



**Fourth Session — Thirty-First Legislature**  
of the  
**Legislative Assembly of Manitoba**  
**STANDING COMMITTEE**  
**ON**  
**LAW AMENDMENTS**

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**29 Elizabeth II**

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Speaker*



**SATURDAY, 12 JULY, 1980, 10:00 a.m.**

**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty - First Legislature**

**Members, Constituencies and Political Affiliation**

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<b>BANMAN, Hon. Robert (Bob)</b>	La Verendrye	PC
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<b>BOSTROM, Harvey</b>	Rupertsland	NDP
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**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON LAW AMENDMENTS**  
**Saturday, 12 July, 1980**

**Time** 10:00 a.m.

**CHAIRMAN** Mr. Robert Anderson (Springfield).

**MR. CLERK, Jack Reeves:** Gentlemen and lady, may I have your attention for a moment. Mr. Filmon, the chairman of this committee, is not here and it has been suggested that Mr. Anderson might sit in for him. We are short at the moment two people for a quorum. I wonder if you would like to start and probably hear Mr. Cvitkovitch and go on from there.

**MR. CHAIRMAN:** Order please. I will read out the bills that we have before us, Bills No. 32, 59, 77, 78, 79, 80, 81, 82, 85, 104. A number of people have indicated that they wish to appear before a Law Amendments Committee. The clerk has been unable to contact very many of them. There is only one who has been contacted, that's Mr. Frank Cvitkovitch, Mortgage Loans Association of Manitoba, who wishes to appear regarding Bill No. 80.

**BILL NO. 80**  
**THE PAYMENT OF WAGES ACT AND**  
**THE REAL PROPERTY ACT**

**MR. CHAIRMAN:** Mr. Cvitkovitch, do you have a copy of your presentation or your brief?

**MR. FRANK L. CVITKOVITCH:** No I do not, Mr. Chairman. I had been informed yesterday afternoon I guess that the Law Amendments Committee was not yet ready to deal with this. The bill wasn't passed so I put the material in my briefcase and thought I would be out at the lake this weekend to work on it. I also would like you to know that I am wearing a tie because the reason I am not at the lake is I was supposed to be at a funeral at 10:00 o'clock, and that's why I was still at home last night when the phone rang.

Mr. Chairman, what I have provided the clerk with to circulate is a list of the current membership of the Mortgage Loan Association. If I might start my presentation on that basis, there are a number of the members who have been sitting for some time and perhaps have seen our group make a presentation before, but for those who have not, the Mortgage Loan Association of Manitoba is a grouping of, I would like to think, the main mortgage lenders, the banks, trust companies, life insurance companies, credit unions and mortgage brokers in Manitoba, and has been in existence since the early 1900s. One of its objectives is to maintain a watch and make recommendations regarding legislation affecting real property.

You can see from the list that I have circulated that there are approximately 40 members and in addition we have associate members who are in the mortgage insurance field, and we have as observers and regular attenders at our meetings, Canada

Mortgage and Housing, formerly CMHC or Central Mortgage and Housing, and the Manitoba Housing and Renewal Corporation is also a member of our association.

Mr. Chairman, I would like to comment I'm not sure this folder contains all of the letters that our association have sent in the last two or three years with respect to The Payment of Wages Act and the problems. Those letters basically have been sent to the Attorney-General, but they have also gone to the Law Reform Commission of Manitoba that has dealt with this matter.

I might perhaps at this point acknowledge that the Bill No. 80, Section 7, subsection (6), does provide for a real property mortgage, once registered, to have priority. In that regard there was some consideration given by the association executive as to whether or not we should be making a presentation because certainly on the surface that might seem that for our, so to speak, special interest group there was some provision being made.

However there are two considerations with regard to that and one is the fact that there was a recent decision of the Manitoba Court of Appeal which seemed to, in any event, under the previous existing legislation, uphold the priority of registered documents; and the other consideration was that there, in a sense, is still more at stake as far as our association is concerned in terms of what Mr. Justice Freedman termed several years ago in a case, the sanctity of the registration or the registry in Manitoba. And to that extent therefore, although we recognize that subsection (6) provides for mortgages we still see many of the other difficulties continuing that have been pointed out to the government.

The suggestion we would like to make to the government is that they consider implementing the legislation that was passed last year but placed in abeyance to be proclaimed in force after, we understood, a report from the Law Reform Commission which would investigate the whole matter. The Law Reform Commission did investigate the matter and did make a report saying that there were all kinds of problems with this legislation and that the thing to do, at least at the outset, was to put into force the amendment that was passed last year.

However, the government has not seen fit to do that and, as a starting point, it still is a position of our association that the legislation that the government introduced last year in the Bill No. 68, of the last Session, Statute Law Amendment Act No. 2, that it would be a more effective temporary bandaid amendment to the law in a way which would allow for the return of the law to the priority system that Manitoba has benefited by for a number of years.

Mr. Chairman, I find it, in a sense difficult, perhaps even with a group of lawyers, to discuss this topic at times, but in a sense with non-lawyers it might seem like a technical and mechanical thing. I appreciate that there are some lawyers here, but there are many lawyers who were not even aware of this Act a year or so ago and the Bar Association made a

presentation here and also made a release in its own bulletin to advise lawyers of this Act, and advise them of some of the ramifications with regard to reporting on title to land and on security. I should perhaps put emphasis on title to land as well as security, because it isn't a matter just of the lender, it is a matter of the buyer, who could be jeopardy; it is not only buyers and lenders who are in jeopardy.

Perhaps it would look more vital and be more appealing to the members to come to grips with if I were to suggest to you that if a wife, under a Separation Order which was registered against property, was protected in terms of receiving payment of maintenance, and then eventually if the land were sold of receiving some settlement. She could now be in the situation under this Act, and has been for several years, where she could be just, to use a vernacular, s-o-l, because if her husband was an employer, which sometimes happens, his employees may have priority to the rights of his former wife.

In terms of other workmen, we have The Mechanics Lien Act of Manitoba and if somebody is in the process, for example, of building a Signet home and they have laboured long and hard at building that particular house, they would seem to have, under The Mechanics Lien Act, that's been there for years, a vested interest in receiving payment. They won't receive payment if the people at Signet Realty have priority. The bookkeeper, who may have known the company was in difficulty times but may not have taken salary for a couple of months, he will have priority to the man who was working there on the job site.

The problem that this Act creates is really out of proportion, I think, to whatever cure the government that enacted it, the governments that have amended it, were trying to do. If they were trying to ensure every working man in Manitoba that he receive a certain amount of money, in the event that his employer was not able financially to pay him, it might have been frankly more economical for the government to make a straight payment, rather than to have many of its members in the Attorney-General's Department litigating in the courts of Manitoba as they have for the last four or five years, with regard to where the priorities are. There has been a lot of taxpayers money spent already in dealing with this issue.

Now that may sound like it is coming from a biased area and a self-interest group, but I would like to quote to you from the Law Reform Commission, and its report to the Attorney-General on August 15th, 1979. He says, and this is the Chairman, Dean Edwards report, and I guess it is the report of the whole Commission, "The enactment of Section 7 and subsequent amendments precipitated a disproportionate amount of litigation in our courts concerning the interpretation of the legislation and alerted the legal profession to the true effect and ramifications of Section 7, Liens."

I might just digress in terms of representing the Mortgage Loan Association and just as a lawyer say that probably the Act has had a very beneficial effect for the practice in terms of the number of cases and number of files that have been opened up by lawyers dealing with this particular issue.

The Law Reform Commission goes on to say at Page 3, "We make no comment respecting the philosophy of the creation of the special lien right in favour of the wage earner, other than to draw to your attention the fact that many wage earners may also have additional Rights of Lien pursuant to The Mechanics Lien and the Builders Workmen, and that consideration will be given in a future paper by the Commission dealing with the priority to consolidate and order these liens in a reasonable way."

The Commission went on to say, "Our immediate concern is to eliminate the threat which certain provisions of The Payment of Wages Act pose to the integrity of the Torrens system, while still preserving a special right in favour of the employee."

Now, Mr. Chairman, as I say, it may seem kind of abstract to most of the members here, but basically in what I have seen the Commission's report say, and what we have been saying, and I believe the Bar Association said last year, is no one is questioning the right, if that is the philosophy of the government, to give the wage earner a special lien, but we are saying the mechanics of doing it is wrong. I believe that the Department of Labour personnel in endeavouring to do their work have from time to time been frustrated in terms of what they can collect, and I would suppose again that this would be a much more topical vital publicity-wise issue if we were talking in terms of the Department of Environment and somebody came along with a particular type of fogging solution and decided that they would spray, because they wanted to get one particular element out of the environment, they would spray even though it did some damage to others. That would be very popular and everybody would be up and talking about it.

But this in effect, in terms to a technician dealing with our system of holding land, is what is happening with this Act. I feel that the Department of Labour, in terms of wanting this special priority, is not providing adequately for the existing rights. It is not only my feeling, it is the feeling of the Court of Appeal of Manitoba, the Supreme Court of Canada, in connection with cases that they have considered, the Supreme Court of Canada in B.C., in terms of pre-existing rights of individuals under our system of landholding.

Further to the Law Reform Commission Report, they say, they "conclude and recommend that the government enact legislation, which will return this jurisdiction to the philosophy of priority of registration and indefeasibility of title to the extent that the amendment accomplishes and they are speaking there in terms of last year's amendment to the extent that the amendment accomplishes the desired result, the commission supports it. They go on to note the deficiencies because there are many other problems under The Payment of Wages Act in terms of trusts and liens that are set up. They indicate that that will take some time to come up with legislation. They were recommending that perhaps that legislation would come up at this Session, that was last August.

The other point that they make and which we, as an association, support is that their recommendation, again it was for this Session, that there be introduced a provision which would require that a lien under The Payment of Wages Act be registered

against a specific title. As the situation stands now actually there is really some question about whether there is any system for registering a lien but it has been registered by way of caveat and the problems relating to whether you can identify a specific piece of land, etc., are, in a sense, not exactly insurmountable but are again a continuing consideration of our courts in connection with applications before it to interpret whether this has been done properly or not properly.

The commission then basically, Mr. Chairman, that commission report, as I say, I think is unbiased. It isn't a self-interest group but I don't think that the government, unfortunately, has adhered or followed closely enough the arguments that were presented in that report in terms of preserving the integrity of the registry system.

Now dealing with the specific legislation I would like to recommend, if the bill in its present form carries forward, that subsection (6) of Section 7, be amended by the deletion of the word "mortgage" in the second line; and replaced with the word "instrument". That simple amendment would relate the section back to the wording of last year's amendment and it would have the affect, Mr. Chairman, as I mentioned before, in terms of maintenance orders or judgments or whatever rights that other individuals have and have properly registered, those rights would have to be considered in terms of priority.

