the will of the committee to review at ten o'clock? Okay, so noted.

Is it the will of the committee to set time limits on the presentations? No. Okay, it is not the will of the committee to set time limits on the presentations. We could encourage everyone to be as brief as possible while still getting their message across.

I have a list of persons wishing to appear before this committee.

Bill No. 63: Mr. Ken Mathews, Private Citizen; Ms. Jennifer Hillard, Consumers' Association of Canada,

Manitoba Branch; Mr. David Newman, Manitoba Chamber of Commerce; Mr. Dale Mulhall, Private Citizen; Mr. Jan Kaczmarski and Mrs. Glennis Kaczmarski, Private Citizens; Mr. Brian Lutz, Private Citizen; Miss Lynn Martin, Social Assistance Coalition of Manitoba; Ms. Olga Foltz, Private Citizen; Mrs. Mavis Bleasdale, Private Citizen; Mr. Les Stechesen, Private Citizen; Mr. Art Elias, Private Citizen; Mr. Maurice Paul, Private Citizen; Ms. Alice Balsillie, Private Citizen; Mr. Maury Bay, Private Citizen.

Written submissions to Bill 63: Mr. Bill Stokes, Private Citizen; Mr. Sanderson Layng, Director, Children's Broadcast Institute.

We have not received Mr. Stokes' presentation at the present time.

Bill No. 64, The Business Practices Act. Persons wishing to make presentations: Mr. Buddy Brownstone and Mr. David King, Winnipeg Chamber of Commerce; Mr. David Newman, Manitoba Chamber of Commerce; Ms. Jennifer Hillard, Consumers' Association of Canada (Manitoba Branch); Mr. Lefty Hendrickson, President, Manitoba Motor Dealers Association.

Bill No. 83, The Ozone Depleting Substances Act. Persons wishing to make presentations: Mr. Chris Kaufmann, Manitoba Environmental Council.

* (2010)

Should anyone present wish to appear before this committee, please advise the Committee Clerk and your name will be added to the list. If anyone present who is registered to speak has written presentations, please pass them on to the Committee Clerk at this time.

This is a change. Mr. Lefty Hendrickson would like to speak to Bill No. 63 instead of Bill No. 64. He will be No. 4 on the list because of prior registration.

Are there any out-of-town presenters registered who would like to speak at the beginning?

Is it the will of the committee to proceed with Bill No. 63 at this time? I imagine that would be, to go right into the presenters. Is it the will of the committee to go into the presenters at this time? Okay.

Mr. Ken Mathews, please. Mr. Mathews, have you a written presentation to distribute?

Mr. Ken Mathews (Private Citizen): Yes, I gave it.

Mr. Chairman: They will just pass it out and then we will get underway.

Mr. Mathews: I would like to thank the committee for the opportunity to address the issue that I am comfortable with, and that is some of the clauses in Bill 63 that is under advisement today.

I have included a summarized list of my credentials on the opening there. That is just to convince people that I am still alive after 40 years in the service business.

If memory serves me correctly, in either the spring or the fall of 1970, I discussed with Senator Gil Molgat—at that time he was leader of the provincial Liberal Party—the need for more stringent rules and regulations for existing and future service industries. The discussion was precipitated by an ongoing problem in House re hearing aid salespeople. Senator Molgat was most interested and surprised that there were no protective measures in place to protect the public's investment in service industries, but somewhat pleasantly reassured to discover I had maintained a $50,000 trust fund in my dancing school to protect the students' investments that were arranged on a prepaid basis.

Senator Molgat brought the entire issue to the attention of the House and was good enough to provide me with a copy of Hansard of the day in question. So mine is not an adversarial position in general but in specific clauses and, regardless of the outcome of my presentation and suggestions, I concur with this committee's position that some improvement is necessary. Some improvement is better than no improvement at all.

The next few pages just outline my particular clauses that I am concerned with. I would like to take you down—and I apologize for them not being numbered—to the sixth page near the bottom where it says, Note. We are discussing here the protection of the public in reference to service industries, dancing schools, health spas, exercise clubs, et cetera. I make note that the client or the buyer, the member of the public, is at the mercy of the vendor who

A) Oversells their capacity of the physical environment in which he operates his business.

B) In the event where personalized attendants are sold as part of the agreement—oversells the capacity of a limited staff availability to deliver the personal attention promise in the agreement.

C) Deliberately reduces staff and payroll overhead to economize and increase the net profit of the operation.

D) Closes all offices or drastically reduces the available number of hours the buyer has to avail himself of the service.

* (2015)

Down at the bottom of the next page, I would like to address the issue that has been brought up re lifetime contracts, or lifetime programs. I covered, just preceding this, how the thing came about, what the problems were with it, with a lifetime registration form. Down at the bottom I say here that: The lifetime program was seized upon by other service businesses that had no commitment to downstream personalized attention or service. It was seized upon as a quick way to raise funds and was readily sold to the buying public who was not sophisticated enough to realize that there is no such thing as a free lunch.

The service businesses themselves were not sophisticated enough to realize that they were caught in the law of diminishing returns, and that the day would come when they could not service everyone they had

sold, whether the physical limitations of their environment or staff prevented the delivery of total services and were now primarily in business to service clients who had no resale potential. Their only choice at this point was to close.

An example I will bring here of recent memory. When the Fit Stop was unfortunately forced to close, just prior to their closing, they were offering, I think, in some cases two free years of membership if you brought another referral. If my memory serves me correctly, and I could be wrong in this, at one point they were offering 30 days for 10 cents.

At this stage the necessity of getting more and more money in now superseded the servicing of the clients who had already paid the fees. This is not a new phenomena. In 1956, I believe, the American Health and Silhouette salons opened in the Winnipeg area. I think they were open here about nine weeks. If memory serves me correctly, at least the figures that were reported, they took about $185,000, in 1956 money, out of the market. It was open, watch your fingers, we're closed again.

The key to having a successfully operated, long-term personal service operation is in having downstream repeat business with a large percentage of your existing clientele.

The largest ongoing expense of most personal service businesses, aside from payroll, is advertising. The most crippling ongoing expense is rent and its accompanying utilities and tax escalation clauses. The larger the physical space required to service the public—health spas, fitness clubs, and dancing schools—the more onerous the fixed rent becomes.

When an organization is reduced to offering outlandish benefits to members to produce new members through the referral system—such as a free month or a free year of membership—they have effectively cut their own throat because they have eliminated the potential downstream resale to the original client who brought in the referral.

Because a dancing school has an ongoing and progressive learning program, a well-run school can avoid the pitfall of health spas, et cetera. But because of the extensive and ongoing expense of training and retraining professional full-time dancing teachers, there must be allowance made to ensure that the operator of the school has the assurance of the public that they, the public, will show up for agreed-upon instructional programs. This assurance is only valid through prepaid tuition or agreed-upon time payments.

* (2020)

Without assurance that the public also has some responsibility to the operator, the operator's only intelligent decision is to close the school and put the full-time staff—many of them dedicated to their profession—out on the street. In the 40 years I have been associated with the dancing industry, no school I have managed or owned has ever refused a client a lesson they had either paid for or agreed to pay for, obviating of course a student coming in unannounced and a teacher not being available at that instant.

No school I have owned has ever been sued for lack of performance, misrepresentation or failure on our part to fulfill any agreement with the public to the letter, even in cases when the time period allotted to the agreement has expired.

I consider myself truly without peer as a qualified representative of the personal service industry. I offer these suggestions as regulations, because I seriously believe and agree with the Government that regulation is required.

The instruction of dancing should take place in an organized school environment only. Ex-teachers teaching in basements and community clubs, for what is in many instances unreportable income, contribute nothing to the economy or the profession. They hire no staff, provide no opportunity, pay no business tax, no rent, no liability insurance, and often contribute little to the overall enhancement of the student's social life.

Any existing fixed-location dancing school that accepts prepaid tuition or time payment agreements should lodge copies of their business forms with the appropriate Government agency. An investigator should be entitled to enter any school at any time, have any student identified to him or her and have the student's records provided for immediate examination. The records should indicate the student's name, address, phone number, and list all the programs purchased, list all the program payments arrangement with corresponding receipts issued, list the total number of lessons purchased, list the total number of lessons taken to date and the balance to be taken, the outstanding dollars to be collected on time payment programs, and the outstanding lessons that must be taught that have been prepaid.

At the time the inspection is made, if the operator is unwilling or unable to provide the above information to the investigator, then the business should be padlocked. If the current records do not exist at the time of the inspection, I assure you that any records produced at a later date will be falsified.

A school should be designed as a fixed location in which lessons are taught for money, either one room or multi-roomed.

Opening a new school in Manitoba should require certification, licensing, clear identification of the owners and shareholders of a limited company, a listing of the legal representative and accounting firm, and a prepaid cash trust fund of at least $50,000 to insure students' tuition prepayments.

For other services such as dating agencies, et cetera, a properly registered place of business that the public can attend at their option at any time during reasonable hours of operation to discuss the status of their membership and exploit their use of the service that they have paid for, should answer most of today's problems. The downstream vested interest in the client's success, examples, charges for dates arranged, marriage fees, et cetera should be outlawed. Newly organized personal service businesses, health clubs, et cetera should have the same trust fund requirement I suggest for dancing schools. Other requirements

including identification of the owner, et cetera should be posted in a conspicuous place for the public to see.

* (2025)

In closing, I suggest to you that there are many responsible people in the service industry, and I suggest just as strongly that there are many who should be put out of business as quickly as possible, and many who should not be allowed into the field. To ensure the public of Manitoba as much protection as possible, a full-time experienced investigator should be hired. I would just like to add one other further point because it came up after I finished this here.

I would like to submit two further thoughts for your consideration and bring it to your attention. As outlined on the back of the page, this is the latest evidence of some of the problems that we are facing. A young fellow here is threatening he may have to close the doors of his racket club or sports club.

Everybody wants to be in business these days. Much thought is given to the idea of going into business or getting into business. Some thought is given to how much is it going to cost me to get into business, and then usually you find out a little bit later it costs a lot more than that. Very little thought is given to how do you get out of business.

Here is a young man whom I am sure was filled with a great deal of hope and anticipation, and I am sure he put up a considerable amount of money, or his company did. He is locked into a situation where his expenses are $25,000 a month.

If he wanted to close, if he had been involved with life-time memberships, if he wanted to be as conscientious, if he wanted to be as responsible as possible and face the fact that he just could not afford to carry on, but he thought he should give all of these members at least 12 months to use their memberships, he is faced with $300,000 worth of obligation just to keep it open for the public to come in. I am sure if this young man ever realized that it was going to cost him $300,000 to conscientiously close the business, he might have given more thought to opening it in the first place. It is unfortunate but that can be the situation there.

I also make note here in the middle of the last page that I just think this is the tip of the iceberg with service businesses. I think you may see more closures. When a situation develops such as the one this committee faces the committee cannot win, because whatever you do the public perceives it as locking the barn door after the horse has gone. I strongly suggest to you that you make it very difficult for the barn door to be opened in the future. Thank you very much.

Mr. Chairman: Do the committee Members have any questions of the presenter? Mr. Maloway.

Mr. Jim Maloway (Elmwood): Would I be correct if I was making the assumption that you are endorsing the provisions of the Bill, that in fact you feel that we probably have not gone far enough at this point?

* (2030)

Mr. Mathews: I think in some directions you have not gone far enough. I think the one part I am most uncomfortable with is the decision to give the members of the buying public 10 days to change their mind, a little bit different in the service industry to somebody who has an investment in a business where he generally advertises for clientele and the member of the public comes in.

It has been years and years and years since anybody seriously wrestled the public to the floor in the Indian death lock to get their money out of them. Most adults and most businessmen do business with adults only. They can say, no. If they enter into an agreement with a man who has money committed, he does not need 10 days to make up his mind whether he wants to keep his word.

I cite examples in my presentation there, of cases where people can come in and they can be just as unscrupulous as a purchaser as the merchant can be, as the purveyor of the service. What protection does somebody like myself have, or people I have sold my dancing school have, to somebody who comes in and says, oh yes, well I want to take some dancing lessons? I will write you a cheque, I will give you $300 for the dancing lessons. They deposit the cheque and by the time the cheque bounces seven or eight days have passed, the person has taken the instruction, the cheque bounces and the person says, well, it does not really make any difference because I was going to give you notice on the ninth day, I was going to change my mind, anyway.

What does the merchant do? How do you pay your staff? Do you pay them on the basis, well, do the work today, but wait 10 days in case the public changes their mind, because if they change their mind, I cannot pay you? This is not how it should be done.

I do not know how strongly you can make the regulations for people who are in business now, but I really do recommend you make it tougher for people to get into business. With most of them it is not a devious plan in advance, particularly in the service industry where nothing tangible changes hands.

People will invest their money in franchises, they will invest their money in service industries and they do not really understand the ramifications of it. You cannot have a sale, you cannot have an inventory sale, because you do not have an inventory. You do not have a product. All you really have going in a service industry is your budget for your advertising, your budget for your fixed location, and your budget for your payroll to service the public.

It is entirely possible that the public needs a great deal of protection, no question about it, but I do not think that the public really is so uninitiated that they have to have 10 days to make up their mind whether they are going to keep their end of an obligation that they have entered into. That is my position on it.

Mr. Maloway: I was very pleased to hear you say that you had in fact kept $40,000 or thereabouts of your customers' money in a trust situation—

Mr. Mathews: It was $50,000.00.

Mr. Maloway: —$50,000, and I would venture a guess that very few businesses today are in a position to do that, nor do they do that, and that is really the problem that a lot of other presenters here are going to be dealing with tonight, and that is businesses are not relying on bank credit, they are not relying on 30 day credit from suppliers. They are relying on customers' money. The fact that your business has been operated in such a responsible way and that you have not used your customers' money to operate your business, in fact you have held that money in trust, I think says a lot about the way you have operated your business. I only wish that many, many other businesses would follow a similar practice in this province. We would have far much less problems than we do right now.

My further question to you had to do with a business in Manitoba that has been advertising—this particular business is involved in the, I believe, it is the spa business. They have been sending around brochures, scratch and win brochures, and it is a promotion, it is part of their advertising budget. They have been suggesting that if you scratch and win, you can win a trip for two to the Bahamas and in order to get your trip you must sign a three-year spa contract at $5 a month. It works out to be about $180 which I guess is a very reasonable price for a spa membership relative to what some other companies are charging.

When you look at the trip a little further you find out that the trip will cost you—the air is free, the hotel is charged to it, but in fact, the trip when you pay the air will cost you, I believe, it is $700 and it is possible to get from Winnipeg to Mexico for two weeks with P.S. Holidays or local tour operators for even $100 or so less than that. What you are buying from these people is an overpriced vacation, but—so there is a bit of smoke and mirrors here.

My question to you really is whether or not those people, on top of fooling the public, are really fooling themselves because by evaluating their service to the point where they are probably collecting half of what the business should be collecting to run a proper operation, are they not basically heading down the road to inevitable demise because of this kind of operation?

* (2040)

Mr. Mathews: Well there is no question about it. Anybody in the service industry where you can receive the money up front and you are going to deliver the service over an extended period of time—and the period of time does not have to be long, it could be 30 days, it could be 90 days, six months, or a year—anybody who operates a service business and receives say $500 from a client for a 12-month membership or whatever it is, is absolutely insane to believe that the $500 is his the minute he gets it.

If it is for a 12-month membership or whatever you want to call it, then he has to figure in the back of his mind that he is really only going to get $45 a month. That is as fast as he can earn it, because the $500 was for a 12-month period. But, of course, many of the businesses and many of the service operators get caught up in the idea that they can have a tremendous opening to their business and they may take in—in the example I quoted in Silhouette in American Health back in 1956—$175,000, $185,000 in nine weeks.

If the operator does not have his head screwed on correctly or he is a little lightheaded to start with, that would be such a windfall—look at all that dough I made, that is mine—until you realize, of course, you now have to be open two years to service the people you already took the money from. Then I think in their particular case, it was a much easier decision to make to just put the money in a suitcase and fly.

Nobody in their right mind, really, in the service industry would assume that just because they got the money today, it is theirs today. They have a moral obligation to figure out in their own mind that this money has to be dispersed in one way, shape, or form, over the length of the period of time that you have extended yourself and your obligation to the public. For people to say that a membership in anything would be a thousand dollars for a year—I would think even a golf club that would charge a thousand or $1,500 for a year, they may take your money on the first of January and they spent it on the second of January, but in all truth they have not earned the money till they close the golf course in October, and that is the difference.

If the businesses are responsible, if the businessman is responsible and he can see this, and he has capitalized himself so he cannot have to put his hand into the pool of public money that has paid in advance, fine and dandy. But if he is operating from short lines, or if he has put all his money up in front for the space and the equipment and everything else, then I am afraid I have to tell the committee that it is awfully tempting when he opens his doors and he takes in $5,000 in a week or $10,000 in a week, or $20,000 in a week, to think that money is his and that is just human nature. There has to be something in place to protect the public from that.

Mr. Maloway: Mr. Chairman, one final question. Would you agree, Sir, then that proposed deposit legislation whereby a limit of say 20 percent would be put on deposits, that is 20 percent of the selling price of the good or service, and the deposits over $500 be held in trust would be adequate protection to the public?

Mr. Mathews: Yes, you would have to tie that into the length of time that the service was to be extended to the public. It could not be an ad infinitum, if it was like a 12-month membership. The man would have to be able to release the money, whether the member of the public came in and used the service or not, because the businessman is committed to be open for the 12 months or the 24 months. If the member of the public puts up the money and decides not to come in for four months, you cannot expect the businessman to keep deferring the deposit. It has to be a prorated thing.

Mr. Maloway: I do not believe that particular scenario would apply in your service business anyway, because it is not likely that you will be collecting $500 in deposits from people anyway. I just sort of asked you as a general principle, that when you are hiring somebody to build

a sunroom for $10,000 or if you were hiring a contractor to do some work for you in those kinds of big amounts, do you not think it reasonable that the firm that is conducting the operation should be prevented from collecting more than 20 percent up front, that that 20 percent, assuming it is more than $500, be held in trust? In other words, that business should rely not on the deposits that people are putting up, but it should be relying on bank financing or some kind of financing with a base other than the customer's money.

Mr. Mathews: I would prefer to see the money put in escrow if it was a 12-month situation. Say you decided that 25 percent of it had to be put aside. That would be put in escrow and could not be released until the twelfth month. The businessman should be able to support to service the business with the 75 percent advance.

Mr. Taylor: Mr. Matthews, in your presentation on—it would be the first page after your introductory letter. Do you have the presentation there in front of you? I have questions on a number of paragraphs that maybe you could help lead us through here. On the third paragraph it talks about where—it is not dissimilar to what you were just talking with Mr. Maloway (Elmwood) about—if a member who signed up for some sort of service or lessons decides to defer the taking of these things, does not start right away, then 10 days later decides to take the money back, the provisions are then, as you understand the Act, that it is 100 percent refund within the 10 days.

