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Legislative Assembly of Manitoba

STANDING COMMITTEE

ON

LAW AMENDMENTS

Chairman

Mr. J. Wally McKenzie
Constituency of Roblin

Thursday, June 7, 1979 8:00 P.M.

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Hearing Of The Standing Committee
On
Law Amendments

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Time: 8:00 p.m.

MR. CHAIRMAN, Mr. J. Wally McKenzie (Roblin).

MR. CHAIRMAN: We will be dealing tonight with Bills No. 6, An Act to amend The Condominium Act; No. 7, An Act to amend The Jury Act; No. 13, An Act to amend The Highway Traffic Act; No. 17, An Act to amend The Public Printing Act; No. 20, The Personal Investigations Act; No. 25, An Act to amend The Human Tissue Act; No. 27, An Act to amend The Liquor Control Act; No. 45, An Act to amend The Teachers' Pensions Act; No. 46, An Act to amend The Civil Service Superannuation Act; and No. 50, An Act to amend The Manitoba Telephone Act.

Are there any persons here tonight who would like to make presentations whose names are not already on this list? If so, would you be kind enough to come to the microphones, there, and leave your names.

Under Bill No. 6, I have Mr. Hugh McDonald and Mr. Walter Kehler; under Bill No. 20 I have Mr. Frank Allen, Mr. Norm Larson, Dr. Ralph jjames, Mr. Dale Gibson, Mr. M. Brown, Mr. Jim McEwen, Mr. John Breen, Mr. Al Valentine, Mr. Greg Tallon, Mr. Bill Enefer and Mr. Andrew Allentuck; Bill No. 27, a Mr. Dario Perfumo.

Yes, Sir?

MR. JIM CARTILAGE: Mr. Chairman, my name is Jim Cartilage, representing the Winnipeg Chamber of Commerce, and I'd like to speak on Bill 20.

MR. CHAIRMAN: Okay, Sir, thank you.

Shall we proceed then with Bill No. 6, An Act to amend The Condominium Act. Mr. Hugh McDonald.

MR. HUGH McDONALD: Thank you, Mr. Chairman. I have a number of copies of a brief brief which perhaps the Clerk could circulate. Thank you.

I appear on behalf of The Tenants' Association of 811 Grosvenor, which is Grosvenor House Apartments, with specific reference to condominium conversion and the problems that that has caused a number of tenants in Winnipeg, their submission thereon.

As the Act now stands, Mr. Chairman, Section 5 (1.1) contains considerable protection for tenants. As you know, existing tenants are given a 30-day option to purchase their apartments, in the event of a conversion. The Condominium Corporation, who takes over the apartment block and is involved in attempting to convert the apartments to condominium units, must recognize existing leases and must offer renewal leases in accordance with the Landlord and Tenant Act. Furthermore, no apartment block may be converted to a condominium unless not less than 50 percent of the tenants who have written leases consent. And I understand that the proposed amendments to The Condominium Act this year would extend requirements to tenants under any kind of occupancy.

The Condominium Act, as it now operates under our system of rent control gives a good deal of protection to residential tenants from possible excessive behaviour by condominium converters. Armed with that act, I know that several Tenants Associations have been able to negotiate very favourable agreements with condominium converters.

However, I understand that as the supply of rental accommodation continues to increase, so that the competitive market can provide a real control on rents, our Government's policy is to phase out controls out entirely. We understand this complete phase-out may start occurring in about another year.

My considered opinion is that without rent controls, the Condominium Act as it is now written could enable a condominium converter in effect to eject tenants who do not consent to the conversion by drastically increasing their rents. In this way it seems to me that the intent of Section

5 of our Condominium Act may be thwarted and unscrupulous condominium converters would b able to eliminate opposition to the conversion.

I know that this is not the intention of the Government nor probably of any members of th Legislature.

I would therefore propose an amendment to The Condominium Act by inserting a requiremer whereby a condominium converter must offer each existing tenant a lease at a fair market rer for as long as a tenant wishes, such lease to be non-assignable and terminable by the tenant a any time upon 30 days notice.

A draft clause is attached to my brief for your consideration.

A provision similar to the above was accepted by the developer who converted 55 Nassau t condominiums, so that I would expect that condominium developers could live with such a provisio in the Act.

We look forward to your consideration of this matter, which is of concern to a large numbe of tenants in our province.

MR. CHAIRMAN: I thank you, Mr. McDonald.

Are there any questions of committee members to Mr. McDonald?

MR. McDONALD: Perhaps I could just read through the proposed amendment and I am not a expert in drafting legislation and perhaps there could be changes.

It seems to me that at the time of registering a condominium there should be an additiona requirement for the condominium corporation to file a statement that each residential tenant wh on the date of registration is in occupation has been offered a written lease of the premises occupie by him for such term as the tenant requests at a rental not to exceed the fair market rental there as determined by agreement or arbitration from time to time, such lease to be non-assignable b the tenant and terminable by the tenant at any time upon thirty days notice.

MR. CHAIRMAN: Any questions?

Thank you, Mr. McDonald.

Call Mr. Kehler, Walter Kehler.

MR. WALTER KEHLER: Thank you, Mr. Chairman.

I am appearing as the Chairman of the Real Property Subsection of the Manitoba Branch c the Canadian Bar Association and really only to introduceoour spokesman. On behalf of th Subsection we have a submission to make to you in respect of the proposed governmer amendments to The Condominium Act as well as some further amendments that we are ourselve suggesting. What we have done is we have gathered a committee of a number of the leadin practitioners in the legal profession in the field of condominiums, people who are familiar with th problems that this legislation creates, and they have worked in conjunction with the Registrar-Gener of the Land Titles system to try to formulate amendments that we think to be most workable. would ask Mr. Myron Calof of the law firm of Buchwald, Asper, Henteleff, to actually present th presentation that we have to make to you.

MR. CHAIRMAN: Very good.

MR. CALOF: Mr. Chairman, I too have a form of written submission in the form of a letter addresse to the Attorney-General some time ago. I hope I have enough copies for all present; I am not certai Perhaps I might begin because the contents of the submission will not become that relevant fc a moment or two.

As Mr. Calof has indicated, since the introduction of Bill No. 6, a special committee of the Re Property Subsection has been studying both the provisions of the Bill as well as The Comdominiu Act generally. Those members of the committee who could be here tonight are Mr. Robert Smethurs QC, a partner in the law firm of D'Arcy and Deacon; Mark Shulman, a partner in the law firm c Shulman and Shulman; Jeffrey Selby of the law firm of Norton, Schwartz, McJannet, Weinber myself, a partner in the law firm of Buchwald, Asper, Henteleff and Mr. Norm Goltsman, a partne of the law firm of Simkin, Cantor, Goltsman and Rosenberg, could not be here tonight.

Between them, we believe the members of our committee have extensive knowledge an experience with The Condominium Act, implementations of its provisions and the issues an problems facing those who, whether they are unit owners, condominium corporations, or developei of condominium projects, must work within the confines of this legislation. The committee ha concluded its deliberations and wishes to make various recommendations and suggestions. Som of these concern provisions of Bill No. 6, while others deal directly with The Condominium Act a

presently formulated. The committee's recommendations are dealt with in the letter of May 18th to the Attorney-General, which has just been distributed. And as I don't wish to take up any more of your time than is absolutely necessary, some of my remarks this evening will be merely a summary of the contents of that letter and by referring to it now, I'd ask that it be included in the record of our submission.

With the exception of those points raised here, the committee is in complete agreement with the amendments brought about by Bill No. 6. It's bare land unit provisions will clear up uncertainties in the present Act and will broaden its scope and application to a new form of housing and shelter option which has been adopted in some other jurisdictions. Other provisions of the Bill deal positively and in a remedial manner with difficulties encountered in the past. We believe these provisions will generally assist and benefit all persons as a whole who are involved with The Condominium Act.

Moving on to deal with our specific recommendations, they are as follows:

Section 2(3) is being added to the Act by the Bill. It appears that the reference to Subsection '6.5'' is incorrect and should have read ''6(5)''. The committee therefore suggests that Section 2 3) read as follows:

''Unless otherwise shown on a plan referred to in Section 6 (5) the boundaries of a bare land unit shall be deemed to extend vertically upward and downward without limit.''

The amendment to sub-clause (1)(f) of Clause 5 proposed in Bill 6 would require the Declarant o obtain not only the consent to registration of all persons having registered encumbrances against he land or interest appurtenant to the land described in the Plan, but also the consent of persons having interests or estates in the land in respect to which Caveats had been filed. While the committee does not disagree with the general requirement that Caveators must consent to the Declaration, a strong objection has been made to including within this category of Caveat holders those who have filed a Caveat claiming an interest or estate by virtue of a residential tenancy. Extending the equirement of consent to such a Caveator would be contradictory to the words and intent of Section 5, sub 1.1(a) which provides that only 50 percent of residential tenants need consent to a registration. f, in addition, the consent of any one tenant who had filed a Caveat was required, a single tenant could prevent registration effectively increasing the required consent to those of 100 percent of enants.

The committee is of the opinion that this was not the object of the proposed amendment.Rather t was that adding to the necessary consents the consent of persons holding interests or estates n respect of which Caveats have been filed cleared up any uncertainty in Subclause (1)(f) of Clause 5, which had used the term ''registered encumbrances'', in that and firstly, Caveats are not encumbrances and secondly, Caveats are filed rather than registered.

In light of the foregoing, the committee recommends that Subclause (1)(f) of Clause 5 be amended as follows:

''Clause (1)(f) of the Act as amended by adding thereto, at the end thereof, the words ''or interests or estates in the land in respect of which Caveats have been filed, other than Caveats claiming an interest or estate in the land that is the subject of the Declaration by virtue of a residential tenancy''.

With the amendments brought about by Bill 6, a Declaration will have to contain a statement hat each residential tenant who, on the date of registration is in occupation under a lease of any ind, has been or will be given an option, exercisable at any time within 30 days after the date f receipt of the option, to purchase as a unit the premises that are the subject of the lease at price not exceeding the price at which the unit will be offered to the public and on terms that re not less favourable.

While no objection is made by the committee to the suggested amendment, the committee does ish to register an objection concerning the scope of persons to whom the option must be extended. Where there is some period of time between the date of registration and the date at which the declarant is prepared to sell the units, there is the possibility — and the longer the period the reater the possibility — that those who were tenants at the time of registration are no longer enants at the time of sale. It is the opinion of the committee that the tenant who has voluntarily acated the premises and selected alternate accomodation prior to the Declarant extending any ptions to purchase, has no further interest in the premises as residential accommodation and herefore should not be the automatic recipient of an option to purchase the premises. This would e in contrast to the person who was in occupation at the time of registration and who has continued o remain in occupation at the time the options would otherwise be given and who, in the opinion f the committee, would be a logical recipient of the option.

Based on the foregoing, the committee recommends that Subclause (1.1)(b) of Clause 5 be mended as follows:

''Clause 5(1.1)(b) of the Act be amended by adding thereto, immediately after the word

in the second line thereof, the words "under a lease of any kind", and by adding thereto, at th end there of, the words "unless at the time the option would otherwise be given, the tenant ha vacated the premises".

Bill 6 proposes to delete Section (1.1)(d) of Section 5 from the Act. Declarations registered afte September 1, 1976 and prior to enactment of Bill 6 must contain the statement that the Corporatio is the Assignee of the Lessor in respect of all leases of any kind of the land that is the subjec of the Declaration or any portion thereof and in effect on the date of registration. In view of th deletion of Subsection 1.1(d) of Section 5 which the committee is in complete agreement with, th committee recommends that the bill provide for the automatic deletion from all Declaration registered during the aforesaid period of the statement above referred to concerning assignmer of leases.

The proposed new Subsection (7) of Section 6 would make Subsection (1) of that section - and, by the way, Section 6 deals with the contents of a condominium plan — inapplicable to plan upon which all units were bare land units but provide, however, that if a building was show on a plan the Examiner of Surveys could require compliance with any part of Subsection (1) whic he deemed necessary.

A bare land condominium plan would be one upon which one or more units would be define by delineation of horizontal boundaries, without reference to any buildings. Therefore, while it ma be unlikely, it is nevertheless possible that a bare land plan could include both bare land unit as well as what I would describe as building units. The reference to building units, in this contex would mean condominium units defined under present legislation by reference to buildin walls.

If Subsection (1) was applicable to a plan upon which some units were bare land units and sor were building units, a strict interpretation of Subsection (1) and particularly Subsection (1)(b) woul require that all units, including bare land units, be described by reference to buildings. In the cas of bare land units separated from building units by a considerable distance, one could imagir horrendous metes and bounds descriptions of bare land unit boundaries by reference to buildinç located a considerable distance away.

In the committee's view, the difficulty described above can be remedied by making Subsectic (1) inapplicable to a plan upon which one or more units are bare land units, rather than all uni being bare land units, and then relying on the discretion of the Examiner of Surveys to determir any necessary compliance with Subsection (1) in the event that buildings were shown on the pla Taking into account the foregoing, the committee recommends that Subsection (7) read a follows:

"Subsection (1) does not apply to a plan upon which one or more units are defined by delineatic of horizontal boundaries thereof, without reference to any buildings, but if any building is show on a plan the Examineroof Surveys may require compliance with any part of Subsection (1) whic he deems necessary, in respect of such building."

During the course of the committee's deliberations, concern was expressed by Mr. C. Evan District Registrar of the Winnipeg Land Titles District, about the possiuility that plans referred in Subsection (5) of Section 6 might be drawn by unqualified persons if Subsection (7) of that sectic eliminated the operation of certain portions of Subsection (1). To deal with this concern, Mr. Evar suggested the following amendments with which the committee is in complete agreement.

With respect to Subsection (1)(d) of Section 6, that that section of the Act be repealed, ar in respect of Subsection (2) that it be repealed and the following subsection be substituted in i place:

A plan and any amending plan shall not be registered unless:

(a) it contains the certificate of a land surveyor certifying that he was present at and personal superintended the survey represented by the plan or amending plan, and that the survey and pla or amending plan, are correct; and

(b) it has been approved by the Examiner of Surveys.

With respect to Subsections (8) and (9) of Section 8 of the Act as presently formulated, it wa the unanimous opinion of all members of the committee that, firstly, the terms of a mortgaç obligation should not be modified in any manner by the registration of a Condominium Declaratic and Plan. Any modifications as to prepayment, partial prepayment, etc., should be the subject an agreement between the appropriate parties.

Secondly, Subsections (8) and (9) should be applicable only to encumbrances which have some time been registered against all units and common interests. On a strict interpretation the present wording of Subsections (8) and (9), the partial discharge rights therein could be applicab to an encumbrance registered against less than all units and common interests, even just one ur and its common interest.

It was the view of the committee that the basis for obtaining partial discharges, namely th

of a portion of the sum claimed, determined by the proportions specified on the Declaration for contribution to common expenses, was appropriate only if the encumbrance had been, at one time, applicable to all units and common interests. If the enumbrance had been registered against less than all units and their common interests, but each of the units was entitled to obtain a partial discharge by paying the portion just mentioned, the encumbered units could all be discharged, leaving a portion of the encumbrance debt outstanding without any security.

For those reasons, the committee recommends that Subsection (m) of Section 1 of the Act be amended to read as follows:

"encumbrance" — and this is the definition of encumbrance — "encumbrance" means a claim that secures the payment of money or the performance of any other obligation and includes a charge, a mortgage and a lien, except as otherwise provided in Subsection (9.1) of Section 8".

And that Subsection 8 of Section 8 be amended to read as follows:

"Any unit and common interest may be discharged from an encumbrance by payment to the claimant of a portion of the sum claimed, determined by the proportion allocated to that unit in the Declaration for contributions to the common expenses".

And that, furthermore, the following Subsection (9.1) of Section 8 be added:

"For the purposes of Subsections (8) and (9) "encumbrance" shall mean an encumbrance which has been registered against all the units and common interests, and shall exclude a mortgage".

The committee is of the opinion that condominium corporations should be given greater flexibility in determining whether or not to appoint an insurance trustee. This would enable the condominium corporation to avoid the expense of an insurance trustee and to provide a means of controlling insurance proceeds, their disposition, and coliance with Sections 19 and 20 of the Act.

In furtherance of the above, the committee recommends that Subsection (2) of Section 17 of the Act be amended to read as follows:

"Any payment by an insurere under a policy of insurance entered into under Subsection (1) shall, notwithstanding the terms of the policy, be paid to the order of the insurance trustees, if any, or as otherwise designated by the Declaration or By-laws of the Corporation, otherwise shall be paid to or to the order of the Corporation; and, subject to Sections 19 and 20, the Corporation shall forthwith use the proceeds for the repair or replacement of the damaged units and common elements so far as the same may be lawfully effected".