Now that doesn't cure all the defects of the Act but it certainly would go some way to doing it. The other very kind of practical feeling I have, Mr. Chairman, in terms of a change is in Section 7, subsection (7), there is a provision about what is called a perfected purchase money security interest. I don't even know whether all of the lawyers here would want me to explain that one and I'm not sure I could, but in general terms the time limit of 10 days in terms of completing the registration procedures and reporting to one's client and advancing moneys is not very relevant and to my personal way of thinking is an unfortunate time limit obviously set without consultation with those people in the field where they would be providing the opinion and involved in advancing of funds on a purchase money security interest. That is not very realistic. I would like to suggest that might be changed from 10 days to 90 days.

Mr. Chairman, I would like to apologize for not having a written brief which in the past we have endeavoured to do at any time we made a presentation, because I can appreciate that most of the time we make one it's of a very technical nature and in terms of the members dealing with it, it may be easier if it is on a piece of paper. We would be prepared, if there was any benefit, to provide the chairman, if this committee is still hearing this bill next week, with a summary of these remarks and the written special recommendations.

**MR. CHAIRMAN:** Thank you, Mr. Cvitkovitch. Will you submit to questions from the committee?

**MR. CVITKOVITCH:** Yes.

**MR. CHAIRMAN:** Mr. Schroeder.

**MR. VIC SCHROEDER (Rossmere):** Thank you, Mr. Chairman. In simple layman's terms, the changes proposed in the legislation are that working people would wind up being behind mortgage companies. At the present time they are ahead of mortgage companies at the closing of a company, that is where a company goes bankrupt or where a mortgage is foreclosed on, currently the working person is ahead of the mortgage company and this legislation will turn that around. Is that correct?

**MR. CVITKOVITCH:** No, that's wrong in terms of where the working man is now and in terms of bankruptcy. I can't speak from any expertness in bankruptcy, but there are priorities under The Bankruptcy Act that might govern in terms of what this legislation will do and in terms of what is now. I mentioned a recent decision of the Court of Appeal of Manitoba, the Federal Business Development Bank and Leo Perrin et al, including the Manitoba Development Corporation, and in that decision the courts held that even with the existing legislation, that the debenture holder had a priority.

Part of the problem is that it is not clear. It is not so much an effort to do away with a priority as to clarify technically at what stage do you have this right; and it isn't just a right that you have against the mortgage company going bankrupt, that isn't the way the or the employer going bankrupt. That isn't the way the Act reads. The Act reads in terms of title. So whether the mortgage is in arrears or whatever would make no difference in terms of the employee's right.

I talked to in terms of the employee right now might allege that he has priority in terms of a wife's maintenance. He may have. That one hasn't been adjudicated by the courts.

**MR. CHAIRMAN:** Mr. Schroeder.

**MR. SCHROEDER:** Well, the difference between the debenture and the maintenance order which you bring up, sir, is that the debenture is under federal law and you are dealing with maintenance orders under provincial law. Is that why you say they haven't been adjudicated on?

**MR. CVITKOVITCH:** No, the debenture is a provincial instrument, it is a security instrument. It was the Federal Business Development Bank, you might have caught that part and thought that somehow involved a federal law; but it was under provincial law and it was The Payment of Wages Act that was being interpreted.

**MR. SCHROEDER:** The change you are suggesting is to change the wording, take the word "mortgage" out and include the word "instrument", so that it would clarify the position that your Association takes, that all instruments should be ahead of wages.

**MR. CVITKOVITCH:** No, not necessarily that all instruments would be ahead of wages, but that . . . Frankly, basically what I would like to see is an instrument, a proper mechanical device, if that is the decision of the government, that an employee would have a particular interest, that the mechanics of him registering that would be provided. What we are

concerned about is what the Law Reform Commission quoted Mr. Justice Freedman in the Dominion Lumber case in 1963, and he was talking about the principle of the sanctity of the Registrar, in terms of if you are going to create a right, then it has to, as a technician, mechanically it has to be brought in; the plumbing, so to speak, has to be right. It has never been right in this Act since this particular amendment came through, I think, in either 1975 or 1976, that endeavoured to give priorities. It has never been right. I don't know, in terms of what the rights are now, that is part of the problem. That is why we are asking for clarification.

**MR. SCHROEDER:** Forgetting about technicalities and what the law now is, let's talk about what you think the law should be, because that is why you are here. Do you think that on the bankruptcy of a company that the mortgage holder should be ahead of the worker.

**MR. CVITKOVITCH:** What do I think? Well, Mr. Chairman, I guess I better pass on that one, because I am really here as counsel for the Mortgage Loans Association and I have never dealt with them on instruction on that point.

**MR. SCHROEDER:** Well, on the closing down of a company, when you are determining priorities, is it the position of your client, the Mortgage Loans Association of Manitoba, that they should come ahead of the worker?

**MR. CVITKOVITCH:** Well, what their instruction to me, Mr. Chairman, is is that we should endeavour to maintain the system of security and taking security that they have experienced in Manitoba over, I guess, the last forty or fifty years, and that is the way we have been dealing with it, and in terms of again there sometimes is a misconception of the mortgagee and I haven't gone through that routine, which I have done at other submissions to this Committee, is the mortgage man in many cases is a middleman. He has your RRSP or your pension benefits or your savings, and he takes them in and he puts them out, and in terms of who is going to come first, if it is in terms of, we can't collect that mortgage because that working man should be paid by, in effect, the mortgagee, who has advanced his money in this thing, then we can't make that pension payment to you the week after. We can't give you that security that we are required by law to give you, that your money is safe and secure, that it is a first mortgage, it is below, in certain instances, a 75 percent equity. How do you establish that?

If you are going to change it, then there are some vast changes that have to be made and technically it has to be worked through. We don't have a position that says, don't change it; we have a position that says whatever you are trying to do now is not workable, it is harming the system, it is not doing what it was intended to do, so let us do away with it, and if you want to start on a new tact with a new mechanism, then fine.

**MR. SCHROEDER:** Yes, Mr. Chairman, I am impressed with the argument that the law, as it stands, is not working and therefore obviously we

have to do something about that. The question is, how do we clarify it under provincial jurisdiction? Do we amend The Real Property Act and any laws dealing with debentures and other instruments to indicate that employee's wages come first, or is it the position of your Association that any amendments that are required should be made in such a fashion that the mortgage company's interests are protected first?

**MR. CVITKOVITCH:** I am sorry I kind of lost the flow on that as to the commencement of the question.

**MR. SCHROEDER:** Yes, I will try it again then. The position of your Association appears to be that you don't know exactly what the present state of the law is. There are court decisions which indicate that, although The Payment of Wages Act gives a working person first priority, the court decisions are saying, no, a debenture is ahead of that, and there is some doubt in your Association when you are dealing with loans to businesses as to exactly where you fit in on a bankruptcy. Will you be ahead or will you be behind the working force? Now, I am saying that if the law is unclear, then obviously we have a responsibility to clarify the law. The question I am then asking is, if your Association had a choice would you prefer to have the laws relating to registrations of real property mortgages and debentures and other registrations changed so that they would come second to the rights of the working force, the people working at an actual business which is going bankrupt, or would you prefer to have The Payments of Wages Act changed so that the people working at such a plant would become second to the mortgage companies?

**MR. CVITKOVITCH:** Well, I don't think we think in terms of first or second. I can only give you a specific example of one of the lenders who is involved in a situation where they made a mortgage loan on a house to a fellow who was not then in business, in order for him to buy that house. He then, a year or two later, went into business, failed to pay his employees, and there was no bankruptcy, but he also failed to make his mortgage payments. The financial institution wanted to take back the property and the individual was prepared to give it back to them, because the property wasn't worth really what was still owing on the mortgage, but in order for the financial institution, in a sense, to get its property back, they had to make good the wages of those employees. Now to them that didn't seem fair and that is what we are talking about.

We are not talking in terms of first and second, because I think that becomes kind of abstract; we are looking at actual transactions that we are dealing in, and in some situations I think it would be fair to say that you might find yourself in a position where the wage earner should have priority to the person who is holding the mortgage document. But you would have to look at that circumstance, and if for example it was some type of transaction whereby the employer endeavoured to get money out of his company and didn't put it into the company, and the lender somehow could have participated in that, maybe he shouldn't be in the position. But what

responsibility, Mr. Chairman, should a lender have to pay the employees of an employer if they really have made a loan not in relation to a business at all and have or should have received value for their money. We don't see it as a case of first or second.

**MR. CHAIRMAN:** Mr. Schroeder.

**MR. SCHROEDER:** Yes, Mr. Chairman, I would like Mr. Cvitkovitch to explain that specific example of his again. Is he saying that an individual took a mortgage on his own house and then wound up as a result of that having the mortgage company being required to pay the wages of his employees, which wages had absolutely nothing to do with this particular mortgage loan?

**MR. CVITKOVITCH:** That's right. That's the way the act reads. I think I said this at the last Law Amendments Committee. You people yourselves, the way act reads, might be considered employers of all the staff. It's a very, to my way of thinking, loose arrangement as to who his an employer, what is an employer. You lose the protection or whatever of limited liability in terms of a corporation. That has ramifications again on your spouse in terms of what her equity is or should be. It's too wide. It's an elephant gun approach. That's the point that I am trying to make. That specific loan was a loan on a residence, had nothing to do with the business. As it happens the Court of Appeal case had to do with a business, but that's not even considered in any way in the judgment.

**MR. SCHROEDER:** This business then, I take it, was not an incorporated business. This was just one individual who as an individual was also running a business.

**MR. CVITKOVITCH:** It doesn't make any difference whether he was incorporated or not. As an employer, at least you could certainly argue as an employer under the Act, under subsection (d) says, "an employer means a person, firm, corporation, principle agent, responsible directly or indirectly for the engagement or employment of or payment of wages to a person employed." And I think that's wide enough, if I were representing a wage earner, that it wouldn't stop me that he was working for a "Joe Limited". I would go after Joe's house.

**MR. SCHROEDER:** Mr. Chairman, I suggest that Mr. Cvitkovitch is away out there. I would ask him again, did that particular individual have an incorporated company? The reason I ask that is that you have just read a section that says, person, employer, a firm, etc If the firm owned the house then it would be logical for all of the firm's assets to be involved on the division of property on the winding up. If the firm did not own the house, then I would suggest that it would have been highly improper to add the house into it. So therefore, I ask again, did the individual who owned that house have an incorporated company, or was it simply a personal business.

**MR. CVITKOVITCH:** I just looked at my notes and I am not sure from the note that I have from the

lender as to whether it was or not. I am not sure of what you were saying there earlier in terms of it would be improper to bring the house in. Improper by who?

**MR. SCHROEDER:** Mr. Chairman, Mr. Cvitkovitch has just read a section that says that any property owned by the employer or the firm shall be brought in and of course that makes sense but there is, as he well knows, a considerable distinction in law between a shareholder in a corporation, whether it is a 100 percent shareholder or a 1 percent shareholder, and the owner of an unincorporated business. The owner of an unincorporated business is, in effect, just one person. If he owns a house and a garden and a boat and business, all of it would be tied up in one on a closing up, as he is well aware, and if he owns the shares of an incorporated business, then in dealing with a winding up, all that is dealt with is the assets of that incorporated business unless there was a personal guarantee or any other such instrument. Is that not correct?