Mr. Mathews: Yes.

Mr. Taylor: In the context then that the person did take some of the lessons, that certainly is not going to be 100 percent refund, would it?

Mr. Mathews: The way my interpretation is, is that he can take them all and ask for the money back within the 10 days.

Mr. Taylor: Okay, I think that is something we will have to get clarified from the Minister. There was a second point in the following paragraph. You have got D/S, I assume that is Dance School students. Is that what that means?

Mr. Mathews: Yes, it could be. Yes.

Mr. Taylor: Okay, so that is another example that you are using there of that same point?

Mr. Mathews: Yes.

Mr. Taylor: Okay, down near the bottom of the page it talks about s/b. Now what is that?

Mr. Mathews: That is should be. That is my own shorthand, excuse me.

Mr. Taylor: Oh, it is your own shorthand, okay. All right. Could you just explain that paragraph to me?

* (2050)

Mr. Mathews: Yes. It says, should be with the exception that part of the money is deemed fair and equitable for the amount or portion of the service used by the buyer prior to the date of cancellation. I think that when I got the Act, the way I interpreted it was that it would not make any difference whether they took part of the services or not. The businessman was still obliged to refund the money within the 10-day period, whether the customer had used part of the services or not. I say here, should it not be the portion of the unused services?

Mr. Taylor: Mr. Mathews, if we continue on to the following page, that is another similar example you have used here, where a dance student has signed up for 10 lessons and then takes the money back again. You are considering that as an attempt to defraud, and it would certainly seem to be the case. Could you explain a little more the one after than then?

Mr. Mathews: Yes, it says that any well run service—is that the part you mean?

Mr. Taylor: No. It says: It is a criminal offence—

Mr. Mathews: Yes. Well that was my understanding of the law, that it was a criminal offense to attempt to obtain goods or services through the use of a fraudulent cheque. Suppose the buyer in the above scenario pays by cheque, completes the program before the cheque bounces and then says, you cannot charge me with a violation of the Criminal Code, because I notified you on the 9th day that I wanted my money back anyway.

Mr. Taylor: You are suggesting that by this Act, the merchant has no other recourse except to start a separate civil action to try and regain the monies they have to pay?

Mr. Mathews: Like it says here, the seller in either scenario has delivered, or made available, the entire range of the service in question must still refund the money and then go to legal action to collect their money.

Mr. Taylor: Then you are suggesting by your interpretation of the Act, Bill 63 as it stands, the merchant or the entrepreneur running a service outfit has not the discretion to refuse a refund; that is your interpretation.

Mr. Matthews: Yes, under the amendments.

Mr. Maloway: I guess I should ask Mr. Matthews whether or not his business involves direct selling. Do you have a situation where sales people are going on a door-to-door basis selling your product?

Mr. Matthews: No, our business is all done like what is called resident sales, where the member of the public comes into our office at a pre-arranged appointment.

Mr. Maloway: Well, in that case, it has always been my understanding that the cooling-off period, which is

what we are referring to here, and which is involved in this Bill, refers only to direct sales, door-to-door sales, and not sales involving people coming to your place of business. So in my original Bill last year I was planning to extend the four-day period in Manitoba to seven days, but the Minister, in his wisdom, brought in an amendment extending it consistent with the Saskatchewan law which is 10 days. We, in our Party, have no problem with what he has done there, but it is our understanding that the cooling-off period has only to do with direct sales, and by your own admission you are not involved in the direct sales operations so, therefore, it would not involve you at all.

Mr. Matthews: That was not my interpretation of the Act as it was in the booklet, that there was no differentiation, because I always did believe that the cooling-off period was four days and was put in place because of door-to-door salesmen, or spur of the moment purchases, that perhaps it could be deemed that the public was not able to make a good decision in a hurry. But, at least in the way I interpreted it, it did not make that delineation. It said "service industries."

Mr. Bill Uruski (Interlake): Mr. Chairman, to Mr. Matthews—

Mr. Chairman: Would you pull your mike in a bit, please?

Mr. Uruski: I do not think it is on, Mr. Chairman.

Mr. Matthews, I want to thank you for the depth of your brief. Do I understand you correctly, that you are not opposed to the extension of the cooling-off period for personal services, provided that if any services are received during that cooling-off period that the refund be proportionate to the amount of services received? Is that correct?

Mr. Matthews: I think it should be proportionate to the amount of services that the merchant was prepared to deliver. I do not think the public has the right to arbitrarily decide themselves not to use the agreed upon service, and then at their prerogative come back and tell the businessman he owes them the money.

Mr. Uruski: Let me just understand that. What you are saying is, if there is a prescribed agreement between the merchant and the client for that cooling-off period of, say, two lessons, and the individual did not come for those two lessons, the cost of those two lessons should still be borne if the customer decides to change his or her mind.

Mr. Matthews: Certainly, if the appointments were booked and private teachers were being paid to service that client and they just decide not to come in, then there is no reason why the businessman should bear that loss.

Mr. Uruski: In your presentation, Mr. Matthews, you also indicated that it was your belief that much more stringent requirements should be in place for people beginning businesses such as bonds of sort. Do you have any suggestions for the committee as to what the Government and committee should look at in terms of people going into the service industry? What kind of requirements would be normal requirements for the protection of the public?

Mr. Mathews: I would prefer to give it more thought but, I would say generally speaking, anybody who wanted to go into a service business from a fixed location should be able to designate in advance what they feel their minimum monthly fixed operating expenses are going to be. If it is deemed that they are going to be $4,000 a month, whether they do any business or not, but they want to open for business, they want to advertise for business, then I think they should be required to put up $48,000 which would be the operating expense for the first year, if they did not get a customer at all.

If they want to project a business that is going to cost them $9,000 a month to run, then they should be able to put up $108,000.00. They have got to be able to show that they can stay in business. Anybody can go in business. It is important can you stay in business, even when business is bad.

* (2100)

Mr. Uruski: Thank you very much for your advice.

Hon. Edward Connery (Minister of Co-operative, Consumer and Corporate Affairs): Is there a problem with service not being provided for 10 days? Under the prepaid services part of the legislation, prepaid services are part of the 10-day cooling-off period. Would it be a problem for the consumer not to use the services for 10 days? It would give an opportunity for the cheque to flow through. Is that an inconvenience to the industry?

Mr. Mathews: It is an inconvenience to the industry in respect that any businessman, any merchant when a client shows up, or a customer shows up and says, I would like to spend some money with your company, you do not want to call him a liar for nine days. I mean, you go along. You want to provide the person with the service because that is what you are in business for. I assure you, and I would not be the only service industry operator who would tell you this, that there are many times people have come in, made arrangements to negotiate for the service and to use the service, and the owner or the operator has made the service available, then they find out later that the cheque bounces, and they are sitting there and they wonder how they are going to collect the dough when they have delivered the service.

Mr. Connery: You have an opportunity through the courts to collect that for that bounced cheque, but we recognize that is not easy. For the use of the service within the first 10 days or at any part, Section 123(7) indicates where service is partly performed that, if you read (a), the seller's right to recover, he returns the money and then gets the portion that has been used, whether it is a dance studio, whatever. There is an

opportunity to recover from the client that portion that has been used.

Mr. Mathews: Yes, but you see, you put the onus on the businessman, that now he has to give back all the money under the law, regardless of how much has been used by the member of the public, and then he has to turn around and sue the member of the public for the money that he just gave them back under the law. If his relationship with the client is so tenuous that it will not hold up for nine or 10 days, then what possible hope does he have of getting the money from the client beyond the 10 days?

Mr. Chairman: Thank you, Mr. Mathews. Do you have any questions of the committee?

Mr. Mathews: No, just to thank you very much for your attention.

Mr. Chairman: Ms. Jennifer Hillard. They are just distributing your paper. Would you just hold off until they—

Would you proceed, please?

Ms. Jennifer Hillard (Consumers' Association of Canada, Manitoba Branch): The Consumers' Association of Canada is an independent, non-profit, volunteer organization, representing and informing consumers. CAC has about 140,000 members across the country. About 7,000 of them reside here in Manitoba. CAC Manitoba has offices both in Winnipeg and in Brandon.

We are pleased to see improvements being made to The Consumer Protection Act, and we thank you for the opportunity of appearing tonight to present our views on this piece of legislation.

We would like to make some specific comments on sections of the Bill, and our page numbers refer to the printed copy of just the amendments that you sent out.

On page 4, Section 58.2(1), this was the section where the sellers are responsible for the warranty. We are very pleased with the content of this paragraph, but we trust that when the Bill is passed this will be given plenty of publicity, because otherwise we feel there will be considerable confusion, both to consumers and to business people.

On page 5, Section 94(1), this is the section with fines for corporation. CAC Manitoba feels that setting minimum and maximum fines for corporations may impose undue hardship on small business while amounting to no more than a slap on the wrist to large corporations. We would like to see the fines to corporations set at levels commensurate with the gross annual income of a corporation in order for the fine to both be effective and to reflect the amount of damage inflicted on consumers.

On page 8, Section 123(1), this was the section with the deposits that you have just been debating. CAC is concerned that this section does not allow for consumers to withhold a portion of a contract price pending satisfactory completion of the contract. We feel that the 7.5 percent holdback, which is currently allowed under such things as renovation contracts, is insufficient, and we would like to see that amount increased and written into the Bill at this point.

Page 8, Section 123(2), this is the extension of the cancellation period that you have just dealt with. We interpreted this as referring to direct selling. In other words, door to door, or at trade shows. We did not consider it as on a straight service contract. We applaud the extension of the cancellation period, and the very precise requirements for the size of the print that are outlined in 123(3). We do, however, have some concerns that a 10-day cancellation period will cause considerable delays to consumers who do not cancel their contracts.

Those are our specific things. On a more general nature, CAC is disappointed that many of the suggestions we have made for specific consumer protection have been omitted from this Bill. There is no provision for arbitration, thus forcing consumers into the court system. There is also no provision for class actions; therefore, many consumers will be forced to continue to absorb their losses. We also feel that this would have been the ideal time at which to introduce legislation to protect Manitoba consumers from failures in the travel and tour company and business.

We have some concerns about the separation of activities of the Consumers' Bureau and the people who are going to be servicing the new Business Practices Act, but we will deal with those at the end of the comments we have on the other Bill. That is the end of our specific comments on this Bill.

* (2110)

Mr. Chairman: Has the committee any questions of the presenter?

Mr. Uruski: Mr. Chairman, Ms. Hillard, I want to thank you for your brief.

I would like a little bit of clarification on your presentation dealing with fines. I guess I am wondering whether there may be the possibility, if your suggestion were incorporated, as to using the level of fines as a percentage of gross income of that corporation.

If, for instance, a new business begins and the operators are very unscrupulous, they may begin their business by taking in maybe $5,000 in the first month. They are just in business, but that $5,000 is total fraud from the consumer. The judge may say, hey, they were just in the business—if they were charged—to defraud. There was no other intent. If your suggestion was in place, the fines would only be a proportion of the income of that corporation. While the judge in his discretion may say, look it, we want to stop this in the tracks and levy a fine maybe twice the income of that corporation because the Bill does allow, if I am reading correctly, up to $10,000 in levying of fines. Whether your suggestion maybe should be tempered somewhat?

Ms. Hillard: I would assume that similar to when they are doing income tax, they will multiply the number of

months the company has been in business and work it out as a ratio for the year. In assessing that, we particularly feel that this applied in the recent fine that was levied against Shell for price fixing in Manitoba. This has been built into national CAC policy as a result of actions similar to the Shell one, where they were fined something like a parking ticket for defrauding consumers and fixing prices.

Mr. Uruski: Your concern is primarily with very large corporate—what is deemed corporate fraud in the sense that a $10,000 fine for Shell is just a slap on the wrist—

Ms. Hillard: Precisely, but also we feel that if you are going to set a minimum, a maximum that are going to be reasonable for a large corporation, they are not going to be reasonable for a very small single family business. They could quite possibly put them out of business on a fault that would not normally put them out of business.

Mr. Richard Kozak (Transcona): Could Ms. Hillard please elaborate on her comment regarding Section 123(2), where she states that she has some concern that a 10-day cancellation period will cause considerable delays to consumers who do not cancel their contracts? I believe that particular comment is not self-explanatory.

Ms. Hillard: We feel that in a lot of cases, as I said we interpreted this as dealing with door-to-door sales. We felt that where you signed an agreement at a door-to-door sale to purchase something that was going to be brought in from outside of the province, that the company that you purchase it from is not going to order it until the cancellation period is over. Therefore, if you are genuinely signing the contract it is going to be now 10 days before the company even placed the order, and then you have to wait for delivery and all the other problems.

Mr. Chairman: Are there any more questions of the presenter? Mr. Maloway.

Mr. Maloway: Yes, Mr. Chairman, my question to Ms. Hillard concerns the sticker prices on cars, the manufacturer's suggested retail price stickers which was in our original Bill last year but the Minister had taken out when he introduced his copy of the Bill.

We are interested in knowing there are people in this hall who will be making presentations concerning an amendment that I will be introducing concerning the manufacturer's suggested retail price stickers inclusion into this Bill. I would like to know what your comments are about that particular amendment?

Ms. Hillard: We have not seen a copy of your amendment. I have however circulated a separate sheet which has on one side of it, a copy of our resolution in regard to the manufacturer's suggested retail price stickers on cars, which we do want to see put into the legislation. On the reverse side, it has three national resolutions on advertising to children which are also included in one of your amendments.

We felt that since we had not actually received copies of your amendments it would be difficult for us to comment on them, specifically at this point. Our resolutions were copied for circulation.

Mr. Chairman: Are you finished, Mr. Maloway?

Mr. Maloway: A second, Your Honour. I will pass.

Mr. Chairman: Okay, the Honourable Minister is next.

Mr. Connery: Yes, where you are talking about penalties, you would like to see fines set to corporations at the level commensurate with their gross annual income. Would these be the maximum fines allowed or are you saying that would be the fine?

Ms. Hillard: That they would be set at a proportion be it either the maximum to be 10 percent and the minimum to be 15 percent, as a percentage rather than a set dollar amount because we feel a set dollar amount—as I said with a large corporation just does not—it is a cost of doing business, they ignore it.

Mr. Connery: If you had a large corporation that had a large department store, whatever, but had a spa as part of their operation, would the fines be then relating to the gross income of that particular sector that they are operating, or the income of the whole corporation?

Ms. Hillard: I guess that would depend on how they were registered for tax purposes and as a business. There is a lot of businesses that are owned by larger corporations that operate as a small business and have a separate structure financially.

Mr. Taylor: Yes, to Ms. Hillard, thank you very much for the presentation on this Bill. I also look forward to the presentation you will be giving on No. 64. In your last comments to the Member for Elmwood (Mr. Maloway), you made reference to the fact about a proposed amendment for this Bill, and that because you had not seen it earlier, neither you nor your organization were prepared to make comment at this time. Were you aware that same proposed amendment is also contained in another Bill, Bill No. 22, that would be coming?

Ms. Hillard: Which is that, the advertising amendment or the sticker prices on cars?

Mr. Taylor: I am referring to the sticker prices on cars.

Ms. Hillard: No, we were not aware of that, I am afraid.

Mr. Taylor: Mr. Chairperson, what would be the views of the Consumers' Association of Canada of dealing with a significant amendment like that on this particular Bill, Bill No. 63, as opposed to waiting for Bill No. 22 coming up and holding the proper hearings like this on Bill No. 22? Do you have any comment on that?

Ms. Hillard: We understand that there is a Bill relating to car dealers which is coming up next week. I am not sure of the number of it. We would like to see it

addressed at that time; we feel that the laws covering car dealers should be all wrapped up together. That is where we would like to see it, in with the safety checks.

Mr. Taylor: Why I asked that of you is that we have had some comments made about the potential lack of opportunity for people as individual citizens or organizations to properly vet the proposed concept and therefore be able to come forward in a session like this evening and speak intelligently on it if they have not had proper notice and ample opportunity to ask questions and so, whether some concerns have been brought forward to us in the last day or so on this.

Mr. Mark Minenko (Seven Oaks): Mr. Chairman, I would like to ask a couple of questions. One dealing with—you have interpreted the 10-day cooling-off period for prepaid contracts as being extended to a completely different section in the Act, dealing with direct sales. Is that because you had legal interpretation that all direct sales are in fact prepaid contracts?

Ms. Hillard: No, that is because we understood that the four-day cooling-off period only referred to direct sales. We assumed that this was an amendment to what was already in place.

Mr. Minenko: What this Bill is really creating is a completely different section dealing with prepaid contracts. It has no reference—perhaps the Minister could later on clarify it, whether the Minister's department does in fact interpret all direct sales as prepaid contracts. That is something we can deal with later on.

The other question I have is about the clause about the 10-day cancellation period. What are you then suggesting we do? We have to make a decision one way or another about it. You are suggesting on the one hand that businesses are going to delay the provision of services or goods past the 10-day period of time to ensure that they are protected. What do you then suggest? It is obvious that we are stuck.

* (2120)

Ms. Hillard: Something in between the four and the 10, possibly the seven that was originally suggested. With 10 days you also do not count the weekends or the holidays, so you are really, in terms of actual time, dragging it out to two weeks.

Mr. Minenko: That really does not change the whole issue. You are cutting it down three days, the waiting period, but you are still caught in the same kind of thing.

Ms. Hillard: You are cutting down the waiting time to consumers who have ordered materials while still giving them an extended period, from the four days we have now, in which to cancel.

Mr. Maloway: Ms. Hillard, I think that we have been through so many different Bills and amendments over the last couple of years that it is easy to not recall what is in them, considering that I have something like 15 Bills and amendments now before the House.

You will probably recall, or at least other people will at the committee, that this particular Bill with the manufacturer's suggested retail price requirement in it was brought in in the first Session after the'88 election. It sat in the Private Members' Bill section with Members of the other Parties refusing to even speak to it, month after month after month. When we started another Session, the second Session, which has now been going on close to a year, I reintroduced the same Bill with the manufacturer's suggested retail price in it and it still sits after nearly two years now, sits before the House.

What the Minister has done, is simply brought in that Bill minus the manufacturer's suggested retail part of it. All we are attempting to do at committee is to reintroduce that particular aspect as an amendment on the Minister's Bill. I simply wanted to clarify that point to you in response to my Honourable Liberal friend opposite.

Mr. Connery: Just for clarification on the 10-day cancellation, there are two parts in the Bill. One is the door-to-door selling aspect which is Section 12, and then there is the prepaid services which is Section 123(2). There are two parts to the Bill, but it is still going from four days to 10 days.

Ms. Hillard: Will the cooling-off period apply to both? Would the spa thing that Mr. Maloway mentioned earlier, where you have to sign up and you have to pay three years when you go in, and you have to commit yourself to paying about $2,000 for this hotel in the Bahamas, and you have to commit right there on the spot, but you have to go into their office to do it—would you now have a cooling-off period or will you not have a cooling-off period until this Bill is through?