While Bill 6 contains no amendment in respect of Sections 19 and 20, the committee has re-examined these sections in light of the bare land condominium concept. It was the view of the committee that in the event of damages described in Section 19, the value of improvements made in a bare land unit by the owner thereof should not be taken into account in determining whether or not a repair vote is necessary.

In any event, the unit owner himself is responsible for the repair of damage to improvements in his unit and in the case of a bare land unit the entire residence or other structures constitute the improvements. If there is even total destruction, the bare land unit owner still has his unit, unlike the building unit owner who, upon destruction, loses his unit in a physical sense. Because his building unit has to be replaced in concert with replacement of other building units, the building unit owner participates, under Sections 19 and 20, in a determination of whether or not to rebuild. However, the bare land unit owner need not work in concert with other bare land unit owners; the choice whether to rebuild or not to rebuild is his alone. Therefore the value of his improvements, which he alone can decide to rebuild or not, should not be included in the determination of whether to maintain the condominium corporation or terminate its existence.

The independence of bare land unit owners, as just described, does not, however, extend to common elements. In the case of common elements, there is a sharing, and if there is destruction the common elements must be rebuilt on a co-operative baiis. Therefore, it is appropriate to consider the value of the destroyed common elements in making the determination under Sections 19 and 20.

For the foregoing reasons, the committee recommends that the calculation in Section 19 exclude the value of improvements made on bare land units and, accordingly, that Subsection (1) of Section 19 be amended to read as follows:

"Where damage to the units and/or common elements occurs the Board shall determine within 21 days of the occurrence whether there has been substantial damage to the extent that the cost of repair would be 25 percent, or such greater percentage as is specified in the Declaration, of the value of the units, other than bare land units and improvements thereon, and common elements, immediately prior to the occurr ence."

That concludes our Committee's recommendations concerning both Bill 6 and The Condominium Act, and we do appreciate this opportunity to appear before you and make representations. If there are any questions, I would be pleased to answer them.

MR. CHAIRMAN: Thank you, Mr. Calof. Any questions? I thank you, Sir.
I call Mr. Frank Allen. Bill No. 20.

MR. ALLEN: Thank you, Mr. Chairman.

MR. CHAIRMAN: Before you start, Mr. Allen, you are representing Mr. Boyd, whose name I ha here and a Mr. Langrud. Is that correct?

MR. ALLEN: Yes, Mr. Boyd is the Director of the Credit Grantors Association of Winnipeg. M Langrud is identifying with the submission I have prepared, of which I have extra copies I'd lil to distribute if I could.

Mr. Chairman, as my submission indicates, I've been instructed that the Winnipeg Chamber Commerce, Creditel and Equifax Limited join in the submission. However, the Winnipeg Chamb of Commerce have their own representative here tonight in the person of the President. Credit has a representative here in the person of Mr. Graeme Haig, who I don't think is on your list, I came in after you called for persons to come forward.

In any event, it is the concern of my client and these others, that The Personal Investigatic Act will lead to three basic things: (1) is that it will add to the bureaucracy and further government controls on business that are unnecessary; (2) we feel that its implementation in its proposed for will severely restrict the conduct of business; and (3) we feel that the implementation of the propose Act in its present form would substantially increase the cost of doing business.

From inquiries that I have made concerning the purpose of the Bill, it is to fill what is now believe to be a gap in the existing legislation, namely, to provide notice to persons with respect to who personal investigations are conducted. So far as the intent of the Act is concerned, my client h no real objection to it but questions its necessity because consent or notice is already require by Section 3 of the present Act, which is Chapter P 33, Statutes of Manitoba 1970. Even if v err in our view as to the need for the Act, it seems that the proposed legislation goes far beyor merely filling a void in the present legislation, but creates problems for business, as well as tho who may wish to use credit and may well have the effect of creating a whole new branch bureaucracy at a time when our present government is advocating restraint and purported attempting to restrict the growth of bureaucracy.

I realize that the Act is aimed to an extent at what to some may appear to be competing interes — business on the one hand, that is those who require personal investigations, and those seekir credit on the other, but it fails to recognize that the two interests are not competing but indee identical. Individuals seeking credit or a "benefit" as it's described in the Act, which includ insurance, the right to rent property and the like, to which the Act applies want those benefit Those seeking the reports are people who are in business of supplying those beneftts, so that is in the mutual interests of Iboth parties that a comparatively free flow of credit and charact information is maintained. It is the fear of my client, and I understand it is the fear of others the industry, that is the industries supplying such reports, that the passage of this Act may w adversely affect business in the province of Manitoba and certainly will increase the cost.

A clause by clause analysis of the Act gives rise to many criticisms. To review each would r doubt take more time than I am allotted and if there is no limitation on my allotted time, certain more time you'll want to listen, and therefore I don't intend to deal with each specific matter, b rather to highlight those that I think are of importance and I will do so generally as the matte arise in the Bill.

I first draw your attention to Section 2, Subsection (2), which exempts corporations ar partnerships from the application of the Act. It goes a little bit further, however, and also exemp from the application of the Act, officers of corporations and partnerships, and employees corporations and partnerships. The result is, I submit — I state this somewhat differently in n submission — that while one would be prohibited from asking for a personal investigative repc on Frank Allen, unless I had applied for a benefit and given my consent or I was given notic The fact is, if you ask for it on the law firm, of which I am a partner, Allen and Booth, they cou give you all the information you wanted. The same would apply, if I was a Director of a corporatio even further, they could give you information on my secretary under that particular exemptio

Section 2, Subsection (2)(b) is applicable to reports on applicants for insurance if the applica application is to a private company. It would not be applicable if the application were made a mutual company. In other words, in that particular instance, the Act does not achieve wh apparently it was designed to achieve and is discriminatory.

These are two instances that I think they could be expanded on; that I think exemplify a poi I will later make that the full ramifications of the Act have not been thought out.

I now turn to the question of the need for registration. If the purpose of the Act is merely to give notice to a subject who may have applied for a benefit, it is difficult to see how registration of persons or organizations in the business of supplying such information is going to be of any benefit to anyone and as indicated previously, does nothing more than create another department of government for no good reason.

Even if one were to concede that registration is necessary, I must say that I find difficulty in determining just who must register. I think a fair inference would be that only persons or organizations who make it their business to supply credit and character information were intended to be registered. I take this from the reading of Section 3, Subsection (3), which refers to "personal reporting agencies." But Subsection (2) of Section 3 prohibits any person from providing a personal report unless registered under the Act. A personal report is defined by Section 1(h) as any report, written or oral or in any other form of communication, of information obtained from others in the course of making a personal investigation. It is entirely conceivable, therefore, that if I received an inquiry about a former employee by someone considering he or she for employment, and if in the course of answering such an inquiry I were to convey what had been told to by still a prior employer, then I would have broken the law unless I, too, register as a personal reporting agency.

My client does not —(Interjection)— you get help sometimes from unexpected sources, Mr. Green.

MR. ALLEN: My client does not itself particularly object to being required to register, although he feels that to require registration at all is but a further encroachment by government into the field of free enterprise. My client is of the opinion that no organization that makes it its business of gathering information on individuals for sale to users would object.

The problem which it anticipates, and does not appear to have been considered by the proponents of the legislation, is that the Act requires that no person shall even compile personnel files unless registered under the Act. I find it hard to conceive a business, corporate of otherwise, that might not therefore have to register. Any organization or individual that does business with the public or has employees could be effected and required to register. That even applies, by virtue of this statute to the government of Manitoba and to lesser government agencies right down to municipal corporations and school boards.

Further, with respect to the registration of personal reporting agencies, I note the rather awesome power that will be enjoyed by the director. It is self-evident that, subject to appeal, the director has a very far-reaching power to deny registration to almost anyone. One of the most glaring examples is where he can decide under Section 4(1)(b) that an agency cannot reasonably be expected to be financially responsible in the conduct of business. This in effect means that any person who wished to enter the field as a private entrepeneur could be precluded from so doing. It is the small businessperson trying to commence a business that will be hurt in this instance.

To carry the matter to an extreme, but not impossible, situation a municipality that had run foul of the Act could be suspended, in which case it could no longer compile files on its employees.

With respect to Section 9 of the Act, our client feels that it is quite onerous to begin with. This is the one that requires, if I may just digress to read it to you. "Every personal reporting agency shall compile information on a subject in a personal report in such a manner that the full content of the report is readily understandable by the subject." The subject, of course, being defined as the person who is in the report, upon whom they're to report. We think it's particular onerous in view of Section 19(3) to which I will come in a moment or two. But Section 9, in effect, requires the report must be readily understandable to the subject of the report. Taking that in isolation, it could mean that computer reports that may be coded, could no longer be permitted, and a great deal of this information, I am instructed, is today on computer. It would mean that if the subject chose to say "I do not readily understand the report", the reporting agency would find itself in difficulty. It's not the director or members of this House that are to decide whether or not it's understandable. It is the subject of the report. It would mean that where a report was done on a new citizen in Canada, not familiar with the English language, he would be entitled to receive the report in his mother tongue. If this is what the section means, and I cannot interpret it otherwise, then it means that there is going to be substantial cost built into doing business.

Section 19, Subsection (3) requires that every personal reporting agency, no matter what size, shall provide trained personnel to explain to a person any information furnished to him under this section or under Section 18 of the Act. This I think would be sufficient without the necessity of section 9, Subsection (1). However, even this could become onerous in certain circumstances, and in thinking there of small businesses in this particular field, and I submit should be carefully considered.

Section 10(1). I confess that this section gives me some difficulty. If I read it correctly, then

an investigation can be carried out on any person, provided it is not for the purpose of conferrin a benefit to one who has not applied for it. I n't go into the details of the definition of benefi but I assume from that that other types of investigations into an individual are not precluded b the Act. If I interpret this section properly, I can see no real objection to it, except in one area I understand that it is co alon practice in industry and government ike for the purpose of fillin senior positions to seek out, often through the assistance of personnel agencies, the names c persons suited o would be for that position. I know that this happens within the Civil Service c this province. Section 10(1) would probably prohibitaany such inquiry.

While I feel that my interpretation of this section is correct, I must say that I arrived at thi conclusion only after reading and re-reading a number of times the section and the definitions c Section 1. If I am correct, however, it looks — pardon me, it's creates — that's what it shoul say, an anomaly to which I will make reference later.

Referring now to Sections 11(3), 14(2) and 14(3): these are the sections that in essence say tha husband and wife or spouses are not defined as husband and wife necessarily in the Act, are nc to be reported in each other's reports if they choose not to be. But I think this raises some ver great difficulties. A wife wishes to obtain credit at a department store, she's unemployed an completely dependent upon her husband. The husband refuses consent to investigate and he ha not applied for a benefit. The wife may well be turned down to her detriment. Or if a husban is a financial burden to his wife, who would otherwise be financially sound, then a report must b silent on the question. Is this fair to a credit grantor? The fact is that frequently the risk involve in dealing with a married person is affected not by the applicant themselves, but by their spouse It would seem to me that if I were a credit grantor and could not have this information, then cred would not be granted. In short, the probability is that many persons seeking a benefit may be denie because of the lack of information that, by law, cannot be provided.

However, while I believe that what I have said with respect to Sections 11(3), 14(2) and 14(3 is the intended result, I do not think that it'll work under this Act. While a wife may have a separat file, and while a report cannot refer to her spouse, there is nothing to prevent a user from requestin a separate report on the spouse without consent and without notice. The spouse has not applie for a benefit, and the user has no intention of offering the spouse a benefit. Therefore the Ac if I interpret Section 10(1) properly, does not prohibit an investigation of the spouse.

Section 14(1). Generally we do not find this section objectionable and indeed I understand tha to a large extent it merely reflects the present practise of my client. However, there is one exceptio to this, and that is Section 14(1)(d). Is it to be, as this section suggests to me, that a potentia grantor of credit is not to know if a borrower is being sued for a substantial sum of money an for which a court might find him liable. Surely this is the very type of information that a cred grantor would want. If he can not get it from independent sources, then the door is left open t fraud. More likely, however, credit will be withheld, not because of what the report says, but becaus of what it does not say and is not permitted to say.

There are certain other sections to the Act that concern us. One example is Section 13(2) an 19(1). It seems that by virtue of these provisions and by implication from others that it is intende that once a file is opened on a subject, it should be maintained in perpetuity. If this is not th case, then the Act could not be complied with. The problem is, as I am instructed, that most not all companies in the business of providing credit reports update their files on a regular basis some as frequently as monthly in the case of my particular client, and ofttimes destroy informatio that is more than a matter of a few months old. To have to change now would be very costly a very costly operation for them, in terms of utilizing additional space and additional help.

This concept may at first be difficult to understand, for I am sure that most of you have th same concept of personal files as I have, that is, a continual assembling of information that continue to pile up during the individual's lifetime. I am instructed that this is not so. The facts, as I ar giving them, is that, for credit purposes at least, only the most recent information is given. Fo example, if a person for some reason fell behind in financial commitments, this information woul go into a control agency such as my client, but if the person was able even in a short time t bring his payment current, his prior delinquencies would not be reported.

Lastly, but certainly not least in importance, is the number of notifications that are to be ser out to subjects. By reference to Sections — I have left out one Section number there — 1 subsection (1); 12; 13(1); and 22(4), and this isn't applicable in every case but is conceivable tha four notices that have to go out with respect to one investagation. As it would be up to th investigators, that is, the reporting agencies, to prove compliance with the Act, no doubt they woul have to use registered mail. The basic cost to my client based on current usage of its service would be $12,960 per month. This figure is not an estimate. It is based upon the actual usag of my client's service assuming Bill No. 20 was in force today. A breakdown of this figures is availabl for you if you wish. This would be an increased cost without additional income. Of course our clier

ould always increase its charges for its services to make up this additional cost. However, that ill be paid by the credit grantor who, no doubt, will pass it on to the consumer. They could also efuse to supply information to users outside of the province. That of course would only reflect dversely on those seeking credit outside of the province.

Even if the notices could be sent by regular mail, the increased cost to our client would be 3,840 per month, which represents approximttely 10 percent of its sales and is more than their resent profit per month.

I do not suggest that I have exhausted all of the possible criticisms of the Act. I am sure that ifferent business concerns will be affected in different ways. I have tried to explore some of my lients main concerns. However, I feel that I have drawn to your attention sufficient to justify what am about to say in conclusion.

I do not know what particular shortcomings in the present Act are intended to be overcome. do not know what particular abuses there may be in the gathering of personal reports that it intended to avoid. Without specific knowledge, it is difficult to be constructive. I do think however, iat the proposers of this legislation, no matter how justified or well intended have, in an effort correct what they see as abuses or differences, have not examined the full ramifications of the gislation.

I can assure this Committee and the honourable minister, that my client, and I am sure many thers, is prepared to join with any interested parties and representatives of the government, to xamine any problems there may be and to offer assistance in preparing amendments to the present gislation or if necessary, new legislation that will overcome any problems that possibly exist, but the same time not unduly interfere with commercial practise and need, as we are sure will occur Bill No. 20 becomes legislation.

I therefore invite you not to report this Bill to the House but rather defer it for further onsideration.

Thank you very much.

R. CHAIRMAN: Mr. Green.

R. GREEN: Mr. Allen, I want to direct your attention to some of the clauses that you have referred and some that you have not referred to.

R. ALLEN: Yes.

R. GREEN: You will look at 4(1): The director may refuse to register a person as a personal porting agency where he has, and then take (b) and (c), having regard to his financial position - that you referred to — and secondly, (c) the past conduct of the applicant affords reasonable ounds to believe that he may not carry on business in accordance with the law, or with integrity id honesty.

Now do you think that the director, in examing (a) and (c), would, or could legally consider that e man has five writs against him?

R. ALLEN: Yes, I think he should.

R. GREEN: Yes, so then he is entitled to do what the personal reporting agency is prohibited om doing under 14(1).

R. ALLEN: Correct.

R. GREEN: The director is a hypocrite. He says: "You can't do it but I can".

R. ALLEN: Well of course, it will be the Legislature that will be putting this in his mouth, Mr. een.

R. GREEN: Yes, so if we did that, we would be hypocrites.

R. ALLEN: That's correct.

R. GREEN: If you will look at 9(2). You talked about 9(1), and you were very concerned in making ormation understandable to a subject. I am much more concerned with making information derstandable to a bureaucrat.