**MR. CVITKOVITCH:** Mr. Chairman, yes. I am aware of those distinctions and have been since I graduated. What I am saying is if you will study that section in The Payment of Wages Act, it does not simply say employer, it defines employer, and includes employer as a person who may indirectly or directly be involved in engaging that person. What indirectly means I don't know, but I think it is wide enough that a claim could be made and that's my point in terms of bringing a house in.

If you are talking in terms of the assets of the employer, then the Act should be amended to specifically state "assets of the employer involved in the operation of the business" and the definition of employer should be concise. But directly or indirectly leaves a lot of room as far as I am concerned. We would think ordinarily if a company hired an individual, the company is the employer, and what is there indirect about it? But if I happen to own that company and be the manager and have hired him, am I indirectly the person? And that's our concern. It's clarity that this Act needs.

**MR. SCHROEDER:** Yes, Mr. Chairman. Mr. Cvitkovitch represents 41 mortgage companies and several associate members and of course would have far more knowledge than we would have. Therefore I would ask him, is he aware of any specific case where an individual who is a shareholder in a company, since the passing of this law, has been held liable to provide his personal property, which has nothing to do with his shares in a company, in the winding up a company where he did not give a personal guarantee?

**MR. CVITKOVITCH:** I can't say one way or another. I know, Mr. Chairman, that there are several of the financial insitutions that have been involved in litigation. I have one more here that is detailed, but I can't really tell from it. It was a mortgage on a residence, but the proceeds were then used to capitalize a limited corporation which went into bankruptcy and apparently the employees filed a caveat and that caveat has been effective in stopping the Notice of Exercise of Power of Sale, or the

mortgage foreclosure proceedings. Whether the residence was owned in the corporate name or whether it was owned in the name of the individual, I haven't got that detail.

Now I clarify, Mr. Chairman, that I represent the association, but each member of the association has their individual legal counsel and I think, unless I am mistaken, there is one party ready to present on Bill No. 80, that wasn't able to be reached who is a member of a law firm where they are dealing with several of these cases and he may be able to give you a specific situation. But I say that the problem is there and it is not something that we have just recognized ourselves. The Law Reform Commission, after considerable research, agrees and it actually goes farther. They saw many more problems than we saw with the legislation.

**MR. SCHROEDER:** Mr. Chairman, I would be prepared to eat the entire amendment if this witness can come up with one single case where a shareholder in a company has had his personal property become involved unless there has been a personal guarantee by that particular shareholder. and again I have asked the witness several times and he hasn't been able to come up with one instance although he is here as an expert.

**MR. CVITKOVITCH:** Let me just say that in terms of defending shareholders, if that's the member's concern, that shareholders are safe under the Act. They may be, I say there is an argument that being a shareholder, or not necessarily being a shareholder but being a person who is involved in the management of the company, may be enough to bring you under that definition. But if you say, are shareholders protected, I would have to say that I'm not sure that they are. I would say, in terms of the small businessman who many times is not incorporated, he certainly is not protected nor is his spouse in terms of where he is at because he may not want to involve himself in the costs of incorporation or afford to operate that way. There are many small operators in that situation. I don't know whether, for example, the people in our farming communities, whether they would fall under that heading.

**MR. SCHROEDER:** Mr. Chairman, I would like to ask the witness whether he has any statistics from these companies as to the percentage of loan applications approved before and after the amendments to The Payment of Wages Act, in 1975. Was there any change in the numbers of loans approved?

**MR. CVITKOVITCH:** I have no information. We do not maintain those kinds of statistics, Mr. Chairman.

**MR. SCHROEDER:** Yes, Mr. Chairman, I take it that in some other jurisdictions in Canada this type of legislation, putting the working person ahead of the mortgage company, or purportedly putting them ahead, has not been passed. I am just wondering whether the witness has any statistics on whether or not in those jurisdictions the mortgage company's profits are higher or lower than they are from the Manitoba operations.

**MR. CVITKOVITCH:** We have no idea of profits, Mr. Chairman, as an association. I have no information.

**MR. SCHROEDER:** Did your association oppose the changes to The Payment of Wages Act back in 1975 or 1976?

**MR. CVITKOVITCH:** No, Mr. Chairman, unfortunately, and this is part of the problem with this kind of legislation. We maintain a watch in terms of The Real Property Act, The Mortgage Act, The Personal Property Securities Act. We obviously had assumed that The Payment of Wages Act was a matter dealing with labour relations, and I think it is mentioned again by Dean Edwards in his submission that the profession, as a whole, the legal profession, weren't really aware of what was happening here in terms of an erosion of the registry system until some cases started to appear. And the cases have been appearing. I don't know the exact number, but I know again that the chairman of the Law Reform Commission says there has been a disproportionate amount, and perhaps there are other statistics available in some other fashion as to how much legislation there has been. I know there has, I think, been an amendment to the legislation each year which to me is indicative that you didn't start out too well with whatever you started with.

**MR. SCHROEDER:** Mr. Chairman, we are all aware that in any company operations you require funds but you also require workers. If we change the legislation as proposed would you have any suggestions as to how we notify people who are applying for jobs as to the financial position of the company they are coming to. If you have two different farm machinery companies, for instance, one of which has no loans outstanding and the other one of which may have a number of them outstanding, maybe there should be some notice given to the workers that they are coming to an organization which, if it goes down the drain, is going to put them in a position where they are not going to recover the last of their wages; whereas if they went to the other one, that's one concern they need not have, at least for some considerable period of time.

**MR. CVITKOVITCH:** Mr. Chairman, I can only say that because we have some members who transfer from province to province my information would be, from them, of an informal nature. There are no problems, for example, in getting workmen in Alberta or Saskatchewan where they don't have the same legislation. That doesn't seem to be a concern in terms of the employee. There is a quote here in the Law Reform Commission report saying, "and because of the unfamiliarity with this legislation the cost of litigation, the uncertainty as to the outcome and time limits, it is logical for employees in most cases to rely on the department's wage collection system, and in fact it would appear the vast majority employees alleging wages owed to them do so". That was a quote of the then Minister of Labour, Russell Pawley, in 1975 and it hasn't got any clearer since then.

**MR. SCHROEDER:** Thank you, Mr. Chairman.



**MR. CHAIRMAN:** Mr. Wilson.

**MR. ROBERT G. WILSON (Wolseley):** Many of the concerns I had were already covered but can you see any particular arbitration vehicle that might be enacted that would bring fairness into this particular Act. I am referring especially to the confusing court decisions. In other words the people that you represent go into a situation that is fairly black and white when they go into it but they then run across future horror stories. Is this what you are saying?

**MR. CVITKOVITCH:** It could be the situation. I don't think it's the practise right now of any member of our association in granting a loan to specifically inquire whether you are an employer and to, ongoing on an annual basis, ask you, are you now an employer, how many people have you and what is your payroll. It increases the paper work. It was suggested last year by a member of this committee that the lenders or their lawyers could think a way around it, or work a way around it, and that may be possible but is expensive. The end result of that expense doesn't go to the lender, it just goes in the carrying charges that all of us who are mortgage borrowers pay. It seems to be the kind of answer to the problem that really isn't good common sense. In coming back to arbitration, what we are saying is that the mechanics, the plumbing of giving this right, and deciding what is appropriate is not there in the legislation and it should be. And until it is there, the horror story, as you say, can develop and has developed in a sense for some lenders in terms of taking residential property back from a borrower who bought that property with the money that they provided and being stopped from doing that or being required to satisfy his employees.

**MR. WILSON:** What I am saying is that it seems that we have a confusion in these decisions because you have one case I'm familiar with, the Royal Bank and Midway Videon, and you have cited four or five others where federal laws have superseded all priorities of the provincial jurisdiction, payment of wages and everything, where a bank's debenture would take priority over absolutely everyone.

Your comments of the erosion of the registry system is it not maybe time that we set up a commission or a group to deal with the human rights versus the court system? In other words, we pass all these bills to make the human rights allegedly fair, but we then run into the erosion of the registry system. You are suggesting that back when we passed the Bill in 1975, the comments of someone else, are they your comments as well that there appears to be an erosion of the registry system?

**MR. CVITKOVITCH:** That is correct, Mr. Chairman. That is what is happening, and the fact that . . . I think there is a danger and I guess maybe I have already been sermonizing the law makers anyway, but if you are making a general law that you don't think in terms of, for example, the mortgage lender being a national or international corporation and you draw law that way, because in two months time your parents may sell their home and take a mortgage back and be a mortgage holder. Somebody might say, well, it is fair in that situation for Ma an Pa to

get their money, that actually was related to the purchase of that property, but it is not fair to X Bank Limited to get their money back, because they can absorb that loss, they are big. I don't think the law should be made that way, but I think that seems to be a concern of the members.

In terms of arbitration or adjudication, if you have the proper mechanics, then everyone knows where they stand and they know whether they have a priority and what the extent of it is. What the lender is saying, if we know that priority in advance and we know that anybody who is an employer, instead of having 40,000 worth of equity in his business because he has got a 40,000 payroll, we are just not going to lend. That is the danger in terms of dealing with.

Now, they have been contesting these matters and they are still contesting them and they have contested them in B.C. But the overall concept of registry is the thing that is suffering by this kind of legislation, and your Law Reform Commission recognizes it and they are I keep saying I believe they are not biased.

**MR. WILSON:** Well, in light of the comments that you made, we have a situation where the only asset is the home, and I will maybe ask two questions.

First of all, what is your interpretation of what wages are? I notice under the section they say each worker can claim 2,000. Does your group have any concern as to the definition of wages, i.e. can the particular individual who may also be the owner of the company and have been taking foreman's wages

what I am saying is, are you concerned as to the definition of wages and what would your interpretation of wages be? What I am saying is, is there anything to prevent phony wages of directors and owners and this type of thing? I mean, are you fairly clear cut in your mind as to, when you are dealing with this Bill, as to what is going to be allowed in the 2,000 is wages? What would your interpretation of that be before I go on to the disposal of that asset, namely, the house that your group has a mortgage on?

**MR., CVITKOVITCH:** If I can go back, and unfortunately Mr. Schroeder is not here anymore, Mr. Chairman, in terms with Mr. Wilson mentioning directors, has reminded me that there is a section in the Act, Section 5, that deals with the liability of directors, even though you have an incorporation. So perhaps I wasn't on my toes there in terms of his questions earlier, but in terms again of the residence, if the director is liable then it would seem that they would have a claim.

I am personally familiar with one case where a director's wages were claimed by the spouse of an individual, who had gone into receivership, and there was a considerable litigation on that matter, I think to the end result that she was not successful in collecting. Now I don't know whether somebody here would say that is fair or unfair, but in that particular instance the debenture took priority and I don't know all of the circumstances, but it was a company that I had had some involvement with at one time, and was aware of the case and the claim.