Mr. Connery: Not until the Bill is through. No, there is no cooling-off period at all for the prepaid services—

Ms. Hillard: But there will be when the Bill is through?

Mr. Connery: Yes, there will be when the Bill is through. Is there a suggestion from the consumers that 10 days is too long of a cooling-off period?

Ms. Hillard: Yes.

Mr. Chairman: Ms. Hillard, and now the Honourable Minister. Square off in your proper corners here.

Ms. Hillard: Sorry about this.

Mr. Connery: What is your recommendation?

Ms. Hillard: Our recommendation is seven days.

Mr. Maloway: Mr. Chairman, just a couple of other questions to Ms. Hillard. On the question of the deposit legislation, and you and I have had some considerable discussion about that over the time, you know that we

have had a Bill before the House, also now for nearly two years and reintroduced into the second Session, requiring that deposits be limited to 20 percent of purchase price and that deposits over $500 be held in trust.

I was fairly certain that the position of the Consumers' Association was one of support for deposit legislation. I thought that was true. Is that still the case?

Ms. Hillard: There is support for deposit legislation but we feel it has to be realistic, bearing in mind the need for a business to operate, and if the deposit that is collected is so small that it does not allow the business to buy the materials necessary to perform the service, then we feel that it is a disservice to consumers. You will drive a lot of small companies out of business and the marketplace will then lack competition.

Mr. Maloway: Mr. Chairman, on that vein then, Ms. Hillard, what percentage would you consider to be an adequate percentage for businesses to be taking in terms of deposits?

Ms. Hillard: We suggest, sorry, do I have to wait for the Chairman to say something?

We consider that we would like to see an allowable holdback of 20 percent, either the consumer could hold it back, or it could be as with The Garagekeepers Act, put in a special trust fund and held until the satisfactory completion of any contract.

Mr. Maloway: Mr. Chairman, another question to Ms. Hillard. Another amendment that we are considering bringing in deals with the documentation fees charged by motor dealers when they draw up contracts, sale contracts, on new and used cars.

As you know, most dealers in this province or this city charge any where from $40 to $140 for that purpose. The purpose is to allow them to charge for paying the person to type up the service contract and to check and see if there are liens against the car. Most of us feel that is not a proper charge. What is the position of the Consumers' Association on that particular proposed amendment?

Ms. Hillard: We feel that service that is performed by the car dealer is part of their cost of doing business, and it should be built into the price of the car. That particular issue is dealt with in our resolution on the manufacturer's suggested retail price, which you have in front of you.

Mr. Maloway: Ms. Hillard, that then puts you at odds with the Manitoba Motor League, if I am not mistaken, that was in favour of elimination of the documentation fee. I thought that the Consumers' Association was also opposed to that fee, but you are saying that you are not opposed to the documentation fee?

Ms. Hillard: We are opposed to it as a specific fee. We feel that it should not be a separate item, an extra charge, it should be built into the cost of the car. It is a cost of doing business to the car salesman.

Mr. Maloway: If I hear you right, you are saying that you agree that the fee should not exist?

Ms. Hillard: It should be built into the price, it should not be a separate charge, if you can even see it as a separate charge, if you can find out what it is.

Mr. Minenko: So you are saying even after you have negotiated the price, you are not suggesting that should be added after you have come with the final price of the car?

Mr. Chairman: Ms. Hillard—Mr. Minenko, pull your mike up, please.

Ms. Hillard: That would be built into the price of the car in the same way that the rent for the space for the car, the dealership, the telephones and everything else—it is their cost of doing business. I am sure if you ran a business you would not—if you went to the grocery store, you would not appreciate having 25 cents added onto your bill for the cost of the sales clerk ringing it through the till. That is how we see it.

Mr. Kozak: Just to achieve final clarification of this one point, Mr. Chairman, Ms. Hillard is suggesting that despite the inclusion of the fee within the base price of the car, there should be no change in the bottom line price of the car, whether the fee is charged separately or built into the price?

Ms. Hillard: Hopefully, the bottom line price of the car will be fixed, and we will be able to know what it is. The car dealer presumably will build his costs of doing business into the price of the car, which we will be able to see on the sticker price, which will be legislated to be displayed on the car.

Mr. Chairman: Are there any more questions of the presenter? Mr. Minenko.

Mr. Minenko: How long has the association had the position with respect to some of the suggestions that you have replied to or responded to by Mr. Maloway? Is that something just recent in the last year and a half or so that you have come up with, or has this been a concern for a number of years?

Ms. Hillard: The sticker price on costs, I believe the date on that resolution is'83 or'84. You have it in front of you and I am afraid I do not.- (interjection)-'86, so then we have had it around for four years.

Mr. Minenko: With the concern with respect to the extra charge for administration, is that something that is recent also, or has that been a long outstanding complaint of the association going back several years?

Ms. Hillard: It is mentioned specifically in our resolution, so it has been a concern for as long as we have been asking for sticker prices on cars.

* (2130)

Mr. Connery: Ms. Hillard, one of the concerns raised by the auto dealers was that some of the automobile

companies in their desire to sell vehicles will put out a MSRP which really does not cover all of the costs of the dealer. They truly cannot sell the vehicle for that price, but everybody perceives that the MSRP is the price from which you bargain down from.

How would you view that, because this to me is a real concern of the auto dealers? There was one vehicle that they were trying to advertise, I think it was—well, I cannot remember now—but it was just under the cost of what they could do business for. It did not have advertising and a lot of other costs that the dealers have. How would you address an issue like that?

Ms. Hillard: We feel you should address that in amendments to the franchise legislation, not the consumer legislation.

Mr. Connery: Thank you.

Mr. Maloway: Just a final question, Mr. Chairman. Ms. Hillard, another amendment that we are planning to introduce has to deal with a subject known as lemon law, and there are several presenters here today who are certainly going to be talking about that as well.

In the United States, as you are probably aware, 45 states out of the 50 have lemon laws in place which require a car manufacturer to provide a refund in full or a replacement vehicle if they are unable to fix a vehicle that a person has bought. In other words, if you or I buy a new vehicle from a car dealer and the vehicle turns out to be a lemon as these vehicles have, then the dealer has four opportunities to repair that car or refund the money.

What is the position of the Consumers' Association of Canada, Manitoba section, with respect to the concept of lemon law?

Ms. Hillard: We feel that a great deal of what you have in the lemon law is covered under the section of the amendments which makes the seller responsible for living up to the warranty. We feel that a car deteriorates so much in price. The price devalues so much from the minute you drive it out of the lot that to expect the dealer to replace a car that you have driven around for a month with a new one is probably going to impose undue hardship, and consequently, drive more of them out of business, and competition is good for consumers.

We do not want a lot of businesses driven out. We do feel that the dealers do have that responsibility to live up to the contracts, to the warranties, and it is up to them, again, through the franchise legislation, to come to whatever arrangements are necessary with the supplier of the car to cover themselves in that sort of situation.

Mr. Maloway: Mr. Chairman, Ms. Hillard, surely, though, it must be recognized that there is a problem here. If there was not, why would 45 states of the United States bring in such legislation? Why would the Province of Ontario come up with an, admittedly, weak version of the same? Why would the current Minister of Housing (Mr. Ducharme), when he was the Consumers' Critic for two years, four years ago, have made this a major issue of his that lemon law was necessary?

I think that all we have to do is when we get to the presenters who have these horror stories, they have cases where they bought a vehicle for $20,000, they have had the vehicle for only eight or nine months, and they have had to put $10,000 in repairs. The fact of the matter is there may only be one in a hundred cars or one in a thousand cars, but these cars evidently do exist. You drive them off the lot, and they start falling apart on you as you go down the street.

We have examples of that here, so obviously there is a problem. Perhaps now that the people know who you are they could maybe give you some of that information while you are still here, because I am sure you want to hear about these things.

Ms. Hillard: Believe me, we are not without complaints in our offices about cars that are lemons, about cars that are not safety-checked, about car dealers, the way they sell. However, we feel that if this sort of legislation is going to be built in on a consumer level, then there has to be something built into the franchise legislation. It is not reasonable to expect the dealer to handle all that. The dealer has to be responsible for the goings-on between the manufacturer and the consumer. They have to insist that the car meets the warranty specifications.

You have to fix the franchise legislation at the same time. You cannot fix one and then fix the other. If you are, you have to do it the other way around; you have to fix the franchise legislation first before you bring in the consumer amendment.

Mr. Maloway: Well, Mr. Chairman, just a final question and comment to Ms. Hillard. I agree that there is a problem with franchise legislation, and we have tried to address that with the introduction of a Bill there as well. There is a definite need there. But surely though, when 45 states out of 50 have gone the route and brought in such legislation in the United States, and we have people right here in this room who have had this terrible situations, at least three or four of them, happen to them personally, surely there is an immediate need that should be recognized by an association such as yours. We should be encouraged to enact legislation similar to those 45 states in the United States, and then at the same time look at franchise legislation later on.

Ms. Hillard: The Consumers' Association feels that consumer legislation should work to keep the marketplace going smoothly on both sides. Legislation which is anti-business is ultimately not good for consumers.

Mr. Minenko: So what you have said is that irrespective of what has happened in some of the more populous states in the U.S. and more populous provinces in Canada, we have a relatively small market here, and that in the long term it is better to have a graded number of people providing the services than in limiting the businesses. That is what you are suggesting?

Ms. Hillard: We are not suggesting that this sort of legislation is not good and is not protection for

consumers. We do feel that if you are going to bring this kind of legislation, you have to bring in the balancing legislation to protect the car dealers who are, after all, consumers from the manufacturers. Otherwise you have the dealers caught in the middle. We have lost a lot of car dealers in the province over the last few years. Now car dealers, needless to say, are not our favourite people—with all due respect, Lefty—and consumers have a lot of difference of opinion with the car dealers. However, we do feel that they need protection in this situation just as much as we do as consumers.

Mr. Allan Patterson (Radisson): Ms. Hillard mentioned that some 45 of 50 states have this lemon-law legislation. Are you aware of the types of consumer legislation that are in these various states, which might well be far less than the present protection that exists here?

Ms. Hillard: I am not familiar with this legislation in many of the states, no.

Mr. Patterson: Thank you.

Mr. Connery: Ms. Hillard, it is unfortunate that a lot of the amendments that are going to be proposed by the Member for Elmwood (Mr. Maloway)—he did not have copies of them to be available to review then. In Bill No. 22, in Section 128(2), whereby and upon written notice to a dealer within 60 days of the day of a contract of the sale of a new vehicle elects to render the contract void, under Subsection (1), which means that there was no sticker price on there. Do you think that is a reasonable thing to have? You see there is no sticker price on it. Do you take the car out and drive it for 59 days and then bring it back and say, you did not have a sticker on, here is my witness, I want my money back?

Ms. Hillard: It sounds wonderful. I do not think you can wrap consumers up in cotton wool to that extent. We have a certain amount of responsibility to look after ourselves.

Mr. Connery: I gather from that you do not think consumers need the 60-day period of grace to inform the dealer that there was no sticker price on the window when they were purchasing the car.

Ms. Hillard: It seems an unreasonably great length of time, myself.

* (2140)

Mr. Maloway: Mr. Chairman, to Ms. Hillard, I guess what the Minister has brought to your attention here is the actual provision of the Ontario Act. In Ontario it is a requirement that manufacturer's suggested retail prices stickers be left on the cars, and not ripped off by the car dealerships and replaced with an artificially high price sticker as happens here in Manitoba.

In Ontario it is a law that the dealers have to leave those stickers on the car until sold. It is also the law that they have to leave those stickers on the car for 60 days afterward, and if there is no sticker on the car when you drive it off the lot, that should never happen, but if it ever does happen, you have 60 days to return the car. That is directly from Ontario legislation. It has been in Ontario for some time now, I am sure under a Liberal Government right now, I am sure under a Conservative Government before, and no one in Ontario has suggested that it has been onerous on car dealers in that province.

Ms. Hillard: Are the car dealers able to recover that cost from the manufacturer?

POINT OF ORDER

Mr. Patterson: On a point of order, Mr. Chairperson, should the committee Member be more or less arguing with the presenter, or is it a matter of questioning for information?

Mr. Chairman: Thank you for your point of order, and between the Honourable Minister and the Honourable Mr. Maloway, I think they are actually badgering our presenter here.

An Honourable Member: Badgering, I asked her a question and she thought—

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Mr. Chairman: Okay, where are we at here? Are there any further questions of our presenter? The Honourable Minister.

Mr. Connery: Yes, Ms. Hillard, in Ontario I am told that the legislation says that the price must be in the offer to purchase, has to be listed, but not on the window in Ontario. It does not have to be on the window of the vehicle, but it has to be listed in the offer. How do you perceive that?

Ms. Hillard: We do not feel that the consumer should have to make an offer to purchase before finding out how much the car is going to cost them. This is the main objection we have here. This is a problem that may well sort itself out when the GST comes in, because we are going to be paying tax on whatever the price is that is stuck on the car. I think that may stop—we are going to pay GST on the advertised price, not on whatever we bargain them down to, so that may sort itself out at that point.

Mr. Chairman: Are there any further questions of our presenter?

Mr. Patterson: Just to clarify, Ms. Hillard, I hear you say that the GST would be on the suggested retail price even though the actual price paid would be less.

Ms. Hillard: We have been told that the GST will be on the price that is listed on the car. So if a car dealer takes a car, bumps the price 2,000, then lets you bargain him down 2,000, you will pay the GST on that extra 2,000.

Mr. Patterson: I would question that. We would have to get some legal—it seems to me the GST applies to the price the purchaser pays.

Ms. Hillard: That was the information that we received when we phoned the office in Ottawa to ask them whether you would pay it on the listed price or on the discounted price.

Mr. Kozak: I believe Ms. Hillard would provide a service to a number of anxious Members around this table if she could clarify the source of that information that she received from Ottawa.

Ms. Hillard: The 800-line that you can phone for information.

Mr. Kozak: Thank you.

Mr. Chairman: Are there any more questions of our presenter? Have you got any questions you would like to ask the committee?

An Honourable Member: She cannot ask questions.

Mr. Chairman: No? She cannot ask questions? Okay.

An Honourable Member: Not unless you are ready to answer.

Mr. Chairman: I certainly am. Thank you very much.

Ms. Hillard: Thank you.

Mr. Chairman: I would like at this time to announce that the Government House Leader has informed me that it is their intention to call another meeting for Law Amendments on Thursday, January 25, 1990 at 10 a.m. in Room 255. If there is anyone present wishing to make presentations at that time instead of tonight, would you please see the Deputy Sergeant-at-Arms at the back of the room. He will list your name for the 10 a.m. meeting.

At this time I would like to take a few minutes to organize the presenters' list before we proceed with the next presentation. We will be distributing the written submissions to Bill No. 63 by Mr. William Stokes, private citizen, and Mr. Sanderson Layng, Director of The Children's Broadcast Institute. We will now take a few minutes break at this time to re-organize.

RECESS

Mr. Chairman: Committee come to order. I have been asked to next have Mr. Dale Mulhall and Mr. Les Stechesen because they are unable to attend on Thursday. They have a very brief presentation. They want to make their presentation and then go. Is it the will of the committee to listen to them now as they are not going to have an opportunity on Thursday? Mr. Mulhall, please.

Do you have a written presentation, sir?

Mr. Dale Mulhall (Private Citizen): No. My presentation will strictly be anecdotal in nature.

Mr. Chairman: That is fine, it was just that if you had a written presentation, we would like to distribute it first. Okay, then carry on.

Mr. Mulhall: I am not familiar in detail with the contents of this Bill, but I think there are parts of it that would have helped the situation that myself and my wife were placed in this year. We contracted with Academy Kitchen Ltd. to supply us with cabinets and, to make a long story short, our contract was for $13,500.00. We ended up with about $6,000 worth of product. The fellow who we had contracted with packed up and moved to Hawaii. We have no financial recourse and our agreement with him was, at a certain time just before installation we were to pay him for everything. We subsequently have found that he never paid for our original cabinets nor a very expensive counter top. Now, I am one of several people who are placed in this situation.

Basically, we have no recourse and we have no protection. I am out $5,000 because of this. This fellow can hide behind commercial law. He can say his company went broke; he can shovel all the money into his private pocket or his wife's name. I have no recourse. Sure, you can say, I can try to sue him for breach of contract. What is it going to cost me to try and get him back from Hawaii? A lot, and I am going to get nothing out of it.

I personally feel that there should be legislation that in some way protects the consumer. I am in private practice in business myself. I have to deal with people all the time. I cannot understand how there is no protection for the consumer in a regard like this. I understand my presentation is very brief, if there are any questions?

* (2150)

Mr. Maloway: Mr. Chairman, Mr. Mulhall, the amendment that we are proposing to bring in concerning deposit legislation which would have limited the amount that you would have had to give the contractor up front, the 20 percent of the purchase price of the kitchen, and the provision that that deposit being over $500 would have to be held in trust protecting you from his bankruptcy, do you feel that that would have been adequate protection for you in this particular case?

Mr. Mulhall: I would not have had to put up so much money which I realize was my decision, but I now have no recourse because of his physically moving away.

Hon. Gerald Ducharme (Minister of Housing): Mr. Chairman, I think the presenter might be confused in what the Member for Elmwood (Mr. Maloway) has said. What he has referred to is not in this Bill. Do you understand that it is not in this Bill, what he just asked you about? Do you understand?

Mr. Mulhall: Yes, I realize that. Yes, it would have helped me—fine, getting to the point, yes.

Mr. Chairman: Mr. Mulhall, were you finished?

Mr. Mulhall: Yes.

Mr. Kozak: Mr. Chairman, I doubt that any Member of the committee would take any satisfaction at all at the situation that Mr. Mulhall finds himself in. Without meaning any discourtesy to the witness, may I ask him what might have motivated him, certainly an intelligent presenter, to enter into a contract with such obviously disadvantageous terms attached to it?

Mr. Mulhall: Well, like I said, I entered it into it freely. We checked into this fellow. We had several friends do business with him. This was his way of doing business. He had done business like this for seven years. The unfortunate part of it was that he so chose at that time when he was dealing with us to leave the country.

Mr. Kozak: In that case, Mr. Mulhall, you did undertake research which gave you reason to be satisfied that this individual had a credible business record despite the extremely unusual terms and conditions attached to the contract that he expected you to sign.

Mr. Mulhall: I would agree, yes.

Mr. Ducharme: What portion did he complete? In other words, what was your process? Did you have to put 25 percent down at the time of the—

Mr. Mulhall: Twenty-five percent down when the cabinets arrived in his warehouse; we paid him, I believe 30 percent, he showed us the cabinets and just prior to installation we were to pay him for the rest, and that is what we did. He came out to our house and told us that he would be by in a few days, and it was right after that time that he left.