MR. ALLEN: Well, Mr. Green, that's why I made the comment that 9(1) deals with the subjec understanding. It doesn't say what the director will understand. I realize when we come over t 9(2), but 9(2) doesn't cure the problem and I agree with you that he might not understan either.

MR. GREEN: Well, 9(2) says that I have to provide information that will be understandable to th satisfaction of the director.

MR. ALLEN: Yes.

MR. GREEN: Now, in your experience in life, have you from time to time found it difficult to mak things understandable to a bureaucrat?

MR. ALLEN: Yes, I must confess I have had that difficulty.

MR. GREEN: But this law says that you must make it understandable to some governmen bureaucrat.

MR. ALLEN: That's right.

MR. GREEN: Now, isn't that as serious a problem as 9(1)?

MR. ALLEN: It could be; I didn't say it is, it could be.

MR. GREEN: It could be. Now, going to 10(1), and I had some trouble; I'm not sure that I hav the same meaning as you have. But my understanding from 10(1) is that I cannot, or a perso cannot cause a personal investigation to be conducted unless the subject has applied for a benefi Now I want to put a hypothetical situation.

Supposing that there is the son of a widow who is being wooed by somebody that he consider to be a rake, does this section — as I understand it — prohibit him from trying to find out abou that person?

MR. ALLEN: I don't believe so; no, and the reason I don't, is that my first impression was, . . prohibit any type of a personal investigation as you and I would normally understand that excep where a benefit had been applied for.

MR. GREEN: Right.

MR. ALLEN: But when I took the words "personal investigation" and referred back to Sectio 1 in the Definition , a "personal investigation" only pertains to an investigation for the purpos of conferring the benefit.

MR. GREEN: Then I have to repeat, the Section then escapes me. It says: "you cannot conduc a personal investigation unlsss the subject of the investigation has applied for a benefit".

MR. ALLEN: Right.

MR. GREEN: But you're saying that a personal investigation is only where a benefit has been applie for.

MR. ALLEN: Within the meaning of that section.

MR. GREEN: So then, what is. . .?

MR. ALLEN: Well then, "benefit" also, however, is defined.

MR. GREEN: "Benefit" means . . .

MR. ALLEN: Means credit, insurance, employment, tenancy, lease, and rental of goods.

MR. GREEN: Well, but it says: "no person shall conduct or cause to be conducted, a persona investigation to which this Act applies, unless the subject of the investigation has applied for

benefit''. Which means that the subject has not applied for a benefit, you cannot conduct a personal investigation of him. At least that's the way I read it.

MR. ALLEN: That's right. But a personal investigation under the Act is only a personal investigation for the purpose of conferring a benefit. .

MR. GREEN: Well, isn't this a dog chasing his tail?

MR. ALLEN: Absolutely. I didn't want to say it in so many words, but I think it is a terrible piece of legislation. I don't think it has been thought out at all. I don't really appreciate the problems it is designed to overcome. If there are such problems, as I say we would be happy to help resolve them but, without knowing what they are, it's very hard to be very constructive.

MR. GREEN: . . . 14(1).

MR. ALLEN: 14(1).

MR. GREEN: You have alluded to this, and I also have a problem with it. ''No personal report shall contain information regarding any civil action against the subject which has not been determined or disposed of . . . ''

Now, the fact that I may issue a Statement of Claim against you does not mean that you are responsible to me for what I claim.

MR. ALLEN: That is correct.

MR. GREEN: But doesn't this Act prohibit me or prohibit a person from saying an action has been commenced against you, which is a matter of public record, which anybody can go and find out.

MR. ALLEN: That's what it does.

MR. GREEN: And I take it from the files of court that these things can be found out relatively quickly and alphabetically.

MR. ALLEN: That's right.

MR. GREEN: So all this does is . . .

MR. ALLEN: Or chronologically.

MR. GREEN: Yes. All this does is prevent the investigator from acting as a Clerk, in fact, for the person seeking the investigation, who would otherwise have to go down and find out for himself.

MR. ALLEN: All they will be able to do is phone up and hint broadly, ''You better go down and search the records yourself.''

MR. GREEN: It will result in a lot of bootlegging.

MR. ALLEN: That's all. Frankly, I think it's silly.

MR. GREEN: Now, 26. I concur with your section, with your opinion, that this provision that this Act would prevent me from asking you about your previous stenographer, who happened to leave and you can't hire her back because you have another stenographer.

MR. ALLEN: Correct.

MR. GREEN: And if I ask you, I am committing an offence, because I am not registered under the Act, or, excuse me, if you tell me you are committing an offence.

MR. ALLEN: No, I think, as I read the Act, I can tell you how I appraise that girl's services.

MR. GREEN: Yes.

MR. ALLEN: But supposing, Mr. Green, that because I do a great deal of litigation work and yo do too, but let's assume you didn't; let's say you did solicitor's work and you asked me abou the secretary and I said, "Yes, she was very good for me", and you ask people how was she i solicitor's work. I don't think, without being registered under the Act, I can then say, "Well, sh didn't do solicitor's work for me but she did for her prior employer, Mr. Smith" and he tells m she was very good. I think the minute I utter those words, I have breached the Act.

MR. GREEN: Well, haven't you breached the Act when you have told me, yourseff, because persona report means any report, whether written or oral, or in any other form of communication of th information obtained from others.

MR. ALLEN: Yes, from others.

MR. GREEN: From others. So what you are saying is that you can tell me about your ow information but you cannot tell me about others.

MR. ALLEN: Right. That's the way I interpret it.

MR. GREEN: All right, let's assume that you told me that your partner found her to be a ver good person. That would be illegal.

MR. ALLEN: I think that might be covered, too, in here, by something to do with agency. I jus forget where it is.

MR. GREEN: All right then, go back to your example. Let's suppose that you said that the othe firm that she came from before she worked for you, told you that she was very good.

MR. ALLEN: Yes, that's illegal under the Act.

MR. GREEN: Yes, that would be illegal. If I used that information, under Section 26, and hire her — not didn't hire her — but I thought it was good information and I hired her, that woul be illegal.

MR. ALLEN: If you did it on the basis of the information I gave you, yes.

MR. GREEN: Well, I gather that I would do it because you were telling me she was a very goo person or that you understood from somebody else hhat she is a very good person, and if I the hired her because I thought that I was getting valid information, that would be illegal.

MR. ALLEN: Right.

MR. GREEN: Okay.

MR. CHAIRMAN: The Honourable Member for Winnipeg Centre.

MR. J.R. (Bud) BOYCE: Mr. Allen, from your familiarity with the Act and the amendments propose in this particular bill . . .

MR. ALLEN: I'm sorry, Sir; I can't hear you.

MR. BOYCE: From your knowledge of the Act itself and from the amendments which are propose to the bill, I wonder if you could express an opinion which arises out of your statement in you brief, , on Page 9, that they can refuse to supply information to users outside of the province, whic implies that there exists a relationship between people in the province and outside of the provinc as far as providing information is concerned.

MR. ALLEN: The purpose for that statement — and possibly I should have gone into more detail I didn't want to take too much time — is that special and further notices must be given wher the report and the information is going outside of the province. And all I'm suggesting is that t reduce costs, to which I make reference there, they could stop doing that. And, as I understan

the present Act, there is no need for a further notification merely because the information is going outside of the province. what he is is speaking of, I suppose, is the type of thing where somebody might apply by mail order or otherwise, and more in business, I would think, where a great many of the suppliers are in eastern Canada, and the storekeeper applies to a wholesaler in Toronto for credit and a supply of goods on credit. And under the new Act, if that application comes to, say, my client in Winnipeg, my client would have to give a notice to that storekeeper. And I'm suggesting that in certain circumstances, when you open a file and so on, you can get as many as four notices, if in fact there was an initial enquiry, say, on a new storekeeper.

That's the point I am making. So I am saying our client might save some of its cost by virtue of not mailing one notice, by simply refusing to give information out of the province.

MR. BOYCE: Well, perhaps one of my apprehensions is not well-founded and I would appreciate your help. And I don't want to focus attention on any one of the people that you say are members of your assocation's Schedule A, but I notice that some of them are smaller businesses that have been in Winnipeg for a long time.

MR. ALLEN: That's correct.

MR. BOYCE: If what you suggest this bill will do is make it more difficult for these people, what is to prohibit them from contracting with an outfit in Texas, for example, to provide the information, to ask the questions and store the information outside of the province or outside of the country entirely, to dispense with the services of the association?

MR. ALLEN: I didn't think of that, particularly, at the time but I can indicate to you that they would probably then become subject to registration. Because once you start compiling a file . . . This compiling a file, I think anybody could be registered. The corner grocer who starts compiling a file of my bills and accounts could become subject to registration under this Act, as I read it. So if I decide to circumvent the law by getting a company with a head office in Texas to supply information to me; is this what you mean? I am in Manitoba; I want the information.

MR. BOYCE: That's right.

MR. ALLEN: Right. And I decide to get it from some large corporation with offices outside of Manitoba. I still become subject to registration the minute I start compiling that information, as I interpret the Act.

MR. BOYCE: Well, with some of the smaller ones that are national, in this sense, that if the credit granting is done or the action is taken as a result of information which has been compiled outside of the province . . .

MR. ALLEN: Yes.

MR. BOYCE: With one of the department stores, for example.

MR. ALLEN: Yes, let's say Eaton's, one on the list.

MR. BOYCE: If they shut down their local credit operation and went completely to computers, that all of the information, if somebody wants something on credit, all they do is apply for credit and Eaton's says yes or no.

MR. ALLEN: Yes.

MR. BOYCE: Not because they are going to apply for registration or any other action, all they are going to do is have their yes or no from smme head office, which could be in some other province or even outside of the country.

MR. ALLEN: That's quite correct. I'm sorry; I didn't understand your point. The other thing, however, is that you get into the situation of an organization like Eaton's and they have branches in many parts of Canada, whether they are compiling the information in Toronto or not, having an office there may well make them subject to the Act. That's something I really didn't consider. But, nevertheless, your point is well taken.

MR. BOYCE: Yes, well it arises out of your other comment, you know, that there are more an more files becoming compiled on all of us. And there was one particular credit card that I ha some 30 years ago in which my name was misspelled and it was subsequently corrected by tha particular company; I still appear on mailing lists with my name misspelled in the same peculia fashion, and it happens to be from outside of the country. So I was just wondering if my apprehensio was rather naive but I don't think it is.

If I could sum up, Mr. Chairman, it appears, if this bill goes through the way it is, it will b more difficult for the credit grantors to compile information and it will make it easier for them t move in that particular direction.

MR. ALLEN: Easier for who to move? The larger corporations, eh?

MR. BOYCE: The larger corporations . . . centralized files and not necessarily in this country

MR. ALLEN: My understanding of the concern, which I don't think the Act really appreciates, i that by curtailing the free flow of information, credit information, you're not just going to hu business; you're going to hurt consumer, as well. Because business is going to have to tighte up in credit.

MR. CHAIRMAN: The Honourable Member for Wolseley.

MR. WILSON: Mr. Chairman, Mr. Allen, I would tend to support some of the comments of M Allen but he represents, I believe, about 175 businesses, according to this brief, and I wondere on Page 8 you talked about registration. Would you interpret it to mean, as you indicated to th Member for Winnipeg Centre, that it would mean anyone in that office that answered the telephon that partook in any way, shape or form in a file, a person carrying the file from point A to poi B, or can you envison that every person on the payroll of that staff would have to b registered?

MR. ALLEN: I do not envisage that at all, no.

MR. WILSON: You don't.

MR. ALLEN: No.

MR. WILSON: I wondered if I could rely on your interpretation. There was an indication from th Member for Inkster that writs issued could not be reported until they were finalized. Is that ho you interpret it?

MR. GREEN: I never said that. Mr. Chairman, I said the opposite.

MR. WILSON: You did, eh?

MR. GREEN: Yes. Unfortunately, the member doesn't understand English.

MR. WILSON: I wondered if Mr. Allen could indicate, does he envision his membership reportir writs that are issued or writs that are finalized. What does the Act state, as you . . . ?

MR. ALLEN: I don't know what you mean by the term "finalized" when you are referring to writ. A writ is one way of starting a law suit in this province. At least, it used to be, in the Coun Court of Winnipeg; it no longer is. And really why the term is even in this Act I don't know. B if we're talking about a writ in the sense of me commencing a claim against another individua I think that they should be able to report it. I think it's facetious that they can't, because it is matter of public information, number one, and, number two, I am sure that if I were to come you to borrow a substantial sum of money, you'd be very interested in knowing if I was being sue for everything I owned.

MR. WILSON: I wondered if Mr. Allen envisions the computerized age. I notice that on all cre applications these days they ask for the social security number. Do you feel that governments w be supplying your members with . . . In other words, will the industry be computerizing applications, based on the social security number?

MR. ALLEN: I am sorry; I am not capable of answering that question.

MR. WILSON: I see. The other question, I notice on Page 8 you say that only the most recent information is given, and I assume it's correct information by your members. From your experience, what is the present penalty if the information requested is . . . Do you see any need for a time limit? Do you think information ten years previous is something that should be reported, or do you think that . . . could you envision a time limit if this Act goes through?

MR. ALLEN: Well, I see that the Act now says, 14 years on bankruptcies, and seven years on adverse factual or investigative information is not to be reported by Section 14. Whether those are the right periods of time, or the wrong ones, I can't tell you. My clients instruct me that those particular provisions do not bother them, as I indicated in 14(1). They are only concerned about Subsection (d), because of the fact that their members aren't interested in last week's newspaper; they want to know what the man's doing today.

MR. WILSON: My final, sort of indication, is that I notice in the United States there's many consumer advocates have been successful, and I think there was one particular case, I believe it was against Ford Motor Credit, which a couple was rewarded, or awarded through the courts, about $150,000.00. I wondered if you can tell me if, in your general knowledge, is there any penalty for giving false information as it presently stands? Do cases go to court for false information being given by your membership, your members.

MR. ALLEN: I'm not aware of any such case in Manitoba having to do with credit or character reports of this nature, but I have no doubt that if one was made erroneously and maliciously, that a law suit could ensue, if for nothing else, for defamation.

A MEMBER: Even if it wasn't malicious.

MR. ALLEN: Yes, even if not malicious, I agree, Mr. Chairman.

MR. WILSON: Are you then saying that it is possible that a credit grantor giving false information could be successfully taken to court?

MR. ALLEN: In my opinion, yes.

MR. CHAIRMAN: The Honourable Member for Inkster.

MR. GREEN: Mr. Chairman, first of all, let me apologize. It was I who used the word "writ"; in subsection (d) it says "civil action against the subject." The word "writ" is used in (c), which I assume could refer to a Writ of Execution.

MR. ALLEN: A Writ of Execution, and other writs.

MR. GREEN: Those are not obsolete, those are still used, with latin names, I suspect.

MR. ALLEN: Yes, but we're talking there about writs that are statute-barred.

MR. GREEN: Yes. So you are not permitted to refer to either an old writ, or a Writ of Execution, or anything that is statute-barred?

MR. ALLEN: Or whatever.

MR. GREEN: But I was referring, and should have referred to, Statements of Claim.
Mr. Allen, I want to deal with a subject that has not been mentioned, which I forgot. You people are not involved, I gather, with Section 10(2), with regard to tests?

MR. ALLEN: No, we are not.

MR. GREEN: You have no submission to make in that regard?

MR. ALLEN: No.

MR. GREEN: Then I won't invite you.

MR. ALLEN: I'm not prepared.

MR. CHAIRMAN: Any more questions of Mr. Allen?
The Honourable Minister.

MR. JORGENSON: You mentioned, on a couple of occasions, the possibility of an increase in th bureaucracy. I don't know where you get that impression, but I don't see where it's necessary t add one single person to the existing staff for the purposes of administration of this Act. Ther is no intention on my part to add any staff for the administration of this particular Bill, any mor than there was in the other Bill. And I'll also say that a number of the points that you have raisec Mr. Allen, I thank you for drawing them to our attention. We have already taken note of them and have amendments prepared for them, particularly one that has been frequently mentioned, an that was Section 3(2).

I do want to point out that there will be an amendment made to that section, as well as a numbe of others that have been raised during the course of your presentation, and the remarks that hav been made on second reading of the Bill.

MR. ALLEN: Mr. Minister, if I may just reply on the added bureaucracy, I say with the greates respect, not because I've ever been a member of government in the viewpoint of being an electe person, but I have been in the Civil Service. And I know that when I left the Attorney-General' Department about 18 years ago, it consisted of seven Crown Attorneys, and I think there's no something like 60. And the population in Manitoba has increased by three or four percent in tha time. —(Interjection)— But apart from that, Mr. Jorgenson . . .