**MR. WILSON:** What I am thinking of is the disposal of this story on the house that you talked about, and not being a lawyer, but being subject to the confusing court decisions, you sell the asset, and then you have six or eight people claiming priority over the assets that are there. I am suggesting that you have indicated to me a feeling that I have had for a number of years, that we should know the priorities in advance and I am saying, what can we do when you have the federal government for income purposes, the Canada Pension Plan; there may be unemployment insurance; there may be payment of wages; there may be utility bills owing, I think the Hydro claims they take priority; he may have if he is in business business tax claims, they take priority; a mortgage holder under the attornment clause or whatever, may be, i.e. a sort of a type of a landlord who says my mortgage payment are in arrears, I want my money. I am saying that given the fact that in the 1980s we have this erosion of the registry system to the fact that it becomes very confusing to myself as a layman as to who am I to believe when we have all these laws saying we take priority? I am saying, is your group not that concerned that they can't spend the legal money to have a test case and force the governments to put some form of listing of priorities in advance so that those of us in the business community know what the rules of the game are?

It seems this massive confusion is created for, in my opinion, very questionable reasons, and I just wonder what is the role of legislators in your opinion regarding knowing these priorities in advance?

**MR. CVITKOVITCH:** Well, Mr. Chairman, I would just say that I don't think that necessarily we could in any way force the government to make a list of the priorities, and the other part of that problem is the conflicting jurisdictions, federal and provincial, in terms of determining who has priorities. I know that some of the legal counsel that were representing our lenders on some of these cases were saying that they felt The Payment of Wages Act and those areas establishing priority was unconstitutional, and ultra vires as far as the province of Manitoba was concerned. They never carried it that far, they weren't required to carry it that far, but that is the major problem. I don't think one court decision is going to take that, that would probably take the goodwill of the provinces together with the federal government in terms of revisions to The Bankruptcy Act, and what provincial legislation would do is a followup to establish your priorities. I guess the confusion is one of the things that gives benefit to we lawyers in terms of, as you say, you don't know where you stand and then you have to go to court.

In terms of the mortgage lenders and the examples that I have referred to, we are talking though about mortgage sale proceedings through the Land Titles Office, and I do know of one situation where a sale could have been effected, which would have recouped the funds that lender had advanced, which would have recouped Canadian Mortgage and Housing, which insures many of these loans, but which couldn't be proceeded with because in the meantime now they have to litigate over whether or not an employee of that person who owned the residence has a priority because that person,

through the Department of Labour, has filed a caveat in the Land Titles Office, and there have been a number of those instances. I believe in terms, again, of non-bias, I believe that the Registrar-General of the Land Titles has indicated also, a concern. The Law Reform Commission points out that the provincial government may be open for a negligence action on the basis of the way it issues titles, because of the fact that it does not specifically state that this particular lien might have a priority.

So there are problems, and what Cliff Edward said in the commencing of his report was it requires a comprehensive undertaking of Herculean proportions. I think he has taken some of the previous Chairman, Mr. Muldoon's, words there. But that's what you're dealing with in terms of trying to change that area.

**MR. WILSON:** Thank you.

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** Just two questions, Mr. Cvitkovitch, which you can probably answer yes or no.

Would you agree, sir, that the provisions of this bill merely confirm the decisions of the Supreme Court of Canada in the B.C. case and the Manitoba Court of Appeal decision with respect to priority of mortgages?

**MR. CVITKOVITCH:** I think so, yes.

**MR. MERCIER:** Secondly, Mr. Cvitkovitch, with respect to the balance of the bill and the priority of a lien for wages, would it be your opinion that this legislation evidences a bias in favour of the working man?

**MR. CVITKOVITCH:** I guess if it were effective it would, Mr. Attorney-General, but I think certainly it seems to give him a right over all others.

**MR. CHAIRMAN:** Mr. Enns.

**HON. HARRY J. ENNS (Lakeside):** Thank you, Mr. Chairman. Just one observation and confirmation that I would like to have from Mr. Cvitkovitch. We tend to deal with this in the harsh world of politics in very black and white terms, and it is being presented and pitted as the working man's rights or rights to his wages against the Bank of Nova Scotia or the Royal National Trust, or the Royal Bank of Canada, and so forth. But the moneys that your member companies and organizations are dealing with are, in many instances, pools of money brought together by these same working people. You mentioned RSP plans, pension benefit plans, maintenance rights of an estranged or a separated spouse, and it's the maintenance of the sanctity of these registered documents that is of principal concern to your organization.

What I'm trying to put into proper perspective is we tend to view the situation, or at least it has been presented that way in the field of politics that it is large financial corporations versus the working man. However, the working man who, over his lifetime, invests his money, whether it's for mortgage purposes on his property; or the person that is

relying on the proceeds of that money after a duly registered court document is filed, as could be the case in the maintenance order; or the money that is placed in trust with members of your organization to supply a pension benefit in later years, it's the erosion, and which by law you are ordered to maintain their integrity, which is a difficulty, as you see, with the Act as it is.

**MR. CVITKOVITCH:** That's correct, Mr. Chairman, under The Trustee Act certain investments by trust companies, as conventional loans and not requiring insurance and therefore at lower cost to the borrower, require the borrower to have 25 percent equity. Now, if he doesn't have that equity because of the fact that he is an employer and he has got a potential claim, then, in a sense, some of our members may not be complying with that Act.

I should also point out that our membership includes Cufs Loan Corporation, and recently, Astra Credit Union has joined as a member of our organization. As you point out, the depositors really have some rights, as do the wage earners, and it's a question, I suppose, for the Legislature to balance. And I didn't say it completely in jest when I said that if the government position wanted to be that they would guarantee all employees payment, then that might conceivably cost less in the form of an unemployment insurance type payment or whatever, in this situation, rather than confuse the rights of individuals that may have been there for many years, not only the loan rights but others.

**MR. ENNS:** Well, thank you. I think that's all I wanted to take advantage of your presence here, to confirm that in instances we could be talking about the same person, for instance. It is not the working man against the big financial institution; it's the working man who has a problem with loss of wages if a company goes under, but he can also be in the position, as a depositor in one of your member firms, of seeing a proportion of his life savings or of his moneys that he has entrusted to you be jeopardized by this kind of legislation.

**MR. CVITKOVITCH:** That's correct.

**MR. CHAIRMAN:** Mr. Corrin.

**MR. BRIAN CORRIN (Wellington):** Thank you. I'm wondering, Mr. Chairman, seriously, whether any of these firms would be in that sort of jeopardy with respect to their depositors. I say that with respect, Mr. Cvitkovitch. It seems to me that you represent a group of people who are all subject to certain insurance, federal insurance regulations, pursuant to legislation that affects financial institutions. Now, there may be some here that I haven't noticed that are of a smaller nature but, by and large, these people are banks and trust companies.

**MR. CVITKOVITCH:** Mr. Chairman, that concerns me, in terms of you might be insured against this risk so you are going to be not in jeopardy, because I don't think that is the way our members approach this. I don't think, again relating this back to the individual situation, previously, some years ago, the Winnipeg Mortgage Exchange was a member of our

association; now would you say, in terms of being put into jeopardy, because now, that wasn't the reason and I will admit that that wasn't the reason that they were in that position but they could very easily have fallen into that position, in terms of granting a loan, selling that mortgage to a third party. Many of our members administer loans, as a trust company, for a pension fund and in terms of a large default, where they might be mortgaging a condominium for a couple of a million dollars and that couple of a million dollars might come from the MGEA employees group, and it's being administered for them, it doesn't necessarily have a guarantee from the trust company or the bank and if something goes wrong with that, it might fall on the people that are to be the benefactors of that fund. I don't think you can make laws for the large and the small kind of thing, or if you do then I suppose somehow you have to be more specific.

**MR. CORRIN:** I'm not going to belabour that. What I would like to talk to you about, Mr. Cvitkovitch, is your interpretation of Section 7(6). You have spoken a great deal, and I am not supportive of what the Attorney-General has said about his legislation. I do not agree that it is advantageous to the position of the working man, but I want to discuss with you the provisions of 7(6) because I think that there are misconceptions that are being raised as a result of what you have said and I wonder whether they accord with the record, the amendment in 7(6).

The Law Reform Commission talked about the erosion of the registry system. They talked about the principle of indefeasibility of title. They asked that the government do something in order to protect the rights of secured creditors. Is that not correct, or am I wrong about that? I want to make sure that we are four square before we proceed any further here.

**MR. CVITKOVITCH:** Are you quoting from the Law Reform Commission Report?

**MR. CORRIN:** Do you disagree though, that's what you say the Law Reform Commission talked about indefeasibility of title; the problems entailed by past erosion of the registry system; lack of recognition by legislation and legislators of prior registered security instruments? Is that what you are saying is the major shortcoming of the former legislation and is that what the Law Reform Commission addressed?

**MR. CVITKOVITCH:** I am just a little bit reluctant, Mr. Chairman, to say in terms of that kind of summary of what the Law Reform Commission has said. I think I have been fairly careful in terms of quoting from parts of this report. There is an appendix where they list their recommendations on Page 22 and Page 23 of their report, and their first recommendation is the Act should clearly set out all payment of wages, liens must be registered in the Land Titles Office as a condition for their enforcement against real property, and that their priority is established according to the time of registration. Otherwise it will be necessary to amend so and so, section 57 of The Real Property Act to include reference. And it goes on to say the lien right in favour of an employee and the problem is the act is very complicated. There are other lien

rights besides that one that the Law Reform Commission has found, I think four or five. Their summary before that had said that the amendment that was passed last year be proclaimed in force; that further amendments in accordance with the recommendations set out in their appendix be introduced. That's really what they have said on it.

**MR. CORRIN:** Mr. Cvitkovitch, I respect all this but I want to know, do you not agree that 7(6) with respect to the question of mortgage lenders now and the security they register at the Land Titles Office, do we not all agree that the government has in fact provided them with a sort of protection?

**MR. CVITKOVITCH:** I think I was asked by the Attorney-General whether this was really a restatement of the decision in the Manitoba Court of Appeal case, Federal Business Development Bank, and I agreed with that because in that case, without that amendment they still have decided in favour in this particular case in terms of the debenture holder. It is to a certain extent confusing because they are dealing with a case that's two years ago and this act has been amended every year.

**MR. CORRIN:** You represent the Mortgage Loans Association of Manitoba. You are talking presumably relative to the status of mortgage lenders in Manitoba.

**MR. CVITKOVITCH:** Correct.

**MR. CORRIN:** We are talking about by and large real property mortgages, are we not?

**MR. CVITKOVITCH:** Correct.

**MR. CORRIN:** Okay. Are you suggesting that the debenture holder gets a preference to the mortgage lender? I just want to be clear, are you suggesting that the bill is deficient because it gives a preference or it fails to address the problem that has been raised in this court case where preference was expressed in favour of the debenture?

**MR. CVITKOVITCH:** Mr. Chairman, a debenture can be a mortgage and a mortgage can be a debenture. It takes certain qualities to make one the other and vice versa, and they are not always there.