Mr. Chairman: Are there any further questions of our presenter? Mr. Minenko.

Mr. Minenko: So, as far as you understand, this operator's standard operating procedures was to pay, in your case, 25 percent down?

Mr. Mulhall: I believe it was 20.

Mr. Minenko: Twenty percent down as you were ordering it.

Mr. Mulhall: At the time of contract.

Mr. Minenko: As seemingly work progressed, just like in a building contract for a house that "as the work progresses, you pay progressively more" kind of a thing.

Mr. Mulhall: That is correct.

Mr. Kozak: I am going to risk treading on fairly unfamiliar ground for a moment. I myself do not benefit from the legal training that my colleague, the Member for Seven Oaks (Mr. Minenko), has. However, it does strike me that the performance of this particular contractor violated not only civil law but also criminal law, and I wonder, Mr. Mulhall, if you pursued this particular contract through the police and other instruments of the criminal law.

Mr. Mulhall: The Winnipeg Police Fraud Department has been notified.

Mr. Kozak: About how long ago did this particular situation materialize, and about how long have the police been investigating this particular situation?

Mr. Mulhall: November 2, I believe, was when Mr. Olafson left the country, and I believe it took us some time to get the police involved. We spoke to them within two or three weeks, and it took several different people phoning. One of the Winnipeg Police Department themselves had to be involved. He was one of the people that was involved and had been affected by this contractor, and at that time things fell into place.

Mr. Kozak: Though I myself am treading on somewhat unfamiliar ground and pretend no expertise in the criminal law, Mr. Mulhall, you perhaps are of the opinion that other remedies may perhaps work to your benefit in this situation through the operation of the police and other agencies of the criminal law.

Mr. Chairman: Any more questions of our presenter? Yes, Mr. Mulhall?

Mr. Mulhall: Yes, but not in a personal financial sense. There may be some recourse legally if the police and the legal system decide that it is worth extradition if they feel they can prove fraud, but I personally feel that I have no financial recourse. The legal costs that I would have to undertake in order to get my money back would far exceed my loss.

An Honourable Member: Never mind trying to collect.

Mr. Mulhall: Exactly, he is going to hide behind commercial law.

Mr. Kozak: I would certainly not like to leave the impression, and I believe I have not left the impression, that I would in any way for one moment defend the contractor in question. I have no reason to dispute anything you have put on the record this evening.

However, if the individual does find himself back in Canada facing criminal charges, it would, I imagine, facilitate civil action on your part that might prove less expensive than pursuing the individual on a civil basis to Hawaii.

Mr. Mulhall: Yes, and perhaps if this legislation would have been in place, I would not be in this situation.

Mr. Ducharme: I guess a key to this, not only that but, how was your house solicited? Was it a referral or was it some type of solicitation by—

Mr. Mulhall: It was a referral.

Mr. Chairman: Thank you, Mr. Mulhall.

Mr. Mulhall: Thank you very much. Thank you for your time.

Mr. Connery: Mr. Chairman, I would like a ruling of the committee. A lot of people came here to present

on Bills 63, 64, and 83. Some of the presentations that are being made on the supposed amendments to the Bill, which I am told by legal people, would be ruled out of order because they are substantive changes. They are not part of the Bill itself.

I sympathize with the people who are here and who have a concern. I think we should listen to them. Could we have the presenters of the Bills who came to talk on the specific Bills—and I am prepared to stay here all night to listen to other people that have concerns. They are very valid concerns, but other people that have other commitments would like to speak to Bill No. 63, 64 and 83.

I would suggest that we first hear the presenters to those Bills, and if the committee is willing, and I am, to listen to all of those presenters that have other concerns.

Mr. Chairman: Thank you, Mr. Minister. Mr. Uruski.

Mr. Uruski: Let us get on with the hearings and allow people to speak, and then Members decide as to how extensive they wish to question them. Let us hear the presentation. Let us not deal with the presentations when we do not know what is in them. Let people who are concerned about consumer matters raise those consumer matters to the committee. Obviously the people who are here wanting to make presentations have some very legitimate concerns. Let us get on with the presentations. If it deems that we are going on far beyond what we deem we want to sit, then we have already agreed that there be another meeting on Thursday morning.

Mr. Chairman: Thank you for your point of order. It is the will of the committee to deal with the relevant speakers, or whatever? What is the will of the committee?

Mr. Connery: Let us deal with the ones pertaining to the Bill first, then I will stay all night to listen to others. Others came here prepared to speak to the Bill, and so I would prefer that. I will stay all night to listen to the others and have the questioning, but I think those pertaining to the Bills as advertised should be dealt with first.

Floor Question: May I ask a question? I understand now, having heard two hours of this—

* (2200)

Mr. Chairman: Excuse me, I think you are out of order. Just a second, until we check. No, your question would be out of order. We will have to wait until you come forward with your presentation.

Floor Question: But my question only—

Mr. Chairman: No, presenters cannot ask questions unless they are—you just simply cannot, that is the procedure.- (interjection)- We will try and clarify that right away.

I want to thank all Members for their point of view. I am making a ruling. The thing is that when a presenter presents his presentation, all questions should be relevant to the Bill that he is presenting on. If I feel that you are badgering the presenter or whatever, I will ask the will of the committee, if that is fine with the rest of the committee.

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Mr. Chairman: Mr. Les Stechesen, please.

Mr. Les Stechesen (Private Citizen): My presentation has just been made obsolete. I was just speaking to the amendment, so I guess that concludes my presentation.

Mr. Chairman: Just come back to the podium, Mr. Stechesen. We are willing to listen to you. That was my ruling.

Mr. Stechesen: I am just here, Mr. Chairman—thank you very much for hearing me. I just heard about this this afternoon, so I have no written presentation. I am here in support of the amendment to Bill 63, with regard to deposits for work requisitioned, and I am quoting the same case that Mr. Mulhall said earlier. Perhaps I can give you more information on that.

I am an architect and I have been dealing with Academy Kitchens in the past. They are supposedly one of the more prestigious kitchen companies in Winnipeg. They have done major installations all through Tuxedo. I came to the point where I was looking at remodelling my own kitchen and I approached Academy Kitchens to give me a price on a kitchen renovation. I was given a price and told that the deposit was 40 percent, not 25 percent, the balance being payable on installation.

I was given a time; I told him I could not make up my mind immediately. Within a week he called me and said that if I wanted my kitchen I should decide quickly because he is moving to Hawaii. He was successful in the lottery and he was moving to Hawaii and if I wanted the kitchen I should order it right away. I put down a deposit of $3,200 on a $8,000 kitchen.

I informed another client of mine whose kitchen I thought would be suitable for this application. He was a lawyer, he also purchased a kitchen at $14,000 with a $5,700 deposit. We were given a time of delivery. A week before the time of delivery we were called by Academy Kitchens saying that there would be a delay, in the manufacture, of two weeks. Two weeks later the manufacturer called myself and my lawyer client, and asked if we gave a deposit, to which we answered in the affirmative. We were told that the deposit was not received and Mr. Olafson had disappeared to Hawaii. So we were out our deposits.

There were apparently several other kitchens that were similar examples. The manufacturer of the kitchens was a Red Owl company out of Saskatoon. They contacted the RCMP and filed fraud charges. My understanding is that at present they have contacted Mr. Olafson in Hawaii and he denies any wrongdoing and they are trying to settle the thing out of court without bringing him back to Canada. But clearly, if

this legislation was in effect this situation could have been alleviated.

Mr. Chairman: Thank you. Mr. Kozak.

Mr. Kozak: On a point of order, Mr. Chairman. Certainly, while I commend Mr. Stechesen on his presentation and indeed commend Mr. Mulhall before Mr. Stechesen, I do not know if the committee can proceed to discuss material that is not on the table before us. I have to confess that I am not personally aware of the material under discussion. It is not contained in the Bill before us, it has not been presented to us in the form of amendments. I do not know how a Legislature, or a legislative committee can proceed in this way. I am at a loss to know what we are discussing. What is going on, in short?

Mr. Jay Cowan (Churchill): On a point of order, following upon the comments from the Member for Transcona. These committees which are unique to Manitoba have a long-established tradition of allowing, as a matter of fact encouraging, individual citizens to come forward to attempt, sometimes successfully, sometimes not, to help legislators make better legislation. In doing so they bring forward different ideas and suggestions, and advise us of what they would like to see the legislation contain. We have an opportunity to discuss with them how we might resolve their own personal problems and problems that affect others as well.

I think we should listen and question and in doing so perhaps will learn a bit and become better legislators for that reason. I think it is important that we listen to what these presenters have to say, and I think it is important that we have an opportunity to question them. If new legislation, new ideas, come forward as a result of that, then they have accomplished much, and we have accomplished something as well, so I would suggest that we continue on with the questioning.

Mr. Chairman: Are there any questions?

Mr. Maloway: Mr. Chairman, my question to Mr. Stechesen is that if, given that the amendment that we are proposing to bring in, that is the deposit legislation limiting deposits to 20 percent of the purchase price, and that the deposits over $400—

POINT OF ORDER

Mr. Chairman: Order, please. The Honourable Attorney General, on a point of order.

Hon. James McCrae (Minister of Justice and Attorney General): Mr. Chairman, I think the Members of the committee and through yourself, have stated that we are quite happy to hear the people, under whatever assumption they were operating, they wanted to come forward and speak this evening. I think the Members of the committee are prepared to hear the people who are coming forward.

I do not think we need to hear the Honourable Member for Elmwood (Mr. Maloway) asking questions about amendments that are not on the Table. That is the point that I would object to on behalf of the members of our Party.

Mr. Cowan: On a point of order, I think if you were to go back and review the transcripts, the Hansards of committees such as this, you would find that on many occasions the original subject matter was expanded upon by people making presentations which did result in amendments which were either agreed to or not agreed to by the committee at a later date.

In order to fully understand what it is the citizens of this province, the people who elect us to represent them, are asking of us when they have this unique opportunity, we have to have the ability to question them directly on their concerns. That has been a long-standing tradition. This is nothing new that is happening here tonight. The only thing that is, I think, new in this particular circumstance, is one of the Members of this committee has indicated previous to the committee sitting that one of the Parties will be bringing forward a series of amendments.

* (2210)

I think that is a positive way to approach committee hearings, because let us look at what these committees are intended to do. They are intended to put forward before the public legislation, ask the public to respond to that, and then allow us on the basis of their response to have our own particular response. Now normally you have a Bill that comes forward. The individuals respond to the Bill, amendments are made after the individuals leave, and if there is a failing in the committee it is that we are not then able to hear those individuals speak to the amendments which invariably come forward later on.

What we have tried to do in this particular circumstance is get the amendments upfront so that we can have the advice of citizens with respect to possible amendments that may be brought in at a later time. They may or may not be in order. They may or may not be accepted by the committee, but that is the same circumstance and situation with any amendment that is brought forward at any particular time.

I think that given the fact that the presenter does have some knowledge of the situation, some knowledge of the problems, I think some very good suggestions on how to deal with the problems, and he does have some knowledge of amendments that might be brought forward at a later date, this committee is functioning quite well if it listens to him, and at the same time, allows members of the committee to question the presenters to determine if, later on they will want to pass those amendments if they are, indeed, found to be in order.

We cannot pre-empt them and prejudge them as being out of order without actually having them before us. We cannot have them before us until we have had the presenters present. I think with those circumstances, we have to be able to ask questions at this point in time.

Hon. Jack Penner (Minister of Rural Development): Mr. Chairman, I—

Mr. Chairman: Is this on the same point of order?

Mr. Penner: On the same point of order. I find it highly unusual that the Chair would allow the discussion of an amendment that has not been put on the Table. I find it unusual that presenters are continually referring to the amendment when those of us that are sitting at the Table are wondering what amendment we are debating.

Therefore, Mr. Chairman, I would wonder whether it would be useful for the amendment to be finally tabled that we could discuss and review the amendment, and see whether we could actually agree with the amendment or not agree with the amendment, and whether we should then, in fact, debate the amendment that we are debating at the present time.

Therefore, I would suggest to you, Mr. Chairman, that we might, first of all, discuss the Bill and refer to the deficiencies of the Bill or the pro-active parts of the Bill that we could agree with or not agree with, and suggest on the basis of the deficiency an amendment to the Bill that we can table and discuss.

Mr. Uruski: Mr. Chairman, on that same point of order, I would just like to draw to Members' attention, just a week, week and a half ago, Committee of Municipal Affairs sat in discussion on The Municipal Assessment Act. The Liberal Opposition, during the process of those hearings, wanted to radically amend the Bill by proposing amendments that would do away with the committees dealing with assessment appeals.

Had they asked questions of presenters, who may not have made any comments about what their proposals were going to be, whether it had been from the presenters of the Union of Manitoba Municipalities, the City of Winnipeg, had they done their homework in terms of setting the stage of what they were proposing, the committee could have dealt with those amendments which were not in the Bill, which were a total departure from the Bill. But they had not done their homework in preparing the groundwork of the public.

Here we have the public telling us, look, you have a consumer Bill in front of you, it is deficient in these kinds of areas. We are giving you some suggestions, that may help improve, for your consideration. You may not take our advice, you may not listen to us, but here are some suggestions that may help you improve this legislation if you listen to us. What we are saying here—we cannot ask those people who may be making presentations to us, on a consumer piece of legislation, but not directly to this amendment.

If this committee is to deal with just what is in front of us, Mr. Chairman, then the entire hearing process and the public process of allowing Manitobans to speak to a new legislation will be a charade. Let us close the committee off and say we are just not allowing people to make their views known, whether they like the legislation, whether they want something else or whether they want to say, look, scrap this whole thing and throw the Bill away. Manitobans should have a right and Members of the committee should then have a right to question them on their presentation.

Mr. Chairman: Thank you. I would like to thank all Members for their input.- (interjection)- Is this going to be lengthy? Okay, let us—Mr. Ducharme.

Mr. Ducharme: No, very short, just a comment to the Member. The rest of us sit here and we do not mind someone asking questions about various parts, and the presenters making various remarks about the consumers Bill in itself. But when a Member cross-examines a presenter on an amendment that he knows what he is cross-examining him on, and the presenter is in the unfortunate position of not knowing what that amendment is, that is the part that annoys these Members here—is that, hey, we are free and we know that people should question the consumer Bill, but not to cross-examine them when they do not know what is in the amendment.

Mr. Chairman: I would like to thank all Members for their input and, as this originated from Mr. Kozak's point of order, I am going to go back to that point in time. The Honourable Minister asked that we listen to all the presenters that were strictly adhering to the Bill and had presentations. I felt as the Chair, and ruled that—I felt it was the will of the committee that we wanted to hear Mr. Stechesen, and I asked the committee at that time to more or less stick to the meat of the Bill after his presentation.

What is happening right now is kind of embarrassing to the Chair and should be to the whole committee, where we have this man up here and he is listening and listening while we bicker and monkey around.

What is the will of the committee? Do you want to have a vote on proceedings to go back to strictly the rules of the game, or do you want to call it quits for the night, or how would you like to handle this? What is the will of the committee? I think that we have listened to this man. If you want to ask him some relevant questions to his presentation, fine, whatever.

* (2220)

Mr. Cowan: I think any decision we take has to be put in the proper context, and I would offer a suggestion in that regard.

One, it is the tradition of this committee to listen to presenters, to build the basic questions around that which has been presented as well as the Bill that is before us. It has never been confined to one or the other. There have been times when the discussion has become extremely far reaching and the Chair has tried to pull the discussion in without cutting the discussion off. I think that is a difficult task sometimes but a very important one for the Chair.

We do have to be able to ask presenters their opinion on certain subjects that they bring forward. We do expect that they will talk about the Bill and things that they would like to see in the Bill that are not in the Bill, or things that are in the Bill that they would not like to see, and I think it works both ways. I think we should let the dialogue flow in that way, because that is the tradition.

Secondly, is the tradition of hearing presenters as they appear on the list, with some exceptions. The

exceptions are usually out-of-town presenters who are brought forward because they have to travel and it is usually late at night when we finish these. The exception may be presenters that can appear at another time to try to cut down the list, as was done this evening, but normally we do not try to prejudge the presentation by saying we will only listen to presenters who are going to confine themselves directly to the Bill first and then listen to others -(interjection)- well, that is what the Minister was saying earlier, so I do not think that would be a good use of our time.

Thirdly, with respect to adjourning I would suggest that we try to go another half hour or so until eleven o'clock, because you asked if it was the will of the committee to adjourn now. At eleven o'clock if we need another night meeting we will have another night meeting, but we have another day meeting already scheduled—and I see the Government House Leader (Mr. McCrae) nodding his head in agreement with that. I think the Liberal Party would be in agreement with that. I would suggest we get on with it, continue on, go to 11 o'clock and then come back if necessary.

Mr. Chairman: Okay, I will read you the ruling as written out by the Clerk, and we will go with the unanimous consent of the committee -(interjection)- my ruling as it should be.

All of the information before the committee should be strictly relevant to the Bill at hand. If there are presenters who are making presentations that contain information that is not relevant to Bill No. 63 I would see that presentation out of order. However, if it is the unanimous will of the committee to hear from these presenters I would ask for your vote at this time. All those in favour to hear from presenters who are not relevantly presenting please say "yea," and those opposed please say "nay."

Before the vote I just want to make it clear that I want to go with the will of the committee and -(interjection)- Mr. Cowan first, please.

Mr. Cowan: Just for clarification, when one is speaking strictly relevant to the Bill that includes addressing what is not in the Bill, which ably should be in a Bill of that nature, as well as, what is in the Bill that they support and what is in the Bill that they do not support. Would that be the case?

Mr. Chairman: Well, Mr. Stechesen said he did not know exactly the contents of the Bill, and I assume that he was going to present his case and we were going to ask him questions pertinent to our knowledge of the Bill that would maybe help us or inform him and therefore be of some use to the committee. Is that not—

Mr. Cowan: Well, I do not think we should single out one presenter, because it is a process problem not a problem with any one presenter.

Mr. Chairman: No, I am not singling him out, but I thought maybe we would ask him questions that were pertinent to his case that he had brought up and mentioned so we could get a better clarification of what he was trying to present to the committee.

Mr. Cowan: Now, he would like to see legislation developed that would address that particular—

Mr. Chairman: Correct. We can do that, surely, on our own. The Attorney General.

Mr. McCrae: Yes, Mr. Chairman, just to clarify whether I understand what you have ruled. I do not want to be in a position where I am asking presenters not to present what they came here to tell us.

Mr. Chairman: That is right.

Mr. McCrae: I do not want to be in that position. I do not think that is the right way to deal with people who have come before us.

I do not know what instructions or what information some of our presenters have been given, nor by whom, but I sense that perhaps there are presenters that are coming here dealing with some amendment that we do not know very much about. Maybe it is an amendment in the name of the Member for Elmwood (Mr. Maloway) that, you know, he has not shared with the Members of the committee. Perhaps he has shared it with some of the presenters. The point is, we are here on Bill No. 63.

