Fourth Session - Thirty-Sixth Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Law Amendments

Chairperson
Mr. Jack Penner
Constituency of Emerson

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Sixth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, June 11, 1998

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Jack Penner (Emerson)

VICE-CHAIRPERSON – Peter Dyck (Pembina)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee:

Hon. Messrs. Enns, Radcliffe, Toews

Messrs. Dewar, Dyck, Faurschou, Helwer, Martindale, Penner, Struthers, Ms. Wowchuk

APPEARING:

Ms. MaryAnn Mihychuk, MLA for St. James
Ms. Marianne Cerilli, MLA for Radisson

WITNESSES:

Bill 37–The Farm Machinery and Equipment and Consequential Amendments Act

Mr. John Schmeiser, Canada West Equipment Dealers Association
Mr. Don Dewar, President, Keystone Agricultural Producers
Mr. Scott MacDonald, Manitoba Wholesale Implements Association

Bill 41–The Life Leases and Consequential Amendments Act

Mr. Derek Kindrat, Westman Lions Manor Inc.
Mr. Louis Tetreault, Private Citizen

WRITTEN SUBMISSIONS:

Bill 37–The Farm Machinery and Equipment and Consequential Amendments Act

Mr. Glenn Dickson, Project Manager, UGG

MATTERS UNDER DISCUSSION:

Bill 19–The Public Trustee Amendment and Consequential Amendments Act
Bill 22–The Veterinary Services Amendment Act
Bill 24–The Crop Insurance Amendment Act
Bill 37–The Farm Machinery and Equipment and Consequential Amendments Act
Bill 41–The Life Leases and Consequential Amendments Act
Bill 44–The Statute Law Amendment Act, 1998

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Mr. Chairperson: Order, please. Will the Standing Committee on Law Amendments please come to order.

This morning the Standing Committee on Law Amendments will be considering the following bills: Bill 19, The Public Trustee Amendment and Consequential Amendments Act; Bill 22, The Veterinary Services Amendment Act; Bill 24, The Crop Insurance Amendment Act; Bill 37, The Farm Machinery and Equipment and Consequential Amendments Act; Bill 41, The Life Leases and Consequential Amendments Act; Bill 44, The Statute Law Amendment Act, 1998.

To date, we have had the following persons registered to speak on Bills 37 and 41, and there might be others. If there are others in the crowd that would want to make presentations, would you please notify the Clerk's office in the back of the room and make sure your name is on the list? We will be asking later on whether there are any further additions. In addition, if there are any people making presentations who wish their presentation to be photocopied, we can photocopy them.

Now the list of names for Bill 37 that wish to appear before the committee is: Don Dewar, President, Keystone Agricultural Producers; John Schmeiser,

Canada West Equipment Dealers Association; Scott MacDonald appearing for Gary MacDonald, Manitoba Wholesale Implements Association; Lyle Stone, National Farmers Union; and, Glenn Dickson, United Grain Growers & Canadian Association of Agri Retailers.

Then, on Bill 41, we have Derek Kindrat, Westman Lions Manor Inc.; Bill Coady, RFC Real Estate Services; Louis Tetreault, Private Citizen.

Those are the citizens that I have been apprised of this morning. What is the wish of the committee? Should we hear, as is normal, the two bills that have presenters first? [interjection] We will ask the presenters then. I would suggest that the Bill 37 presenters be heard first. We have a standing agreement that normally out-of-town presenters are heard first. Is that the will of the committee again today? [agreed]

So I will call, then, the out-of-town presenter. Does the committee wish to impose time limits on the presentations?

An Honourable Member: No.

Mr. Chairperson: No. Okay. That is agreed. Did the committee wish to set a time as to when the committee should adjourn, or, do you want to leave that for later consideration? [interjection] We will leave it then for later consideration. Thank you.

Bill 37–The Farm Machinery and Equipment and Consequential Amendments Act

Mr. Chairperson: I will call, then, John Schmeiser, Canada West Equipment Dealers Association, to make a presentation on Bill 37. Mr. Schmeiser, you may proceed.

Mr. John Schmeiser (Canada West Equipment Dealers Association): Thank you, Mr. Chair. First, on behalf of the Canada West Equipment Dealers Association, and particularly our membership in Manitoba, I would like to thank all the members of this committee for allowing me the opportunity to address you here today. Secondly, I would like the Minister of Agriculture (Mr. Enns) and his officials, along with the officials from the Farm Machinery Board, for previously taking the time to meet with myself and our Manitoba directors, Scott Medd and Clark Tweed, in order to hear our suggestions on amending this legislation.

It has been over 10 years since the Manitoba government has made any amendments to The Farm Machinery and Equipment Act, and many different aspects of the equipment industry in this province have drastically changed during those 10 years. We would like to congratulate the government for seeing fit to update this legislation now. The agricultural, retail and manufacturing industries are constantly evolving. The legislation which governs them must not only regulate their business practices, but it must allow all involved the protection and the flexibility to compete in the global marketplace.

* (1010)

Currently, Alberta and Saskatchewan are also in the process of revamping their agricultural implement legislation, and we hope that the final version of the legislation before us today, Bill 37, will provide Manitoba equipment dealers, farmers and manufacturers, with the ability to compete on a level playing field in western Canada and across North America.

I can see that some of the amendments already outlined in Bill 37 will help achieve that goal. Canada West Equipment Dealers Association fully supports changes Bill 37 makes in respect to reduced warranty period from two years to one, the elimination of the retail parts price list and dealer bonding, and we also support changes to the parts return process. However, there are still a few important issues that Bill 37 fails to address. The next two pages of the proposal that I have handed to you outline exactly what our concerns are, and, as a result, we offer suggestions for further amendments to this bill.

At this time I would like to outline those proposed amendments that we have put forth. First issue is warranty support. We propose that vendors fully compensate dealers for warranty work done on equipment that they had originally supplied. We have provided proposed wording, and we feel that the

following section should be added in the Payment by vendor, Section 45(1), and that additional reference be also made in the section pertaining to warranty.

This proposal is as such: "The vendor shall provide the dealer with reasonable compensation for diagnostic work, as well as repair service, parts, labour, and transportation of equipment, as required for warranty repairs. The compensation the vendor pays the dealer on warranty work shall be subject to the following conditions:

"a) Will include reimbursement for transportation of equipment to the dealership for needed warranty repairs and the return of the equipment is at the dealership's retail rate if the customer is within the dealer's designated area of responsibility.

"b) Time allowances for diagnosis and performance of warranty work and service shall be adequate for the work to be performed.

"c) The hourly labour rate paid the dealer for warranty services may not be less than the rate charged by the dealer for like services to customers for non-warranty service.

"The vendor shall compensate the dealer for parts used in the performance of warranty repair, and the compensation may not be less than the amount paid by the dealer to acquire the parts, plus a reasonable allowance for handling."

This issue is a very important issue to our membership. We currently face two situations, depending on the relationship that our dealer has with the manufacturer. We ourselves as an association publish a flat-rate guide. This flat-rate guide has been determined by the actual repair times that have been compiled from dealers all across Canada. Consistently, in this guide, we have repair times that are 25 to 30 percent higher than what the manufacturer tells us the time there should be to be repairing this.

The major manufacturers will compensate dealers for warranty work based on their own flat rates. These flat rates that are determined by the manufacturer are set in perfect conditions, mechanics consistently working on the same equipment over and over and over in a lab environment. Unfortunately, the dealer does not operate in that same type of an environment. When warranty work is to be performed, it is usually done on an emergency basis. In most cases, it is done on the farmer's field.

There is no compensation for the dealers for diagnostic time. A lot of the times when new product comes out, the mechanic does not have the exposure to the equipment and basically has to learn on the go. We have some situations where product is rushed out to the field and the dealers end up doing the R & D on the equipment. There is a demand for product at times, and sometimes, with the level of training that the manufacturers require of mechanics, they just cannot get that level of training quickly enough.