MR. JORGENSON: That indicates the prolific nature of the lawyers.

MR. ALLEN: One of the reasons that I believe that you're going to have added staff is becaus if you leave the requirements for registration as they are, I think you're going to have a very ver high percentage of business organizations, and other organizations. For example, I notice one c the members of my client's group is the Co-operative Housing Association of Manitoba Limitec You're going to have them all requiring to be registered. And I think that's a bigger test than possibl is intended.

In my submission, I have pointed out that it would appear to me that the intent, by virtue c Section 3(3), was only people that made a business out of personal investigations. Whereas th 3(2) goes much wider. That's one reason I thought it would increase.

MR. JORGENSON: I think your fears, as the legislation was written, were justified. But I am assurin you that that is going to be reworded to limit it to precisely the group of people that you inten to have it limited to.

MR. ALLEN: If that is the case, that might substantially alleviate that particular problem. But tha is the basis upon which I made that submission.

MR. CHAIRMAN: The Honourable Member for Wolsely.

MR. WILSON: Yes, I just wanted to, . . . I note on Page 3 that the need for registration, you comments here, and I would say that, to Mr. Allen, that if he is successful in his comments, tha if I'm reading him right, that the registration of persons or organizations in the business of supplyin . . . is going to be of any benefit toany one, you're saying it does nothing more than create anothe department of government for no good reason.

Would you then feel that organizations that presently are required to register their employees who do not have the financial clout of your organization, should be given the light treatment. I refe to the industry which I am involved in, the private bailiff industry, that must register every one c their employees, and register their companies as well. And I see that the government is alread set up inthis particular area. So, like the Minister of Consumer Affairs has stated, since this activit is already in place, he sees no need to add additional employees.

MR. ALLEN: Well, as I say, if the Bill goes through, possibly you can ask the Minister, not thi year, but the next Session of the Legislature, how many employees there are. And I hope that he' right and I'm wrong. The point I think of your question, Mr. Wilson, is, are you saying that merel

ecause certain people have to be registered now, that we should continue on that bent, or is it ot the policy of the Conservative Party to do away with bureaucracy?

R. WILSON: My stand has been to decrease the consumer's department, and to get less overnment control over the lives of the businessmen, so I agree with your presentation. I'm simply aying that it seems there's a law for those that have a large financial clout, and those that are ot organized. And I would like to see equal treatment for every business section in this rovince.

R. ALLEN: Well, it might interest you to . . .

R. CHAIRMAN: Any more questions? Order order. This is to question Mr. Allen, not make tatements here. We can make statements tomorrow in the House.

Are there any more questions for Mr. Allen? If not, I thank you, sir.

R. ALLEN: Thank you very much. I call Mr. Norm Larson, head of Legal Aid Manitoba. Is Mr. arson not here? Then, Dr. Ralph James, or Miss Frances Statham.

R. ARNOLD: I am not Dr. James. Dr. James is delayed by an earlier commitment. My name Abe Arnold, I'm the Executive Co-ordinator for the Manitoba Association for Rights and Liberties. would just like to say a few brief words before turning it over to Frances Statham, who will present ur brief.

This brief has been prepared by the Legislative Review Committee of the Manitoba Association r Rights and Liberties, a newly established committee in our association, including a number of wyers from some of the leading law firms in our city.

Incidentally, the brief has been submitted, and I hope you have been able to distribute the copies, r. Chairman.

R. CHAIRMAN: Oh, I'll have to check to see.

R. ARNOLD: And this is the second time that our organization has the privilege of appearing efore this body. We appeared a year ago, in connection with The Human Rights Act, at which ne we were listened to very closely, and some of our suggestions were taken heed of.

I hope that now that we are a much stronger organization, and more broadly representative, at perhaps our views will be listened to even more closely. The committee that worked on this ief included Garth Erickson and Frances Statham as co-convenors, and Dale Gibson, Harry Glinter, dward Lipsett and Butch Nepon. Miss Statham will present the brief, and a couple of other members e here to assist her in answering questions, if necessary, mainly Dale Gibson and Edward psett.

Thank you, Mr. Chairman.

R. CHAIRMAN: Thank you.

SS STATHAM: Mr. Chairman, at the outset, we would like to state that the new Personal vestigations Act as proposed in Bill 20 represents a considerable improvement over the previous t, which was adopted by the Manitoba Legislature in 1970. We recognize the fact that the 1970 t was a pioneering effort, and one of the very first investigation statutes adopted by any legislative dy in North America.

Since that time, however, a number of other legislatures in Canada and the United States have opted their own laws in this field, which represent an advance over the original Manitoba t.

We are also aware that this new Personal Investigations Act includes some of the commendations proposed by the Canadian Conference of Commissioners on the uniformity of gislation. This is a federal-provincial co-operative body which has prepared a model bill on personal vestigations. Bill 20, which we are now considering, differs considerably from this model bill.

The new Act does represent an important step forward in the improvement of the law governing rsonal investigations in Manitoba. Nevertheless, Bill 20, as drafted, still includes, in our view, a mber of serious weaknesses. We are therefore taking advantage of the opportunity to make this esentation to the Law Amendments Committee, in the hope that some further improvements may made before the Act is finally adopted by the Legislature.

Turning to specific sections of Bill 20: Firstly, Section 1, Subsection (a). We respectfully commend that the definition of benefit should be extended to include the services offered by

professional associations, trade unions, social service agencies, and educational facilities, so tha such bodies, with respect to applications for benefits, would also be governed by The Persona Investigations Act.

As I understand, you have a copy of the brief. I ask that you shrike from it, Roman Numera II.

Turning to Section 2, Subsection (3), this clause states that the Lieutenant-Governor-in-Counci may exempt any person or class of persons from the definition of personal reporting agency. This means, in effect, that the Cabinet will have the power to exempt any investigating agency from the terms of this Act.

Will all due respect, we suggest that, since Cabinet Orders-in-Council are not necessarily made public, that this method of exemption is not in the public interest, and that if any exemptions from the Act are to be granted, which exemptions we do not favour, they should at least be done through some clearly public procedure. To do otherwise might make possible completely secret investigations which, as we should be aware, can sometimes lead to some very unfortunate consequences. The model Act of the Conference on the Uniformity of Legislation provides for no such exemptions.

Section 10, Subsection (2): Our committee discussed this section at some length, particularly the banning of the use of so-called lie detector tests, and came to the conclusion that this section of the Act would be a welcome addition, if properly drafted. However, as presently worded, it does not apply to most interviews where a lie detector test may be used, because personal investigations are restricted to situations where enquiries are being made of third parties.

Section 11 (1): We note here that, while this section states that no personal investigation shall be conducted without the expressed written consent of the subject, it permits in Subsection (b) that certain investigations may be undertaken without written consent, provided the subject is notified within ten days of application for a benefit that an investigation has been or will be conducted.

It was the unanimous view of our committee that Subsection (b) should be eliminated, and that there are no circumstances which justify the launching of a personal investigation for the various reasons outlined in this Act, without the advance consent of the subject.

Section 14(1): This section states that no personal report or personal file shall contain in Subsection (a) any reference to race, religion, ethnic origin or political affiliation of the subject or person unless the information is voluntarily supplied by the subject or person.

It is our view, firstly, that there should a number of additional prohibited references in this section including national origin, nationality, political belief and colour.

Secondly, we also urge that this section should be brought into harmony with the Manitoba Human Rights Act, which, for example, bars questions of this nature in employment application forms. We therefore urge that such questions asked of the subject should not be allowed, and for this purpose we respectfully recommend that the words in Subsection (a) "unless the information is voluntarily supplied by the subject or person" be eliminated.

Another matter of concern in Section 14, Subsection (1) is to be found, in our view, in Subsection (i), which bars the inclusion in personal reports of criminal charge information in cases where the charge has been dismissed or the subject has been granted an absolute discharge. We respectfully suggest that this section should also bar reports of criminal investigations and criminal charges which have not yet been dealt with, in fulfillment of the belief that any person who is charged under the law is presumed innocent until proven guilty.

It is also urged that criminal charge information should also be barred where there has been a stay of proceedings or where a conditional discharge has been granted and the conditions met.

Section 18, Subsection (1). This section provides that when the subject has been given the notice of denial or modification of the terms of benefit, he or she has the right to be informed under Subsection (b) of the source and detail of all factual information and the detail of all investigative information. As this section is now written, and the same applies in the case of Section 18, Subsection (2), Subsection (a), it means that the subject may not be given the source of any investigative information.

We should certainly be aware that such anonymous sources of information, whether from a neighbour or a person who may work with the subject, may sometimes not only be wrong, but distorted for malicious or unfriendly reasons. The subject of any personal investigation deserves to be protected in such situations and this can only be done by providing the source of investigative information when it is demanded under the Act. We therefore urge that Section 18, Subsection (1), Subsection (b) and Section 18, Subsection (2), Subsection (a) be modified to read "source and detail of all investigative information".

Again, we would like to point out that the model Act of the commissioners on uniformity o

egislation provides for such full disclosures.

Finally, Section 19, Subsection (8) . This section provides that medical information may be lisclosed in Subsection (b) where the disclosure is required by law, or Subsection (c) where the lisclosure is required in civil or criminal proceedings. It is our view that Subsection (c) should be eliminated and that there should be no disclosure of information about a subject in relation to any egal proceedings unless a Court Order is issued. Under such circumstances, Subsection (b) should oe sufficient.

That concludes the representation of our committee. If there are any questions, the members of the committee would be pleased to try to answer them.

MR. CHAIRMAN: Any questions? The Honourable Member for Inkster.

MR. GREEN: I would like to ask, with respect to 10(2), the lie detector problems, your indication s that you feel that this is a problem because it appears to be asking somebody about somebody else.

MISS STATHAM: That's correct, yes.

MR. GREEN: I would gather that the drafters of the legislation — and you may be right, I'm not arguing with that — but the drafters of the legislation really mean it to apply that if you were coming o me for a job that I would not submit you to a lie detector test. And that, to you, would represent an improvement in the drafting.

MISS STATHAM: That's correct.

MR. GREEN: Now I have some problems with this that I'd like to explore with you. Would the Act prohibit me from hiring Mr. Orchard here, who tells me that he can tell whether somebody s telling a lie or not? He may think that he can, and I can't see that the Act would prevent me rom doing that.

MISS STATHAM: I don't think it would either.

MR. GREEN: Do you think that that would be worse than a lie detector or better than a lie letector?

MISS STATHAM: I just don't know.

MR. GREEN: Well, I'm just trying to figure out whether you are really going to be able to deal with this problem, and I am sincerely concerned because it may be that we cannot handle every problem that society has before us, and I am asking you the question as to whether or not you hink that, if I can't use a lie detector machine but I can use Mr. Orchard, you haven't plugged up all of the problems, have you? As a matter of fact, you may have created a bigger problem han the lie detector test.

MR. CHAIRMAN: Mr. Gibson.

MR. DALE GIBSON: Mr. Green, if I may reply on behalf of the committee, . . .

MR. GREEN: She was doing so well.

MR. GIBSON: She wasn't offering the reason that I believe the committee talked about in offering he opinion that they did. What concerned the committee was this — and we had quite a lengthy liscussion in fact, about the lie detector section, and there were some differences of opinion — but the thing that eventually persuaded the group was that lie detectors, because they are technical machines which have a kind of a mystique of believability about them, may carry a greater aura of credibility than the ordinary kind of personal judgment.

If all of us understood that lie detectors are as fallible as human beings in making their decisions, here would be no difficulty.

MR. GREEN: Well, why don't we pass a law saying lie detectors are as fallible as human beings? Write it in a statute so everybody will know.

MR. GIBSON: The point of the group, Mr. Green, was simply that there is, at the moment, a aura of credibility about lie detectors which we thought was undesirable.

MR. GREEN: Well, I would like to ask the question whether, if we did succeed — and I by n means am satisfied that we will — but if we did succeed and we then had employers or othe peoples conferring benefits, saying that "If I can't use a lie detector, I'll use Mr. Orchard becaus he is the guy who's holding himself out as being able to ascertain lies," and people believe tha he can do that, have we made an improvement or have we gone backward?

MR. GIBSON: Our position is that you would have removed one source of apparent but fault credibility. You wouldn't have solved all the problems of the world. Of course, there are still sort of problems that . . . By the way, just to strengthen the point that I think you're making, Mr. Green I might draw your attention to Section (b) of that 2(b); I really don't want to, but I think Sectio 2(b) is worth commenting on. It seems to prohibit placing the subject or person under surveillance auditory or visual, which sounds as if you can't look at him or listen to him while you're interviewin him, and it seems to me that 2(b) would have to be amended a bit too. I think what they're talkin about is covered surveillance, hidden microphones and stuff like that.

MR. GREEN: All right. Now I want to ask that if you then became really progressive and you stoppe the lie detector and you stopped me from hiring Mr. Orchard, who claims to be an expert a ascertaining lies, and I desperately wanting to know this was told that palmists can tell me abou character, will this prohibit me from having somebody read the palms to see whether I should hir this person?

MISS STATHAM: I don't think it would, no.

MR. GREEN: Would it prohibit me from reading the lumps on his head?

MISS STATHAM: No, I don't suppose it would.

MR. GREEN: I understand now that they're making a lie detector — and this I saw on televisio — which looks like a wrist watch. Do you see any difficulty in enforcability of legislation whereb a man could be wearing a wrist watch and using it as a lie detector when he was investigatin somebody?

MISS STATHAM: Certainly. Sure there would be a problem in enforcability but it's the committee' position that at least a start should be made with Section 10(2)(a) and the use of lie detectors at least openly, should be prohibited.

MR. GREEN: The open use of lie detectors?

MISS STATHAM: Well, any use of lie detectors, but . . .

MR. GREEN: Do you remember we had laws — maybe you don't remember, but I do — whic prohibited people from selling contraceptives except for the protection of health, I think it was Do you think that that was a law that was a start in any direction?

MISS STATHAM: No.

MR. GREEN: What I'm concerned with — you say in your brief that nobody should be able t make a personal investigation under any circumstances, and I think you sort of added to th circumstances. Now, I gave you a problem a little earlier which to me represents a problem. Let' say a son was concerned that his mother, who was a widow, was being courted and charmed b a rake. Would you prohibit me from trying to find out about that person and getting somebod to do an investigation on him? Where is he from? What are his antecedents? What is his past' Would you prohibit me from doing that?

MISS STATHAM: I'd like to ask Bill Gibson to comment on that one.

MR. GREEN: I'm asking you.

MR. GIBSON: I'm sorry about the divided responsibilities, Mr. Chairman. In answer to that question

would submit that Mr. Allen's answer to you is correct. Now, the Act is difficult to understand n many of its aspects, but I read that section as Mr. Allen does, as not applying to that kind of nvestigation but only applying to investigations relating to the benefits as they're referred to in :he first part.

MR. GREEN: But in your brief, Mr. Gibson, you've extended the definition of benefit.

MR. GIBSON: That's right, but not to inquiries about marriage.

MR. GREEN: You wouldn't extend it that far.

MR. GIBSON: No, wait till you hear my personal brief and then you can ask me that ;uestion.

MR. GREEN: Well, if you're answering, I'll get it now. Do you believe that that should be)rohibited?

MR. GIBSON: My personal belief is that all investigations ought to be made with notice to the ;ubject, whatever the purpose.

MR. GREEN: All right now, Mr. Gibson — and you better both stay with me — do you not see ıny problems of chasing out of operation people who, regardless of what you think of them, are ı business and subject to certain laws, storefronts addresses and phone numbers and are having his work done by some Mafia-type organization because people will want the information?

MR. GIBSON: Yes, I certainly do.

MR. GREEN: Is that not a greater disease than the disease we've got now?

MR. GIBSON: If it were a real threat, yes. There have been in Canada since the mid-1970s four ıcts in other provinces which go as far as this legislation in most of their respects, and I've seen o evidence at all of the indushry shrivelling up. Now, I hasten to add that there are provisions ı the Act which I hope to refer to in my own submission which I think are unduly restrictive of ıe industry and which I would hope would be remedied. But I don't see a threat of the size that ou seem to suggest.

IR. GREEN: I really am not worried that the industry will shrivel up, and if I worded it that way ıen I'm sorry. But I am more concerned with an underground growing up.

IR. GIBSON: Yes, so am I, and I have a submission to make along similar lines.

IR. GREEN: Okay. Then you do acknowledge that this is a problem and that when you try to arry legislation beyond that which is reasonable under the circumstances . . .