We are quite happy to hear from the presenters for whatever reasons they are here, but I think that Members of this committee should confine themselves to living within the rules that we have set. Those rules are that questions are put to presenters even if the presentations are on the point. The questions put are for clarification only, not to argue or badger with witnesses, as has been done earlier this evening, but to seek clarification only. That kind of thing need not take very long, Mr. Chairman. I am not suggesting that it should.

Mr. Chairman: What is the will of the committee? We will proceed, and we will keep our questions more or less relevant to the Bill and so on. Thank you. Mr. Maloway.

Mr. Maloway: Mr. Chairman, if I could repeat the question to Mr. Stechesen. It is my understanding, based on the presentation that you and Mr. Mulhall made, that in fact some amendment to the proposed Bill No. 63 might be in order to in fact limit deposits, that businesses such as Academy Kitchens could take to a reasonable 20 percent of the purchase price, and that such deposit should be held if over $500 in trust. Do you feel that that would be a helpful and amendment and would have been helpful to you, had it been the law at the time that you dealt with Academy Kitchens?

Mr. Stechesen: Most definitely. It is not unlike the mechanics liens Act when you are dealing with contractors. A certain percentage is held back to protect the owner and to protect the trades for improper performance. It is held in trust until the end of the project, at which time, if there are no liens placed, the money is distributed.

Mr. Minenko: We heard earlier from the presenter that they had initially put down 20 percent. As presumably the work progressed with respect to the ordering of the cabinets and so on, they paid a little bit more as they went along. In the situation that you had cited with respect to the lawyer, they had paid $1,400 out of $5,700, which is higher than 20 percent. I am just wondering, is that the standard practice of the trades generally that they would ask for 20 percent now as standard operating procedure of the trades involved, not only Academy, but the industry as a whole, or does each vary with each contract? Does it vary with each individual contract?

Mr. Stechesen: It varies. It varies with each individual supplier or contractor. There is no norm in the industry. I was surprised to hear that in one instance he was asking 20 percent and in our instance he was asking 40 percent. Clearly there was some ulterior plan in mind.

Mr. Minenko: So in fact, as far as you know, some people in that particular business of home renovations could ask as little as 1 percent or 10 percent or 15 percent?

Mr. Stechesen: That is right.

* (2230)

Mr. Minenko: So it really almost depends on the individual consumer, whatever contract. With respect to the case that you had cited, was there any particular reason that you figure it was approximately 40 percent that was requested as a deposit?

Mr. Stechesen: To tell you the truth, I never even questioned it. I have dealt with the particular firm in the past, and I had no reason to question them; nor did my client. We did not question it.

Mr. Minenko: I imagine that you as an architect and your firm have either been the middle people between the ultimate consumer and the provider of services on a number of matters. Is that correct?

Mr. Stechesen: That is right.

Mr. Minenko: What would you say is the standard in the industry with respect to home renovations or other things? Is it 20 percent or less, or is there a progressive payment schedule?

Mr. Stechesen: It is usually around 5, 10 percent in most of the work that we get involved with.

Mr. Minenko: I see. So in the vast majority of cases it is around 5 or 10 percent that people are required up front, much less than the 20 percent that we have been hearing about.

Mr. Stechesen: In the type of work that I get involved with, which is usually building contracts which are larger amounts, it is usually around 5 or 10 percent just for the purchase of materials to get started with.

Mr. Minenko: Again, with someone who is familiar with the industry generally, what impact would you feel—and I realize there are always given situations. I have noted several times in speeches in the House on various Bills that the people who are fast operators you will never be able to catch one way or another, and that is the most difficult problem, because that person who goes into an operation providing goods and services with the intention of being a fast operator is going to do that whatever legislation we have before us, and through corporate veil and just being able to disappear in keeping assets moving around, you may never be able to even collect even if you get a judgment against them.

I am just wondering if you could offer your opinion, as someone who has had regular contact for a number of years, I presume, with the building industry and trade. What impact do you feel it would have on building industry and trade if we were to indeed require a 20 percent deposit to be held in trust and presumably not released until the completion of the project?

Mr. Stechesen: I would not suggest it would be an outright 20 percent deposit. I would say a maximum 20 percent deposit, but certainly 20 percent in building contract work would be excessive.

Mr. Minenko: What we are looking at is requiring companies to front the full cost of providing some sort of goods and service?

Mr. Stechesen: You see, the case of Academy Kitchens is a little bit unique in the sense that he is a middleman for a supplier out of province, so not only is he collecting a deposit for himself, but on behalf of a manufacturer. When you are dealing with a building contract, you are dealing with a contractor who is directly responsible and is the provider of the service. Mind you, he has subtrades, but it is a little bit different. Academy Kitchens is an in-between man.

Mr. Minenko: With a final question, then, so the usual business practice in the Province of Manitoba is that people provide, usually in the vast majority of cases, less then a 20 percent deposit in any event today.

Mr. Stechesen: In the building contracting business, yes.

Mr. Patterson: Mr. Stechesen, are you aware that there has been legislation in The Consumer Protection Act as it now stands, legislation in respect to deposits that has existed since some time in the early'80s, some seven or eight years, to the effect that deposits of more than $50 are to be held in trust? This particular section was passed. It is in legislation, but to come into force on a date to be proclaimed. It has never been proclaimed in the intervening years.

Mr. Stechesen: No, I am not aware of it at all.

Mr. Chairman: Thank you. Are there any more questions? Mr. Ducharme.

Mr. Ducharme: I think we are getting a little confused here with the general construction business where you

have a hold-back situation and progress estimates each month, where in this particular case the gentleman who was discussing it earlier, I do not know how, other than a bond on every contract, could you protect that consumer. I think the only thing you could ask of a Government to do is to protect the deposit because you cannot go out and protect the progressive estimates as they go along, like you do in the general construction business. Do you not agree?

Mr. Stechesen: Yes, I agree. When I refer to the 5 to 10 percent, that is usually the case of house construction, where you are dealing with a small contractor dealing with a resident. You are quite correct. In the case of larger contracts, you have The Mechanics' Liens Act, which is protection against all trades and the client.

Mr. Chairman: Thank you. Are there any more questions of our presenter?

Mr. Taylor: Mr. Chairperson, to Mr. Stechesen, how did you become aware of the fact that the legislative committee was going to be dealing with this Act?

Mr. Stechesen: I got a call this afternoon from my wife who read the paper, saying that it was appearing, that there was a committee hearing tonight and that I should that I should try and appear.

Mr. Minenko: Okay, the earlier discussion then, would that apply also to the renovations trade?

Mr. Stechesen: I am sorry?

Mr. Minenko: Would our discussion and the questioning I had, would that also apply to the renovations field, like the people who advertise that they will put this addition on or do a kitchen, this or that, although I have been able to do it sort of banging around myself, but would the standard in that particular industry be also in the 5 to 10 and less than 20 percent range for deposits?

Mr. Stechesen: Yes, there would be.

Mr. Minenko: So, the questioning before would apply also in the smaller subtrade of renovations?

Mr. Stechesen: Yes.

Mr. Minenko: So they are self-regulating?

Mr. Stechesen: Yes.

Mr. Chairman: Thank you. Are there any more questions of our presenter? Thank you very much. The Honourable Attorney General.

Mr. McCrae: Mr. Chairman, just in relation to the hearings of this committee. We have indicated that there will be a meeting on Thursday morning at 10 a.m., and I think on the basis of that a number of presenters went home, if I am not mistaken, so that they can come back Thursday.

I know there is a problem for the representative here of the Manitoba Chamber of Commerce or maybe it is the Winnipeg Chamber, I am not sure which, and also the Consumers' Association of Canada and perhaps one or two others. I note that there is someone here from out of town who—if there is anyone here from out of town who needs to be heard tonight and cannot come back Thursday, the committee would love to know about it. I see Mr. Hendrickson here and Mr. Elias.

Okay, could we agree that we will hear in this order: Ms. Hillard of the Consumers' Association of Canada, Mr. Kelly of the Chamber of Commerce, Mr. Hendrickson, who I happen to know is from out of town, and Mr. Elias. If we can agree to do that this evening, then there would have to be subsequent hearings, but I know there are scheduling problems for Ms. Hillard and perhaps one or more of the others that I have mentioned. It is for that reason that I raise this as a suggestion to the Members of the committee.

Mr. Chairman: Ms. Hillard has already spoken as the second presenter.- (interjection)- Oh, she wants to speak to Bill 64, too. Okay.

Is it the will of the committee? (Agreed)

Is there anyone else in the audience that came to present and has not been accommodated? Okay. Would you please come forward? Could we have your name? What is your name, please?

Mr. Brian Lutz (Private Citizen): Brian Lutz.

Mr. Chairman: Brian Lutz. Did you have to be included tonight?

Mr. Lutz: I would like to be, yes.

Mr. Chairman: Is it the will of the committee to include Mr. Lutz as well? Okay. Thank you very much. And your name, please.

Mrs. Glennis Kaczmarski (Private Citizen): Glennis Kaczmarski. I am from Steinbach.

Mr. Chairman: And you wanted to be on tonight as well?

Mrs. Kaczmarski: To address the lemon Bill. The lemon law, sorry. Okay, your proposed lemon law.

Mr. Chairman: Is it the will of the committee? Okay, then. Ms. Hillard.

* (2240)

Ms. Hillard: Thank you, Mr. Chairman. I really appreciate the variation in this. We have prepared a brief on Bill No. 64 also, which specifically refers to the Bill.

I would like to do it the same way as I did last time. I will go through and pick on the specific items that we would like to comment on and then I have some questions and some general comments.

Section 2(1) on page 3: CAC Manitoba feels that implementation of this Section would definitely improve consumer protection. However, we feel that the wording is vague and it will be exceedingly difficult to successfully lay a charge under any of these sections, particularly Section (f). There is nothing here to protect the consumer from what he/she is not told. We suggest that an addition be made which enforces total disclosure.

Section I: We would like to see a provision similar to Bill No. 63: 123(3), which specifies the size of type used for statements regarding availability in relation to the size of type used for the rest of the claims.

Section (g): We feel it is essential that both the estimate and the consent of the consumer to higher costs be in writing.

8(1) on page 9: CAC Manitoba has concerns about the 21 days allowed for in this Section. Although we realize that 9(1) allows for immediate compliance, we feel it is essential that this section specifically state that no new contracts may be undertaken within this 21-day wind-down period.

25 on page 19: CAC Manitoba would like to see the removal of paragraphs (a) and (b) from this Section. We are curious as to which suppliers were being considered when these paragraphs were drafted.

We now have some general questions and comments on this Bill, some of which relate to Bill No. 63 as well.

Where does the authority of the Director of the Consumers' Bureau end and that of the Director of the Business Practices group begin? Can the provisions of Sections 2(1) be enforced where the federal Acts on misleading advertising on packaging and labelling fail to protect consumers?

How will the Director of Business Practices prioritize complaints and decide which ones to investigate?

Does the budget of the Department of Co-operative, Consumer and Corporate Affairs allow for the employment of a Director of Business Practices and adequate support staff?

Will the Consumers' Bureau and the Business Practices office have sufficient staff and authority to enforce the provisions of these two Bills?

CAC Manitoba believes that application of Sections 2(1) to 2(5) of The Business Practices Act will significantly improve the marketplace for both consumers and ethical business. We trust that the Manitoba Government will be more successful in their enforcement of these provisions than Consumer and Corporate Affairs Canada has been in dealing with similar provisions under the legislation covering misleading advertising and packaging and labelling.

Mr. Minenko: With respect to the comment about the size of the staff in the bureau, from the experiences from the federal level how extensive do you see an organization to deal with this particular aspect of your presentation.

Ms. Hillard: Considerably larger than we have in the Consumers' Bureau now and certainly considerably larger than the federal Government has to try and enforce their Acts.

Mr. Minenko: Do you have any specifics with respect to how you define "considerable"? I realize it is a difficult question, but again with your monitoring what is happening at the federal level, I would like to better understand this part based on your experiences or the association's experiences.

Ms. Hillard: As far as numbers, I really could not give you an intelligent answer to that question. We have, on several occasions, pointed out cases, that we have felt are misleading advertising and false representation, to Consumer and Corporate Affairs Canada and they have not been able to lay a charge.

One was actually brought to my attention today that is covered by this Bill, the business of advertising a special and then not having anything on the shelves the very first day. It is almost impossible under the way the federal law is written to actually lay charges, and I would hate to see this Bill go through without some provision for really being able to do something with it.

Mr. Chairman: Any more questions? Thank you very much. Brian Kelly, Peter Ramsey, please.

Mr. Brian Kelly (Manitoba Chamber of Commerce): Mr. Chairperson, thank you very much for accommodating the schedule. We appreciate that.

As the first vice-president of the Manitoba Chamber I will provide comments to you in line with the submission, which I believe you already have in writing.

Mr. Chairman: Just a second until we pass them out, please. Do you have them there already?

Mr. Kelly: If not, we do have some additional copies we can provide.

An Honourable Member: That is dated January 19, the letter?

Mr. Kelly: Yes, that is correct, dated January 19.

Mr. Chairman: Okay, would you please carry on.

Mr. Kelly: The Manitoba Chamber of Commerce represents 45 local Chambers of Commerce, including the Winnipeg Chamber, throughout the province and numerous individual businesses. It is especially concerned with small business, which constitutes over 90 percent of the Manitoba business community. It is from that small business perspective that I will be speaking this evening.

It is the individuals who serve as proprietors, partners and the directors and officers of corporations and co-operatives which constitute our Manitoba businesses and which are essential to the success and well-being of our Manitoba communities.

Bill 64, as proposed, is unacceptable. While the intention of the Bill is to protect the consumer from

unscrupulous trade practices it goes a lot further than that and may have the effect of ultimately hurting the consumer, something which today's consumers can hardly afford. We are all consumers.

The scope of the legislation. The Act covers all professions and businesses and affects all individuals involved in and dependent upon them. Its impact is extensive, complex, costly, adverse and in most cases unnecessary.

The powerful director. Another concern we have rests with the director being given express powers and coercive powers, which are intrusive and heavy-handed. It is a political appointment. The director serves as investigator, judge and enforcer. The powers and sanctions are disproportionate with the offences and duplicate, in many cases, other laws and protective mechanisms now in place and working.

Increased taxes. If Bill 64 is passed the result will lead to higher taxes for the consumer. The Bill calls for appointment of a director of business practices and such other employees as may be necessary to administer the Act. Experience tells that "such other employees" tends to mean a full-fledged bureaucracy. What the Government of Manitoba has not mentioned in this, however, is who is to pay for the bureaucracy.

Increased regulation. Bill No. 64 is an extensive Big-Brother approach. It allows for regulations to be created, which could: dictate the form and content of agreements entered into by consumers; define the meaning of words, expressions or representations used in promotion or advertisements, thereby limiting freedom of speech; and require suppliers to furnish information of all kinds to the director of business practices, the cost of which would necessarily be a part of doing business and have to be passed on to consumers.

Increased prices. Every added administrative cost Bill No. 64 would bring would have to be passed on to the consumer, and this would lead to higher prices. In view of the fact that we still have a significant level of inflation and, with the proposed GST potential becoming a reality, it is plain that consumers would not welcome increased prices caused by unnecessary legislation.

* (2250)

Duplication of efforts. As the Government has pointed out, it is true that there does exist unscrupulous operators unfortunately, and the Manitoba Chamber of Commerce does not wish to see them supported in any way, but there already exists effective means by which to punish such persons, namely the criminal law, existing consumer protection legislation, and all sorts of self-regulation protection such as warranties and complaint systems. Bill No. 64 overlaps with these areas.

Fair play. Under Bill No. 64, an individual proprietor, partner, director or officer of a proprietorship, partnership or corporation who, and this is the key part, even unknowingly and without deception, misrepresentation or intent, sells goods or services to a person who was not capable of adequately judging for him or herself whether the consumer transaction in question was in his or her best interests or who simply fails to furnish information required by the director of business practices is liable to a fine of up to $100,000 or imprisonment of up to three years if an individual, or a fine up to a $1,000,000 if a corporation or co-operative.

The unfairness of the legislation is what is our concern, as it treats many morally innocent individuals in this fashion and which could result in penalties of this kind. Therefore, we have very serious concerns on this.

These sanctions are powerful levers in the hands of the director and his or her bureaucrats to potentially coerce individuals or organizations to carry out the dictates. Such interference in the Manitoba business community is unacceptable.

Entrepreneurs being discouraged. Who would want to be an entrepreneur when it means becoming an individual sole proprietor, partner, director or officer, of a business, which is subject to this sort of exposure? At a time when entrepreneurship is sorely needed, why throw up another impediment?

Discourages self-responsibility. Should not each one of us as consumers have some duty to protect ourselves? The representative of the Consumers' Association has commented on that earlier ths evening. If this is not the foundation of our economic and judicial system in terms of self-responsibility, informing and educating should be the preferred method of dealing with the evils contemplated by this legislation, not dictatorial powers and unnecessary regulation or interference and threat of sanctions.

This limits consumer choice. The less attractive it is to live or carry on business and professions in Manitoba, relative to other locations, the less choice we will have in products and services and the less social services we will be able to afford.

Again, the representative of the Consumers' Association commented about the need for increased competition earlier this evening. This proposed law is unquestionably the harshest and most obtrusive of its type in Canada. There is not a demonstrated need for it that is not addressed by existing laws.

In conclusion, our concern rests that Bill No. 64 involves a dramatic shift in responsibility from individuals who buy goods and services. In a major way, it shifts that responsibility to the individuals who sell and are responsible for the sale of the goods and services. This shift replaces self-responsibility with a state-imposed regulated and enforced responsibility.

This is alien to our cherished Manitoba values, which are becoming thankfully more widespread. Why then Bill 64? It represents the wrong philosophy and approach at this point in time. We do not believe it is necessary. It duplicates what already exists. Any law such as this should and must be demonstrably justified, and it must be custom tailored. This is the key point: it must be custom tailored to focus on dealing with the wrongdoers and minimize the impact on the righteous and moral businesses in Manitoba who make up the vast majority.

The Manitoba Chamber of Commerce does not countenance unfair or unethical business practices. I make that point, and I repeat that point. We do not support or countenance unfair or unethical business practices. But we cannot support a Bill which casts such a wide net, that those who are ethical can be caught in it. It may well be that there is a need for more rigorous enforcement against unethical and unfair business practices, and perhaps even a need to strengthen existing legislation, such as the consumer protection legislation.

However, Bill 64 goes beyond the appropriate stage to place unreasonable risk and shift unreasonable levels of responsibility onto business from consumers, making them as consumers potentially careless. This, along with the anti-business philosophy message that is conveyed and the significant adverse consequences for consumers, employees, and jobs in Manitoba, makes the proposed Bill undesirable.