There is a separate issue, and that is the compensation that the dealers receive. We do not have an argument in the payment of our advertised shop rate from the major manufacturers, but this is an issue with the smaller manufacturers. A number of them have set rates, and I will quote one example. One manufacturer, they pay a dealer $30 an hour for warranty work where the dealer charges his customer $60 an hour. We make the argument that because of the short change either from the major manufacturer on the time that a repair is supposed to be conducted in, or from the short line manufacturer where they are paying us in most cases a lower rate than what we charge our customers, in essence our customers are subsidizing the manufacturers, and we think that is wrong.

This issue has really gathered a lot of support across North America. Our members in Manitoba, as members of Canada West, are also members of the North American Equipment Dealers Association. Currently there are three states in the United States that have passed this warranty reimbursement. Through the North American Equipment Dealers Association, they have been instructed to draft model legislation on warranty support and it is anticipated that next year this type of legislation will be introduced in 40 states.

We view it as we are no different than our dealers who are in North Dakota, our dealers who are in Montana. In fact, many of our dealers sell a lot of product into those jurisdictions. It has been some time since this legislation has been changed, and it is our

concern that if we do not address this issue now we will be out of step with the rest of North America in one year's time.

Every system should have some checks and balances in it, and we also believe that this should have some checks and balances in it. So we also propose the addition of the following clause: the vendor may audit the claims for one year after payment and may charge back to the dealer the amount of any false or fraudulent claim.

We feel that if a provision like this was put in place to protect the manufacturer's interest, there has to be some way for them to ensure that their dealers are not taking advantage of them.

The next item that we have is the disposition of proceeds of sale by the lien holder: if a dealer sells a piece of repossessed equipment under Bill 37, as it is currently worded, then any profit made on that equipment from the sale would be returned to the purchaser who was in default of the original payments.

We feel that this is wrong, and we have proposed an amendment to Section 42(3) that would read as follows: a lienholder who is under this section sells farm machinery or farm equipment is entitled to retain the amount owed by the purchaser with respect to that machinery or equipment under the lien note including accrued interest if any. The cost of repossession and sale exceeding 10 percent of the selling price and the cost of repairs to the machinery or equipment that were necessary in order to facilitate its sale.

The present situation is, if the customer is in default and if there is any money made from that, the dealer is allowed 10 percent. However, our experience shows that there are more instances where there is money lost on these situations, and I will address that in a second with the next proposal that we do have, but in reality, the dealer ends up picking up that shortfall.

We feel that responsibility should be either with the purchaser of the equipment who was in default, or maybe the responsibility should lie with the lending company. If a piece of equipment comes back to the dealer, there should not be a cap on the 10 percent of the profit that they should make.

The purchaser's liability. We propose that this section be amended to include discharging of the liability of the dealer if the money from a sale of a piece of equipment which was bought with outside financing is repossessed and sold and the amount from the sale is less than the amount owed on the equipment.

In our opinion, why should the dealer be forced to make up the difference for a purchaser's shortfall? The customer gets the credit approval from a finance company based on their credit terms and conditions. The dealer is the retailer but in most cases is not involved in the financing.

So we propose that Section 42(4) be amended as follows: That the purchaser's and dealer's liability be discharged, where 42(4) would read: "Where a lienholder repossesses and sells farm machinery or farm equipment and the amount realized from the sale is less than the amount owed by the purchaser with respect to that machinery or equipment under the lien note, the indebtedness of the purchaser with respect to that machinery or equipment is nevertheless fully discharged and no action is maintainable by the lienholder against the purchaser or the dealer to recover the balance of that indebtedness."

* (1020)

We also propose another amendment to provide some flexibility. Our dealers, to be good businessmen they have to go the extra mile for our customers from time to time. We may have a situation where a customer does not have good credit, and we would like the flexibility that if the dealer agrees to an alternate arrangement where he would take recourse on a piece of equipment, we think that would be flexible. It gives the dealer the option and certainly would benefit the customer, as well, especially customers with credit problems in the past.

The final issue that I would like to bring to your attention is the parts return, and we feel that the definition of an unused part is outdated and does not adequately reflect the shelf life of present-day parts. The definition of an unused part refers specifically to one area of the act, and that is in the parts return that we have with the manufacturers. In the current proposal, the dealers are entitled to receive 90 percent

of the current net price of the parts on parts returned to the manufacturer if the dealer cancels a contract or retires. If the manufacturer cancels a contract, the current wording of Bill 37 says it would be 100 percent.

We fully support that. We also feel that there should be some fine-tuning on the definition of unused part. Right now, unused part includes seals, hoses, cork gaskets, paint, and we feel that any reference to that should be removed. What has happened, I guess with increases in technology, we have seen a lot of these parts being packaged and shrink-wrapped in better containers where their shelf life is almost indefinite. They should be treated like any other part. What it does do is when a dealer encounters a parts return with the manufacturer, it brings up confusion as to what is and what is not an unused part.

So our proposal, Section 44(1), we propose that it should be amended to read: "'unused part' means a part or parts assembly that has not been used but does not include a) a part that has been broken or damaged, b) a parts assembly that is incomplete and cannot be made complete at reasonable expense, c) a part or parts assembly that has been removed from farm machinery or farm equipment and replaced at no cost to the dealer for parts under a modification or warranty substitution program."

That is the extent of our proposed amendments to Bill 37. Once again, I would like to reiterate our support for this legislation. I would like to compliment the minister and his officials for their endeavour. We are very pleased with what we have seen. We would like to see some attention to our warranty support. Nonetheless, that is the extent of my presentation, and if there are any questions, I certainly would be pleased to entertain them.

Mr. Chairperson: Thank you, Mr. Schmeiser. Are there any comments or questions?

Hon. Harry Enns (Minister of Agriculture): Yes, I have some.

Mr. Schmeiser, I appreciate very much your taking the time and presenting those views to us this morning, and I also appreciate the fact that, in the main, you are supportive of the amendments that are being brought forward to the act at this time.

I want to just take this opportunity to remind committee members that the legislation that governs farm machinery and this kind of legislation Manitoba imposes on our dealers the responsibilities in this legislation, with the manufacturers–the John Deeres, the New Hollands, and some like that–we cannot reach out to them. So it was of interest to me to hear the concerns being expressed by Mr. Schmeiser on behalf of the dealers association.

I ask one particular question on the whole warranty issue. Most of us consumers are aware of when Ford calls back 5,000 cars on a recall, or Chrysler, 10,000 units on a warranty claim like that. Those cars, of course, go back to the hundreds and thousands of automobile dealers scattered across the country and the province, and the adjustment is made. Are you aware, do automobile dealers have a similar complaint with the manufacturer that you voiced to us this morning? For instance, if your shop rate is $50 an hour or $60 an hour, does Chrysler impose or pay only $20 or $35, as some manufacturers can do under this legislation?

Mr. Schmeiser: We have had many discussions with the auto dealers association about this issue. It seems to me, the impression I get from them is that they have worked it out with their manufacturers. The key to them was the flat rate. Now, because there is a lot of similarity in the vehicles, if you are repairing a transmission, what they are telling me is if the manufacturer dictates it is four hours to repair that transmission, they are saying that it is almost right on. So the flat rate issue they have seemed to have been able to negotiate hours that I guess they both can live with. In their case, they are reimbursed for the flat rate.

I have yet to hear a concern in my conversation with the auto dealers about the manufacturer not paying their advertised shop rate. They will pay the advertised shop rate. Furthermore, I have yet to hear a concern from an auto dealer regarding the buy-back laws on the parts. They, I guess, look at me with astonishment when I tell them that right now we only get 85 percent on a parts return. They cannot understand that. They cannot understand why it is not 100 percent. In some cases, in some jurisdictions, they not only get 100 percent of the

current net price, but they also get 5 percent for transportation costs, which is a big issue in itself. At one time in western Canada, we had a number of parts distribution warehouses here. Now those are closing, and when a dealer has to send the parts back, he has to send them back to Racine, Wisconsin or he has to send them back to Dallas, Texas. It is not the case with our short-line manufacturers who are based here, but with the major manufacturers it is a fairly large issue.

Mr. Stan Struthers (Dauphin): Mr. Chairperson, I want to thank Mr. Schmeiser for putting some thought to this important bill. I congratulate the Canada West Equipment Dealers for putting some forethought into this, and your directors, Mr. Medd and Mr. Tweed, as well. Thanks for coming and sharing your concerns and your suggestions with us today.