IR. GIBSON: Of course. If you prevent people obtaining information in a legitimate way, then ıey're going to find it in an illegitimate way.

IR. GREEN: All right. That brings me right to the point, Mr. Gibson. I am concerned. I do not ish to hire a Nazi. I do not wish to hire a Nazi, and you are preventing me from finding out whether)mebody was a Nazi. Now that is a problem for me. You are saying that political belief, in your rief, cannot be included in the information that I get . . .

IR. GIBSON: Yes, what we're saying is that political belief is not one of the things that should e sold; that kind of information is not information that ought to be sold to others. There is nothing) prevent you making your own inquiries about my political beliefs except that funny Section 3(2), hich of course is going to be remedied.

IR. GREEN: I'm not a . . . I'm in the Legislature; I'm in the law business; and I play golf, and want somebody to find out whether this guy is a Nazi, and you say that I should not be able) do that.

R. GIBSON: Well, Mr. Green, we have a Human Rights Act in the province which states

well, all right. But the Human Rights Act of the province states that questions of that kind ough not to be part of an employment enquiry, and our submission, as the Manitoba Association of Right and Liberties, which is fully in support of The Human Rights Act' as I think all political parties i Manitoba are, is that The Human Rights Act and this statute ought to be compatible. That's th plain and simple point that we're making tonight.

MR. GREEN: So you are saying to me: "Mr. Green," that "if you're to find out whether somebod is a Nazi, you're going to have to do it illegally".

MR. GIBSON: No, I didn't say that. I said you're going to have to find it out yourself.

MR. GREEN: Well, and I tell you that I am not going to do it by going over to Germany and checkin the. . .

MR. GIBSON: Why don't you ask him?

MR. GREEN: And I'm asking you whether you are, other than by doing it myself, I cannot fin out or it will be illegal?

MR. GIBSON: That's a problem, I agree.

MR. GREEN: Thank you.

MR. CHAIRMAN: The Honourable Member for Wolseley.

MR. WILSON: On Bill No. 20, The Personal Investigation Act, I wondered if the group had give any consideration to . . . because we are concerned what is being sold, we're also concerned tha anyone applying for credit be given a reasonable hearing or a fair hearing, and I wondered, in ligh of the fact that many housewives are refusing to give such groups as the Department of Educatio or we'll use the example of the Canadian bond issue, where if you don't give your social securit number, you pay a 25 percent penalty. With the age of the big computer, and I may be cryst balling, and I am certain you're committee might have thought about it, what do you feel abou the fact that credit grantors and people giving credit are rejecting applications based on the refus of the people applying for credit to supply information such as social security numbers?

MISS STATHAM: The committee hasn't discussed that and I don't think we are capable c answering the question.

MR. WILSON: All right, thank you.

MR. CHAIRMAN: Are there any more questions? I thank you then, Miss Statham, and I call M Gibson now.

MR. GIBSON: Thank you. I'm sorry to appear to be monopolizing things, Mr. Chairman, and I shoul perhaps first explain who I am. I am Professor of Law at the University of Manitoba. I had som small part to play in the drafting of the original legislation back in 1971 and I had a continuin interest in the legislation since then. I am appearing as an individual, though I was also a membe of the MARL committee, and with one small exception, I agree with everything that the MAR committee brief had put forward.

The items that I am about to talk about, miscellaneous in nature, and they have now been reduce by reason of Mr. Allen's presentation and this previous one, are sort of snippets and bits that haven yet been discussed and that I think ought to be put before the committee. I apologize for not havin done this work until too late to produce a written brief for you so I'm afraid you'll have to bea with my verbal comments.

The first point that I think needs to be made and made strongly, because we hear commen that sound as if this Bill is suddenly coming out of nowhere with no previous experience, is tha the Bill which is now before us — and I commend the government for having put it before us - is a very considerable improvement on legislation which has been developing, not just in Manitob but in North America over a period of time. I think it's impottant to see the historical progressio The United States, federally, passed the first Act of this kind in 1970 and the next jurisdictio as far as I know anywhere in the world to pass such legislation, was Manitoba in the followin year.

When The Manitoba Act was put forward, it was a very important step forward but understandably because it was so new and untried and there was so much opposition concerning it, it was very much a compromised Bill and not anywhere near the perfect legislation that one would have liked.

Following the Manitoba lead, several other provinces over the next few years, introduced legislation, and in each case — with some backward steps I think, but generally speaking — there were improvements made as each province improved upon the experience of the last. And then after several provinces had done this, a very important Legislative group, the Conference on Uniformity of Legislation in Canada, decided to study the question thoroughly and over the course of years they compared all of the Canadian provincial material; they looked at foreign material; and they arrived about a year ago, at a model — they call it, what is it; Information Act, or a model Act, the idea being that each province can then take this model Act and with such small modifications as it wants to make, can build upon it and Canada will have a somewhat uniform, we hope, personal investigation legislation.

Now, the present Bill, owes very much to that model Act. It is not — I think it's fair to say — it is not a copy of the model Act; it's a kind of an amalgam between the model Act and our existing statute, but it adopts in my view, many very important improvements that the model Act as put forward. And I stress the fact that there has been a lot of experience and a lot of discussion by skilled legislative draftspeople that stands behind that model Act and behind this statute that you're now looking at.

Having said those congratulatory things though, I think it is necessary to say that there are some faults in the Act. I don't agree with Mr. Allen that the implementation of the Act ought to be delayed. It seems to me that it's close enough to final form that it ought to go forward and that the improvements that are involved in it are so important that Manitobans deserve to have them at this Legislative Session. But I do say that there are some very significant amendments that are needed, as well as I think a number of small housekeeping amendments, drafting amendments, and I'd like to refer to a few of those in no particular order, although I'm going through the Act in a more or less section-by-section manner. I'll try not oo deal with things that have been dealt with before except where it may be desirable to add something.

I would, on the point made in the MARL brief, concerning the desirability of expanding the list of benefits, add just this point: That the list of benefits included in the model Act has a very significant additional portion, which is not in this Bill, and that is one which relates to Government Services. Under the model Bill, a person who applies for welfare or for any other government service generally from a city or from a province or whatever, would have the same rights as would a person who is applying for a mortgage or insurance or whatever the case might be. And I submit as MARL said earlier, that that is a very important additional purpose that ought to be added to the Act.

I would go further; I would point out to you that there are many investigations that are carried on that don't involve the bestowal of benefits. Often they're carried on for exactly the opposite reasons. A lawyer, for example, frequently will employ the organizations that we're talking about to make checks on people who are contrary to their client's interest in litigation or in some kind of controversial business situation or whatever. But because there is no contemplation of benefit involved, those lawyers — and I've done it myself — make use of these organizations without any of the protections for the subject that the Act provides for a mortgage company or an insurance company when they're using it.

My point is, that as much as Legislative drafting can do, every investigation that is carried out and every report that is made by these organizations — for whatever purpose — ought to be subject to the appropriate protections. What's happened in the legislation is, that because of certain drafting difficulties, we've focused on the most important, the most common transactions: mortgages, insurance, and lending, and so on. But these other things are very important too and if you're at the point now that you're at, of finally putting into being the first statute in Canada to make use of the model Act, then it seems to me that one ought to try to get the best possible job and cover the most possible ground.

Another difficult area which the Bill does in fact cover, but it seems to me maybe it oughtn't to be covered, is Crown information. The Bill does provide that if someone is applying to government for employment or insurance or something of that kind, that the Bill would apply. But there are many many other sources of government information, Medicare — to name just one of many many programs involving data banks about all of us — where there are privacy problems. Other governments are beginning to recognize that you can't apply a commercial regulation statute to government information banks and the result is, both in the United States and at the federal level in Canada, that we are seeing a move toward a parallel set of legislation providing similar protections but for government informttion.

In Canada, the appropriate model is Part 4 of The Human Rights Act which provides just these kinds of protections but for government information, and what I'm submitting, not for this Legislative Session but for your future consideration, gentlemen, is that the job isn't completely done until you've protected the public with respect to the information that the Government of Manitoba is amassing about all of us, because there are many dangers there too.

I'd like to say a word or two about the consent requirement. It's this point with which I am in some disagreement with the MARL group. Section 11, as you know, requires that any one who is subject to an investigation, either consent to it or be given a notice after a period of time. Now the MARL position is, that there shouldn't be this alternative that everybody should consent, that it should not be possible to investigate anyone without consent. I personally don't share that view. It seems to me that one ought to be able to investigate other people for one's own purposes, goodness sakes, we're in so many different relationships with others and it's important that we find out, as Mr. Green has been saying, information necessary to protect ourselves.

What I say, is that the other alternative is the most important one; not the consent one, but the notice one. That if we really want to protect Manitobans, let's not worry so much about the consent; that ties everybody's hands. But let's make sure that every time somebody is investigated by one of these organizations, they know about it. That's all they have to be given; a brief notice that there has been an investigation and from then on, the Act works pretty well. It provides ways in which they can find out what that report is and so on. But unless we're sure in providing that notice provision — and that's the weakest part of the Act right now — we're not going to be giving people the full effect, the protections that we seem to be giving them. I'll come back to that point in another way in just a moment. As a matter of fact, the moment's arrived.

Mr. Allen made the point, and I think there's a good deal to it, that there are too many notice provisions under the Act. There's a requirement of notice when an investigation is commenced in certain circumstances; there's a requirement of a notice when a new file is opened; there's a requirement of notice concerning the identity of an agency in certain circumstances; it's required that there be a notice where there is a benefit denied and so on, and that gets pretty horrendously complicated and bureaucratic.

My submission to you is that if you made at least one of these notice provisions really effective it might not be necessary to impose as many of these procedures on the industry. And to make the most fffective notice provision possible, I submit that one ought to focus on Section 11. Section 11 is the one that I just mentioned, that you either have to get consent or you give notice.

Now the problem with consent is, that consent that can be given in a purely formal way, in a standard form contract, it's true that the Act or the Bill says that there has to be a notice and it has to be near the . signature and has to be in 10-point print, but I still believe that 9 out of 10, or perhaps 99 out of 100 applicants for credit or whatever, will sign their name to a document not knowing in fact that they have authorized, that they have given their consent for one of these things to go on. And my point is, much more important than that, tell them at some point, either that there is an investigation under way, or that there is likely to be an investigation under way and do it in a way that's really going to get through to them. And I submit that the existing provisions of Section 11 are not enough to do that.

The problem with Section 11 now, the major one, apart from the consent provision, is that unlike the model bill, and unlike most other Canadian statutes, it places the onus, not on the agency to give the notice, but on the user, the credit grantor or whatever. In other words, I come to apply for a loan and I sign my consent, like most people without knowing what I've really signed; then the credit grantor gets or seeks a report on me and the report is sent back to the credit grantor — oh, I'm sorry, if I do give my consent, this thing doesn't apply, but assuming that I don't give my consent, the report comes back to the credit grantor, and it is then the credit grantor who must notify the user or the consumer that there's been a report about himself. Now, that's an extremely difficult, I would say impossible sort of thing to police. Most of the other legislation and certainly the model Act places the focus on the agency and says, when the agency sends a report about anybody to a credit grantor or any other user, they automatically notify the subject that there has been a report made. Nww if you made that one very important change, and it's not a radical change; it follows what other provinces are doing and follows what the model act recommends it strikes me that you would have made this Act an extremely effective vehicle to protect Manitobans privacy and you might even be able to simplify it and remove a good deal of the bureaucracy about which others are complaining.

I'm going to leap over a number of rather picayune points and just seize on one or two more Mr. Chairman. One of these relates to a difficulty that I think Mr. Allen also had in reading the Act and understanding what it means. There are two sections, Section 13 (2) and Section 19 (1) both of which purport to state that an individual has the right to see his file or to see reports that are made about him. But the two sections are somewhat different in nature; Section

ays that he may do this at any time, whereas Section 19 (1) says that he may only do it once very six months and there are a number of other substantial differences between the two, and here is to my way of reading it, no way of understanding whether one takes priority over the other r whether these are two different ways of obtaining access to your file or what, and I would simply raw attention to the legislative draftsman that it might be desirable to blend those two sections nd to remove what appears to be, at least to me, a confusing provision in a very important part f the Act.

Now, the next point I want to make is a picayune one, but it's a picayune one that might in act, create problems. As you know, the Act gives the person the right, having learned that there s a report about him or that there is a file about him to obtain certain information — indeed, lot of information about his own file. But Section 20 tells him that he can only do it if his identity s verified by a Commissioner for Oaths. Now, the lawyers among us know that anybody can be ppointed a Commissioner for Oaths by sending a few dollars to a provincial government office nd secretaries in most law offices are Commissioners for Oaths and so on, but the man on the treet doesn't know that. The Commissioner for Oaths to the average citizen who says, "Hey, I ant to find out what the Credit Bureau's got on me," thinks, "oh, God, I've got to go to a lawyer's ffice, they're going to charge me a fee. Maybe it's some big fancy thing." Forget it. There's no eed to have a Commissioner for Oaths certified to a person's identity. What is a damned ommissioner for Oaths know anyway, about my identity. If I go in and say, "I'm Dale Gibson." hey say, "Oh, you're Dale Gibson. Staff it." What does that add to it? The model Act and most f the other legislation simply says, "Satisfactory proof of identity" and surely that's all that the ct ought to be calling for.

Where once the individual has learned what's in his file and he has the right then to offer xplanatory material, it seems to me that Section 19(4) of the Act goes much too far in permitting he subject to file what appsars to be anything he'd like to file. As I read 19(4), if somebody disagrees ith something in a Credit Bureau file, he may come down with an armful of documents and all f us, I'm sure any legislator has runned into the individual who carries a kind of permanent library f paper around with him, and it seems to me that there will be those individuals dumping great uantities of paper, difficult paper to process and that there's no need to be as free and easy s Section 19(4) is. The model Act sets a 100-word limit on explanations that may be filed; maybe hat's a little bit too short, but surely, some kind of limit ought to be filed and placed on what person may file. And just, also in connection with that right to file an explanation, Section 21(1) think is just a little bit unfortunately drafted. I'm sure the intention of 2l(1) is to ensure that when ou do file your explanation, that it stays on the file. But it doesn't say so in so many words and seems to me that it would be just worth the slight effort that's involved to say specifically, "And he agency shall retain the explanation on the file," as long as the information about which the xplanation is offered is retained on the file.

The final point that I have to make, Mr. Chairman, relates to information outside Manitoba — m sorry, information involving either credit reporting organizations or users outside Manitoba. We ave a provision in this Bill as you know, which calls for the user in Manitoba to undertake certain f the obligations of the reporting agency, if the reporting agency is outside the province. However, think there are a couple of improvements that could be made, even though there is that protection ffered. First, I would direct your attention to Section 13(2) and this is that odd section that I talked out before, that seems to deal with disclosure of people's files. It seems to deal with it almost dundantly and yet, it's got a strange heading. The heading doesn't talk about disclosing of files; he heading, this Section 13(2) talks about copy of a personal file to remain in Manitoba, and the eading seems to be dealing with the question of information that goes outside Manitoba. But if ou read the section, I don't think it says what it really intends to say. I think what it's intending say is that there's got to be a file in Manitoba about the individual, but as I read it, it doesn't ay that, because it says about two-thirds of the way through the section, that they must make vailable the personal file at their chief place of business or at any of the branch offices in Manitoba which the file is kept. Now it seems to me that those words "in Manitoba" ought to apply to e chief place of business as well, because if a Toronto operation keeps the file in Toronto and as no information left here in Manitoba, I don't think that Section 13(2) is providing the protection at was intended by it; so I think the simple insertion of the words "in Manitoba" after the words hief place of business" might be an improvement.

And finally, also on the question of foreign information or foreign operations, I would refer you a provision of the model bill, which is not in this Bill and which I offer for your considersation. here are, as you know, data banks developed outside of this country and therefore, outside of ny legislative control in this country, which may be tapped by agencies within Manitoba or within anada. The model Act, in order to ensure that there is always a source of information which one n keep one's hands on, requires that no report be given, unless it is based on information found

in a file in Canada. It doesn't say in the given province but at least in Canada, so that we knc that we can get at the data bank, wherever it might be and I would seriously submit for yo consideration adoption of that excellence provision of the model Act.

Well, that completes my rather miscellaneous submission, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Gibson.

The Honourable Member for Winnipeg Centre.

MR. J.R. (Bud) BOYCE: Through you, Mr. Chairman, to Professor Gibson, the silence in the A on your last point was one of my apprehensions; that perhaps without being out of order, M Chairman, you could perhaps tell us how we could handle the problem of extent of informatio Those of us who have credit cards which is based on information, which is filed outside of Canac at the present time — well, major oil companies and things in that area.