**MR. CORRIN:** They are registered in different places.

**MR. CVITKOVITCH:** Mr. Chairman, unfortunately, and I beg to differ with the learned member there, but a debenture can be registered in the Land Titles Office effectively as a mortgage on the fiat of the Registrar General and it is a fairly common practice in terms of taking fixed security that you register your debenture there and under the Personal Property Security Registry. That frankly is another one of the problems that I haven't raised in terms of use of the word mortgage rather than the use of the words mortgage and debenture, in terms of identifying which is which. There is an obvious way around it, or argument, for the lender in terms of if he has registered it in effect as a mortgage he will still be able to use it in that way.

It's just another example as far as I'm concerned, Mr. Chairman, of the confusion that the Law Reform Commission has identified, that the courts of this province and of this country have identified with this kind of legislation.

**MR. CORRIN:** Is it possible that a perfected purchase money security interest would include a debenture?

**MR. CVITKOVITCH:** Certainly it is possible, yes.

**MR. CORRIN:** If we can agree that's true, and we can agree that certain priorities are accorded both real property mortgages and purchase money security interest by the amendments, if we agree with this, is it then not true that if the lender perfects his security by way of registration as expressed in those two subsections as required by the law, if the debenture is registered at the Land Titles Office or at the other registry, at the corporations branch and of course the mortgage we presume would always be registered at the Land Titles Office because otherwise it would vitiated, it's purpose would be vitiated; what is the problem? How can if you can just explain that to me, and my mind is still open at this point, but what is the problem if they have registered? If your lender has registered the document, and I am telling you that I am opposed to this. I am taking the Attorney-General as perhaps the Devil's advocate; I am taking his side, because I just want to see what the problem is. Now what is the problem? If you have registered I will read the legislation that he is proposing to put in the legislation. It says that notwithstanding the . . .

**MR. CHAIRMAN:** Order please. Carry on.

**MR. CORRIN:** It says notwithstanding the provisions of subsection 1 or any other act of the Legislature, whether of special or general application, any mortgage registered in a Land Titles Office prior to the filing of a certificate of judgment, and that is what the employees have to do under The Payment of Wages Act do we agree?

**MR. CVITKOVITCH:** No, I don't agree that's what they have to do under The Payment of Wages Act.

**MR. CORRIN:** Under Bill No. 80, when the amendments are made to The Payment of Wages Act, will it not be necessary that the Department of Labour or whoever is representing the wage earners perfect their lien rights by filing that particular lien right in pursuance of the act? Will they not have to comply and will they not have to file the certificate of judgment in the Land Titles Office? Are you suggesting then that subsection (4) of 7 will be of no purpose?

**MR. CVITKOVITCH:** Well, I believe that's what the Law Reform Commission dealt with and implied in their report, that there are several lien rights, and that's the problem, it is not simplistic. In fairness to the member, I might say that was my initial reaction, too, because we're aware of the procedures and the outlines that are there for mechanics' lien and in terms of protecting your interest and registration. We

think this is something similar until the Act starts to get dissected and you find out that there are many lien rights and there is not a specific requirement that that be registered for a claim to be put forward. It doesn't say that. One would think it would say that, but it doesn't.

**MR. CORRIN:** So you're suggesting that there is some other form of lien right that is not covered by this particular Act. Now, you've conceded that debentures can be registered and that they are probably purchase money security interests, anyway. What are we talking about? The Member for Rossmere, Mr. Schroeder, had a discussion with you relative to loans that had been advanced to persons who were unincorporated, and you talked about problems that might arise; you couldn't express a specific case, but you said that they might arise.

I would note that I am not so concerned about that, simply because I know that in 1975 there were amendments to this Act that would enable directors and officers of corporations to be found liable for payment of wages. So I don't understand, if we had to amend the Act in order to include the directors and the officers, with respect to that sort of liability, how you can perceive the definition of employers being so all-encompassing as to include people of the sort you are talking about.

It seems to me that your problem, frankly, has been addressed by the government. It's a question of policy whether wage earners or mortgage lenders should have certain priorities and it seems to me that mortgage lenders' rights have been protected by this government. Frankly, I don't understand why you are complaining. You should come here and thank the government for the efforts they have made on your behalf. It's quite clear that what they have done is tried to provide the security that was formerly not accorded to lenders, to people you represent. And so I don't understand what it is that is so aggravating about this particular bill. If you can just tell us that. You know, frankly, I haven't heard you make the point yet, and I say that with respect. Well the Attorney-General agrees.

**MR. CHAIRMAN:** Before Mr. Cvitkovitch answers the question, I would remind all members that my understanding of the purpose of this committee is to elicit information from the witnesses, as opposed to debating or attempting to change their views. I recognize that this witness is well able to take care of himself but, on that point, I will leave the answering to Mr. Cvitkovitch.

**MR. CVITKOVITCH:** Mr. Chairman, if I could answer. I might, first of all, say that I believe and I'm not sure whether Mr. Corrin was in the room at the time, perhaps he wasn't. I think, immediately after introducing who I represented, I said that we were in a quandry because the legislation, in one sense, appears to look after the mortgagee but, in other respects and in particular with regard to the whole concept that one of the other member was raising in terms of priority and dealing on a day-to-day basis with the registry system, that it was important for an organization such as ours to make a presentation and to point out to the government

again, as the Law Reform Commission had pointed out, that we have a system of registry here that is being jeopardized by these kind of laws. I don't know of any organization of separated wives who might come forward and be concerned, in terms as a spokesperson, so we are here for that purpose.

I think I have answered a lot of questions that didn't really have to do with that particular position but really, what I am saying is that we are concerned, that's why we are here; for the same reason the Law Reform Commission made their amendments.

**MR. CORRIN:** You indicate that you are concerned about associations of separated wives, Mr. Cvitkovitch, and their not being here. Are you suggesting that, if the government followed your suggestions, that your group would be encouraging the government to put separated wives before mortgage lenders, in terms of security, so that separated wives should have a lien, in preference to mortgage lenders? Would you suggest that to members of the committee?

**MR. CVITKOVITCH:** I'm trying, Mr. Chairman, to direct my questions. My answers, I suppose, not questions. Just to the simple point of the registry system, and who it is or what it is makes no difference, but the people that are dealing in that system everyday, I think, have a responsibility, as responsible citizens of this community, to come forward and say, perhaps as the teachers might in terms of The Public Schools bill, that's not workable. What is wrong with the lender doing the same thing and what is wrong with the lender, in terms of saying it in accordance with what the Law Reform Commission Report has given? Now, I'm not sure whether the members have received a copy of that report, but they may want to consider that because a much deeper and more thorough research has been made by that group than by our association.

**MR. CORRIN:** Can you tell us, Mr. Cvitkovitch, in the simplest possible language let's throw out all the legalese we've acquired in the simplest possible language, why is it not workable? Why is it not workable? In the simplest possible way of expressing it, why is it not workable?

**MR. CVITKOVITCH:** Because the mechanics are not there in the way they should be there, and that requires a great deal of work on the part of those people who are dealing with the mechanical procedures of the registry system.

**MR. CORRIN:** Tell us why the mechanics are deficient. I mean, I appreciate the argument, you have repeated it several times, that there is a deficiency in the mechanics. Tell us what it is, and we will address ourselves to it. I say that with all respect to you.

**MR. CVITKOVITCH:** Mr. Chairman, I again refer Mr. Corrin to the Law Reform Commission Report. It tells you what is wrong with the mechanics. We do not disagree. We have adopted their report and I am endeavouring, in that way, to explain to you. I have, by previous letters to the Attorney-General,

suggested deletions of umpteen sections of that Act to bring it back to where it was in 1975, to give the Department of Labour the right to endeavour to collect, on behalf of an employee, regardless of who he is, to absorb the cost, to fight his cause; but to start from there in terms of legislation that will give him a lien right whether it has priority or not to other people, I don't know. Obviously, I can't be here and argue that they should have priority over the lender or the other people that are in the registration system, that's a matter of philosophy in terms of the government. But in terms of amendment, this Act needs to go back to Square One and be brought forward with a system something like The Mechanics Lien Act, which is now on the verge, I think maybe the Law Reform Commission is going to be recommended to be not dealt with anymore because of the confusions that arise. But you don't have a simple answer because, frankly, you haven't got a simple question.

**MR. CORRIN:** Can we agree on this, anyway, that the government has made an effort to address that problem.

**MR. CHAIRMAN:** The Minister of Agriculture, on a point of order.

**HON. JAMES E. DOWNEY (Arthur):** Mr. Chairman, on a point of order. I don't think it's a matter of the member of the committee asking whether or not we're here for a matter of agreement; it's to solicit information from the individual who has presented the brief, and I think he should be brought to order of this committee.

**MR. CHAIRMAN:** The point of order is well taken in that I have already called to the attention of the committee that that was our purpose.  
(Interjections) Order please.  
Mr. Cowan.

**MR. JAY COWAN (Churchill):** Thank you, Mr. Chairperson. First, I'd thank him for coming out on a Saturday morning and spending a fair amount of time here protecting the interests of his clients. I would suggest that that is entirely what he is doing and when he brings before us the argument of the sanctity of the registered document, one has to view that argument and consider that argument with an open mind, and I am prepared to do that.

I would ask the gentleman if he believes that the wage earner may enjoy a sanctity of the earned wage, also, and that what we are talking about in this regard is a philosophical question as to which sanctity should take preference, that of the registered document or that of the earned wage. I'm putting that question to him without regard to the legal arguments, but on a philosophical basis only.

**MR. CVITKOVITCH:** Well, I guess I'd have to bypass the question on a philosophical basis, because I am here for the association and I don't really have a position or instruction on that point from them.

**MR. COWAN:** Mr. Cvitkovitch, in his presentation, has indicated that the Act needs clarification, and I think he has convinced myself of that argument. I

don't believe that it necessarily means that it was bad legislation to begin with, nor do I believe that it means that it's inappropriate legislation now. I think it just means that it's legislation, like all legislation, which must be changed to meet changing conditions, must be tested in the courts and must, from time to time, undergo a process of clarification. That's why we have the mechanism to amend legislation.

I would ask him if it could be clarified to better protect wages. He is suggesting that it has to be clarified to better protect the registry system; I would ask him if, on the other hand, it might not be possible to clarify the legislation in order to better protect the wages and take into consideration some of the problems that have been mentioned in regard spouse maintenance, etc., but still uphold the sanctity of the wages accruing to a worker for work that worker has performed?

**MR. CVITKOVITCH:** Mr. Chairman, I think I have the same problem with that one, really, and I don't mean to try to beg the question. I think anything is possible, someone can come before you and suggest a more clear-cut way. Obviously, the way it's been done hasn't been adequate since 1975, or there wouldn't have been these many decisions. I think it has been done piecemeal. It has got to the stage where it has, and the Law Reform Commission has indicated, I believe, on instruction from the Attorney-General before, that this is one of the pieces of legislation, in conjunction with other lien rights; I think their Research Officer said to me that there were 92 lien rights, or something, somewhere in the legislation and they were trying to come to grips with all those.

So I have relied, Mr. Chairman, fairly heavily on the Law Reform Commission Report, in terms of trying to show that although I represent a self-interest group, the mechanics, the technicalities, the technical things are not the way they should be, and they haven't been found that way since 1975.