The solution that we recommend is to send this back to further revision in the Law Reform Commission. It is recommended that Bill 64 be referred there for review immediately with instructions to take a fresh look at the situation, consult widely, and even start from scratch. The Law Reform Commission is admirably suited to perform this function well, and the result will hopefully be something which is generally acceptable and consistent with the values and needs of the Manitoba community, as Bill 64 is not.

Respectfully submitted by the Manitoba Chamber of Commerce.

Mr. Chairman: Just to clarify, did you wish to present on Bill 63 at this time?

Mr. Kelly: Our presentation and our comments will be focused solely on Bill 64, not on 63. We had been listed under 63, but we will make all the comments regarding 64.

Mr. Chairman: Thank you very much. Are there any questions? Mr. Taylor.

Mr. Taylor: Mr. Chairperson, I would like to thank the Manitoba Chamber of Commerce for this presentation. We in the Liberal Opposition were fortunate enough to get this document ahead of time and had a chance to peruse it and raise eyebrows.

I would like to particularly comment to the delegation about their section on fair play, and their section on conclusion. I think they have really underlined the problems as we see them in this legislation as it now stands. I would like to ask the delegation if he and his member organizations were rather surprised to see a piece of legislation of this nature come forward from a Conservative Government.

Mr. Kelly: Not at all. The key concern that the Manitoba Chamber of Commerce has does not rest with the intent, it rests with the legislation as it is proposed, and especially with, as noted under the fair play with the Section 2(3) of the Bill, which indicates, whether or not the act or practice has the capability, tendency or effect of deceiving or misleading, and whether or not the consumer is in fact deceived or misled, it can be an unfair business practice.

Mr. Taylor: That is fine, Mr. Chairperson.

Mr. Chairman: Are there any further questions of this presenter? Mr. Minenko.

Mr. Minenko: I guess the first question is, has the chamber canvassed its membership—

An Honourable Member: Could you speak into the mike? I cannot hear you.

Mr. Minenko: I am speaking right into it.

Has the chamber canvassed its membership with respect to this particular legislation in draft before it drafted up the presentation?

Mr. Kelly: We requested input from the local chambers throughout the province and also from a number of business members of the Manitoba Chamber.

Mr. Minenko: What then were, in a succinct fashion, if you could put it, the effect they felt it would have on small business if it were then in place? If you could list the effects that the chamber feels would result from this legislation.

Mr. Kelly: The key concerns rest from both a business perspective and a consumer perspective in terms of the risks to business of directors where under the legislation—if, even unknowingly, any act occurs, the director is responsible. The increased cost of doing business in terms of insurance, legal costs and other aspects, improved or increased credit analysis, and especially from a perspective of the increased cost for business of having to research the circumstances and situation that the consumer may wish to utilize the goods and services under. It is the responsibility, as the Act is now drafted, of the business to ensure the consumer receives substantial benefit regardless of the circumstances, et cetera.

* (2300)

Mr. Minenko: You also probably appreciate the whole issue of corporate veil, where presumably people set up a corporation to protect themselves personally. Do you feel that that is necessarily a bad thing, that perhaps directors should be taken from the almost total protection they have pursuant to corporate veil to something bearing a little bit more responsibility?

Mr. Kelly: Well, I think the key wording that relates to our whole area of concern is, you used the words, a little bit more responsibility. Our concern is that while we want to see unethical business practices stop, we see this Bill not being a little bit more, but going far beyond that in creating problems for directors who attempt to be absolutely honest and moral, and for a business that acts in that manner as well.

Mr. Minenko: In your interpretation of this legislation, are there any responsibilities from this Bill that lie on

consumers with respect to any complaints they may have, which the director may find that have no basis in fact?

Mr. Kelly: The concern of an excessive shift, an extremely excessive shift of responsibility to businesses from consumers rests both with the aspect of business having to do the research and confirm but also with the director. I believe there are a number of instances, for instance Section 8(1) and also especially Section 9(1) and several other areas. For instance, in 9(1): where in the opinion on the director. Unfortunately, when it is the opinion of the director that makes the ruling, it creates very serious concerns in that it shifts that responsibility excessively to the business to protect the consumers' interests.

Mr. Kozak: Mr. Chairman, I would like to clarify just a couple of sentences that appear in the conclusion of the chamber's well-thought-out presentation. The conclusion states that: Bill No. 64 involves a dramatic shift in responsibility from individuals who buy goods and services to individuals who sell and are responsible for the sale of goods and services. This shift replaces self-responsibility with state-imposed regulated and enforced responsibility.

Does the chamber imply in those sentences that there is in fact no place in our system for a Business Practices Act covering many of the topics covered by the present Bill, or does the chamber instead advocate a balance between defence of the consumer and maintenance of a healthy business environment?

Mr. Kelly: The Manitoba Chamber of Commerce has very extensive concerns based on a number of small businesses views and a number of chambers views and our business members views, very extensive concerns regarding this Bill in many areas. It is not just a couple of clauses but in many areas, including the principle of an extreme shift of responsibility to business and removing most of the responsibility from consumers. A balance is what is required.

Mr. Kozak: Mr. Chairman, the presenter did in fact answer my question. In his last sentence he mentioned that a balance is required. I gather from that that he does not oppose, that the chamber does not oppose unfair business practices legislation requiring regulation of any kind.

Mr. Kelly: A rather difficult question to respond to in terms of a definitive answer to legislation of any kind. Our concern is that a Business Practices Act that has an extreme shift of responsibility to business will be unacceptable.

Mr. Kozak: But a shift with a consideration of the balances and the appropriate weightings of responsibility would be a shift that the chamber could live with. The chamber is not suggesting to us that we not have unfair business practices legislation involving regulation at all in the Province of Manitoba? It is not taking that extreme position, is it?

Mr. Kelly: The Manitoba Chamber of Commerce does not want to see this Bill passed, or a Bill similar to it that has even some significant amendments. It fundamentally creates an extreme shift, and we oppose that.

Mr. Kozak: Thank you, Mr. Chairman.

Mr. Uruski: Mr. Chairman, to Mr. Kelly, have you examined the Bill in its entirety?

Mr. Kelly: Personally, I have been through the Bill a number of times in most of the areas, and certainly of the areas we have concern on. A number of other individuals within the Manitoba Chamber have been through the Bill extensively.

Mr. Uruski: Mr. Chairman, to Mr. Kelly, which of the unfair business practices that are listed in this legislation do you feel are unconscionable and are overly onerous?

Mr. Kelly: It is the approach that is taken in the shift of responsibility to business in that looking at Section 2(3) again: whether or not the business conducts a practice or an act that has the capability, tendency or effect of deceiving or misleading, whether or not the consumer is affected, and whether or not the business knows any of the, I believe, 10 practices that are listed, most of which are very subjective in their definitions. Any of those that occur, regardless of whether the business knew, and regardless of whether the consumer was affected, and regardless of whether there was intent, create the responsibility on the business and the potential for the director in their opinion to rule. An unreasonable situation for business.

Mr. Uruski: Well, Mr. Chairman, I will just pick one of those unfair business practices dealing with deceiving or misleading. I mean there are 18 of those circumstances which would constitute a business deceiving or misleading a consumer. Are any of those provisions—do you find totally objectionable as being an unfair business practice?

Mr. Kelly: We have not focused our attention on that list under Section 2(1), but rather the concerns predominantly being in 2(3) and with the principle that, regardless of whether the business knowingly conducted or intended to conduct, regardless of whether it had any tendency to and regardless of whether there was any effect, they can be found guilty.

Mr. Uruski: Mr. Chairman, in 2(3) of those 10 unconscionable acts, which might constitute an unfair business practice, if you have gone through those, which of those—and you have stated it in general terms as an association that you were opposed to those—would you consider irrelevant to day-to-day operations of some businesses, recognizing as you did that you do not want to have unscrupulous businesses being registered and in operation, that what you want is a climate of honesty and fairness and openness in the business community? Which of these do you say should be pulled out of the Act?

Mr. Kelly: With the structure of the Act, and it is not possible to answer just in an isolated set of words in one line.

Mr. Uruski: Well, let us go through them all.

Mr. Kelly: The listing of the 10 of those in the setting that they are in are all unacceptable because the approach is of creating an excessive responsibility on the business.

* (2310)

Mr. Uruski: I ask Mr. Kelly: a) that the consumer was subjected to undue pressure to enter into a consumer transaction. If someone buttonholes you, either comes to your door, or gets you in the corner, wherever, and you are not pushy, you are a meek person, and gets you to sign a contract and then you say to yourself, my God, what did I do? I signed a transaction that I really did not want to, and I am in a deal. Would you consider that an unconscionable act on behalf of the business?

Mr. Chairman: The Honourable Member is hindering, or badgering the witness here.

Mr. Kelly: Might I answer?

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Mr. McCrae: On a point of order, Mr. Chairman.

Mr. Chairman: Just a—the Attorney General.

Mr. McCrae: I am sure Mr. Kelly will be given the opportunity to answer, and I would not want him to miss out on the opportunity, but the point is the Honourable Member is doing precisely what he ought not to do at this particular stage of the proceedings of the Bill.

Presenters come forward and put forward the way they feel about the Bill. I mean a lot of people come here, they do not want to be subjected to this kind of thing. If they are going to be, a lot of the members of the public are going to learn about the way they are being treated by Members of the New Democratic Caucus here, and they are not going to want to come to committees here if this is the kind of treatment they are going to get. I say this with respect to others who have come forward this evening as well.

Mr. Uruski: Mr. Chairman, perhaps one of the things that should be mentioned to every presenter is that if they find any of my questions objectionable that it is the right of every presenter to say, look, I do not want to answer that question.

Mr. Chairman, on the same point of order, the Chamber of Commerce came to this committee and said, we do not like any part of this Bill. I am only trying to determine as a Member of this committee which part of the Bill is onerous and detrimental to business. Some of the practices that the Government has put forward I am trying to get for my satisfaction, to say, look, maybe there is something we can agree on and maybe some of these provisions that are unconscionable acts and deceiving and misleading business practices maybe should not be in this Bill.

We have had a blanket approach to this legislation that I am not sure that the Chamber itself wants left here, or I as a Member have to say I do not totally agree with their position.

Mr. Chairman, you can rule me out of order in asking questions specifically to the legislation, but then why did we have that half hour debate an hour ago and why are we here?

Mr. Chairman: I thank all Members for their point of order. I think we will carry on with the provision that we control ourselves a little bit.

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Mr. Kelly: Regarding the question and specifically relating to that example given, The Consumer Protection Act specifically does cover door-to-door sales. I use that example because there are a number of pieces of legislation that already provide protection. The concern with this Act is that in the specifics provided in the 10 items under unfair business practices, with the preamble it sets a stage that the business basically is entirely responsible. Under that setting it is no longer then fair in that while, yes, it certainly will achieve the purpose of being able to convict anyone that is desired to be convicted, because it has cast such a wide net that all will fall under it. Our objection to it rests with the fact that many legitimate, honest, morally correct individuals diligently doing their best will probably have problems with this legislation because they potentially would be found to be contravening this Act as well when they never intended to and it was not a problem and it is not considered by anyone to be an unfair practice.

Mr. Uruski: Mr. Chairman, I would venture to say that if those people that you describe would not be I guess led to be investigated and maybe they would be investigated on a complaint, but it would not stand up if it was shown that there was no undue pressure. I was not even suggesting that section dealt with door-to-door selling. But let us take another one down the road. Pick any one of those that the consumer was likely to rely to the consumer's detriment on any statement of opinion made by the supplier. Would that be excessive or onerous on the business when statements promoting the product, what is being sold, are in fact far beyond what a consumer might expect that product to do for him or her, or perform in a particular way, in terms of the salesmanship?

All of us are in our own right, I guess, salesmen or women in promoting of one item or another. Would that be an unconscionable act or be too onerous in determining that, look, you told me this was going to do these kinds of things, but it never performed. Should the business have to stand behind those kinds of statements? Yet that is in essence the way I read this section.

I am not the consumer critic of our Party, but I looked at this legislation tonight after hearing a brief, and I said, what are we doing? I ask you, is that onerous?

Mr. Chairman: Mr. Kelly, would you care to answer that question or not?

Mr. Kelly: Please, may I. The example given in terms of Subsection (h) cannot be looked at just as Subsection (h). It is (h) of 2.3 of the Act, which means that the interpretation of it is in light of the business not knowing, in light of the business potentially having contravened the Act even though there may not have been any tendency or effect of doing that, and even though the consumer may not have been affected. It is the combined aspect.

When you look at the preamble, whether or not the act to practise had the capability of deceiving, whether or not the consumer is in effect deceived, and whether or not the business knew, can be determined by the opinion of the director, that can be determined to have contravened the Act, and the penalities then apply. That creates the unreasonable shift of responsibility to business. To make a point about this—it may address your questions. While this will achieve what may be the intent of trying to ensure that it is easy to convict anybody who does anything that is deemed to be improper, it does it by casting such a wide net that firms which are acting fairly and ethically fall under it.

An example is especially in the case of Subsection (f). A business that makes a sale of a good or service, and does that in a normal manner, must ensure that the situation does not occur where the consumer would not receive a substantial benefit. If there is a sale of a good or service, and the consumer does not receive a substantial benefit, that business can be determined by the opinion of the director to have contravened the Act regardless of how the consumer used it, regardless of the application for it. It is the opinion of the director that determines it. That is what creates the excessive shift.

* (2320)

Mr. Minenko: I think the intent of the legislation is to have a level playing field between the seller of a product and the purchaser presumably. In earlier discussion with members of the audience, we had a discussion about automobiles. Does an individual really know what the actual cost is? Presumably somebody, the seller, is obviously in a better position to know what the scoop is, what the story is behind the product they are presenting.

I agree that 99.9 percent of vendors in this province, in a normal course of business, probably would not contravene this Act. It is just that small percentage that we constantly read about, and it certainly has affected my constituents and the constituents of other Members of the Legislature, that this is attempting to deal with, to try to level out that playing field.

If you, as a producer or seller—I think that is what the Member for Interlake (Mr. Uruski) was suggesting in saying, how does this upset the applecart? How does it force extra provisions on a provider of a service or, well, a good anything other than that people would normally say in their ordinary course of business? What I think this legislation is going for is saying, all right, if you say this car is going to fly, then you damn well better be sure that it is going to fly. If it is not going to do that, then you do not make that particular claim; or whatever other product, this water purifier is going to purify this amount of water or so on. The consumer is not in any position to be able to say yea or nay about that particular quality of the product that the vendor is selling.

I think this legislation is dealing with that particular problem. I am just wondering if you could offer a comment on that suggestion.

Mr. Kelly: Yes, a comment on that. The Manitoba Chamber of Commerce does not countenance unfair and unethical business practices. We want to see those people prosecuted, but this proposed legislation does not do just that. What it does is—and an example perhaps to make the point—it puts legitimate, ethical, fair businesses at risk of having the director determine, in their opinion, that they are contravening the Act and they are then subject to being closed down immediately, in fact, without even having the investigation completed.

They are subject to potentially a million dollar fine and three years in jail. They are subject to that, even though they may not have known, the act they conducted may not have tended to create a problem, and the consumer may not have been affected. The example being—and it applies to any one of these clauses—the example that was pointed out to me is under "d": there is not reasonable probability of full payment. That will require the business to do a sufficient credit investigation to be absolutely sure that that consumer cannot be in a position of having any credit problems. If the business is not absolutely sure of that, in the opinion of the director, they will contravene the Act.

Under "c" where it says, "the price grossly exceeded the price at which similar goods were available," does that mean—in the example that was pointed out to me by an individual: we were looking at a silver set on their table and they said, does that mean that the fact that I bought it just before Christmas and immediately afterwards it was at 50 percent less? In his opinion, that was gross, not an unfair or unethical business practice, but in the determination of everyone who has spoken to us about it, those legitimate, fair businesses could be deemed by the director, in their opinion, to have contravened the Act. That is what the concern is.

Mr. Patterson: Thank you, Mr. Chairman. Mr. Kelly, I just want to clarify something. You refer repeatedly to the opinion of the director, but article 7(1) on page 8 does not talk about an opinion. It says: "Where the director believes, on reasonable and probable grounds," which is somewhat different from opinion.

Where opinion is specifically stated is in Clause 10, headed "Injunction," but it is protection of the court there. It says: "Where, in the opinion of the director, it is necessary for the protection of the public, the director may apply ex parte to the court for an interim or permanent injunction order." So the decision would be made on the basis of evidence presented by the director to the court. Then the court may or may not grant the injunction. It does not necessarily take effect on the opinion of the director.

Mr. Kelly: You cite several examples. Unfortunately, they relate predominantly to the investigation area: Section 14(1), which is "Actions by director for consumers," where it indicates the director may commence actions: "Where the director is of the opinion that an unfair business practice has occurred"; and, more importantly, in 15(1) "Actions by director," it states: "Where the director believes . . . the director may bring such an action." There is no reference to reasonable grounds—and 9 and 10 as well.

Mr. Chairman: Okay, are there any further questions to this presenter? Thank you very much, Mr. Kelly.

Mr. Minenko: On a point of order, Mr. Chairman. I am just wondering whether I will be able to ask the representative from the Consumer Association if she would not mind asking one quick question that has come to mind.

Mr. Chairman: Agreed.

Mr. Minenko: In referring to Bill No. 64, one of the matters that was raised by the previous presenter, in 2(3)(d) it says that there was no reasonable probability of full payment of the price by the consumer, where it would seem that it would be a requirement for every business to check whether someone has sufficient resources to actually pay for something.

I am just wondering how the association may view this particular provision with respect to the issue of privacy of the consumer.

Ms. Hillard: We have talked over most of the points that the chamber member brought forward and we felt that they were quite capable of presenting their own case. We did have some concerns similar to the chamber about this whole section, that maybe they were a little broad and vague and not clearly enough defined to zero in on the real problems. Where we are concerned is the fact that Mr. Kelly did not respond to Mr. Uruski's questions on 2(1), which are all the things like misleading advertising that are of very great concern to us and which we do not feel are covered anywhere else in as I said before a way that can be enforced.

Mr. Minenko: I am just wondering if you could specifically address the privacy concern. Does the association have a concern that (d) would cause problems with respect to privacy of people if businesses have to check whether you have sufficient funds to pay for something?

Ms. Hillard: You have to sign right now to have them investigate your credit, so they are not going to be able to investigate you unless you sign. If you do not want them to investigate, you are not going to sign. Presumably you are going to do without that service or purchase.

Mr. Patterson: With the permission of the committee, may I ask Ms. Hillard a question with a yes or no answer?

Mr. Chairman: Agreed.

Ms. Hillard: Do I have to give a yes or no answer?

Mr. Patterson: Ms. Hillard, were you aware that in The Consumer Protection Act as it exists, there is a provision that deposits of more than $50 will be held in trust, which has been a piece of legislation dating back to the early 1980s. It was to come into force on a day fixed by proclamation, but it has never been proclaimed. Were you aware of this clause in the Act?