I represent a riding that is based in agriculture, Dauphin and the surrounding area. Farmers who have talked to me about this bill have been concerned about the move from a two-year to a one-year warranty. From a dealers association perspective, what effect do you see that having on a farm operation, and then what effect do you see that having back onto the dealers that you represent? Is this going to be a negative impact on farmers? Is it going to cost them more money when they buy equipment from the membership, from the dealers?

Mr. Schmeiser: In fact, it is the opposite. Manitoba, in terms of warranty legislation, was kind of like an island in North America, where everywhere else it was one year and then the market kind of dictated things elsewhere. When equipment sales are slow, manufacturers do have the habit of introducing programs that are attractive to the customers to increase the potential of more purchases. But what the two-year warranty did in Manitoba, the manufacturers, to my understanding, looked at it as more of a hindrance, and a surcharge was added to the invoice price that was given to the dealer. It is our belief that the reduction from two to one may save customers a little bit because manufacturers will not put that surcharge on there to cover that second year of warranty.

In terms of our association and the impact on the dealers, there certainly is a benefit if it goes from two years to one year. We feel we are getting shortchanged on the warranty work that we do right now. If it is warranty going for two years to one year, we will have, I guess, one year where we can charge a price where we can recover our cost to operate the shop as opposed to waiting for two years.

* (1030)

Mr. Chairperson: Thank you very much. Are there any other questions?

Ms. MaryAnn Mihychuk (St. James): I would like to ask, if the other amendments were made to this bill which required manufacturers to cover the actual shop costs that dealers were incurring, would that impact your support for the change to the warranty period?

Mr. Schmeiser: I am not exactly sure if I understand. Could I just maybe ask you to repeat the question?

Ms. Mihychuk: Basically, some of your concerns are that during the warranty period dealers are getting shortchanged. You are covering some of the costs for the repair of this equipment and this is a hindrance to your businesses here in Manitoba. My question would be: if the legislation was changed to reflect some of your recommendations here, including the onus for repair and the requirement for manufacturers to pay your shop costs, your rate for your customers, this would eliminate the cost to the dealer, and so I am asking: if those costs were then removed from the dealers, would that influence your support for changing the warranty period change that the minister is recommending from two years to one year?

Mr. Schmeiser: I have always viewed it as two separate issues, but on the warranty support issue, our figures, the North American Equipment Dealers Association does an annual cost-of-doing-business survey, and in that cost-of-doing-business survey, our figures are coming back that we are billing out the work in our dealerships at about 60 percent. So in most cases, shops are not profitable. We view the warranty support as one way to make our shops profitable. Like I said earlier, we are also viewing it as, unfortunately, our customers are subsidizing the manufacturers because we are charging a higher advertised rate to our customers to make up the difference that we are getting, or to make up the shortfall that we are getting from the

manufacturers. We have always viewed it as a separate issue, and the reduction of warranty there certainly is a benefit to us.

However, we support the reduction of the warranty on the basis of consistency with the North American market, and we have been proposing the warranty support because, unfortunately, our contract with the manufacturers is not a two-way contract. This is not something that a dealer negotiates with the manufacturer. The manufacturer says, if you want to be the John Deere dealer in Steinbach, you sign this contract. It is a contract of adhesion more than anything else.

In a perfect world, we would not be asking for warranty support in legislation. A lot of our members feel that this is something that we should be able to work out with the manufacturers. Unfortunately, through many dealer council meetings, the manufacturers refuse to bend on this issue. We have finally gotten their attention through, I guess, our open dialogue with the equipment manufacturers institute, and we are actually talking about it. But the EMI is opposed to the endeavours that our associations have made in the states where they have pursued this.

Ms. Mihychuk: Can you tell the committee how much more Manitoba farmers are paying for equipment because of this surcharge that is being levied?

Mr. Schmeiser: I cannot give you an actual number, but it is based a lot on the price of the machine. It is in the range of $500 to a $1,500. It depends on the manufacturer as well. Not everybody does charge the surcharge.

Ms. Mihychuk: This surcharge–the farmers I know are not stupid, and they are very astute managers and need to be. Do you find that Manitoba farmers are going to other jurisdictions to buy equipment?

Mr. Schmeiser: What is the primary motivator for farmers to purchase equipment elsewhere is price. We have seen some of our customers spend $500 to save a hundred. We have seen some of our customers drive 120 miles to another dealership just to get a competitive price. That is really what dictates the industry. It is the marketplace.

The dealers also realize that this is a competitive business. On one hand, the dealers are being told by the manufacturers that we want your market share to be at this; we want your sales volume to be at this. A dealer will not turn away somebody who drives 180 miles to get a price. They will sit down and they will talk, and if it is a better price, they might get the deal.

So, in my opinion, it is the marketplace as well as the price of the equipment that really determines where the equipment is purchased. We try and do a good job of promoting the issue of your local dealer, and if you need emergency support we are here for you, but the bottom line is price is the major motivator.

Ms. Mihychuk: My final question: can you inform the committee as to whether, in your perception, there is an increasing use of warranty? Is farm equipment coming back more frequently for warranty work? Do we see overall that there is greater and greater equipment failure? Perhaps you can give us a perspective as to how much warranty you do in the first year and in the second year of warranty.

Mr. Schmeiser: Our estimates for warranty work that is performed in a dealership range from 25 percent to 40 percent. The key indicator there is how much new equipment the dealer did sell. If the dealer did not have a lot of new equipment sales, obviously his warranty work is going to be down. Primarily, most of the warranty work is done within the first year.

Ms. Rosann Wowchuk (Swan River): I just wanted to ask, in your presentation which I was not here to hear, but I have just been looking through it, you say that Alberta and Saskatchewan are also in the process of revamping their legislation. Alberta and Saskatchewan are already at one-year warranty. Are they looking to reduce their warranties even further in those provinces, or what amendments are they bringing forward in those bills?

Mr. Schmeiser: In my discussions with the Alberta officials, they have no intention of changing that because of the similarity between other jurisdictions in North America. In my conversations with the Saskatchewan officials, they are very pleased with what they are seeing here in Manitoba. They have had some instances, I guess, along the border where a customer is

buying something in Manitoba or a customer in Manitoba buys something in Saskatchewan and there is a little bit of confusion, so they have been very pleased with what they have seen from the department in the proposal in Bill 37. That is about the only discussion that we have had on it. It really is a nonissue with them.

Ms. Wowchuk: I want to move to another part of the legislation, and that is the part of the legislation that reduces the number of hours that a dealer has to provide emergency services. Under the old legislation, a dealer was required to provide emergency service until 10 in the evening, and this is now being reduced to normal working hours. Can you tell us whether that recommendation came from the dealers association, which I am sure it did because I know that farmers certainly did not recommend it? Why did that recommendation come forward?

Mr. Schmeiser: That recommendation did not come from our association. However, I will say that we are in the business of providing customer service. We are in a very competitive business. If our dealers do not provide more than adequate customer service to our customers, we will lose those customers, and that customer will go to another dealer. The hours thing, we do not really view that as an issue because, if one of our good customers walks in the door and says I need something, and it is ten o'clock at night, we get that person that part. We have to do that; otherwise, we lose a customer. It is clear and simple.

* (1040)

Ms. Wowchuk: Mr. Chairman, where I come from, we also have very good dealers and they provide us a service, but I was questioning whether it is there. You have not made the recommendation for that change; somebody else has. So we will have to follow it through another avenue.

I live very close to the Saskatchewan border, and I have talked to many people who have purchased implements, tractors, combines on both sides of the border. They tell us that there is no difference in the price because it is not the price that it is listed for. It is just like when you are buying a car. It is not the sticker price that you are paying; it is what you negotiate. Farmers feel that this is not going to save them any money. All it is going to do is reduce their warranty, so this, in fact, has nothing to do with improving services or saving money for farmers. It is to do with improving the situation for dealers, so would you agree that this is more in the interest of dealers than it is in the interest of farmers?

Mr. Schmeiser: I would say it is more in the interest of the manufacturers than it is for the dealers. Maybe the comparison should be between the customers and the manufacturers. Because of the terms of the contract that our dealers sign, we have to perform the warranty work, so we are going to be doing the warranty work. The only impact that we have is where we see we are not being adequately compensated in some cases on doing that warranty work, so there is a benefit to the dealers.