**MR. COWAN:** Mr. Cvitkovitch has mentioned that he believes one of the problems with this particular legislation is that amendments have been added in an ad hoc or piecemeal matter. Would this not be just a continuation of that process, this particular amendment that we have before us, if we are in fact dealing with 92 different lien situations and this only directs itself to one particular situation.

**MR. CVITKOVITCH:** Well, actually it directs itself to several situations. I dealt with one section mainly. I started my presentation by saying that we would urge the government to go ahead with what they had passed last year, in terms of an immediate situation that will regain our philosophy, in terms of the registry system and the priority of registered documents, giving notice to the other person that you have an interest. And that is really what I guess I'm saying in terms of this legislation. Okay, we would be able to live with it but we certainly will be making presentations to the Law Reform Commission in terms of other things that should be done.

**MR. COWAN:** Now that Mr. Cvitkovitch has brought the argument around again to a philosophical

argument, and he did in his answer, I would just suggest that it is a philosophical question and that that is the question to which we are addressing ourselves. But I don't want to belabour that point because we will do that in the Chamber.

**MR. CVITKOVITCH:** Mr. Chairman, if I could just answer that, in terms of the Law Reform Commission report, their report goes on for 25 pages. They say they are not addressing themselves to the philosophical matter. I have tried to keep on the same basis as them.

**MR. COWAN:** Without attempting to belabour the point or argue the point, Mr. Cvitkovitch did say he was here to regain the philosophy of the sanctity of the Registry, so it is a philosophical question. I don't want to get into that because I think we realize that we are different sides of the question and there are other appropriate places I'd rather argue that with the Attorney-General. But I would like some more information and the electorate, the Member for Rossmore says, and he is absolutely correct in this regard.

We know that the Act needs clarification. We can assume that this is a piecemeal clarification of that although it, in the philosophical sense, does meet with your clients approval. I would like to ask Mr. Cvitkovitch to think back to an example he used earlier in which a bookkeeper may have been working at a company that he knew was in difficult times and that had not been taking his or her salary from that company for a couple of months in order to help see that company, or attempt to help see that company, through what were difficult economic times. The suggestion of course is that the company, and companies from time to time, as do individuals, may experience temporary financial difficulties and this person, as well as other employees in that company, may not draw their wages or their full wages for a period of time in order to see that company through. I would ask Mr. Cvitkovitch if he believes that this the case because they know that under the legislation they will have recourse to getting those wages if the company should go bankrupt; if that would not be a consideration for such a bookkeeper that would encourage him to take such action?

**MR. CVITKOVITCH:** I don't know whether he would be aware of it. That is a two-sided sword because I guess somebody could keep a company going along and have the employees come in every day for an extended period of time and then say well we have X number of properties mortgaged, you will get paid out of those anyway whether you are here today or tomorrow; eventually you'll get paid. That wouldn't be the proper thing to do either.

I used that example in terms of what I understood were some matters on the verge of litigation relating to mechanics liens where the subcontractors who worked on certain houses who in terms of talking about that wage earner that some of the members are talking about all the time how do you rate between those two wage earners? We are talking about a rating system, the registry system, we are not talking about first or second, and in terms of

philosophy, I guess my philosophy is of the system, not in terms of who should be first.

**MR. COWAN:** Yes, I'll attempt to be brief because I do realize that the time is proceeding very quickly and we have a lot of business to deal with today and I know Mr. Cvitkovitch probably wants to get out to the lake, as he had mentioned earlier. I would just ask him if he can confirm that his clients lend money on, and it is sometimes termed risk capital, with the knowledge that they may in fact lose their capital because of a bankruptcy, because of a business experiencing economic difficulties from which it cannot extract itself?

**MR. CVITKOVITCH:** I suppose any loan that you make, whether you are a company or an individual, there is a risk. Some of them have more risk than others. I have pointed out though that in terms of the legislation that, for example, binds the banks and the trust companies and the life companies in terms of having equity in the property, and that legislation is put there by the federal legislators on the basis of protecting the policy holders and the depositors, that there should be a certain equity. And if that equity isn't there because somebody else has a prior claim and that's what I am saying in terms of the loan. If we know that the employer's equity is down because he has got a payroll of 200,000, then certainly if we advance him on that 200,000 we are taking a risk. Our other alternative is to say, we may not be able to fund that, that's a little bit risky; we have our depositors to answer to and we are going to be in the position where we will cut the loan off at this amount; if you want to raise free enterprise capital you might apply to the Federal Development Bank, or the provincial government sources or whatever. That's the danger. To my knowledge it's not a requirement or a danger in any other province where these institutions are lending.

**MR. COWAN:** Perhaps Mr. Cvitkovitch can inform us as to whether or not he knows of any loan that was denied because of The Payment of Wages Act being taken into consideration by the lender.

**MR. CVITKOVITCH:** We haven't conducted any survey on that, Mr. Chairman, so I don't know of any situation.

**MR. COWAN:** I would just ask him just a few very specific questions; if he knows of any instance where a lender was caused to go bankrupt or caused to go out of business because of coming under the provisions of The Payment of Wages Act as it now stands.

**MR. CVITKOVITCH:** In terms of lender members of our association, I don't know of any. In terms of individual lenders or mortgagees, whether they have lost something that may have been the case, I don't know.

**MR. COWAN:** I would ask Mr. Cvitkovitch, Mr. Chairperson, to elaborate just briefly on a comment he made before in response to a question from the Attorney-General and that was when he said that he

believes there is a bias in the Act now for the wage earner. I would seek some clarification and ask him if he believes that the Act before the amendments that have been put before us now had more or less of a bias towards the wage earner in regards to the wage earner being able to collect wages?

**MR. CVITKOVITCH:** I think probably it's the same, with the exception maybe of the purchase money interest, that might be something, but I don't even see that, as I mentioned earlier, with a ten day schedule I don't see that workable. I don't see that. That's a red herring in terms of securing the individual to advance his money. I recently had a client who refinanced his company with another bank because he changed banks; it's a free world. When he initially put that debenture security on, that was for purchase money security. When he was refinanced, can you say that is purchase money security? Is the second lender any or more less entitled than the first lender? These things to my way of thinking have to be thought through, have to be studied and this is what the Law Reform Commission recommended. In terms of advance we seem to be holding our ground on the basis of what the courts of the country have been saying.

**MR. COWAN:** You say it's the same because of the court decision. I would suppose the one that you mentioned in regard to the Federal Business Development Bank.

**MR. CVITKOVITCH:** I think that seemed to clarify that in certain circumstances, prior registered interests, the interests of individuals, cannot be taken away from them without some notification being given to them.

**MR. COWAN:** In fact what you are saying, Mr. Cvitkovitch is that you don't see any advantages in this particular set of amendments in regard to your clients.

**MR. CVITKOVITCH:** It may have the advantage, Mr. Chairman, of the fact that it is now in the Act and somebody doesn't have to say, there is case so and so that does away with it in terms of the wage earner or the lender looking at the legislation. It may clarify that in terms of they would like at the Act and not be required to have a lawyer find out what is the latest interpretation. To that extent, I think, it perhaps is valuable.

**MR. COWAN:** But it would be of no substance otherwise?

**MR. CVITKOVITCH:** I suppose that may be up to a court to decide, again. I don't know.

**MR. COWAN:** I would just like to thank Mr. Cvitkovitch for his time and tell him that I do believe myself on the philosophical question that this particular set of amendments will act to the detriment of the wage earner and will act to the benefit of his clients, and for that he should take some solace. Other than that, I do thank him for the time he has expended in trying to convince us of his clients' particular philosophical system.

**MR. CHAIRMAN:** Mr. Corrin.

**MR. CORRIN:** Mr. Cvitkovitch, just in a few brief questions and then I'll in conclusion. Could you tell us what percentage of your clients' loans are insured under CMHC or MICC?

**MR. CVITKOVITCH:** No we don't have that statistic, Mr. Chairman.

**MR. CORRIN:** Could you tell us whether or not it would be true that any loans, for instance with respect to housing, would be eligible for CMHC, MICC mortgage insurance?

**MR. CVITKOVITCH:** Any loans would be eligible?

**MR. CORRIN:** I will issue a caveat; any loans that were within the guidelines. In other words, any loans that weren't of a very high risk nature would be eligible for mortgage lenders' insurance.

**MR. CVITKOVITCH:** I suppose any loan that would be eligible, would be eligible, I guess. Yes, I would have to agree with that.

**MR. CORRIN:** It is my understanding that the guidelines are drawn on the basis of risk and that risks which are deemed by the insurers to be of low to moderate risk, things such as dwelling houses and residences, usually are eligible for either MICC or CHMC insurance coverage. And on that basis I was wondering which category of loans, we were you are really worried about; your clients are really worried out, just pointing out that the low to moderate risk category would be covered by insurance anyway so that there is no problem. I think we can agree and I would ask you whether we can agree that there would be no problem with respect to any loans that were secured by insurance. Is that not true?

**MR. CVITKOVITCH:** No, that's not true. Again, Mr. Chairman, in terms of insurance, and I mentioned previously, and the list that went around indicated that our association also has as associate members, Innsmore which is a mortgage insurance company, MICC, and has as observers CMCH and MHRC. These insurers are just the same as the people who insure your house. If somebody burns it down or they feel they have a claim against that party, they will pay you the money, but then they will go after whatever is left and salvage that or obtain satisfaction from that third party, and in those terms this association would have to say that protecting the insurer is still part of that because they become the lender. They take over the loan; the loan doesn't just disappear when it goes to the insurance company. CMHC, the federal government agency, has been in considerable financial difficulty in the last year or so because of a large load of claims.

That relates back again to our members and to your wage earner mortgagors in terms of the mortgage insurance fee. The learned member is a member of our profession and he would be dealing in mortgage loans and he would be aware of the fact that recently, within the last six to eight months, the cost of insuring of the loan, which is a cost paid by



the mortgagor, has gone up. Anything then that increases the load of claims on the insurer is going to have ramifications on all of us mortgagors. It is not enough to say that there is insurance out there that will look after you.

It also isn't necessarily true that there is insurance because in a lot of small business situations a man may use his home as collateral in terms of getting the capital he needs, or he may use his farm as collateral in terms of getting the capital he needs, and he may not go the insured or the high ratio route at all.

**MR. CORRIN:** I am moved to ask you, in response to your remarks Mr. Cvitkovitch whether we wouldn't agree that the interests of your associate members, the ones you referred to as your insurers, and the primary members, who are essentially in the mortgage lending business, do not to some extent conflict in this regard. In other words, it's only the mortgage insurer then that is put to any prejudice as a result of a default. In the circumstances we have been discussing it seems to me that the lender, if it carries insurance is adequately protected. Would you not agree?