Ms. Hillard: That is a yes and no answer. I was not aware of that particular clause. I do know that there is a lot of consumer legislation which has got to proclamation and not gone any further.

Mr. Chairman: Thank you very much. Mr. Hendrickson. Just a moment till we pass out your presentation. Okay, you can proceed now.

Mr. Lefty Hendrickson (President, Manitoba Motor Dealers Association): Mr. Chairman, Mr. Minister, Members of the standing committee. I just tell you as an observer I too would think it very difficult for you as Members to be trying to judge statements by individuals on a proposed amendment or amendments that you have not read. It is even more difficult for us as participants to make statements on these amendments which we have not read. I would just also follow that up in saying that my information on these proposed amendments came through a little bit of newspaper and a reporter that phoned me for comments on a proposed MSRP and lemon law that may be brought before this committee tonight by Mr. Maloway.

* (2330)

So that was my information and on that I had to write up my comments. I must tell you up front that my comments are in regard also to these proposed amendments by Mr. Maloway that I would like to address to you tonight if you will allow me.

One thing it did do is add maybe one more amendment. I did not know the documentation amendment may be coming forth, and I might comment on that for you if you would like me to. The Manitoba Motor Dealers Association represents all of the new car franchised dealers in the Province of Manitoba. There are 200 new automobile dealers which employ approximately 6,000 individuals -(interjection)- That is what I said. Any acts of legislation that inhibit or deter these dealers from making a reasonable profit in order to stay in business must be addressed by our association.

It is to this end, as president of M.M.D.A., that I address these proposed amendments to this Bill, Bill No. 63. First of all, let me start off by defining the phrase, "manufacturer's suggested retail price." As the wording signifies, this is only a suggested retail price. The dealer may sell for less and, conversely, sell for more than the manufacturer's list price.

MSRP, as it is referred to, would leave the dealers at the gross margins and advertising whims of the

manufacturer. Let me give you an example. This is a 1989 Fort Festiva at manufacturer's suggested retail prices. The base retail, excluding freight, on this particular vehicle is $7,940.00. The dealer invoice from the manufacturer is $7,516.00. The total gross margin for the dealer, if he sells this vehicle, is $424.00. The freight on this particular vehicle is $380.00. The manufacturer, in his wisdom, uses a price leader and advertises this vehicle at $7,940 to be more desirable to the consumer.

The gross profit realized by the dealer is $44 if sold at the advertised price, and that price is disclosed less freight. In order to gross the full $424, a salesperson must ask the consumer for an additional $380 to cover freight costs as he walks into the showroom. This is the manufacturer's way of retail advertising and merchandising, which we as dealers strongly disagree with.

The manufacturers continually raise their prices at model introduction, without increasing the dealer's gross margin but paying for the consumer appealing rebates and giveaways that the customer thinks they are getting for nothing. The legislating of MSRP, to the automobile dealers only, singles out the dealer as the only business that should be regulated. If so, why not regulate all businesses to a manufacturer's suggested list price? Is a house purchase not major? If so, why not regulate the real estate industry to a maximum suggested list? Their sale guarantees them a gross of 5 or 6 percent with very little overhead involved.

If too much gross is the factor, then why not restrict the appliance, furniture and jewellery industries to MSRP, as their gross margins are 50 to 300 percent? Automobile dealers object to having their industry singled out. For the record, as an association, we feel that we do as much or more than any association in Canada to satisfy the needs and service the buying public. In Ontario, where MSRP is legislated, the dealers have found other ways to circumvent the system, and on average their grosses are higher than in Manitoba or any other province in Canada, as far as that is concerned.

Some of these ways they circumvent the system is by dealer required add-ons on the bottom of invoices or inflated retail prices on dealer added accessories. So there are always ways around it. These methods are invented because a dealer cannot survive on the gross margins that MSRP allows.

Solution? We in the retail automobile sector have no problem with supplying the consumers with all of the necessary information to allow them to make a well-informed and educated purchase. We suggest, however, that dealers should be allowed to use their own list price as opposed to the manufacturer's suggested retail price. Our resolution would read as follows: That each motor vehicle dealer be required to prominently post on every new motor vehicle for sale (a) the dealer's suggested list price for the base model, (b) all optional equipment, including transportation and preparation charges, along with all dealer-installed accessories be listed separately under the base vehicle, (c) the total vehicle suggested dealer list price be presented at the bottom of the invoice, and (d) upon request, the dealer's representative must divulge the price of each of the individual options listed to the consumer at his request.

The above resolution would allow the consumer to fully price and compare models and options while allowing the dealers the flexibility of the margins that he feels are necessary to keep him both profitable and competitive in his marketplace. I think it is a resolution that both the consumer and dealer associations can live with, and one that will benefit both in the long run.

On the second, on the lemon law, which Mr. Maloway has stated publicly of his intent to introduce in this Bill, let me say this: the onus should be put on the manufacturer to take back vehicles of poor manufacturing quality. The dealer is once again caught in the middle, with no recourse to go back to the manufacturer with a supposedly defective vehicle.

In our experience, a dealer who is involved with a customer with a problem vehicle will do everything in his power to service the automobile. If the customer is still very unhappy, a mutual agreement is reached and the customer is traded out of the said problem vehicle for as little expense as possible. The dealer will do this if he wants to retain customer loyalty and get a chance at selling to the 20 or more friends that the customer talks to.

In these cases, where the service problems have been rectified, the next owner is very happy with the vehicle and usually does not experience any of the original owner's previous problems. It would be totally ludicrous and financially impossible for the selling dealer to absorb the cost difference to replace the customer's car with another new vehicle, or to refund the total amount that the customer paid for the vehicle and absorb the loss difference after the sale of the said vehicle. In this scenario the dealer would be only too happy to totally refund the customer or trade out of the vehicle if the manufacturer would absorb the difference.

This legislation does nothing to protect the dealers' rights as businessmen. Until we as dealers have protection from our manufacturers, this lemon law amendment would be an unworkable financial disaster for the dealer body. In the real world new vehicle franchise dealerships have been feeling the effects of high interest rates, over-production, cost shifting from manufacturers, heavy inventories and a general slowing down of the economy. This has been evident in the ever-diminishing dealer numbers and the even greater number of dealers showing red ink on their bottom line. With even tougher times in the forecast, we as dealers do not need interference from the Government with improper legislation that may just mean the extinction of many dealers along with the jobs of their employees. Dealers are becoming an endangered species.

I would just make a few comments on the documentation fee that supposedly is coming out. This seems to me to be contrary to the MSRP which you would like us to list all our options on and the prices beside them. The documentation fee, as it has been administered by dealerships, pays for what we consider escalating costs that have been put on us by the manufacturer, by Government, and different bodies.

* (2340)

In that I mean that we have to check out liens on vehicles, particularly vehicles to make sure they are free and clear. We have write-offs that we would like now checked with the MPIC to make sure they are not write-off vehicles that we are taking in trades. We have the manufacturers-enforced computer costs on us. We have to have now one person in our dealership, and most dealerships do, to operate what we call that department that administers doc fees, and that would be services to finance the vehicle, setting up follow-ups for the individual. His time spent in delivering that vehicle alone with that customer is anywhere from 45 minutes to an hour, and he does all the work. Now, that documentation fee supposedly is to pay for all those services that, as consumers feel, should be absorbed in the cost of the vehicle.

We cannot absorb any more costs, gentlemen. That is the fact of the business. We cannot absorb any more costs. So we, up-front, will put those documentation fee charges right on the invoice. They are there for you to see. They range undoubtedly from 45 and some dealers charge 160. I would find that absolutely ridiculous. If I was a consumer and went into an automobile store and the guy charged me $150 for doc fees, I too would object. But it is negotiable. If you do not feel that those services they are giving are worth $160, do not pay him. That would be my advice to you. It is not fixed, but I certainly would justify $45 or $25 because that person who makes the delivery is worth that. I am available for questions.

Mr. Uruski: Mr. Chairman, to Mr. Hendrickson, thank you for your brief. I would like to ask you a couple of questions on the dealer margins. I know the dealers in my home town do put on what I would call the book price that the dealer provides them—

Mr. Hendrickson: The manufacturer provides.

Mr. Uruski: Right. And then they add the extras that are on the car in the way that you have kind of presented in your brief. Now, is that a difficulty for most dealers? I mean, I walk into a GM dealership, or whatever—in fact, my instance that I have had was to walk into a GM dealership and the salesperson there pulls out the book and says, this is the base price of the car, and here are the extras, and then the discussions go from there. Is that an onerous provision for the dealers to put those kinds of numbers on the car? Is that a problem?

Mr. Hendrickson: I would retaliate by asking you, in turn, is $424 gross reasonable to make on selling an $8,000 car, because what the manufacturer does, what we object to, okay—and what I understand the consumer would like is to be able to go into my dealership, anybody's dealership, know what that base model vehicle price is, no matter what it is. What does it matter if it is a manufacturer's suggested list or a dealer's suggested list?

The consumer wants to know the price of the vehicle, all the options that are included, and the bottom-line price. When then he goes to negotiate, he has all that information for him. What does it matter if I am asking $1,000 more than the person down the street, because what you are going to deal on ultimately is the difference that you are going to pay me for that vehicle and the options? So as long as we provide that information, there should not be a problem. We object to using the manufacturer's suggested retail price, because the manufacturer does not care about the dealer staying in business to make gross. They do not leave us enough gross in order for us to make enough profit to stay in business.

Mr. Uruski: Mr. Chairman, to Mr. Hendrickson, are you suggesting, though, the books that the dealers use in selling the cars may as well be chucked in the garbage? I mean, are you telling me that General Motors or Ford or whatever dealership you have, that the books they provide to the dealers in the cost of the base car price, not what they advertise in the papers, but what they provide the dealers, is garbage? Is that what you are telling me?

Mr. Hendrickson: If I feel that what is in it in the gross margin they are not allowing me is garbage, why should I be restricted to use it? What is a retail price? It is the retail price that an individual feels that he can get for the product, considering the market conditions. So why should I be restricted to a manufacturer's suggested retail price?

Mr. Uruski: Is the difficulty there, then, that the dealers in certain models would want to put on a price exceeding what the manufacturer gives them in their regular price books? Is that actually because of the slim margins that they have on some units?

Mr. Hendrickson: Absolutely. If a manufacturer gives me a kind of a margin such as $7,940, and I have a margin of $400 on a Festiva, yes, because what we would like, if possible, is the manufacturer to have a uniform markup on all vehicles, whether they be small, medium or large, at 15 percent. We would love that, but unfortunately they play the games, and we have to live by their rules. That is what we object to doing.

Mr. Uruski: I certainly do not disagree with what Mr. Hendrickson says. If in fact the margin is $44, you are not going to be in business very long, and I have no difficulty. However, when you walk into a dealership and the base price of the car is quoted by a salesperson, plus the extras, and they are prepared to start dealing with 10, 12, 14, 15, 16, 17 percent from what the manufacturer's list price is, then the question comes back: where is this so-called $44 or narrow margin when you leave on the table—and I will give you my own personal experience two weeks ago.

The vehicle was listed, manufacturer's retail price was listed at $31,398.00. The sale price came back at $24,000 and they were prepared to deal, and he had no difficulty of itemizing all the price and the extras. So if he had not any difficulty of itemizing the base price of the car and all the extras, and there was a lot more than $44 on the table, I will tell you, then I question the one example, I guess, that you have given me. Is there some way of getting around that one example?

Mr. Hendrickson: There are ways of getting around all examples. You were probably jobbed in that case.

An Honourable Member: Probably what?

Mr. Hendrickson: Jobbed. That means that you are probably taken on those figures and you believed them, that is, you know—I am just kidding. I was just kidding, sorry about that—

* (2350)

An Honourable Member: No, no, then what you are telling me is that the manufacturer is lying to the dealer—

Mr. Hendrickson: Am I still answering?

Mr. Chairman: Yes, Mr. Hendrickson.

Mr. Hendrickson: No, seriously, the problem with dealer margins is that they vary from line to line, and obviously on a $30,000 or $40,000 vehicle, I am sure that he would have more margin than 7 percent or 5 percent. In those cases they can be 18 or 20 percent. There is no uniformity between those margins.

What we are saying again is that we do not want to be restricted to those dealer fluctuations—or the manufacturer's—because what they do is price their vehicles where they want them in the marketplace, and give us the margins that they want us to have. Okay? In that case that you are probably talking out, also what I would say, you mentioned the manufacturer's list price and it came to $30,000 plus all dealer options. Maybe the dealer added some options in of his own. That might be quite possible, at added margins though.

Mr. Maloway: Given the hour of the day and the fact that we have three more presenters, or at least two more after this, I will try to keep the comments brief. I think the presenter made a fairly good presentation, but I see a couple of flaws in your presentation and it has to do with the fact that you have not seen the amendments yet. You may be actually pleased when you do see what we have to offer. No. 1, the lemon law prescribes that the adjudication is between the manufacturer and the customer, and you would not be caught in any way, or paying any money out-of-pocket for any losses.

No. 2, on your page three you made reference in your second last paragraph to having to absorb losses, that the customer could get their money back after the four attempts or 21 days and you would have to make up the difference. In the amendment itself we have, based on the Florida law, an adjustment made for wear and tear so that the consumer, the customer, is not going to get away with anything here. If the car is a lemon and they have to take it back after 21 days and four failed attempts, then they are going to be adjusted for the time they have used that car. There is a formula in the Bill that is universal. So there is nothing free there.

Third of all, in terms of documentation fee, I know it is no surprise to you to know that there are a lot of dealers in town, including Ron Stenning and many others who do not charge a documentation fee, and you are quite aware of that. So why is it that some dealers can get away without charging it and others down the street are ranging from $45 to $150? Quite frankly, I have noticed most of them in the $50-$60 range. I have not seen any at $145, but there have been reports of that.

Just a couple of observations there that I wanted to point out to you in your presentation. I know you have not had the amendment to look at, but I think you are going to be reasonably happier with it when you see it. Your comments about Ontario dealers getting around MSRP does not say much for the Ontario dealers and their ethics. That would be my comment on that score. I expect dealers to obey the law, just as I expect anybody else to obey the law. If there are MSRP rules, then I expect the dealers to follow that. Other than that, I do not have any other questions at this time.

Mr. Chairman: Are there any other questions?

Mr. Patterson: Mr. Hendrickson, in the example on page 1 of your MSRP, with your dealer margin of $424, it shows the dealer invoice at $7,516.00. That is the invoice that comes with the vehicle. Are there not rebates for volume during the course of the year where the actual margin at the end of the year on the overall business would be somewhat higher than is shown in the example?

Mr. Hendrickson: Actually, it is a fallacy of most of the consumers, of the consumer in general, that there is a volume discount a dealer may achieve and get paid for at the end of the year, be it whatever, from a manufacturer. That would be very contrary to our dealer council agreement, which says that all dealers shall be allowed to purchase the vehicles at the same price as each other.

No, there is not a volume discount, because that would mean the small dealers would not survive with the big dealers. They would run them out of business. The only discount that is available at year end is what we call end-of-model rebate, which is a 5 percent end-of-model rebate which comes to the dealer for carry-over models of previous years. In other words, now we would have'89 carry-overs. We would get 5 percent on that and, with the difference between the increase that the manufacturer puts on the new model in'90, we would possibly have a 10 percent price advantage to sell those'89s over the'90 models. That is all that we have.

Mr. Patterson: I notice again in this same example, you have the freight shown down at the bottom. My memory going back close to 20 years, I cannot exactly recall, but it seems to me—by the way, this goes back to—

An Honourable Member: Trade that car in now.

Mr. Patterson: Yes, it has been traded. But no, this is a brand new purchase. When I was an impecunious graduate student at the University of Minnesota in Minneapolis and was purchasing a new car before I

came back to own it for a year and escape the duties, I borrowed the money from my father, having said it was an impecunious graduate student—

An Honourable Member: Is this a long story?

Mr. Patterson: No, we will get to it. At any rate, the car happened to be a Ford. The factory sticker had everything on it, of course, with the various prices. Then the manufacturer's sticker had the inward delivery or freight added to it, below all the options, and then the total price of the car. The freight was included with the manufacturer's suggested prices.

Mr. Hendrickson: Unfortunately the freight now is always listed separately. Again, I think it is because the manufacturers will take advantage of that in the kind of advertising that I used as an example here, to advertise the vehicle at as low a price as they can. They do that excluding freight. When they do disclose it on an ad, it is so small that a seeing eye dog cannot see it. It flashes so quickly that if you blink, you miss it.

* (2400)

Mr. Uruski: I just want to go back to your example. Would you have difficulty in showing the manufacturer's retail price of $7,940, plus freight of $380 on the sticker that you get from the manufacturer when you are putting the car up for sale? Is that onerous?

Mr. Hendrickson: It will certainly be onerous to me if I can only gross $425 on the vehicle. This example does not leave enough gross for the dealer to sell the vehicle for. Yes, it is onerous, and that is . . . .

Mr. Uruski: Mr. Chairman, what choice do you have when the manufacturer may put out ads in every national newspaper across the country, showing this ad with that little bit excluding freight that you say that most of us miss as consumers and come in and argue with you? Rather than missing that and having that argument over $380, show it on the sticker and—are you telling me that we consumers are so gullible that notwithstanding the ad of your manufacturer, we are going to pay you more for that car than what the dealer says in national newspapers? Is that what you are telling us?

Mr. Hendrickson: I am not telling you anything. What I am telling you is that it is unfair for you to legislate that we, as automobile dealers, the same as any other dealers, whether it be jewellers or whatever, be restricted to a manufacturer's suggested retail price. The manufacturer does not have the interest of the dealership at heart. We cannot make the kind of money that they leave us in those kinds of margins, yes.

Mr. Chairman: Thank you. Are there any more questions for our presenter? Thank you, Mr. Hendrickson.

Mr. Hendrickson: I am at Canadian Motors in Brandon, by the way, if anyone wants to deal.

Mr. Penner: Mr. Chairman, having been in the business myself for a while, I found the presenter's remarks extremely refreshing. I thought he was extremely honest with the committee and very straightforward. I commend the presenter for that. I would suggest that many of the recommendations he has made are good ones. I would just like to ask him one question, if he would not mind.

Mr. Chairman: Is this a long question?

Mr. Penner: No, it is a very short one.

Mr. Chairman: Oh, okay.

Mr. Penner: As I said, having been in the business, I know that many of your association members have operated for many years from the sticker price in the window, the manufacturer's retail price, and they leave them there. Many of your rural dealers especially operate out of that. You being from Brandon would know that. I wonder, Sir, if it would satisfy your needs if we said that we would allow you to retail your vehicles at any price you would see fit to retail them.

However, the requirement would be that the sticker, the manufacturer's suggested retail price, would have to remain part of the identification of the vehicle. Would that cause you any great deal of difficulty?