MR. GIBSON: How can you deal with the problem? Well, what I'm saying is that the model A suggests that no report may be given on anybody for any purpose, you know, to the extent th the Act operates, unless there is a file somewhere in Canada with that information. In other word it simply prohibits files based on data banks in Georgia or wherever they may be.

MR. BOYCE: Mr. Chairman, it does not prohibit the refusal or the granting of credit.

MR. GIBSON: No, that's correct.

MR. BOYCE: So, in effect, it would have no effect.

MR. GIBSON: Well, this whole Act is aimed at the information reporting industry. It's not aime primarily at the credit granting industry. There are other problems, no doubt, in the credit grantir industry that have to be dealt with. But to the extent that you're employing the information reportir industry, that section I submit, does offer useful protection. Where does the credit grantor get h information about you? He's got to get it through an agency and if the agenc has to base i report on information in Canada, then that's a degree of protection.

MR. CHAIRMAN: The Honourable Member for Inkster.

MR. GREEN: Professor Gibson, I would like to ask some questions, perhaps on some sectior that you haven't dealt with but which I believe that you have considerable expertise. I'm going 4(1); have you got the Act in front of you?

MR. GIBSON: Yes.

MR. GREEN: Can you comment on the possible — and my question will be subjective — possib abuse of a section such as 4(1)?

MR. GIBSON: (b) or (c)?

MR. GREEN: Do you see getting a registrar of power to deal with an applicant in the fashion that outlined in this section?

MR. GIBSON: I might have known when you were offering a compliment that it was going to lea me into a trouble area. This in fact, is not an area that I know anything about or have taken ar strong interest in. As a non-expert, it seems to me to be a strong licensing provision; it may b stronger than is needed but it's not something that I've given much attention to.

MR, GREEN: So, you wouldn't care to comment on giving a director the power to refuse someboc the right to carry on business, because the Director believes to pass conduct of the applican for his reasonable ground; you believe that he may not carry on business in accordance with th law or with some integrity and honesty?

MR. GIBSON: That's right, my concern is the consumer and to protect him as much as possibl Now, to the extent that that can be done without encumbering the industry, I agree totally ar I simply don't know enough about the industry or about licensing generally to know whether th degree of power is required or isn't required to protect the consumer.

MR. GREEN: Well, I'm rather surprised at that, Professor Gibson, and maybe that gives us some nsight perhaps, into your general direction on this Act. You're mainly concerned, as you indicate, vith how it's going to affect the subject, which is the ome that's being investigated.

MR. GIBSON: That's right.

MR. GREEN: And therefore, you have. . .

MR. GIBSON: Yes, as Mr. Allen, you have it mainly concerned with the clients for whom he is ;peaking. Yes, that's right.

MR. GREEN: But you have formed therefore, no opinion on how it affects a citizen, who wishes o carry on business as a personal reporting agency and whether he is being subject to undue)ureaucracy.

MR. GIBSON: That's right, as I've told you a couple of times; I just haven't considered that part)f the Act.

MR. GREEN: Section 9(1) of the Act: Are you concerned with the requirement that a personal eporting agency is subject to an offence under the Act if they are not able to make the full content)f the report readily understandable by the subject?

MR. GIBSON: I can't get worked up one way or the other about Section 9(1). I don't really think t'll have any significant effect on the operation of the industry. It wouldn't trouble me at all if you :truck it; it wouldn't trouble me if you left it in.

MR. GREEN: It doesn't bother you, that section doesn't bother you?

MR. GIBSON: Not in the least.

MR. GREEN: 9(2), requiring the reporting agency to satisfy the Director, who may require that the eport and all others like it be amended, giving the director the power to require a report to be mended, to provide for understandable disclosure of the contents of that report, and all others ke it, to the satisfaction of the director — that doesn't bother you at all?

MR. GIBSON: No. Look, it would trouble me to see a director, or anybody in charge, abusing is powers. But I'm absolutely convinced from the relatively little that I know about the way in which he industry operates in Manitoba, that they do make their reports in understandable form, and hat hhis is not u problem that's going to arise.

MR. GREEN: But Mr. . . .

MR. GIBSON: And that's exactly why I'm . . .

MR. GREEN: Mr. Gibson, you see no problem with me passing laws requiring somebody . . . I ave a problem. I have to pass a law which says that it's going to be a criminal offence, or is n offence for which a person can go to jail.

MR. GIBSON: Okay, look, Sid. All I'm saying is, if you don't like it, strike it. It doesn't bother me n the least.

MR. GREEN: It doesn't bother you. I'm really asking for your opinion on it, and you say it doesn't other you.

MR. GIBSON: Because I honestly don't believe that it will affect the industry one way or the other. his is a responsible industry we're dealing with; they're already making understandable eports.

MR. GREEN: I'm really trying to get your attitude to us passing laws, and I am accepting it, that doesn't bother you that the State would pass a law requiring that person to make something nderstandable to irector, does not bother you. the satisfaction of a d

MR. GIBSON: To get you on to another topic, at least, let me agree to this extent, that I thir it's wrong to pass a law which is unnecessary.

MR. GREEN: And you feel that this law is unnecessary?

MR. GIBSON: I don't see the necessity for it, that's right.

MR. GREEN: Well then, at least, we have you got . . . that it is wrong, and that would both you, then.

MR. GIBSON: One for Green, yes, that's right.

MR. GREEN: It bothers you.

MR. GIBSON: Yes.

MR. GREEN: Did it bother . . .

MR. GIBSON: No, it doesn't bother me.

MR. GREEN: It doesn't bother you that we would do that; then it doesn't bother . . .

MR. GIBSON: Never let your guard down with Sid Green.

MR. GREEN: Then it doesn't bother you that we would do the wrong thing? Can I ask you, M Gibson, looking at 14(1)(d) . . .

MR. GIBSON: Yes.

MR. GREEN: Do you really feel that it is . . .

MR. GIBSON: No.

MR. GREEN: That is satisfactory for legislators to pass laws requiring somebody not to tell th truth.

MR. GIBSON: No, I agree with you about 14.(1)(d).

MR. GREEN: 14(1)(d) should be deleted.

MR. GIBSON: I think so.

MR. GREEN: Thank you.

Now, with regard to 26: Now even in the unenlightened days of prohibition, they made it again the law to sell, but nobody was so stupid as to make it against the law to drink. This says th the use of information obtained illegally is forbidden. Now, can you envisage how it will be enforceab for a person who has the information not to use it, and how you would prosecute him for usir it, whether by hiring or not hiring?

MR. GIBSON: Yes. I think I would support this section. The reason for the hesitation is that I' trying to think of a hypothetical kind of situation. But let us suppose that there is a shady crec grantor or somebody, who decides to do just what you're worried this Act may cause him to d and that is to go to unsavoury sources and dig up unreliable and malicious information, and t use it.

Now In that kind of hypothetical, it seems to me that the credit grantor is every bit as guil as the person who's granting the information, and I would like to see him penalized, yes.

MR. GREEN: But Mr. Gibson, this Act prohibits, not the use of shady information; this Act prohibi the use of 100 percent accurate information if it is illegally obtained.

MR. GIBSON: Well' then . . .

IR. GREEN: How would you do that?

IR. GIBSON: Yes, look, the problem . . .

IR. GREEN: Am I a bad lawyer? Am I reading this wrong?

IR. GIBSON: No, I think you're a good logician, because what you're doing is putting an ssumption which isn't necessarily there. You're assuming that the information is valid, that the hole purpose of the restrictions in the Act is to ensure that the information is valid.

IR. GREEN: I ask you to read . . .

IR. GIBSON: Well, let me finish. If the restrictions were not there . . .

IR. GREEN: I ask you to read 26. I ask you to read 26: "The use or divulging of any information btained illegally" — which could be 100 percent accurate, true information —

IR. GIBSON: yes.

R. GREEN: ...And therefore, if it is said...

IR. GIBSON: Yes.

IR. GREEN: And therefore, if it is used . . .

IR. GIBSON: Tell me when you want me to answer.

IR. GREEN: . . . is an offence — yes, I'm asking you whether I am correct in saying that the se of such information would be an offence against the Act?

IR. GIBSON: Yes, it would be an offence against the Act; and if you'd like my opinion, I think at's a desirable offence. I believe also that information that's obtained by breaking into people's emises should not be admitted, though you may hold the opposite view.

R. GREEN: That's fine. I understand you completely.

R. CHAIRMAN: The Honourable Member for Winnipeg Centre.

R. BOYCE: Yes, Mr. Chairman. Through you to Professor Gibson. I wonder if you could give your opinion. We've talked about 10(2), and I wonder if you could take a look at 10(3), and old it in juxtaposition to that, under Definitions, the two definitions of medical information and edical source. Is not the operant effect of that to negate 10(2), because on the list of medical ources and medical information, they include such a broad range of people that if somebody sought formation, and they put the qualification such as degree of hypertension, or stress, or mental ability, or anything else, unto the person who was referred to one of these sources to which (2)(a) d not apply because of the exemption granted under 10(3)?

R. GIBSON: There may be a small problem there, but I think the intention is that it be covered the definition of the term "medical source". It's only a test which may be conducted by certain oups of people; it's not everybody, it's sort of psychological tests and psychiatric tests, and that rt of thing.

R. BOYCE: And lie detector tests.

R. GIBSON: Are they included in . . . I didn't think they were.

R. BOYCE: Well, by granting the exemption under 10(3), we negate 10(2)(a).

R. GIBSON: I see what you're getting at, yes. That's a matter I hadn't thought about, and you ay well be right.

MR. CHAIRMAN: Are there any more questions for Mr. Gibson? Thank you, Mr. Gibson.

I now have a problem which the committee maybe can guide me. Are there witnesses here tonigl that don't live in the province, because we're certainly not going to be able to go through all th list tonight, I'm quite sure of that. If there are people that are not residents of Manitoba, and wis to make presentation, maybe we could carry on —(Interjection)— Winnipeg, rather. If not, the —(Interjection)— I shall call Mr. Brown, Mr. M. Brown.

Mr. Brown not here? I call Mr. Jim McEwen.

MR. DeGRAVES: I am not Mr. McEwen, Mr. Chairman.

MR. CHAIRMAN: Oh, I'm sorry.

MR. DeGRAVES: I am Mr. DeGraves, I'm representing Dunn and Bradstreet, and I have sorr . . .

MR. CHAIRMAN: Graves, did you say?

MR. DeGRAVES: DeGraves.

MR. CHAIRMAN: Okay.

MR. DeGRAVES: And this is the clerk; I have a submission to file with you. May I have one mine back? —(Interjection)— That was deliberately done.

Mr. Chairman, I am going to try to assure you that I will not deal with the same areas th the previous speakers have dealt with. First of all, because I fear the cross-examination of Mr. Gree and secondly, I recognize and respect the committee having sat this long, and hearing the sam material over and over again, may well do more damage to my cause than will assist it.

I'm going to try and deal with the whole question of The Personal Investigation Act on a ve broad basis. In other words, I propose to treat it with a broad brush.

Dunn and Bradstreet, as you know, is almost a name that is synonymous with busines commercial transactions, industrial transactions. It needs no introduction to this committee, ar it's been in business for over a century, and it's been in this province since 1882.

It has been living under the old Personal Investigation Act since 1971 — and you may not reca Mr. Chairman, but I appeared at that time to make a submission on behalf of Dunn and Bradstree and we heard very much the same material about Senator Proxmeier (?) and the subsequent even in model legislation.

I have nothing to say about the legislation except as it affects Dunn and Bradstreet, and sa as it affects business and commercial transactions. And on Page 2 of my brief, I say that I a appending an appendix to the brief. Now, the reason for the appendix is to give you some indicatic as to the kind of business that is being carried on, the kind of administration that is being carrie on by Dunn and Bradstreet.

And I'm not going to burden you with an explanation of it; it's fairly straightforward. But yc can see from the operation of the Act, or the proposed Act, that the proposed Act really has r relevance to a commercial or industrial transaction.

Now I'm turning on to Page 3, the philosophy of the Act. The Minister before Mr. Jorgenso the Honourable Mr. McGill, circulated an information paper or remarks, and he said at the openir of the remarks, the following: "The Personal Investigations Act was passed in 1971, and administered by the Consumers' Bureau. The Act deals with the exchange of personal informatic on individuals for the purposes of entering into agreements for credit, insurance, employment tenancy."

The significant and the controlling words of that particular sentence, are "personal informatic on individuals". Now, I'm submitting that the Act that you are now presenting to us does not rea conform with respect to the avowed intention of the Minister at that time who circulated th Act.

The Act, I think, is really intended to regulate credit reporting agencies in respect to th dissemination of information on private individuals when they apply for a benefit of credit, insuranc employment or tenancy. And I use those words — I'm sure I give the same construction to the as the Honourable Minister did — to recognize that there were certain areas of one's day-to-d existence that needed protection, that needed to be regulated, and that is the daily and day-to-d existence of a man's personal life in respect to credit, insurance, employment or tenancy.

And I'm saying, with respect to the proposed Act, it goes much further than this, and perha unintentionally encompasses business transactions.

And then I deal with the question of, does this legislation unduly interfere with commercial activity, hen he stated in his remarks, in the same foreward to the Bill, he said this, "We have been most terrested in determining whether any practical benefit has been derived from them" — referring) other provincial Acts — "and whether they have served to seriously impede the flow of information iat is so necessary for healthy commercial activity.

Then, we deal with the question of, what has been the experience, and what has been the gislation in other provinces? Significantly, on the west of us, Saskatchewan has in its Credit eporting Agencies Act, the following exemption — and I'm reading from the middle of the page: This Act does not apply to a credit reporting agency where the reports of the agency deal only ith industrial or commercial enterprises, and are distributed only to such enterprises.

Now, Mr. Chairman, I'm inviting you to look at your exemption section, Section 2, Subsection), which attempts to exempt or exclude from the operation of the Act corporations or partnerships at contain no information on any individual other than factual information regarding the officers employees of the corporations or partnerships. Well I hope I'm not straining at gnats by saying at I don't think that goes far enough, and I don't think that it means what I think the Legislature tended it to mean. It only exempts businesses such as corporations or partnerships and doesn't eal with the individual in business.

It does not deal with the right of the reporting agency to report on business in respect to the vestigative nature of that business. And I think that the only effective method of circumventing getting around that sort of constraint is by adopting the Saskatchewan Act. In Quebec, I iderstand, although I haven't got the text of the Quebec regulation, I understand it as well, in e same way, exempts the operation of businesses such as commercial enterprise or industrial om the Act.

And then, in Prince Edward Island, Newfoundland, Ontario and British Columbia the same thing accomplished by defining "Consumer means a natural person but does not include a person igaged in a transaction other than relating to employment, in the course of carrying on a business, ade or profession."

Consumer Reporting Act — Newfoundland reads "Consumer means a natural person seeking obtaining credit for personal, family or household purposes."

Ontario — it was my submission, along with Saskatchewan, who has the most effective means dealing with it : "Consumer means a natural person but does not include a person engaging a transaction other than relating to employment in the course of carrying on a business, trade profession." And B. C. has the same, in effect the same exemption.

I mention these other provinces because the previous speakers had indicated the desire of most them to have uniform legislation across Canada. And I'm citing to you six provinces here which in effect have that exemption and I don't think it is the intention of this government or indeed e previous government to have tried to regulate purely commercial or industrial operations.

Then I submit to you as well that you may want to consider analogous legislation which used exist in our former Partnership Act which defined a businessman as a person carrying on business trading, manufacturing or mining purposes with a view to profit. Then, under the Income Tax t, which of course is the most embracive of all of the definitions, defines business as "business :ludes a profession, calling, trading, manufacture or undertaking of any kind whatever and includes adventure or concern in the nature of trade but does not include an office or iployment."

Mr. Chairman, I submit Page 8 of the submission here, that there is no need for the regulation credit reporting on commercial or industrial transactions. I say by way of parenthesis that Dunn d Bradstreet has not been the subject of a complaint or cause for complaint with the director. has conducted itself in a manner that is totally reputable and responsible.

I subscribe to what Mr. Green says, that unnecessary legislation is bad legislation. And I submit it, in this situation, Dunn and Bradstreet has proved itself to be responsible, the business mmunity relies on it, and any hindrance of its performance or activities in my view hinders the tire economy of the province. And I suggest that the legislation should have in very very broad ms an exemption such as I suggested in the six provinces, that is that Manitoba legislation and actice should be uniform with the six other provinces which I have cited.