Ms. Wowchuk: Again, you may have answered this question earlier, and I apologize for repeating it. So the real problem is between the manufacturers and the dealers, because the manufacturers are not following through on their responsibility for providing warranty for the equipment. That is the kind of discussion that should be somewhere taking place where you, as dealers, should be working with the manufacturers to try to improve your situation. What has instead happened is through legislation you are going to improve your situation, manufacturers are off the hook, and farmers are going to be left holding the bag, because they will not get a reduction in price but they will have a shorter warranty.

Mr. Schmeiser: I would disagree with that because I believe the customer is the big benefactor of a good relationship between the dealer and the manufacturer. If the dealer and the manufacturers are working in harmony, that ensures things like adequate product support. It ensures things like mechanics who are properly trained, who are working on the equipment. It instills customer confidence. It provides the farmer with a better product, a better machine, and competition virtually determines the price. In our opinion, CASE can come out with a great product, a great tractor, but if it is 30 percent, 40 percent higher than maybe John Deere or than AGCO, is the customer going to purchase it or not? There is a benefit to the customer having that good relationship between the manufacturer and the dealer.

I would just like to make a comment about something you said right at the beginning of your comments there. We do not want to paint all of the manufacturers with the same brush. There are a number of manufacturers, a number of them who are located here in western Canada, where warranty support is not an issue with their dealers. However, we have one new manufacturer who has come out with a product. Their policies are going to pay $25 an hour. That is their policy. How does the dealer remain committed to that product if he does not get adequate support from the manufacturer? That in turn hurts the customer. The customer may be really interested in a product, but without a good relationship between the dealer and the manufacturer, there can be a little bit of an adverse effect in supporting that product.

Ms. Wowchuk: This is the last question I will have. Are there any steps being taken between the dealers' association working with manufacturers? The manufacturers must have an association as well. Here in the legislation where we have a standard warranty that is one year, are there any steps being taken by the dealers' association? I am sure you would have the support of farmers on it, where we would start to get standards in warranties from the different manufacturers on the products that they produce.

Mr. Schmeiser: Most of the major manufacturers set up dealer councils where dealers for a group of 12 New Holland dealers from across Canada will meet with New Holland management on a fairly regular basis. Their role is to take input and concerns from their fellow dealers and present them. So there is open dialogue between the dealers within their major manufacturer. However, like I said earlier, it is the manufacturer who falls back onto what is in the contract, and they seem very unwilling to bend on an issue like warranty support.

On your question, there is to my knowledge no discussion between dealer groups and the manufacturers about the length of warranty. It is more on the issue of warranty support.

Mr. Chairperson: Thank you very much. Are there any other questions?

Mr. David Faurschou (Portage la Prairie): I just wanted to ask of you the scenario which depicts the rationale behind adding the dealer to Section 42(4).

Mr. Schmeiser: I will quote you an example that we have that was given to me by one of our Manitoba dealers. A customer was interested in a particular tractor and needed financing from that major manufacturer's credit company. That manufacturer has a credit approval process. There are some questions that have to be asked on the financial history of the farmer, but that whole process is through that finance company, whether it be a manufacturer's finance company or whether it be another financial institution.

When the farmer is in default on that, and if there is more outstanding than what the product will bring if it is resold through whatever manner, auction sale or just sold to another customer, the manufacturer will come back to the dealer and say you have to make up that shortfall.

We view that as unfair. It is the credit company, the finance company's approval process that determines whether or not that customer was eligible for credit. The farmer is off the hook if they default. In fact, they benefit if there is equity in the machine. That is returned to the customer, but if there is not equity in the machine, the finance company has it on full recourse back to the dealer, and we question that.

We still think that there should be some flexibility in there. If the dealer has a good customer who has had some credit problems in the past, that the dealer can say I will sign off on that and you give us full recourse if you give him credit, full recourse back to me, but I will take that risk. The dealer makes the choice as to whether or not to extend that. Right now, he has no choice. If there is a shortfall, they come to the dealer to collect.

* (1050)

Mr. Chairperson: Any further questions? Thank you very much, Mr. Schmeiser, for your presentation.

Before we proceed, I would like to remind committee members, as well as presenters, that we have no time limit on presentations or questioning of presenters. However, if we do take as much time with every presenter as we have today, we will be here til it is nigh unto midnight. We have eight presenters in total, and we have taken 45 minutes for one presenter, so it will

be a substantially lengthy hearing if we continue along this path. So I ask for indulgence.

I will call next Mr. Don Dewar. He is the president of Keystone Ag Producers. Mr. Dewar, would you come forward, please? Have you a written presentation for distribution?

Mr. Don Dewar (President, Keystone Agricultural Producers): Yes, I do.

Mr. Chairperson: The Clerk will distribute. Mr. Dewar, you may proceed.

Mr. D. Dewar: Thank you very much, Mr. Chairman, Mr. Minister and members of the committee.

On behalf of Keystone Agricultural Producers, Manitoba's farm policy organization, we would like to thank you for this opportunity to discuss some of the concerns as well as some of the positive changes which we see in Bill 37, The Farm Machinery and Equipment and Consequential Amendments Act. Our members have identified a number of areas within Bill 37 which we feel would be detrimental to the interest of Manitoba farmers, and these are as follows.

Not surprisingly, warranties is first on the list. Our members are telling us that they are opposed to the loss of the second year of warranty for combines and tractors–the numbers there refer to the sections of the act–while dealers tell us, and in some cases can even show us invoice proof, that manufacturers charge a surcharge of up to 2 percent on the cost of the equipment. We have seen little evidence that purchase prices of these implements in Manitoba reflected that additional cost. Even if they did, we see no mechanism within this legislation to ensure that when the second year of warranty is gone, purchasers will see a corresponding reduction in the purchase price of tractors and combines. When the trend with some manufacturers is actually moving to three-year warranties, we do not see the benefit in reducing the Manitoba requirement to one. We are, however, pleased to see that the suggested reduction of parts warranties from one year to 90 days, which we had discussed with the board, has not been implemented.

With the trial period, we do not agree with the changes in the trial period during which purchasers can reject the equipment if it does not meet performance standards. The previous legislation allowed for a trial period of 10 days usage, with that 10 days being interpreted as 100 hours. Bill 37 allows for 50 hours of use, as we understand, with equipment that has a clock on it, or 10 consecutive days starting on the first day of use for equipment not so equipped. We question whether 50 hours of usage equates to 10 days, and we definitely have a problem with the trial period having to be served on consecutive days where a purchaser can easily run into weather delays which could rob him of a large portion of his trial period. We would urge a return to the previous wording of 10 days usage.

Board action. We note that in the previous legislation the Farm Machinery Board had the authority, on behalf of the purchaser, to take such action, including legal action if necessary, to obtain a fair and reasonable settlement for the purchaser. Bill 37 considerably reduces the board's mandate saying merely that the board may recommend a resolution of the dispute. At the very least, we would suggest that the words "may recommend" should be changed to "shall recommend," and we would still prefer that the board was able to initiate action on behalf of the purchaser. We would further prefer stronger language to compel the board to make a recommendation and to give the board the authority to enforce that recommendation. We also question why a provision has been added to Bill 37 protecting the board members, officers and staff of the board from participation in legal proceedings related to their duties in connection with the board.

As far as emergency parts, where the previous act allowed purchasers to order emergency parts between 8 a.m. and 10 p.m., Monday through Saturday, Bill 37 allows parts to be ordered only during normal business hours. While we do recognize that most dealerships have extended service hours during critical seasons, we are still concerned that this change is a further erosion of protection for the purchasers. The bill also removes a provision that a surcharge for provision of emergency parts cannot exceed $10 and that the surcharge must be listed separately on the invoice. We do understand the need to change the $10 surcharge limit. Courier and special delivery costs will generally exceed that limit, and most producers would rather pay more than have to wait. However, we would prefer to ensure that the

surcharge for delivery be clearly identified on the invoice.