Mr. Chairman: Mr. Hendrickson, you realize you do not have to answer that question?

Mr. Hendrickson: On the grounds that it may incriminate me? Actually, I am trying to wrestle with a response for that. I guess, as one of the Honourable Members had mentioned, it does become very difficult for a dealer such as the question of the Festiva where we list it at $7,940 plus freight, and then ask the customer another $400 underneath that. It does become a bit of an embarrassing situation. However, I think if the individual consumers know that from dealership to dealership the prices may vary according to that dealer's needs or costs, then that possibly may be an acceptable solution.

Mr. Chairman: Thank you again. Mr. Lutz, have you a written presentation? Okay, we have it.

Mr. Lutz: Mr. Chairman and Committee Members, I understand that Jim Malloway is going to be proposing amendments to Consumer Protection legislation. I am here to tell you why I think we need a lemon law.

I am going to read a letter that spells out clearly my experience with a new vehicle that I purchased. I have addressed this letter to Mr. Kenneth Harrigan, President of Ford Motor Company of Canada, in Oakville, Ontario: "Dear Mr. Harrigan, this is to request that you take action on a problem with my Ford truck, a problem which was present from the day I picked it up at the dealership and is still present today.

"I have complained to the dealership owner, sales manager, and service manager. They have all refused to meet my request to: 1) Correct the problem in the

vehicle, either by repairing or replacing the transmission; or 2) Replace the faulty vehicle with another vehicle of the same type with the same features without the transmission problem; or 3) Refund my money in full and take the vehicle back.

"The following is a history of the problem to date. In May 1988, I placed an order for a new 1988 truck from Wilf's Elie Ford Mercury dealership located just outside Winnipeg. On August 15, 1988, I took delivery of my new 1988 Ford Custom F250 4x4. This truck has the 4.9L 300 6-cylinder engine and ZF S5-42 5-speed manual transmission.

"On driving home from the dealership, I immediately noticed an unusual clunking noise in the transmission and poor synchronization in the clutch while shifting. When I spoke to the dealer that same day about this problem, I was told that Ford does not open a transmission for repair until it has at least 2,000 kilometres on it. The dealer refused to do anything until I had driven it for 2,000 kilometres.

"I reluctantly agreed to continue driving the truck, and when I finally did have 2,000 kilometres on it and the problem was still present, I returned the truck to the dealer for repair. The dealer then told me that Ford was having these same problems in other ZF S5-42 5-speed transmissions, and that the Ford Motor Company would not allow its dealers to attempt repairs until the Engineering Department found the solution to the problems.

"The dealer gave me a copy of a service bulletin, which is on the back of this letter, from Ford explaining the noise and motion problems with the transmission. All five paragraphs apply to my truck. I have been told by the dealer to continue driving the truck as is, and when the Ford Engineering Department finds the solution, he (the dealer) will make the necessary repairs.

"The dealer has told me this orally. He will not give me anything is writing, nor will he repair the truck. However, it is noted on the first work order for the truck that the problem was present from Day One.

"Specifically the problem is: 1) Loud clunking noise in transmission while shifting; 2) Poor synchronization in clutch while shifting. Stalling occurs when moving from a standstill due to what I think is a slackness inside the transmission. Stalling occurs at least a third of the time when moving from a standstill; 3) Rattle-like noise or shudder occurs from transmission when braking.

"I have called the Ford Oakville Customer Relations Office about the problem. They have not done anything. They have not assured me that: 1) The Engineering Department will find a solution; 2) The dealer or the Ford Motor Company will repair or replace the transmission at no cost to me at whatever point in time they do find a solution.

I now have 9,910 kilometres on the truck and the problem still exists. Each time I drive the truck I am angry and irritated because I paid $15,000-plus for a substandard vehicle. I did not get my money's worth, and so far Ford and its dealer have refused to do anything about the problem. I want 1) the dealership to correct the problem with the current truck immediately, 2) failing this I want another vehicle of the same type with the same features without the problem, or 3) failing both 1) and 2), I want my money refunded in full and the truck to be returned. Ford's claim of quality, "Quality is job one" is a sham. I have been more than patient to date and if I do not get a satisfactory response from you I will be forced to take further action.

* (2410)

To date I have made my problem known to the dealer's service department many times, the dealer's sales manager, the dealerhip owner, Ford of Canada Customer Relations department in Oakville, Kenneth Harrigan, President of Ford of Canada, Phil Edmonston of Lemon Aid, and Jim Malloway, Member of the Legislature.

The amendments to the proposal will help to force the seller of the vehicle to make the repair satisfactory or else replace your vehicle or refund the purchase price to you.

As I said, the service bulletin on the back of the letter that Ford sends to its dealers on a daily basis, they are always continuously updated these things, all of these five paragraphs apply to my vehicle. Apparently, in 1987, Ford switched their transmission from a four-speed to a five-speed and obviously they did not do the research on it. This problem, I have been told by the service manager at the dealer is not only evident in my vehicle, it is evident in most F250 four-wheel drive, six-cylinder trucks with the five-speed. They were obviously aware of this problem when I bought the truck. The salesman of course did not make me aware of it. This was factory ordered, this vehicle.

Mr. Ducharme: Generally, how has the rest of the vehicle been?

Mr. Lutz: It is up to snuff. I have had the vehicle back many times during the first year. I have about 26,000 kilometres on it now, but when you buy a new vehicle there is a number of trips you have to make to the dealer to repair small items. This transmission problem has been put on the work order each time, and they have done nothing about it.

Mr. Ducharme: Under Mr. Maloway's amendment, would your vehicle be replaced?

Mr. Lutz: Well, I would hope so.

Mr. Ducharme: Are you familiar enough with the conditions, under Mr. Maloway's amendment, would this vehicle be replaced?

Mr. Lutz: Well, that may be debatable but under section—

Mr. Ducharme: I am asking, are you familiar enough with his amendment that he has put forward, that this vehicle would be replaced.

Mr. Lutz: Okay, well I am asking you, if you would read No. 135 Section 1. I beg your pardon—

Mr. Ducharme: We have not seen the amendment.

An Honourable Member: You will.

Mr. Ducharme: You have seen the amendment that he has put forward?

Mr. Lutz: Well I have this form in front of me here.

An Honourable Member: It is in the paper. Read the Free Press.

Mr. Kozak: Mr. Chairman, I thank the presenter for the effort he has put into informing us fully. I thank him especially for waiting till this very late hour of the evening. Since Members of this committee have no awareness of the amendment that Mr. Maloway proposes to place before us I wonder, Sir, if you could inform us of what Mr. Maloway intends to table before this committee or present as an amendment.

Mr. Chairman: Okay, I think we are badgering the witness and we are getting into a hypothetical thing, this mysterious amendment of Mr. Maloway's. It is certainly not on the Table, so I am going to call this out of order. Are there any further questions of the presenter?

Mr. Patterson: Mr. Lutz, did you receive a reply from Mr. Harrigan and, if so, could you inform us of the general contents?

Mr. Lutz: Yes, well, it is not directly from him, it is a Mr. L. H. Brooks, Representative, Operations Section, National Owner Relations Office, Sales Division, in Oakville. His response to the letter I wrote to Mr. Harrigan reads as follows: Dear Mr. Lutz, This will acknowledge receipt of your letter concerning the transmission difficulties you have experienced with your 1988 Ford light truck. While we are sorry to read of your difficulties, please be assured that these would be overcome immediately if we had the answers to the causes thereof. Our engineers are working diligently on the problem, and as soon as a resolution has been determined, your dealership service manager will be advised. We can only suggest you maintain close contact with him in this regard. Again, our apologies for any inconvenience this may have caused, and our assurance of the speediest possible resolution to the problem. Yours very truly, L. H. Brooks.

Mr. Chairman: Any further questions?

Mr. Taylor: I know it is late, we are starting to forget names even. We will have to do some reminding. Brian, you made a comment that you felt the salespeople at the dealership were aware of this problem in the transmissions of that model of Ford truck. Could you again say how it was you came to that conclusion, who told you what, how did you find that out?

Mr. Lutz: After I returned the truck to the service manager and we discussed the problem with the transmission, the service manager admitted to me that there were problems in other vehicles.

Mr. Taylor: Again, Mr. Lutz, that there were problems with these transmissions, and these chronic problems were known in other trucks similar to yours before your sale took place?

Mr. Lutz: Yes.

Mr. Taylor: Thank you. Amazing.

Mr. Uruski: This document that you attached to your presentation, or the letter to Mr. Harrigan, was given to you when?

Mr. Lutz: That was in November, it would have been in November,'88, I believe. I bought the truck in August, and I had been going back with small items that had to be repaired, and then the transmission problem. We really got into it after that and I asked for information, and the service manager provided me with that document.

Mr. Uruski: That is in essence why Ford is refusing to do anything for you at this point in time. They have acknowledged the noise and saying, let it rattle, and we are not fixing it.

Mr. Lutz: That is right. They have told me that the transmission will not be damaged in any way, but as far as I am concerned, the operation of the vehicle is not up to par for a new vehicle. When I am driving it, every day I drive it, I am dissatisfied and, as far as I am concerned, Ford Motor Company should never have let that transmission off the production line if they have problems like that. That is my main point.

Mr. Uruski: The correspondence that you read tonight, is that the extent of their basic acknowledgment—and this document—and no other acknowledgment as to extension of warranty or anything should something occur—the end blows out of the transmission or whatever? No further warranty measures have been offered?

Mr. Lutz: No.

Mr. Chairman: Are there any more questions of this presenter? Then we will call Mr. Elias. Thank you very much, Mr. Lutz. Mr. Elias, have you a written presentation?

* (2420)

Mr. Art Elias (Private Citizen): No. I would like to say first, that had I known that this was going to go this long, when Mr. Maloway phoned me this afternoon, I would have refused to come.

I would like to explain why Mr. Maloway phoned me. It was because I had asked him to, and that is when I wrote three letters to the Leaders of the three Parties about a year ago, or in spring, because I thought that the actions of Manitoba automobile dealerships were not entirely fair, from my own personal situation and also from some others of which I was aware, and I would like to explain those. I know that is not exactly

what this was about, but I believe it is an omission that I think you should address. First of all, I voted for Mr. Trudeau and Mr. Schreyer, but other than that, I am Conservative and probably would continue to be so. So the fact that Mr. Maloway (Elmwood) phones me has nothing to do with my views on this.

I am part owner of an insurance brokerage firm in Winnipeg, and I am very, very pro-free enterprise. So I do not come here suggesting that automobile dealerships should not be allowed to make a fair profit in the business they do and the employment of the people that they employ. I certainly said that in those letters I wrote back in spring, which, incidentally, I have since destroyed because I thought that this must have died by now.

My father bought a car that had one of these electronic talking dashes once, and I did not think I would be saying this, except you talk now, "lemons". The thing would not quit talking, and six months later, gentlemen, he went back and bought another car, traded this one in. Now, he was a really good mechanic but a real shitty businessman, and he paid $8,000 extra six months later to have the privilege of trading a more expensive car in for one that he was sure was not going to have the same kind of problem. That I think is something that is just not right.

My own situation, you are not going to have to have a tag day for me, but I do not think you need one for any automobile dealership, either. I bought a Lincoln from McPhillips Lincoln Mercury last August. Because I had been through various situations before, I knew that the only way that I was going to get a decent deal was if I started to play two dealerships against each other. Because I happen to know one of the salespeople—I do a lot of curling, and he was also a curler—at Landau, I had an'86 Park Avenue that I was trading in, and the first price I received from my friend, and this is the best I was going to do, was $22,000 difference. After four times back and forth I made a deal with McPhillips Lincoln at $18,100 difference. That was okay, because to me that is what counts, and I can take care of myself.

It was not because of that situation for me that I wrote those letters, but rather for the kind of people that I hear my son talking about, because he has a friend who is a salesman for one of the dealerships along Regent Avenue. The price tag that had been put on that Lincoln was $44,500 list, and they are all the same. They are all the same, I guarantee you. You go to all of the car dealerships and look at different deals—and I am not suggesting that this is wrong—but it is like a monopoly. Do not tell me that there are people who do not do it, because they all do it.

I bought another Ford product just yesterday for my wife. It is a 1990 Thunderbird, it is not the LX model, and I paid $18,000 for it in a private deal. The private deal was from somebody who had won the car in one of these lotteries. One of my sons noticed it being advertised, and we had been talking about a Thunderbird for a long time because my wife's car was very old already.

I started to check around. I phoned—just briefly, this did not take much time, this took two days for me to do—Steele Town Ford in Selkirk, and I asked for the sales manager. I do not know who I talked to; I do not have a name, but it went something like this: I'm looking for a Thunderbird, and I give the options and so on. Would you please give me an idea of what your price on that would be? $23,000.00. I said, now look, I have bought a lot of cars, and I know you guys mark them up from the manufacturer's suggested retail price. Now, have you done the same thing here? Yes, I have. And what is the real MSRP? $21,300. I said, so why do you do that. Well, we have to. We all do it, because people expect a higher value on their trade-in. And so what he is really saying is that if nobody did it, nobody would have to. But as soon as some do, then those that do can show a higher value on the trade-in, and that is what people are concerned about.

The public does not know that this is happening right now. They believe that, when they are shown that typed piece of paper, that is the manufacturer's suggested retail price. That is what they believe. Okay, next question: So, if I come down with a cheque right now, how much can I get that car for? $19,900, on the phone. So can we just talk about something a little bit more rational than a Festiva? You know, let us talk about the kind of vehicle sales that make up what the average is and what the markups are, because they are there.

You know, Mr. Penner's suggestion? So put the darn thing there, keep everybody on a decent playing field because I can handle it, okay? But there are old folks who cannot. How many of you remember, about six or seven years ago, when a Pontiac's list price, as far as I could figure, was about $18,000 or $19,000.00? An elderly man in his seventies, who apparently later was found was suffering from Alzheimer's, paid $28,000 for a Pontiac, and his son, who then found out about it, tries to get the money back and has to sue. It was in the papers and all that kind of stuff. Do you think that is right? No. Do you think that is the kind of profit that needs to be made to have dealerships be profitable? Because I want them to be. I want to have the right to go and buy a car. You are darn right. Just like we all do.

The Consumers' Association is awfully responsible in that regard. I think that dealers would be too. I really believe that, if you took all those dealers, one-on-one, and just asked them the question, if the situation was that everybody had to put that price tag on the front windshield of their car, would you like that? I will bet you their answers would be, yes, that they would. I will just bet you any money.

I just want to say a couple of other things. One of the responses that I got to those letters that I wrote was from Mrs. Carstairs. The analogy that was given as to why automobile dealers should be singled out, was, well, then, should we not legislate what the list price on jewellery should be? What kind of comparison is that? Can you see any of these, anything on me? How many people need jewellery the way they have to have cars? That is different, and it is not fair to make that kind of a comparison.

I think that if you were to have a poll of all Manitobans and ask them whether they would prefer you to add to this legislation—and I honestly did not know the

state of your meeting today. When you phoned, Mr. Maloway, you were not quite right. You were not quite fair, I do not think, because all you told me was that, if I came today, I would have a chance to make a presentation at this committee which was to do with the MSRPs, because you knew that I would like to do that. Then I hear these other fellows start questioning whether that should be happening and that is why I stood up for. It was only to ask, gee whiz, am I going to sit here till 12:30 and then suddenly be told that I cannot even say anything to you? That is the only reason I was trying to ask a question before.

Consumers do not know. I will bet you that, if you ask them, 95 percent at least would say, yes, please. Put us on that level playing field. We like to buy cars. When I am 20 years old, when I am 18 years old, gosh, you can ask any price in the world. If I can somehow pay for it, I am going to do it. But that is not right. Let them make a profit, but just let it be fair.

You know, I am in the insurance business and, in our business, there are few that are more regulated than we are. We sell Autopac out of our office, along with various other insurance products. Well, it sure as heck is regulated in terms of the price that you all and I pay for our . . . insurance. It is very regulated. Is our commission regulated? Absolutely it is regulated, but the cars and the sale of the cars that that insurance protects cannot have a little bit of consumer protection. That makes no sense. And you are not going to hurt one single dealer with this kind of legislation, not one single dealer, except one who wants to gouge the public.

Thank you very much.

Mr. Chairman: We were wondering, are there any questions of the presenter?

The hour being 12:30 a.m., is it the will of the committee to rise? Committee rise.

COMMITTEE ROSE AT: 12:30 a.m.

PRESENTATIONS SUBMITTED BUT NOT READ.

Written presentation of Bill Stokes

Proposal No. 63

I. Documentation fees

(A) Why is it used and why is it not used by all Winnipeg and/or Manitoba Automobile Dealers?

1. Does it cost one dealer more than another to make claim searches on automobiles?
2. Is the documentation fee necessary to sell a vehicle, or is it needed to offset the cost of customer inventory control?
3. Why are some dealers not using documentation fees?

NOTE: Why are documentation fees waived for some consumers and not for others?

Usually the people who can least afford to pay are the ones that pay. Where is the equal consumer protection?

II. Manufacturer Suggested Retail Prices (MSRP)

(A) Are these prices not to be used and displayed on the window of each brand new vehicle?

1. Why are MSRP's used in Ontario? They are used for uniformity as well as consumer protection.

William C. Stokes
345 Wildwood Pk.
WPG R3T 0E6

TO: THE STANDING COMMITTEE ON LAW AMENDMENTS, MANITOBA
FROM: THE CHILDREN'S BROADCAST INSTITUTE
DATE: JANUARY 23rd, 1990
RE: BILL 63

It has come to our attention that your committee will hear arguments concerning a ban on all advertising directed to children under the age of 13 years. The institute wishes to request that your committee exercise extreme caution before adopting such a measure. Our recent investigations of the impact of the ban on such advertising in the Province of Quebec suggest that such a ban could have a very negative impact on the development and distribution of Canadian children's television.

Quebec producers of children's programming have expressed grave concerns about the future of children's programming in Quebec, and some Quebec broadcasters have suggested that they may have to drop children's programming from their schedule altogether.

It should also be noted that such a ban only relates to Canadian television and does not address the volume of television commercials directed at children, which originate in the United States and are viewed by Canadian children.

While concerns for the child viewer are shared by many, it is important that all implications of a ban are understood and studied to ensure that you don't throw out the baby with the bathwater and do more harm than good.

The Children's Broadcast Institute is a national, charitable organization which is totally committed to the creation and distribution of quality children's programming in this country. Quality is affected by the resources available for production, and this could be negatively affected by such a ban.

It is on behalf of Canada's children that we raise this concern, and we respectfully ask that all aspects of this issue be carefully considered prior to any decision.

We would be happy to contribute to the discussion on this subject, and I am available to make a presentation to your committee if you deem that it would be helpful.

Thank you for your consideration of these concerns.

(Signed)
Sanderson Layng
Director