I'm here to ask any questions, any administrative detail. I'm very fortunate having Mr. McEwen h me and Mr. Toews, both of Dunn and Bradstreet, who may have to assist me in answering questions. Thank you.

t. CHAIRMAN: Thank you, Mr. DeGraves. Have we any questions for Mr. DeGraves? Thank .

May I ask now if there are any persons who would have presentations to make, if they're going be out of the city tomorrow. The committee will be sitting tomorrow night again. Are there any .?

MR. JORGENSON: Not necessarily. Mr. Chairman, there may be a . . . to get through here tonig and if that is the case we're prepared to keep going.

MR. CHAIRMAN: But we could hear the ones that are going to be out of town, if they are. Okay, I call Mr. Breen. Mr. John Breen.

MR. HAIG: Mr. Chairman, Mr. Breen is not present. He's out of the city. My name is Mr. Hai I represent Creditel, whose principal officer he is. Haig as in whiskey. H-A-I-G.

Mr. Chairman, I've had the advantage, as have you, of listening firstly to Mr. Allen ar subsequently to others, speak on the question of this bill and lastly to hear Mr. DeGraves.

I want to associate myself firstly, almost entirely with the comments made by Mr. Allen, ar I was the beneficiary of his brief before it was presented to you so that I had an opportunity reading it and considering it and I want to, on behalf of my client, Creditel and Mr. Breen, to suppo that submission.

I also, on behalf of Creditel, which has a great deal in common with Dunn and Bradstreet, wou like to support in particular Mr. DeGraves' comments concerning the exemptions respectir commercial transactions. As the bill is presently framed, commercial transactions involving so proprietorships fall within the purview of this bill, and the only effect of permitting that to continu Mr. Chairman, is to impose an unrealistic restriction and limitation on credit capacity on the sm individual proprietor. The person who most needs credit and who needs the greatest benefit latitude in these regards is the one person who, by this bill, finds credit made difficult f him.

Let me explain briefly about Creditel. It's a clearing house for commercial credit informatio It does not conduct any consumer credit duties; it does not distribute or solicit or collect consum credit information. In fact, Mr. Chairman and gentlemen, it reports ledger experiences of busine firms and organizations in the Canadian business scene so that those business organizations c make credit judgments about those who would do business with each other.

Creditel and myself had the opportunity of reviewing this bill when it was presented and commenting with the department before it was presented. The position of my client, Mr. Chairma is that the original enactment, The Personal Investigations Act, was an excellent bill. Creditel al is of the view that it is now time to review that bill and to make some changes and to make sor improvements. We are uncertain — as a matter of fact we are not satisfied that Bill 20 as it presen stands accomplishes those desirable ends. I won't waste your time by going into and repeatir the details that have been given to you in a fullsome fashion this evening, Mr. Chairman, but would like to support Mr. Allen's suggestion that the Bill not be reported, that it be further considere and brought forward at another session of this Legislature. Thank you.

MR. CHAIRMAN: Thank you, Mr. Haig. Any questions for Mr. Haig? I thank you, sir. Oh. Th Honourable Member for Rock Lake.

MR. EINARSON: Mr. Chairman, as a layman — one question that interests me here, Mr. Hai Being a farmer, if I were to do a business transaction with another farmer that comes from a lor distance whom I didn't know and knew nothing about and, assuming that the business transactic was say $20,000 for argument's sake or for explanation's sake, I wasn't sure whether the cheq that I was to receive from this farmer was good or not, and I would say to him, ''I'm going the bank or going to check out your credit rating'', if he says ''No, you can't do that.'' I have take his word for it? Do you gather this interpretation to be so?

MR. HAIG: I'm saying this to you. As I understand it, the moment that you commence inquiri into his creditability as a businessman, not of his personal capacity, that you are conducting personal investigation of the kind contemplated by this Act.

MR. EINARSON: In other words, you're saying, Mr. Haig, that I would be illegal by doir that.

MR. HAIG: The moment you set out to conduct a transaction with him, you're going to sell hi your old combine and you're going to sell it for $20,000 and the moment you start asking hi questions relating to his ability to complete the transaction then you're conducting investigation.

I would like to say on that point, Mr. Chairman, I neglected to do it, that at the very end

is Bill there are some punitive provisions in terms of fines and imprisonment which are of such evere nature on their high . . . as to make one wonder what kind of offenses are contemplated / this Act. It's inconceivable that a bill whose greatest offense is to tell somebody something that ey shouldn't be telling that is probably true to someone else, might be subject to the scale of ies and penalties that are set out in this Act, and I really seriously must suggest that they ought be reconsidered very carefully, Section 30, Subsection (1).

R. EINARSON: So Mr. Chairman, just to carry it one step further, having posed this question Mr. Haig, and assuming that I am violating the laws by taking investigation on his busuness to whether or not that cheque that I'm supposed to receive from him for $20,000 is valid, and aving violated that, and if I can't do that, then if I receive the cheque from him and it's N.S.F., en what is the situation when we have this kind of a law?

R. HAIG: Mr. Einarson, if you found out from some improper source that this was a well-known ıper hanger, to use an expression that'll be familiar to you all, if that information was illegally ɔtained, it would be improper for you to proceed to refuse to deal with him on the grounds that was a well-known N.S.F. cheque writer. This is one of the problems that was created by the ıguage of the amendment.

R.

R. CHAIRMAN: : Thank you, Mr. Haig. The Honourable Member for Inkster.

R. GREEN: Mr. Haig, I think you said that Mr. Einarson would not be able to ask the man himself out his credit, and I don't think that I've found that anywhere.

R. HAIG: I am sorry, that is correct, Mr. Green. I meant that he could not ask the bank to inquire o the man's circumstances and do reporting for him.

R. GREEN: Even that, Mr. Allen had a nuance, but I won't go into it. Do you agree with what ppear to be reading into Section 26? I don't know if you have it in front of you. "The use or ulging of any information obtained illegally or contrary to the provisions of this Act is forbidden." w as I read that, the user who gets illegal information is committing an offense if he uses it, en if it happens to be correct.

R. HAIG: I would go one step further, Mr. Green. I would say that I find it impossible to determine it it was used. All that's required to dea with that thing is for the person who is alleged to ve used it to deny having used illegally obtained information. It's like your question about ploying somebody who can determine the truth. That's why Armenian rug dealers wear dark sses, so you can't read when you've quoted them the right price.

I. GREEN: I gather that you still would have problems, but it would be much simpler if the taining or the thing that was prosecuted was the obtaining of the information or the operating gally, but the actual consumption is very difficult to prohibit.

I. HAIG: It's impossible to prohibit, in my view.

I. GREEN: And it is correct, I think, that when they had the laws, the liquor laws, in the states t they prohibited sale but nobody attempted to prohibit anybody from drinking.

I. HAIG: Yes, prohibition was not against the consumption of it. Right.

I. CHAIRMAN: Any more questions? Thank you, Mr. Haig.

I. HAIG: Thank you, Mr. Chairman, and gentlemen.

I. CHAIRMAN: Now, Mr. Valentine, apparently, has gone home but he has left his submission, ch has been passed around to the committee. I call Mr. Tallon.

. GREG TALLON: Mr. Chairman, I am here on behalf of the Canadian Bankers' Association, re on a watching brief than anything else. The Bankers' Association have asked me to pass ng some concerns they had, relating to, first of all, Section 3, sub-paragraph (2), which we believe,

from prior comments, will be cleared up.

They were also concerned about the ability to obtain information on a person carrying or business, other than a corporation or a partnership and I think Mr. DeGraves has covered tl area quite well and we concur in his submission in that respect.

And, finally, I would point out that we ask that you recognize the need to carry on busine and the business practicalities with regard to obtaining information of this kind. And, in this rega we ask you carefully to consider the submission by Mr. Allen with respect to the greatly increas costs of doing business under the terms of the Act, due to the numerous notice provisions, e The banks asked me to pass along that they do rely on these reporting services and that we thi that Mr. Allen's submissions with regards to the reluctance of institutions to loan money, whe there appears that there may be a shortage of information available, would work not only a hardsl on the lender, but also the borrower. And we would urge the committee to consider any restrictic that might cause the person providing the information to provide incomplete reports and th increase a reluctance to rely on those reports.

Specifically, we point out Section 14(1) sub. (d) and we ask that that be deleted and that clai issued against a person be a valid subject of a report.

We point out that we accept the nature of the Act and we admit that we're not aware of t scope and the nature of the abuses that have occurred to date, and we do support legislati designed to prevent the abuses under the legislation. We ask only that the committee consic the practicalities of carrying on business under the legislation. The banks do not feel that t legislation applies to them, in any way, as a personal reporting agency, and they've asked o that you consider the points that I have raised.

Thank you.

MR. CHAIRMAN: Thank you, Mr. Tallon. Any questions of Mr. Tallon?

Thank you, Sir.

Mr. Bill Enefer.

MR. BILL ENEFER: Thank you very much. Gentlemen, I am acting on behalf of the Canadian Cre Institute, of which I am immediate Past President.

The code of professional ethics for credit management reads briefly as follows:

''That we agree to discharge our responsibilities to our companies and to the pub conscientiously, courageously and capably, and to respect and carefully safeguard the confident nature of all information and opinions received during the course of credit investigations, so th individuals and businesses alike are fully protected from even the slightest possil embarrassment.

We agree to base the interchange of credit information upon confidence, co-operation a reciprocity.

We agree to further furnish effective leadership in the financial management of our compan accounts receivable.

We agree to unite in exposing unjust credit practices, fraud and corruption when discovere and we agree to further the proficiency of the credit profession and encourage training and educati for credit management.''

You have the brief in front of you. The latter part of it was presented to the government the drafting stages, and you have the more current statement that we make to you as membe of the Law Amendments Committee.

We are very concerned, as credit managers and people that are approving and granting cre to individuals and to companies and firms that there be any change in The Personal Investigatio Act. We adjusted to the 1971 Act quite well, although we were very concerned when it first car in, and briefs were presented at that time, indicating that we felt there were various areas of conce But we have been able to adjust to the 1971 Act, but we are concerned about this year Ac

As we understand it, the main reason that the Act was passed in 1971 was to preve discrimination or errors in personal investigations, which could result in a subject being denied t benefit in agreements for credit, insurance, employment or tenancy, and we felt that the 1971 A covered that, in that if, say, a customer, a prospective customer or a sole proprietor was deni a benefit they had the right to go to the credit grantor and say, ''Where did you get your information and the credit grantor said, ''I got my information from such-and-such a reporting agency'', in whi they had the opportunity to go down and see their file, and so on. We felt that the 1971 A accomplished that purpose.

We understand, also, that there has been very few complaints and convictions. For that matt I understand there has been only one conviction for violation of the 1971 Act since its introducti and we really wonder why there is a need for a change.

We appreciate the fact that, you know, other provinces might have enacted other legislation nd may be somewhat trying to co-ordinate it or make it similar in other provinces, but really I ıink we have gone too far in this particular Personal Investigations Act here in our province.

We agree that personal reporting agencies should be required to be registered, but on referring ɔ the definition of a personal reporting agency we wonder if it would mean that every person onducting a personal investigation must be registered. Some credit managers conduct their own ıvestigations without inquiry to a personal reporting agency. Information is exchanged between redit managers. This proposal could have the effect of prohibiting any direct contact between one redit grantor and the other.

On Page 3 in the middle — the next proposal that a personal reporting agency advise the subject ı writing of the opening of a file would serve to increase the cost mf reporting agencies services, hich must be justified to management, and the higher costs would be reflected in higher costs f goods and services to consumers.

Carrying on, on Page 4, in the middle. We feel that the present Act has gone far enough in equiring the disclosure to a subject of the source and nature of factual information contained in ıe report. Disclosure of the source of investigative information would tend to stifle the flow of truthful ıcts. A source person, who volunteers an honest opinion on request, will respond in a more cautious ıanner if, through lack of confidentiality, he or she is later harassed, consequent of this frank and ɔnest statement, in that a person being denied credit, under the new Act, would have the right ı ask a credit manager where he got his information. Well, he got it from such-and-such a reporting gency. What other information did you get, Mr. Credit Manager? Well, under the new Act he would e required to tell his sources of all the information. In other words, he had a discussion with XYZ redit Manager about his account and three or four other credit managers, whicu helped him rmulate his thoughts on the matter, and he would be required to divulge that. Consequently, other edit managers would be really hesitant in discussing anything with him in the future if the person eing denied the benefit went after those other credit managers and said, "Why did you say this ɔout me?" or "Why did you say that about me?" So therefore the confidentiality that the credit anager now enjoys in his job as a credit manager would be lost.

In the credit management process, there are a lot of considerations that are taken into account, ıd a lot of them that are done with consultation with other credit managers and with reporting gencies. And we feel that the change in the Act would be unnecessarily restrictive. We have been ɔle to work in with the 1971 Act.

I must say that in the subsequent pages, Pages 5, 6, 7 and 8, that the page numbers and articles e not those that are reflected in The Personal Investigations Act that you have before me, or rhaps rather in a draft. So if you are interested at all in getting a correction on the pages and e articles, I would be pleased to supply them for you.

But in the main, to sum up without taking too much more time, the people that studied this t were credit managers and are credit managers. They had a look at it. They felt that, with respect credit — I know it covers four different subjects, this particular Act — but with respect to credit, e changes that have been made do unnecessarily restrict the credit manager from gathering the ormation as freely as he wants and from speedily approving credit to companies, firms and dividuals, and it will serve only to slow the passage of goods and services to consumers and sole proprietorships. And we don't want to see that happen because we're there to do a job credit granting and to help maximize the sales of our companies and firms by making an sessment of whether to grant credit or not, and we feel that this particular change, this new Act, ıuld really stifle our efforts to have the passages of goods and services to consumers and sole ɔprietors in the fashion that our sales want us to get them out.

So we urge, as others have said here, that this particular revision to The Personal Investigations t perhaps be left in this Law Amendments Committee and not be reintroduced into the Legislature Third Reading. There are four different areas that are being covered in one Act and it's jusz too much to be covered in one Act, and perhaps there should be a separate Act for each particular ea; I don't know.

One of our members of the Canadian Credit Institute is, coincidentally, the Chairman of the ınitoba Branch of the Canadian Manufacturers' Association. That's Mr. A.W. Janke. And I talked him on the phone and he regretted not being able to be here, but on Canadian Manufacturers' sociation letterhead he writes:

"We regret that we are unable to attend this meeting this evening but we request that on behalf the Canadian Manufacturers'- Association you express our concern regarding the proposed anges in credit investigation. Our concern deals primarily with the proposed changes as they affect ividual proprietorships." The Manufacturers' Association couldn't comment, of course, on the ısumer aspect but we, being in credit management, know that it would have an effect on goods d services, also, being transferred to consumers.

He goes on to say, "Since the Province of Manitoba has been promoting expansion manufacturing industries in the province during the next few years, a program which wholeheartedly endorse, we feel this will create unnecessary hardships in small businesses starti up", that is the passage of this Act in its present form, "and your assistance in making our vie known is appreciated. Mr. A.W. Janke, Chairman of the Manitoba Branch."

That, in effect, sums up what I have to say. The brief that is before you is in more detail a it expresses our particular stand on this. If there are any questions, I would be pleased to answ them.

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

MR. GREEN: You have here in your brief, on the first page, "Personal bankruptcies in Manito have increased substantially over the past year." Is that correct?

MR. ENEFER: Yes. I can refer to the Chief Official Receiver in the Province of Manitoba. The has been a tremendous increase in them, and I think that with the passage of this Act it wou only encourage that.

MR. GREEN: That's kust coincident with the election of the Conservative government.

MR. CHAIRMAN: Any more questions?

MR. JORGENSON: There are Conservative governments all over the place.

MR. ENEFER: Believe me, you'd see an awful lot more bankruptcies if this Act was passed its present form, because you would stifle the flow of information between credit managers a from report agencies and from people that are dealing with others, so we strongly recommend that we can do the job of getting goods and services to consumers and to sole proprietorshi ttat you leave this Act in the Law Amendments Committee and for re-study at a future time. A other questions? Thanks very much.

MR. CHAIRMAN: Thank you. I call Mr. Andrew Allentuck. James Cartilage.

MR. JAMES CARTILAGE: Mr. Chairman, I'm here on behalf of the members of the Winnip Chamber of Commerce, and I would point out that there are some 3,500 such members representi the business and professional community in the city, and point out that over 75 percent of the people represent small or local businesses.