The fee for registering leave. We question whether the clause requiring a dealer or vendor to pay a fee to register a leave to repossess under the new act will have the intended effect of limiting frivolous use of the provision. Rather, we see dealers and vendors continuing to make use of the act in their accustomed manner and simply tacking the additional charge onto the money owed by the purchaser.

With rights to the purchaser, we are opposed to seeing the removal of the right, which a purchaser had under the previous act, to write a letter within a set time period objecting to a notice of repossession. We applaud the addition of a provision to give the purchaser the right to appear before a repossession hearing, and question why in the same clause of Bill 37 that right to appear can be ignored by the board. We feel that the purchaser should have the opportunity to present his case, whether it be by letter or by attendance at a hearing.

The investigatory powers of the board. Clause 5(1) of Bill 37 seems, in our opinion, to allow the board investigatory powers, which go beyond the relationship of purchaser and vendor or dealer. We feel the scope of the powers allowed under this clause is excessive and that the wording should be reconsidered.

With respect to the fund, we have both concerns and positive reactions to a number of changes made with relation to the fund, which is in place to protect purchasers in the event of a dealer bankruptcy. The increase in the level of the fund to $400,000 is good, but we would suggest that the fund be allowed to build even higher. We feel that the $20,000 cap on compensation to any one purchaser is insufficient in light of the value of modern farm equipment. We agree with the clauses that allow investment of the capital with returns to the fund, and require including the annual statement of the fund in the annual report of the department. We do feel, however, that the operation of the Farm Machinery Board should continue to be funded from government sources rather than from surpluses in the fund, and we would prefer to see surpluses allowed to accumulate to enable higher compensation levels.

With the warranty services, as farm equipment dealerships consolidate, purchasers are being forced to travel longer distances to access these services. We do not agree with the provision in Bill 37, which states that, where a dealership closes, service must be provided within a 100-kilometre radius. KAP maintains that where a dealership closes, the vendor should be obliged to provide warranty and service within the same distance as the previous arrangement.

Having stated our main concerns with the provisions of Bill 37, we would also like to highlight some of the areas where we feel protection for producers has been improved:

The leases and lease-purchases. We support the addition of leases and lease-purchases to the provisions of the act as an important and positive enhancement of the protection to farmers.

With replacement equipment, we feel the rewording contained in Bill 37, which puts the onus on the dealer to provide a purchaser with replacement equipment when repair parts are not available, is an improvement over the previous act. The previous act allow the dealer to simply pay compensation instead, leaving the producer with the responsibility to find an alternative means of doing his work.

With the leave to repossess, we agree with the clause which requires a lienholder to receive approval from the Farm Machinery Board before moving to repossess.

Under the investigation by the board, we support the wording in Clause 42(7) that allows the board to determine a fair and reasonable amount, which the purchaser must pay to the lienholder. Whereas a previous act required payment of the outstanding balance, the wording in Bill 37 suggests that the board has the authority to set up a reasonable repayment schedule.

While this list by no means reflects all of the changes in the act, we feel it covers those changes that will have the biggest impact on our members. We have chosen not to comment on those changes in the act that refer to the relationship between the dealer and the vendor, as those are issues we feel best addressed by the dealers association.

In closing, we would like to pass on to you the primary concern which our members expressed to us, that being our sense of a general erosion of the support for farmers in Bill 37. While there are some improvements to the act from our point of view, we felt there were quite a number of changes, both of a major and of a minor nature, which removed some measure of protection that the previous act afforded to the primary producer. This seems to be part of an ongoing trend which increases regulations and programs which control or monitor producer actions--and the list goes on, with the hazardous goods and transportation, manure management, farm lighting, et cetera–and decreases regulations and programs which protect or support the farmers: rail transportation, safety net, the extension services, and other changes.

* (1100)

While we agree that in some cases more stringent regulations are required to ensure the safety and protection of farmers and citizens in general, we would encourage you and all governments to be very thoughtful and aware of the impact these regulations have on the sustainability of the industry. Excessive regulation and diminishing support for agriculture have the potential of driving existing participants from the industry, as well as discouraging new entrants.

With that, we would like to thank you for the opportunity to make our views known and encourage you to take our concerns and suggestions into account as you finalize the next version of The Manitoba Farm Equipment and Machinery Act. At this time, I would be willing to answer any questions or attempt to, if I may.

Mr. Chairperson: Thank you, Mr. Dewar.

Mr. Enns: Mr. Dewar, I just want to express my appreciation for having you and your organization present at this morning's committee hearings. I want to also put on the record that my department has, of course, met on several occasions with your organization in discussing these amendments. I accept your admonitions and your guarded response positively in those areas that you think are deserving of that. I do want to ask you, though, as president of our major and formal farm organization in Manitoba, if you do not agree with me on the following.

With respect to the fact that we are dealing with a multibillion dollar industry, a great deal of farm machinery that is rolling on our 1,200, 1,400 acres, million acres of farmland, to have received only 17 complaints in the course of the year this year, 20 complaints a year before, 17 complaints in the year '95, and then to be further told that the vast majority, 80-85 percent of them are readily settled once the board points out, intervenes, without legal recourse but simply recommends to the dealer. It is usually the case where a repair is not done sufficiently or adequately, and the person takes it back and insists on maintaining the warranty repair. In 80 percent of those circumstances, it is resolved amiably between the customer and the dealer; but in the main, although this is of course an issue of constant concern to farmers, those stats would tend to say that manufacturers, dealers and farmers are resolving their issues, as they should, by reasonable negotiation and without the need of heavy-handed legislation to ensure that this happens.

Mr. D. Dewar: I think on the whole we can agree that the numbers would indicate that the competitive system or arbitrary system that we have and with the help of the board, there has been a minimum of litigation, I guess, come out of the complaints. It would also indicate that even though the protections–if they are not being used, there is no additional burden on the government to have them in place, just in case, as was indicated earlier how the dealers are held ransom by the vendors as we become more and more reliant on less and less dealerships and become more and more to ransom whether or not some day that protection might be needed.

Ms. Wowchuk: I, too, want to thank you, Mr. Dewar, for the efforts that your organization has made in perusing this bill and bringing forward suggestions to improve it and also pointing out the weaknesses of the bill.

I have been out talking to several people about this bill and not very many farmers are aware that there are amendments coming to the legislation. I want to ask you: did you have the opportunity to distribute this bill to many of your members and did many of them have the opportunity to look at it, or do you have a small committee that reviews it?

Mr. D. Dewar: We did take actually the discussion to our general council meeting which has representatives from all our districts. That was in April. It worked out well that it was just after we had had a joint meeting with the board where we discussed some of the proposed changes. We did not know where they were going, and we took those that were discussed to the meeting. We do have some new communication vehicles that we use and distribute information. Some around this table receive, I think, our KAP Alert, we call it, which is an update on our information that is happening. In that, we told our members that this was in fact happening, do you have concerns. That is where the feedback came from that I am relaying today.

Ms. Wowchuk: In the interest of time, I am not going to repeat the questions that we asked earlier, but I just wanted to say that we agree with you and are very concerned that there is a reduction in protection of farmers and that although farmers have not used the legislation very much, they know that it is there, that they can fall back on it, and this is going to be a weakening of services. Thank you.

Mr. Chairperson: Are there any further questions? Thank you very much, Mr. Dewar, for your presentation.

I call next Lyle Stone, National Farmers Union. Lyle Stone. Is he not here?

Bill 41–The Life Leases and Consequential Amendments Act

Mr. Chairperson: Seeing not, then I will move to Bill 41, an out-of-town presenter, and ask Derek Kindrat. Is Derek Kindrat here?

Mr. Derek Kindrat (Westman Lions Manor Inc.): Yes, I am.

Mr. Chairperson: Have you a written presentation for distribution?

Mr. Kindrat: Yes, I do.

Mr. Chairperson: The Clerk will distribute. I just want to remind the committee and those that are in attendance that we are hearing out-of-town presenters on both bills first, as agreed upon at the outset of the meeting. I should also explain that Mr. Stone's name will drop to the bottom of the list of presenters and will be re-called at the termination of the presenters here.

Mr. Kindrat, you may proceed.