**MR. CVITKOVITCH:** Mr. Chairman, the lender, in a situation where there is a default, loses, whether the property is insured or not, in terms of the cost. I am not saying that he goes bankrupt, but what he does is, obviously his overhead increases and his processing fee on your mortgage application the next time around may increase because he absorbs that and passes it on to the people who are able to maintain their mortgages. It isn't a disinterest. They are not interested, that is the insurer is interested in this Act because it may question the security that he has granted a policy on, but he may not be concerned about an annual statement of the mortgage balance, and if we are making a presentation on that he perhaps could care less. But on this we have the same interest and it would just be the same as your insurer if your house burned down, I don't think you would walk away with it in a disinterested way just because you received your money. You would be both after the arsonist if there was one.

**MR. CORRIN:** But it seems to me, and the question is whether or not the insurer isn't adequately protected by virtue of the fact that the insurer sets the rates, and those rates are established as a result of actuarial studies and tables. So really, with respect to the insured properties we have been discussing, is it then not correct that nobody sustains a loss, the consumer simply pays slightly more, if that would be the result of this legislation, the consumer would have to pay slightly more by way of premium, because it is the mortgagor that pays the premium and not the mortgagee, mortgage lender. So the consumer pays a slightly higher premium to protect the rights of all wage earners and presumably most mortgage borrowers are also wage earners, so it seems to me that it is quite consistent and logical to argue that nobody, with respect to insured premises we can agree that no is prejudiced, nobody is put at a disadvantage. The mortgage insurer sets the rate based on actuarial

tables, passes that on through the lender, the mortgage lender to the consumer.

So really what you are saying is unless you are trying to tell me that you think mortgage lenders, working people who are taking loans on their homes, should be concerned about paying an eighth of a percent or whatever higher rates as a result of this legislation you are telling us that everything would be protected from the mortgage insurer's point of view and the mortgage lender is unaffected in the mortgage insured situation?

**MR. CHAIRMAN:** The Member for River Heights on a point of order.

**MR. GARY FILMON:** Mr. Chairman, with respect, I think that almost everything that has been discussed with Mr. Cvitkovitch in the past hour at least has been something that should be brought out in the debate here, and I don't think there is any special purpose for having Mr. Cvitkovitch agree or disagree with statements of the Committee. I don't think that it has added anything to the information that he can bring to us on the Bill, and I, with respect, suggest that that should be covered in our debate and Mr. Cvitkovitch would be allowed to go and enjoy the lake for the weekend as we all would like to.

**MR. CHAIRMAN:** I have already called that to the attention of the Committee, and I would remind the witness that he may answer all, or none, or any of the questions that are put to him.

Mr. Cvitkovitch.

**MR. CVITKOVITCH:** Well, I would just say, Mr. Chairman, that I don't agree with what Mr. Corrin was saying in terms of the insurer being the satisfying thing, that my own personal philosophy doesn't think along those lines, and I think that really is irrelevant in terms of the issues.

**MR. CORRIN:** It is a matter of business practice not philosophy.

**MR. CHAIRMAN:** There being no further questions, on behalf of the Committee, Mr. Cvitkovitch, I would like to thank you for your patience and your forthrightness in answering questions of the Committee. I trust you will enjoy the rest of the weekend at the lake with your family.

**MR. CVITKOVITCH:** I am going to be jacking up a cottage and I am not sure whether one corner is up and waiting for me at the other.

Thanks, Mr. Chairman.

**MR. CHAIRMAN:** I look now to the Committee for guidance. We have a number of bills which have to be considered. What is your wish?

The Honourable Attorney-General.

**HON. GERALD W. J. MERCIER (Osborne):** Mr. Chairman, my understanding, on three bills that were passed last night, I believe Bills 78, 77, and 80, that a number of people had indicated to the Clerk that they wished to appear before the Committee and make representations and the Clerk was unable to contact them last night, so I would ask the Committee if they would agree that these bills be

held over to perhaps Monday night, if the Committee can meet then, and the people can be contacted to appear on Monday night and make representations on those three bills and we not deal with them today.

**MR. CHAIRMAN:** Mr. Jenkins.

**MR. WILLIAM JENKINS (Logan):** Yes, Mr. Chairman, I would agree with the Attorney-General, because I have the list, I guess the same one that the Attorney-General has, that there are . . .

**MR. MERCIER:** I don't have that list. I don't know who they are.

**MR. JENKINS:** Fine.

**MR. CHAIRMAN:** So on that basis we will put aside Bills 77, 78 and 80, and consider the others

Bill 32, An Act to amend The Real Estate Brokers Act. Page by page?

Mr. Corrin.

### BILL NO. 32

### THE REAL ESTATE BROKERS ACT

**MR. CORRIN:** Yes, this was one of the Acts where we were waiting for the Minister's elaboration and response with respect to specific provisions, so if we could do the first page, it is Section 4 of the Bill, 12(3) of the Act, that we wish to discuss.

**MR. CHAIRMAN:** Page 1 pass; Page 2 Mr. Corrin.

**MR. CORRIN:** Yes, dealing with the first Clause (4), Mr. Chairman. There was a considerable debate during Second Reading that ranged on both sides of the House, I think, with respect to whether or not the provision in 12(3) was necessary or fair.

I think the first question we would have is simply why does the government regard the clause as being necessary? Why should a notice be forwarded from the broker to the registrar, giving the reason for the termination of the sales person's appointment? Why do we find it necessary to implement that legislation?

**MR. CHAIRMAN:** Mr. Jorgenson.

**HON. WARNER JORGENSEN (Morris):** Mr. Chairman, that provision has always been in the Act with respect to salesmen. All we are doing is broadening it to include authorized officials, so that they come under the same terms as the salesmen do.

I might add that the registrar is not interested in personal matters or anything of that nature. He is interested in only things that may have a prejudicial consequence against the public, and he wants to have a record of the reasons why that person was dismissed in the event that there is another reapplication and he has some knowledge of his past record.

**MR. CORRIN:** Just as a matter of interest, it seems to me that the person can continue to work as a sales person anyway, or as an official anyway, perhaps I am wrong, a lot of this has to do with the

remarks made by the Member for Inkster, who is not here this morning.

**MR. JORGENSEN:** I might add that during closing Second Reading of this Bill I explained this provision to the Member for Inkster in the House.

**MR. CORRIN:** Did that explanation include an undertaking that the notice that is required to be provided to the Registrar should also be provided to the dismissed employee or official?

**MR. JORGENSEN:** That question wasn't raised, Mr. Chairman.

**MR. CORRIN:** I didn't hear the answer on that.

**MR. JORGENSEN:** I say that particular point was not raised as far as I know.

**MR. CORRIN:** It seems to me that that is the nub of the matter. Is there any reason why we couldn't accord the employee who has been dismissed the same respect as we are according the registrar and provide that the notice shall be made public to him or her in order that such person can object if the reasons given that are put on record with the registrar's office are incorrect?

We are concerned that a person can be dismissed on occasion by a real estate broker without good reason. It is possible that a broker might misrepresent the circumstances in which a person were dismissed from his employ, and if that happened we object to the fact that that information would be put on that person's record at the registrar's office without that person knowing it, and we are concerned that later on, for instance, if that person applied to become a broker himself that that could have a very prejudicial effect. It seems to me that if you are going to protect the right of all the people that it is important that the person be given an opportunity to defend his name. I am sure from time to time people are terminated in real estate without good reason.

**MR. JORGENSEN:** Mr. Chairman, I am advised that that opportunity is afforded to the person who has been dismissed. He is given an opportunity to appear before the registrar upon notice of termination.

**MR. CORRIN:** Just as a matter of curiosity. Where in The Real Estate Brokers Act can we find that provision, Mr. Chairman?

**MR. JORGENSEN:** Well, it may not be in the Act, but that is a general practice that has been followed in the past because, as I said earlier, this provision has applied to salesmen for, I suppose, I don't know how many years. It has applied for a number of years, and there seems to have been no problems up to this point.

**MR. CORRIN:** We have made our position clear, Mr. Chairman. We feel that the Act should require that the broker's information be provided to the affected dismissed salesperson or official, and it is a matter of government policy if the government doesn't wish to do that as a matter of legislation, but would rely on the office of the registrar and staff of that office.

**MR. JORGENSEN:** Mr. Chairman, the Act, as it applied to salesmen, and that provision has applied to them for a number of years, has seemed to work satisfactorily without any difficulties. There would appear to be no good reason to now have it changed in the Act.

**MR. CORRIN:** The only comment I want to make, and it is my experience that brokers have a rather great advantage and a lot of leverage with respect to the people they employ. As I am sure most of us are aware, it is only brokers who are actually allowed to go about the business of listing and selling homes. Most people are sales people working for a specific broker, a person who individually is licenced to be employed in that enterprise. So it seems to me, knowing that, Mr. Chairman, and knowing that the broker is in a very privileged position in society, is in a very advantaged situation, vis-a-vis particularly people who work under him, it seems to me that it is very important that we make sure the little guys are looked after too. I am not suggesting that the registrar doesn't do his job, I am sure he does his best, but it seems to me that we could easily protect those little guys by enshrining the need for notice to go to them, because a lot of those people, of course, are in the business because they hope one day to qualify as a broker so that they too can go forward and expand and become an employer and self-employed as an employer, as opposed to just an employee.

I think if we are going to protect every person's right to be employed in small business, it is important that we make sure that all these people are accorded these sorts of basic rights.

**MR. JORGENSEN:** I don't know whether Mr. Corrin is suggesting that an authorized official of a company is a little guy, because that is all this section applies to. It does not apply to those who have been registered as salesman in the past, because that has been the provision in the past.

**MR. CORRIN:** Yes, but we want it to go further.

**MR. CHAIRMAN:** Mr. Schroeder.

**MR. SCHROEDER:** Yes, Mr. Chairman. My understanding from a brief conversation I just had is that an authorized official is an official who is one of the individuals named in Clause 2(n) of the Act, so that what we are dealing with here are either the president, vice-president, secretary, or treasurer, or managing director, or other persons acting in a capacity similar to that, and also that at present, when a registered salesman is dismissed or terminated or quits, reason is provided in each instance to the registrar under The Real Estate Brokers Act and not to the employee. That is correct.

I am just wondering whether the Minister could expand on that. I listened to Mr. Corrin and I think that this amendment makes sense. If we are going to have notice for the salesmen, then there should be no reason why you shouldn't have notice to the . . .

**MR. JORGENSEN:** I don't know how could further expand on that. I think that the . . .

**MR. SCHROEDER:** What I am looking for, Mr. Chairman, is an explanation as to why that notice which I understand to be a private notice that is, I can't go up there and demand of the Securities Commission that they provide me as a member of the public with the reasons for somebody having been dismissed, so they are private in that sense. But what I don't particularly like about it is if I were either a salesman or an authorized official who had been terminated by an employer, I wouldn't be very impressed with the idea that a government commission has information about me which I had no notice of and no right to contest. That is, it just goes into the file there and it may be at some stage used against me without my having any knowledge of the fact that it is there. It would seem to me that if an employer is going to say about an employee that that individual is unfit for registration I would imagine if he is unfit for registration the Registrar would call him in and give him a new test or something. But if there was some other thing, a personality thing, I think the person terminated should have notice.