The concern in connection with this Act — first of all, I'll apologize for not having a writt presentation — however, the concern about the Act only came to us a matter of a week or ago, and at that time was expressed by a few individual members. We checked then with oth firms to find whether or not they have the same concerns. They confirmed of course that they d And only this past Tuesday did we act to set up a committee to consider and to ma recommendations in connection with the Bill. We were not aware that it had reached this sta and was at this point, and I found it rather interesting that the very concerns expressed on Tuesd by members of the Chamber are the same as we've heard from several of the speakers a specifically from Mr. Allen. We weren't even aware at that time that he was preparing a brief. E the concerns that were expressed at that time were, that the effect of the Bill would very lik be to add to the bureaucracy, that we felt it would definitely increase the regulation applied business and we're concerned as a result it would certainly increase the cost of business in Manitob And this causes some confusion, because the present government's stated policy seems to be t exact opposite of those situations.

I am informed that from the standpoint of business, we're concerned that this legislation cou be interpreted to be the most restrictive legislation of this nature in Canada, and that indeed could create many problems for people doing business in Manitoba.

Recently, our province, under its new government and through its Premier, has receiv considerable favourable publicity, and I believe, generated considerable new confidence in t business community as a result of its stated policy. And if the express concerns by the membersh of the Chamber are or perceive to be justified, this will seriously undermine that confidence.

I think it was interesting that although this matter was only reported in the paper on Wednesda I have been contacted by several national media sources looking for informatio n in this connection the event there are shortcomings in the existing Act, then we would much favour that the Bill n be reported at this point but rather that it be delayed and there be an opportunity for the Chamb

Commerce to make its brief and for other business organizations to make presentations.
It is our feeling that in situations of this type — we are really not aware of any great problems eated under the present Act, but if there are problems, I think that we would feel an awful lot ɜtter if they were dealt with by amendments to the various sections of the existing Act, rather an bringing forward a whole new Act. Our experience with new Acts has always been that they ıem to create a whole bunch of new problems that weren't anticipated at the time they were put gether. We feel it would be better dealt with by amendments to the appropriate sections of the ːisting legislation. Thank you.

R. CHAIRMAN: Thank you, Mr. Cartilage. Any questions of Mr. Cartilage?
The Honourable Attorney-General.

R. MERCIER: Sir, my understanding of the process of this Bill was that last May it was tabled the Legislature and it was distributed throughout the province for comments to the department. ɔu say you only received notice of the Bill one week ago?

R. CARTILAGE: No, I'm saying that the problem was only expressed to the Council of the ıamber approximately three weeks ago by a few individual firms. The Chamber at that point, then ecked with other firms in the business community to find whether or not indeed they have the me concerns. It was last Tuesday that they acted to set up a committee.

R. MERCIER: Did the Chamber of Commerce receive a copy of the Bill approximately one year o?

R. CARTILAGE: I'm sorry, I can't confirm or deny that.

R. CHAIRMAN: Thank you, Mr. Cartilage.
Mr. Perfumo. This is on Bill No. 27.

R. DARIO PERFUMO: Yes, Mr. Chairman, thank you very much.
I can assure you, Mr. Chairman, and Mr. Green and the members of this committee, that although r name is Perfumo, this is not a Mafia presentation. You have my consent to investigate my motives d nor do I wear dark glasses, so therefore having said that, ii will be very brief. We have no itten brief, so we will be brief. I do apologize for not having a written submission but we are re in complete support of Bill No. 27 in its entirety.
The only comments we would make is in regard to Section 93(4), where it deals with the ımmission to set the hours and the word appears on the first line: "the Commission shall specify ɜ hours". We have some concern that this could lead or mean that the Commission would specify ɜ same hours for a beer vendor depot as might be in use for another part of the operation, i.e. ɜ beverage room, which is normally tied to a beer vendor depot. That is our only concern, Mr. airman; if the committee or the architect of the Bill would assure us that this is not so, we are complete support of the Bill in its entirety.

ł. CHAIRMAN: Thank you, sir. Any questions?
The Honourable Member for Inkster.

ł. GREEN: Yes, Mr. Chairman. I'd like to know whether, according to Mr. Perfumo, there are ɣ sections in the Bill which affect when live music has to be performed at the present ıe?

ł. PERFUMO: Not to my knowledge.

ł. GREEN: Not to your knowledge.

ł. PERFUMO: I don't believe there are any sections to that effect.

ł. CHAIRMAN: Any more questions, gentlemen? I thank you, Mr. Perfumo.

ł. PERFUMO: Thank you, Mr. Chairman.

ł. CHAIRMAN: Now go back to Bill No. 20, and has Mr. Larson showed up, Mr. Norm Larson? . Andrew Allentuck? And Mr. Brown. That is all the briefs then that I have here.

Brief presented but not read:

Re: Amendments to The Condominium Act

Since the introduction of Bill 6 in the legisl Legislature, a special Committee of the Real Prope Subsection of the Manitoba Branch of the Canadian Bar Association has been studying both provisions of the Bill, as well as The Condominium Act generally. The Committee has now concluc its deliberations and on behalf of the Manitoba Branch of the Canadian Bar Association wisl to make various recommendations and suggestions, which are set out below. Some of these conc provisions of Bill 6 while others deal directly with The Condominium Act as presently formulat Except as hereinafter otherwise mentioned, the Committee is in complete agreement with amendments to be brought about by Bill 6. Where possible, each of the Committe reccomendations or suggestions is preceded by either the same heading used in Bill 6, or by Section of the Act affected. Furthermore, where appropriate, recommended or suggested langua has been underlined.

Subsection 2(3) added

Subsection 2(3) is being added. It appears that the reference to Subsection "6.5" is incorr and should have read "6(5)". The Committee suggests that Subsection 2(3) read as follows:

"Unless otherwise shown on a plan referred to in Subssection 6(5), the boundaries of a b land unit shall be deemed to extend vertically upward and downward without limit." Cl.5(am

The amendment to Cl. 5(1)(f) proposed in Bill 6 would require the Declarant to obtain not c the consent to registration of all persons having registered encumbrances against the land interests appurtenant to the land described in the Plan, but also the consent of persons hav interests or estates in the land in respect to which Caveats had been filed.

While the Committee is making no objection at this time to a general requirement that Caveat must consent to the Declaration, a strong objection has been made to including within this categ of Caveat holders those who have filed a Caveat claiming an interest or estate by virtue c residential tenancy. Extending the requirement of consent to such a Caveator would be contradict to the wordssand intent of Subsection 5(1.1)(a) which provides that only fifty (50) percent of resider tenants need consent to a registration. If, in addition, the consent of any one (1) tenant who l filed a Caveat as aforementioned was required, a single tenant could prevent registration, effectiv increasing the required consent to those of one hundred (100) percent of tenants. The Commit is of the opinion that this was not the object of the pr oposed amendment. Rather it was that add to the necessary consents the consent of persons holding interests or estates in respect of wh Caveats had been filed cleared up any uncertainty in Subsection 5(1)(f) which had used the te "registered encumbrances", in that firstly, Caveats are not encumbrances, and secondly, Cave are filed rather than registered.

In light of the above, the Committee recommends that Cl. 5(1)(f) be amended as follows:

"Clause 5(1)(f) of the Act is amended by adding thereto, at the end thereof, the words "or intere or estates in the land in respect of which Caveats have been filed, other than Caveats claim an interest or estate in the land that is the subject of the Declaration by virtue of a resider tenancy". Cl. 5(1.1)(b) am

With the amendments brought about by Bill 6, a Declaration will have to contain a statem that each residential tenant who on the date of registration is in occupation under a lease of kind, has been or will be given an option, exercisable at any time within thirty (30) days after date of receipt of the option, to purchase as a unit the premises that are the subject of the le at a price not exceeding the price at which the unit will be offered to the public and on te that are not less favourable.

While no objection is made by the Committee to the suggested amendments, the Commit does wish to register an objection concerning the scope of persons to whom the option must extended. Where there is some period of time between the date of registration and the date which the Declarant is prepared to sell units, there is the possibility - and the longer the per the greater the possibility that those who were tenants at the time of registration are no lon tenants at the time of sale. It is the opinion of the Committee that the tenant who has volunta vacated the premises and selected alternate accommodation prior to the Declarant extending options to purchase, has no further interest in the premises as residential accommodation therefore should not be the automatic recipient of an option to purchase the premises. This wo be in contrast to the person who was in occupation at the time of registration and who has contin to remain in occupation at the time the options would otherwise be given and who, in the opir of the Committee, would be a logical recipient of the option.

Based on the above, the Committee recommends that Clause 5(1.1)(b) be amended as llows:

"Clause 5(1.1)(b) of the Act is amended by adding thereto, immediately after the word ıccupation" in the second line thereof, the words "under a lease of any kind", and by adding ereto, at the end thereof, the words "unless at the time the option would otherwise be given, e tenant has vacated the premises". Subsection 5(1.1)(d) rep.

Bill 6 proposes to delete Subsection 5(1.1)(d) from the Act. Declarations registered after ptember 1st, 1976 and prior to enactment of Bill 6 must contain a statement that the Corporation the Assignee of the Lessor in respect of all leases of any kind of the land that is the subject the Declaration or any portion thereof and in effect on the date of registration. In view of the letion of Subsection 5(1.1)(d), which the Committee is in complete agreement with, the Committee commends that the Bill provide for the automatic deletion from all Declarations registered during e aforesaid period of the statement above referred to concerning assignment of leases.

Application of Subsection (1) Respecting Bare Land Units

The proposed Subsection 6(7) would make Subsection 6(1) (Section 6 deals with the contents the Condominium Plan) inapplicable to a Plan upon which all units were bare land units, but ovide, however, that if a building was shown on a Plan the Examiner or Surveys could require mpliance with any part of Subsection 6(1) which he deemed necessary.

A bare land condominium Plan would be one upon which one or more units would be defined delineation of horizontal boundaries without reference to any buildings. Therefore, while it may unlikely, it is nevertheless possible that a bare land plan could include both bare land units well as "building units". The reference to "building units" in this context would mean condominium its defined under present legislation by reference to building walls etc. If Subsection 6(1) was plicable to a Plan upon which some units were bare land units and some were "building units", trict interpretation of Subsection 6(1), and particularly Subsection 6(1)(b), would require that all its, including bare land units, be described by reference to the buildings. In the case of bare d units separated from building units by considerable distances, one could imagine horrendous tes and bounds descriptions of bare land unit boundaries by reference to buildings located a nsiderable distance away.

In the Committees view, the difficulty described above can be remedied by making Subsection) inapplicable to a Plan upon which one or more units are bare land units (rather than all units ng bare land units), and then relying on the discretion of the Examiner of Surveys to determine / necessary compliance with Subsection 6(1) in the event that buildings were shown on the n.

Taking into account all of the above comments, the Committee recommends that Subsection) read as follows:

"Subsection (1) does not apply to a Plan upon which one or more units are defined by delineation horizontal boundaries thereof without reference to any buildings but, if any building is shown a Plan, the Examiner of Surveys may require compliance with any part of Subsection (1) which deems necessary in respect of such building". Subsection 6(1)(d) and

Subsection 6(2)

During the course of the Committee's deliberations, concern was expressed by Mr. C. A. Evans, trict Registrar of the Winnipeg Land Titles District, about the possibility that Plans referred to Subsection 6(5) might be drawn by unqualified persons if Subsection 6(7) eliminated the operation certain portions of Subsection 6(1). To deal with this concern, Mr. Evans has suggested the owing amendments, with which the Committee is in complete agreement: Subsection 6(1)(d)

Subsection 6(1)(d) of the Act is repealed. Subsection 6(2)

Subsection 6(2) is repealed and the following Subsection is substituted therefor: 6(2)

A Plan and any amending Plan shall not be registered unless:

(a) it contains the certificate of a land surveyor certifying that he was present at and personally erintended the survey represented by the Plan, or amending Plan, and that the survey and Plan, amending Plan, are correct; and

(b) it has been approved by the Examiner of Surveys. Subsections

8(8) and 8(9)

It was the unanimous opinion of all members of the Committee that:

the terms of a mortgage obligation should not be modified in any manner by the registration a Condominium Declaration and Plan. Any modifications as to prepayment, partial prepayment, , should be the subject of an agreement between the appropriate parties.

b) Subsections 8(8) and 8(9) should be applicable only to encumbrances which have been at ne time registered against all units and common interests. On a strict interpretation of the present

wording of Subsections 8(8) and 8(9) the partial discharge rights could be applicable to encumbrance registered against less than all units and common interests — even just one and its common interest. It was the view of the Committee that the basis for obtaining pa discharges, namely the paymnt of a portion of the sum claimed determined by the proporti specified in the Declaration for contribution to common expenses, was appropriate only if encumbrance had been at one time applicable to all units and common interests. If the encumbra had been registered against less than all units and their common interests, but each of the u was entitled to obtain a partial discharge by paying that portion of the sum claimed determi as abovementioned, the encumbered units could all be discharged leaving a portion of encumbrance debt outstanding without any security.

For the above reasons, the Committee recommends that Subsections 1(m) and 8(8) be amen to read as follows:

''1(m) ''encumbrance'' means a claim that secures the payment of money or the performa of any other obligation and includes a charge, a mortgage and a lien, except as otherwise provi in Subsection 8(9.1)''.

''8(8) Any unit and common interest may be discharged from an encumbrance by paymen the claimant of a portion of the sum claimed determined by the proportion allocated to that in the Declaration for contributions to the common expenses''. and that the following Subsec 8(9.1) be added:

''8(9.1) For the purposes of Subsections (8) and (9) ''encumbrance'' shall mean an encumbra which has been registered against all the units and common interests, and shall exclud mortgage''.

Section 17 The Committee is of the opinion that condominium corporations

should be given greater flexibility in determining whether or not to appoint an insurance trus This would enable the condominium corporation to avoid the expense of an insurance trustee to provide a means of controlling insurance proceeds, their disposition, and compliance with Secti 19 and 20.

In furtherance of the above, the Committee recommends that Subsection 17(2) of the Act amended to read as follows:

''Any payment by an insurer under a policy of insurance entered into under Subsection (1) s notwithstanding the terms of the policy, be paid to the order of the insurance trustees, if any as otherwise designated by the Declaration or By-laws of the Corporation, otherwise shall be p to or to the order of the Corporation; and, subject to Sections 19 and 20, the Corporation s forthwith use the proceeds for the repair or replacement of the damaged units and common elem so far as the same may lawfully be effected.''

Section 19(1)

While Bill 6 contains no amendment in respect of Sections 19 and 20, the Committee re-examined these Sections in light of the bare land condominium concept. It was the view of Committee that in the event of damage, as described in Section 19, the value of improvem made on a bare land unit by the owner thereof should not be taken into account in determi whether or not a repair vote is necessary. In any event, the unitowner himself is responsible the repair of damage to improvements on his unit and in the case of a bare land unit, the er residence or other structures constitute the improvements. If there is even total destruction, bare land unit owner still has his unit — unlike the ''building unit'' owner who, upon destruct loses his unit, in a physical sense. Because his building unit has to be replaced in concert replacement of other building units, the building unit owner participates, under Sections 19 20, in a determination of whether or not However the bare land unit owner need not work in co to rebuild. with other bare land unit owners. The choice of whether to rebuild or not to reb is his alone. Therefore the value of his improvements, which he alone can decide to rebuild or should not be included in the determination of whether to maintain the Corporation condomir or terminate its existence.

The independence of bare land unit owners as above described does not, however, exten common elements. In the case of common elements there is a sharing, and if there is destruct the common elements must be rebuilt on a co-operative basis. Therefore it is appropriate to cons the value of the destroyed common elements in making the determination under Sections 19 20. For the above reasons, the Committee recommends that the cal

culation in Section 19 exclude the value of improvements made on bare land units and accordi that Subsection 19(1) be amended to read as follows:

''Where damage to the units and/or common elements occurs the Board shall determine wi thirty (30) days of the occurrence whether there has been substantial damage to the extent the cost of repair would be twenty-five (25) percent, or such greater percentage as is speci

the Declaration, of the value of the units, other than bare land units and improvements thereon, d common elements, immediately prior to the occurrence."

That concludes the Committee's recommendations and suggestions concerning Bill 6 and The ndominium Act. For your information all of the foregoing have been reviewed and discussed with . D. Lamont, Registrar General of the Land Titles Office, and he is in complete agreement with Committee's recommendations. We would appreciate an opportunity to make presentations

concerning the Committee's recommendations when Law Amendments Committee considers Bill Would you please inform us as to the time and date at which we might appear before Law nendments Committee for the above purpose.

All of which is respectfully submitted.

"Myron Calof, on behalf of the Manitoba Subsection of the Canadian Bar Association."