Mr. Kindrat: Mr. Chair, ladies and gentlemen, I would like to thank you for this opportunity to speak before this group. I would also like to thank Mr. Ian Anderson from the Department of Consumer Affairs for inviting me to be part of the discussions regarding this lease legislation. It is a very rewarding experience and very knowledgeable.

I am the executive director/administrator of a life-lease project which was developed in 1989. The project has been very successful in providing seniors housing in Brandon, so much so that a 200-name waiting list has resulted in the board of directors approving a 60-apartment addition which is in progress as I speak. At the start of the Lions project in 1989, life leases were in their infancy. The entrance fee was from $12,000 to $14,000, a far cry from the current project where entrance fees range from $43,000 to $58,000.

The need to establish guidelines, procedures and regulations has always been a necessity regardless of monetary values. The need for protection of both tenants and sponsors has always been apparent. As a participant in discussions regarding Bill 41, I am familiar with the proposed legislation. As a sponsor body, we had concerns regarding the requirements that any proposed legislation would have on our ability to develop and operate a project. At the same time, we are aware of the need to protect our investors who are also our tenants and the proponents of any viable development.

* (1110)

I and the board of directors of Westman Lions Manor Inc. believe that Bill 41 addresses these concerns in a fair and equitable way. The requirements for sponsors are not onerous but require reasonable planning and foresight, integral parts of any successful project. Tenant protection has been strengthened in several areas without causing harmful cost escalations which would end up being passed on to them in most cases.

We feel that legislation regarding life leases is required by all concerned parties and that Bill 41 accomplishes this by providing a workable framework in which financing for many worthy projects can be raised. Thank you.

Mr. Chairperson: Thank you very much, Mr. Kindrat.

Hon. Mike Radcliffe (Minister of Consumer and Corporate Affairs): Mr. Kindrat, I would like to thank you on behalf of the department for your presentation and your participation in the process. We certainly very much appreciate it, and it brings a very necessary perspective. Thank you.

Mr. Doug Martindale (Burrows): I would also like to thank the presenter for being here today and sharing your views. I have one question to start with. You said that as a sponsoring body you had concerns regarding the requirements that any proposed legislation would have on your ability to develop and operate a project. I am wondering if the legislation in any way inhibits your ability to develop and operate a project? Do you have any concerns? Would you like to expand on that sentence?

Mr. Kindrat: The only concerns we had were cost concerns, naturally, because those concerns are ultimately passed on to our prospective tenants. Any costs in our costs would be theirs. We were worried that would put the entrance fees or our ability to raise equity much more difficult than it is or would be. These concerns have not been realized at all. We are in a very workable situation.

Mr. Martindale: Just out of curiousity, why is it that entrance fees have gone from, according to your presentation, $12,000 to $14,000 in the past to currently $43,000 to $58,000?

Mr. Kindrat: Two major concerns: No. 1, the cost of construction in 10 years has made that kind of an increase; and No. 2, our present project has government sponsorship. I do not need to say any more about that, do I? Government sponsorship now is not a part of these projects, and that increased also the costs that we need to raise equity.

Mr. Chairperson: Any further questions? Thank you very much, Mr. Kindrat, for your presentation.

Bill 37–The Farm Machinery and Equipment and Consequential Amendments Act

Mr. Chairperson: We will revert to Bill 37, and we will hear Scott MacDonald. Scott MacDonald, would you come forward, please?

Mr. Scott MacDonald (Manitoba Wholesale Implements Association): Thank you, Mr. Chairman.

Mr. Chairperson: We will wait until the clerk has distributed the presentation. Thank you, Mr. MacDonald. You may proceed.

Mr. MacDonald: Thank you, Mr. Chairman, and members of the committee for this opportunity to speak to you today. My name is Scott MacDonald. I am vice-president of MacDon Industries, a local harvesting equipment manufacturer here in Winnipeg. On behalf of both the Manitoba Wholesale Implements Association, an organization that has existed for over 100 years, and the Canadian Farm and Industrial Equipment Institute, I would present the following.

We would like to begin by saying that there are a number of changes in the proposed act that we agree are necessary to update the act and move towards more harmonization. For example, the addition of leases and the change from two years to one year for warranty on tractors and combines represent changes that we believe to be long overdue. This change on the warranty is consistent with the balance of the jurisdictions in North America and allows the opportunity for farmers to buy the second year of warranty as opposed to having it imposed on them through a surcharge system.

The following is a compilation of the more serious concerns that our association has with regard to the proposed changes to the act. Given the globally market-driven nature of this industry, we question the need for an increased regulation to an already competitive industry. We believe this to be reflected in the low incidence of serious claims brought to the board in the past several years.

Number one, Section 5(1) Boards investigatory powers. This section is extremely broad in its scope and concerns us that the information involved may be

of an extremely sensitive nature, for example, financial information. There is no specific provision for the confidentiality of the information in question. We recommend that this section be deleted.

Number two, Sections 8 to 12 Vendor licence required. These sections provide for very broad powers for the board. It might be interpreted to include the financial information on privately held companies and/or individuals that make up that company's board and officer group. This section also allows for the board to investigate the conduct of any company or its officers or directors. There is no assurance that the information received by the board will remain confidential. This concern is not limited to private companies but includes the concerns of major equipment manufacturers as well.

The level of concern over this section is significant. It does not appear, in our opinion, that the Saskatchewan agricultural implements act allows for such broad levels of discretion to withhold licences or power to insist on disclosure of such things as financial information on companies or individuals. In fact, vendors are not even required to have a licence in Saskatchewan. We believe that the current bonding provisions of the old–I will refer to it as old; it is the current–Manitoba act are adequate and do not need to be changed.

Section 14, Notice of intent to suspend or cancel licence. The fact that the decision of the board would be final, with no right of appeal, is of concern in that the old act allowed for a secondary mechanism for appeal. This would be very important in those cases where a company may have been doing business in Manitoba for many years and the decision of one governing body could end their livelihood without an opportunity to appeal the decision. This is not appropriate in our opinion.

We are a company that does business globally, and it would be inappropriate, in our mind, if we were kept from doing business in our own province because there was no appeal mechanism.

Section 16(3), Vendor to advise any changes. The requirement to report the ongoing status of every dealer is additional work and a responsibility which in this increasingly completive environment we do not perceive to be necessary or appropriate. Obviously, this information is available, but to do it on an ongoing basis would be, in our mind, excessive.

Section 18, Agreement to limit liability void. The fact that all parts, labour, and limited transportation costs would have to be warranted is extremely broad and not the norm in the vast majority of jurisdictions in North America today. We do not know, in fact, whether there will be significant numbers of them changing, but I am talking about what exists today. This would be of great concern to all vendors of farm machinery in the province, would effectively increase the costs of equipment, which would be of concern to all parties involved.

We are in a free-market economy in which there is competition that drives some companies to not only offer dealer price on parts and published labour rate, but more than that for each. So there are instances where as much as I can appreciate there are probably some unscrupulous individuals coming in and offering $30 labour rates, which we all accept is unreasonable, there are also those companies that exceed the dealer invoice price on parts and exceed the labour rates, so there are both ends of that spectrum.

Section 22(2), Length of warranty. The change to date of first use, rather than the date of delivery, appears to be somewhat nebulous. This could lead to arguments over the specific date of "first use." The date of first use should be related to the defined "season of use" in order that we might minimize the number of disagreements.

Section 31, Dealer shall provide alternative equipment. This is a costly issue to both dealers and manufacturers, which is of concern to all members of those two groups. Another associated concern would be where no such piece of equipment is available for the rental. We believe that we are the only industry which is legislated to perform such a function.

Section 32, Reimbursement by vendor for costs for late delivery. Again, we do not believe that this is appropriate in the context of the current economic environment. Is any other industry in Manitoba expected to meet this standard? Again, we are

concerned that there is a situation where companies tend to do the right thing, and I think that is reflected in the volume of work that the board is required to do in the last few years. I think it exists and it is appropriate.

Section 33, Dealer ceasing to carry on business. The concern here is that if there is no dealer within 100 kilometres driving distance of the usual storage place of the machinery or equipment, then the manufacturer may have to provide the emergency repair services direct. Very few, if any, manufacturers have the ability to physically fulfill this requirement. That might include the service as well. This, again, is a requirement that we do not believe exists in any other industry doing business in Manitoba. We do not believe this to be realistic or economically viable.