**MR. JORGENSEN:** Mr. Chairman, I am advised that if the official intends to remain in the business, then he is automatically called in and the contents of that file are discussed with him. If he intends to go out of the file then it just simply becomes dead, if he intends to go out of that business. But in relation to that point there is no I can think of no reason why as a matter of policy we can't direct the Registrar to make sure that everyone is notified. That can be done without any provision in the act. There is no great problem there that I see.

**MR. SCHROEDER:** I would just then encourage the Minister to make that direction to the Securities Commission.

**MR. CHAIRMAN:** 4 pass Mr. Jenkins.

**MR. JENKINS:** I believe we have a motion here or an amendment. Somebody has . . .

**MR. CHAIRMAN:** It's on Page 1. We have to go back.

**MR. JENKINS:** I think we should go back to Page 1 and deal with this amendment.

**MR. CHAIRMAN:** The Member for River Heights.

**MR. FILMON:** Mr. Chairman, we have an amendment which was to have been considered on Page 1. If we can go back to that I move that the proposed clause 12(2)(b) of The Real Estate Brokers Act, as set out in section 3 of Bill No. 32, be struck out and the following clause substituted therefor:

(b)in the residential address of the broker, if an individual, or of a member or authorized official of the broker, if a partnership, or of an authorized official of the broker if a company, as the case may be, or of a salesman registered in the employ of the broker; or

**MR. CHAIRMAN:** Mr. Jenkins.

**MR. JENKINS:** Could we have a brief explanation?

**MR. JORGENSON:** The explanation is as follows. Section 3 of this bill repeals and then re-enacts clause 12(2)(b) of the Act. By sheer chance they have just noticed a defect in the clause, which there had been from the beginning in 1964. It covers a residential address of the partners, if a partnership is an authorized official of a company and all the brokers salesmen, but it simply omits the most obvious case of all, the broker himself if he is an individual.

**MR. CHAIRMAN:** (b) pass; 3 pass; Page 1 pass as amended; Page 2 pass; Preamble pass; Title pass; Bill be reported.

### BILL NO. 59 AN ACT TO AMEND THE FATALITY INQUIRIES ACT

**MR. CHAIRMAN:** Bill No. 59, An Act to amend The Fatality Inquiries Act. Page 1.  
Mr. Corrin.

**MR. CORRIN:** Yes, I suppose the first thing to do is to ask the Attorney-General whether he has had an opportunity to review the MARL brief and the remarks made by Mr. Walsh on behalf of the MARL group. It would seem to us that they have made a very important presentation and certainly we should know the Attorney-General's position with respect to their recommendations.

**MR. MERCIER:** Well Mr. Chairman, if I understand the brief it was with respect to a particular section. Mr. Chairman, my suggestion is that if the Member for Wellington wishes to raise points covered in the brief, that he raise them as we deal with the appropriate section.

**MR. CORRIN:** Okay, the first point they made, Mr. Chairman, through you to the Minister . . .

**MR. MERCIER:** What section are we on?

**MR. CORRIN:** Is that a point of order, I can't hear you. I'm sorry, I thought the Attorney-General raised a point of order.

**MR. CHAIRMAN:** He is asking what section you are referring to.

**MR. CORRIN:** Okay, Section 1 of the bill, Clause 1 of the bill and then (9)(3). The MARL group talked about the addition of a provision (Interjection) That's what I am talking about, Section 1 of the bill.

**MR. CHAIRMAN:** The section that you are referring to is in Section 2.

**MR. CORRIN:** I don't know how you can say that, (9)(3) is clearly under 1, Mr. Chairman. 2 deals with section 14, not (9)(3).

**MR. JORGENSON:** You must have a different bill.

**MR. CORRIN:** Excuse me, I have the wrong bill in front of me, we have two bills. I apologize, we had

the private members' bill that we introduced some months back which has similar sections. I apologize, Mr. Chairman. I make lots of mistakes, Warren, and I have always been the first to acknowledge it. One of the mistakes I made is . . . Dealing with this, the MARL group suggested, as we did in our private bill No. 69, that there should be inquests into cases where people die as a result of acts of peace officers, so that when a policeman is involved . . .

**MR. CHAIRMAN:** Order, order. As I understand it we are on Section 1. Do you have a concern with Section 1?

**MR. CORRIN:** I can't hear, I am sorry.

**MR. CHAIRMAN:** Section 1.

**MR. CORRIN:** Oh yes, yes, go ahead I'm sorry I thought we did it.

**MR. CHAIRMAN:** Section 1 pass; Section 2 Mr. Corrin.

**MR. CORRIN:** I don't want to be repetitive, but anyway the MARL group asked as we did that there be provision for mandatory inquests in the cases of deaths caused by policemen, and we would want to know whether the Attorney-General is willing to make an amendment to enable that provision to be included in the section.

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** Mr. Chairman, in principle I agree that wherever a death is caused by an act of a policeman there should be an inquest. The problem may arise where, as a result of a death of a person caused by an act of a policeman, and the policeman is charged with an offence, that would be a situation where obviously you certainly couldn't have the inquest at least until after the charges were disposed of. But in principle it certainly would be the policy of my department, other than that exception, to require that there be an inquest into a death caused by an act of a policeman.

**MR. CORRIN:** If my recollection memory is correct, Mr. Chairman, there is current provision in The Fatality Inquiries Act wherein it is not possible for an inquest to proceed if a charge has been laid with respect to that sort of matter. I thought that it was necessary that the inquest, as the Act now stands, be deferred until the charges have been dealt with. I believe that's in Section 21 of the act, and I believe if that's the case that the situation which the Minister refers to is already covered by the legislation. He is speaking to Legislative counsel and if that's confirmed would he not agree that's not a matter for grave concern today?

**MR. MERCIER:** Mr. Chairman, that's correct that we have an amendment to the existing provision contained in this bill which would allow a Crown Attorney to stay a proceeding.

**MR. CORRIN:** I just want to make the point that not only is there an amendment in this bill that will allow the Minister to stay the proceeding, but formerly it

was mandatory, it was imperative that the proceedings be stayed, and we don't want to debate 21(1) at this point, but it's peripheral, I think, to this discussion. This was the root of the MARL presentation and our presentation in second reading, that it is simply unfair to make discretionary without at least recourse to the courts what formerly was a protection accorded by statute. Formerly, an accused person knew as a result of the provision in section 21(1) that the inquest couldn't take place until the trial had been proceeded with.

Frankly, we were moved to believe that should be a matter of judicial discretion, so our amendments suggested that an application be made to the court because we became aware as a result of certain cases, notably the Enns case, that there were certain situations where it was unfair to the accused to force them to go to their trial first. What the Attorney-General is doing is he is saying that only himself and his department will decide when proceedings are to be stayed, pending the hearing and trial of a charge. We are very concerned about this, Mr. Chairman.

It seems to us, without going into it, that it's particularly important that there be inquests into deaths involving police officers simply because those

it's usually better before you lay a charge against a police officer, it's usually better to have an inquest in order that the Attorney-General can determine what happened. I think most of us do presume that normally police officers discharge their duties responsibly, so I think it would be much more preferable, rather than going off half-cocked, that the Attorney-General be scrupulous in assessing and evaluating all the evidence that might be adduced before a court hearing such a charge beforehand.

This is the one instance where I think the court should be moved, under our amendment, to allow the inquest to proceed, but I don't think that the charge should be brought. I think the Attorney-General should be scrupulous from both points of view; law enforcement agent and chief protector of the public.

I think that the Attorney-General should want to be assured that there will be good grounds for a homicide prosecution against a police officer before he starts, and the inquest is the one way of providing that assurance. This is, I think, what MARL said. Mr. Walsh said, on behalf of MARL, sort of even-handed, equal-balanced justice to all.

I wonder how the Attorney-General can reconcile his amendment if the question of whether inquests will take place with respect to police-caused fatalities is purely discretionary and if the Attorney-General is moved to act more as a prosecutor than a public protector, as some Attorney-Generals may, I am not suggesting this one does, although Mr. Walsh made the point in the Enns case that he felt that was what was happening, he felt that the failure to call the inquest and the stonewalling about it was tantamount to the denial of his client's rights. I want to say that the Winnipeg Free Press said the same thing two days ago in their editorial, dealing with a whole host of criticisms they had.

It is obviously of some concern to a lot of people, so we are wondering why, in view of the fact that there is a good cross-section of opinion in this regard that all seems to flow in the same direction, why the Attorney-General feels it so imperative to present the legislation as he has?

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** Mr. Chairman, we are on Section 2. I take it the position of the Member for Wellington is suggestive of an amendment that would require a mandatory inquest into the death of a person caused by an act of a policeman. I have indicated my position on that by indicating it would be the policy of the department to require an inquest into those situations. There may well be. I have referred to the exception where there is sufficient evidence to justify the laying of charges against a policeman.

The difficulty with the Member for Wellington's suggestion that in every case there be an inquest prior to the laying of charges rules out a case where there may very well be sufficient evidence to justify the laying of charges without holding an inquest, and it would be inappropriate in a case like that to hold an inquest, where there was in fact sufficient evidence to proceed with charges.

**MR. CORRIN:** The problem with that, Mr. Chairman, is it doesn't address the situation where the police want to make their position known and feel it is important and are more than willing and quite forthcoming in this respect, where they feel it is their right to have their name defended, and the best way they can do it is by coming forward at a non-prosecutorial style inquest and under oath give their testimony, their side of the story; not when they are under the gun, but simply lay it on the line and have the officers who were responsible for the fatality tell their side of it. Then the Attorney-General can decide whether he wants to proceed or the judge can decide whether the allegations as they are, are rubbish.

**MR. MERCIER:** Mr. Chairman, the Member for Wellington is suggesting that a special category of persons in society, namely, policemen, be given the right to have an inquest held before any charges be laid against them so that they can explain their actions. Only policemen would have this right in society, according to the Member for Wellington.

I suggest, Mr. Chairman, that you have to treat them the same way you treat anybody else, and if the Crown has sufficient evidence to proceed with charges, then you proceed with charges, period, and policemen shouldn't be given any special favoured position.

**MR. CORRIN:** Mr. Chairman, in our society in peacetime there is only one class of citizens who are allowed publicly to carry arms, loaded revolvers, etc., no other citizen in this city can drive around with a shotgun loaded and mounted in the front seat of a vehicle; nobody else can drive around with a loaded revolver on his hip; and no one else in the course of his duties is allowed, by legislation, to kill somebody. There is only one person in our society that in the course of discharging his responsibilities can kill and that is the police officer.

So for the Attorney-General to suggest when on the one hand society says, yes, you have this grave responsibility, you have virtually been conferred a God-like decision, the decision whether to use a firearm and wound or kill somebody; then to suggest that on the other hand that person shouldn't be

given any special privileges, even though they have that tremendous burden on their shoulders, and it is a burden, Mr. Chairman, and the Attorney-General should be the first to recognize that.

The circumstances when a police officer uses a firearm are always of grave consequence to society. We all know that the police in our province have established guidelines for the use of firearms. They believe that those guidelines protect the public . . .

**MR. CHAIRMAN:** The hour being 12:30, I leave the Chair to return at 2:00 p.m.