* (1120)

To meet the standard of that dealer having previously existed and no long existing, we all accept the fact that there are fewer manufacturers today, there are fewer dealers today, there are fewer farmers today, than there have been in the past, and the fact is that if a dealer leaves the environment then it may be through attrition in a normal, competitive environment with the way that agriculture is moving. For us to be required to fulfill that requirement, once again, we believe to likely be inappropriate based on the market conditions.

Section 45, Payment by vendor. These values appear to be excessive regarding buy backs. Unused parts increasing from 85 percent to 90 percent of the current net price is significant, as many of the parts may be old and potentially obsolete. Any percentage should be applicable only to current parts and not to obsolete parts; 100 percent in the event of terminations by the vendor, again, seems extreme, particularly in the case where the vendor has just cause.

We could use an example where there is a dealer who is not doing the job. They are not getting the job done and have not sold any parts for five years or two years, and the vendor believes that they are not having their end-user customers properly maintained and assisted and choose to make a change. In that instance, there may be two-, three-, four-, five-year-old parts sitting on that shelf. If we terminate that agreement, we have to pay them 100 percent back for those things at current levels. Now, they may have been purchased three, four, five years ago, and they may, or may not, be obsolete, so that is a major concern to us.

The issue of requiring the dealer to sell parts back to the vendor in the case where the vendor does not want the dealer to be representing themselves as being a dealer of the vendor is not addressed in the new act and we believe that it should be.

That is a case where, similar to my previous example, we no longer want that individual who has those parts in their bins. We may want to be able to have them sell them back to us so that they are no longer representing themselves as a dealer of that vendor. That way we can assure that we have capable dealers to service the purchaser.

Section 55, The Farm Machinery and Equipment Act Fund. We do not understand why the fund needs to be increased from the current level of $300,000 to a level of $400,000. I guess the question is: is the industry in such a state that the involvement of the board needs to increase to the point of requiring 400 or whatever number may be in excess of $300,000? We do not completely appreciate that situation.

Section 55(7), Other payments from the Fund. Authorizing expenditures to cover the remuneration and costs of the board concerns us in that the level of funding may therefore continue to increase. Depending on the level of activity that the board, with these new broader powers, feels that they should have could result in an ever-increasing number and burden on the industry as a whole. Historically, this is an industry that needs to maintain a constant vigil on costs associated with doing business. This is reflected in the number of manufacturers and dealers that have exited the industry in the past 10 years.

It is an open concern over the escalation of the value and potentially escalation of the levies that might be associated with it. It is pretty much the fear of the unknown which reflects many of my comments here.

Sections 56 to 60, Enforcement. This new section is also extremely broad and provides for the appointment of inspectors for the board, which approaches the level of customs or police forces with regard to seizing

actions, et cetera. This we believe to be inappropriate and excessive. We do not understand why this needs to be added to the act.

Section 61, Offence and penalty. The fines that were contemplated in the old act are reasonable. The increase in the fines up to $5,000 for a first offence and up to $10,000 for a second offence we believe to be excessive, particularly relating to inadvertent breaches to the act.

There are many instances where somebody steps offside inadvertently, and we perceive that to be a concern. We are also concerned, not so much for someone of our size, but, more importantly, smaller manufacturers, and there are many of them left in this industry, luckily. Many have exited, but there are still many still in existence and, of course, that would be a significant burden to some of them.

Section 62, Regulations by minister. The ability to unilaterally prescribe requirements for the applications for a licence; to prescribe the duties of the holders of licences; to establish procedures for purchases to order emergency repair parts and for dealers and/or vendors to supply those parts; along with the ability to establish categories of classes of deals and vendors appear to be very broad powers in our opinion. Recess?

Mr. Chairperson: I wonder if we could just hear one more paragraph, if the committee would agree to sit that long? Go ahead.

Mr. MacDonald: In conclusion, we believe there needs to be some form of continuity across jurisdictions and some semblance of reality in any such act. Based on the incidence and severity of claims that the board has dealt with over the past 15 years, we do not understand the need for many of the changes nor the need for the addition of the new sections to the act as outlined here. We can appreciate the government's interest in protecting the interests of stakeholders involved in the industry–vendor, dealer and purchaser. However, it must be something that all parties can live with. Some of these proposed changes are not ones that we believe that all parties can live with.

A personal note. I am not concerned with how the board has acted in the past, but rather the implications that might result from passing of some of these changes. Again, it is a severe fear of the unknown.

Mr. Chairperson: Thank you very much, Mr. MacDonald.

Hon. Harry Enns (Minister of Agriculture): Mr. MacDonald, I appreciate very much your presentation here this morning. I am not so sure whether you want to contribute to downfall of my government at this particular time. The bells are ringing and we will have to excuse ourselves, but, again, I appreciate the concerns that you express on behalf of your industry. We will look at all the suggestions that we hear from all quarters on the bill. Thank you.

Mr. Chairperson: Thank you very much, Mr. MacDonald. The committee will recess until the vote is over and return.

The committee recessed at 11:26 a.m.

After Recess

The committee resumed at 11:54 a.m.

Mr. Chairperson: Could the committee come back to order. When we were interrupted momentarily, we had just finished a presentation. Is there a will of the committee to ask questions of Mr. MacDonald? [agreed]

Mr. MacDonald, are you still here? Would you please come forward? Ms. Wowchuk, with a question.

Ms. Rosann Wowchuk (Swan River): Mr. Chairman, when Mr. MacDonald was making his opening comments, although it was not in his written presentation, he indicated that he supported–or it is at the beginning of the presentation–the change from a two-year warranty to a one-year warranty on tractors and combines.

New tractors and combines cost a lot of money, and I want to do a bit of a comparison. When you buy, when I buy, a washing machine or a refrigerator or a VCR, television, all of those things are covered with

warranty, many times two, three–some manufacturers are prepared to provide a five-year warranty, and we all appreciate that.

Those items do not cost nearly as much as new farm machinery does, so I do not understand why you think that it is a good idea, why you would support the concept of having less warranty when these are such high costs. You would think that the manufacturer would have enough confidence in their product that they would be prepared to provide that kind of a warranty.

Mr. Chairperson: Ms. Wowchuk, is there a question?

Ms. Wowchuk: Yes, there is a question. Can you explain then why you think it is better to move to a one-year warranty and why you feel that the manufacturers should not have to stand behind their product for a longer period of time?

Mr. MacDonald: The first comment that I would want to make, and this is not specifically related to good or bad, it is related to consistency. One of the things that the manufacturers who do business globally, like ourselves, are concerned about is consistency, and one of those things is on standards, the way that we have to design our equipment.

Another one is on warranty. How we have to support our equipment, and to have one jurisdiction that is different than the other jurisdictions in North America, let alone the world, on equipment is very difficult for us as an industry to handle, because, to clarify, warranty provided to customers, to end users through dealers, comes at a cost to the manufacturer, as you can well appreciate. That cost needs to be recouped in some way for the industry to stay strong, and the way that manufacturers do that is they build it into the price of their equipment.

In the case of Manitoba, although we are not one of those companies, there are surcharges put in place to accommodate the additional warranty that those companies have to fulfil for the purposes of the act here in Manitoba. That cost, in some cases, and I will use an example, there are some Manitoba farmers who buy equipment and take it to Texas and bring it back from Texas through the custom run, and we support them if they happen to have a MacDon header on it. They come back from Texas, and at the end of that season they might have 800 or 900 hours on that platform–our platform, not the combine–the combine as well, pardon me. In fact, it might even be more on the combine, because they use different headers on it, not just the one that we provide. They, at that time, might want to sell that piece of equipment or trade it on another piece, as an example.

Those people are in some cases paying a premium to get a two-year warranty which they of course can pass on, but warranties are often difficult to pass on to people to have them perceive the true value of it to pay an additional amount for the equipment, because we are all very price sensitive. Therefore, it is not something that is directly of interest to them or of value to them. The value to them is in that first year, and for many people that occurs.

As John had mentioned earlier, the vast majority of the warranty occurs in the first year. Our objective as manufacturers, and I apologize for answering a question that was asked earlier, but our objective is to get down to less than half a percent. That is where we are all going. I mean, companies like John Deere, they live and breathe that stuff, and we are the same way. Our objective is to reduce our warranty and what we have to pay out. The way we do that is we design better equipment that lasts longer, definitely lasts longer–that is a fact–than it ever has in the history of the industry, is larger, has higher horsepower. To be honest with you, some of that stuff is what drives the increased costs that have been coming up over the years. But you have got more durable equipment that lasts longer, is in better shape when you go to trade it, is larger, more powerful, and more reliable.

So in our opinion, aside from the consistency issue, it should be the choice of the customer to have that second year of warranty as opposed to having it imposed on them.

Mr. Enns: And in many instances you can buy it.

* (1200)

Mr. MacDonald: That is what I am saying, that it should be their choice. If they want to buy a second or

a third year, all the companies offer that, and they encourage it, to be honest with you. If they want to do that, then certainly it is their objective to want to provide that service, and they are welcome to purchase it. Again, we are driven very much by the consistency aspect of this, aside from the fact that we do not like–we, the industry, and we are not an example of it personally in our company–we do not want to treat our customers differently here than we treat them in Saskatchewan. We do not think that is right, and that is what causes those cross-border issues.

Again, there are many people who do cross borders; Manitobans into North Dakota and vice versa, and Manitobans into Saskatchewan and vice versa. There really should not be a system established to really encourage that, in our opinion. The system should be set up as much a level playing field so that dealers in Manitoba can make a fair business and not have their customers going to Saskatchewan or North Dakota and vice versa. It should be a fairly level playing field, in our opinion.

Ms. Wowchuk: Just on that, I think that it is human nature, and no matter what happens people are going to shop around. You had indicated that the price is built in for this warranty. Do you believe that if we move to a one-year warranty that the price is going to drop? Do you see any difference in the prices with the dealers that you supply in Saskatchewan versus the dealers that you supply in Manitoba? Is your price to those dealers less than it is to the dealers in Manitoba?

Mr. MacDonald: My understanding is that there are some surcharges that exist to reflect the additional cost to manufacturers of the second year of warranty in the province of Manitoba. I cannot speak for those manufacturers in stating that that surcharge will be taken off, but if that surcharge exists as a separate charge, showing up or not showing up, then ethically speaking and competition-wise, somebody is going to take it off. I guarantee you, somebody is going to take it off.

If somebody takes it off, everybody is going to take it off. The reason they are going to do that is because if Don is right and it is 2 percent, we are not talking about a small number here, and if one large manufacturer took it off and provided a combine that was less expensive than another manufacturer, I think we all accept, everyone that has spoken today, it is a very price-sensitive industry, and people shop. They move. They will go to another state or province to pick up equipment.

I would not worry about. It will take care of itself, personally, because the competition will determine that, I guarantee it.

Ms. Wowchuk: I want to say that I do worry about it because, as you said, this equipment is supposed to be very durable, and I do not understand, again, why, if the equipment is so durable, the manufacturers would not want to stand behind their product, whether it be a tractor or any other kind of piece of equipment, because although this legislation deals only with tractors and combines, there is other equipment, too. I would think that dealers would want to stand behind it.

I understand that your field is different. You do not deal with tractors and combines, mainly. On the equipment that you deal with, is there any different warranty, or is there only a one-year warranty? What is your warranty on other equipment?

Mr. MacDonald: Our warranty is one year. The point, again, I want to reiterate is that I do not believe–and I cannot speak specifically for those manufacturers because I do not impose a surcharge myself–that any of them enjoy doing that, and the reason they do not enjoy doing that is because it is a very sore point, so I guess I do not agree. I believe that they will remove any that exists today if this legislation is changed because I do not believe they enjoy treating their customers differently and having them move around.

It is not to the manufacturer's advantage to have customers buying equipment a long way away from where they are using equipment. When I say that, if a customer is near dealer A in Saskatchewan, and that customer chooses to go well into Manitoba to buy their equipment, it is not to the manufacturer's advantage to do that. It is always our encouragement to have the dealers in a specific area make those sales because it is easier on everybody. It is easier on the customer, on the dealer and on the manufacturer. So I do not believe that those will exist. Again, I reiterate they exist only

because they reflect the true costs that manufacturers are incurring.

As far as our warranties are concerned, our warranties are consistent with what occurs in the industry, and our warranties are reflected in our pricing. If our warranties were forced to be different, it would affect our pricing, and if the entire industry was told that we had to have a 10-year warranty–we do believe in our equipment, by the way, but we do not offer a 10-year warranty either. If we were told, the whole industry, that we had to have a 10-year warranty on all of our equipment, I think that would decimate the industry.

So we offer what is appropriate and charge for equipment accordingly.

Mr. Stan Struthers (Dauphin): Mr. Chair, just a quick point and a question. Mr. MacDonald, you seem to have a lot of faith in the invisible hand of the free market. What we do know about the free market is that somebody in the end pays for the market. If you take logically what you have been saying about supply and demand, somebody pays for it.

It seems to me that there are three possibilities here. The manufacturer could pay for it, but the manufacturer can also pass that price along to the dealers. The dealers could pay for it, and they could pass it onto the farmers. Who is the farmer going to pass this increased cost to? Whether it is because of the warranty, whether it is buying the extra warranty, as the minister suggested can be done, it is still going to cost farmers more money.

It seems to me that what we are talking about here when we talk about the free market is that the farmer ends up getting stuck again with the higher bill, and that is what makes the free market work for the dealers and for the manufacturers. Am I all messed up on that, or would you straighten me out if I am?

Mr. MacDonald: I believe that the part that you do not mention which we would contend, and I stated earlier, is that the advantage that the customers are having in this day and age is that equipment lasts longer. The reason it lasts longer is because they insist on it lasting longer and because manufacturers are designing it to last longer. We are an example of that, and there are many of them out there. The fact that equipment lasts longer than it has in the past years ago is reflected in the way that the system operates.

So, when we are going to start talking about inconsistency of offering two-year warranties versus one-year warranties, it is absolutely going to be reflected in the price, because it is an extremely competitive industry. If you are in any town in Manitoba and you talk to any farmer in this day and age, where in the old days they typically were green- or red- or whatever, yellow-blooded, that is no longer the case. They go to every dealer in town, and they also go to dealers in other states and provinces. They shop and that price it drives it all.

What you are saying here is you want to legislate in this one province, in this one jurisdiction in North America, that there is a penalty to be paid for manufacturers which they will be forced to pass on to their customers, because in every other jurisdiction they are absolutely competing on a level playing field of one-year warranty and they are reflecting their pricing accordingly and competing in an open marketplace–that we want to do it differently here. I guess we just as an industry do not agree with that. We believe that the marketplace will take care of itself. All of us live and breathe it. We are here because of it.

Mr. Struthers: Just one final comment. If machinery and equipment is lasting longer and if we still believe in the invisible hand of the free market, why would it cost your group more to have that second-year warranty? All things being equal and if equipment is lasting longer, then there should not be a problem with the two-year warranty. Right?

Mr. MacDonald: Just because equipment lasts longer does not necessarily impact what occurs in the second of maybe 20 years. It is one year out of whatever the number is. I am talking about the variation between equipment in the old days sometimes lasting 10 years, now lasting as much as 20 years. So we are talking about a singular year in a group of 20. I do not think you can single any specific year out, in my opinion.

Mr. Chairperson: Any further questions or comments? Thank you, Mr. MacDonald, for your presentation.

Mr. MacDonald: Thank you very much.

Mr. Chairperson: I will call again Lyle Stone. Is Lyle Stone here? Not seeing him, Mr. Glenn Dickson, who is on the list, cannot attend, but has sent a written submission. Is it the will of the committee that that submission be distributed?

Some Honourable Members: Agreed.

Mr. Chairperson: Agreed. Thank you. And recorded in Hansard. Agreed. Thank you.

Bill 41–The Life Leases and Consequential Amendments Act

* (1210)

Mr. Chairperson: I will call then Bill Coady on Bill 41. Bill Coady. Is Mr. Coady here? Mr. Coady is not here.

Louis Tetreault. Is Mr. Tetreault here? Mr. Tetreault, have you a submission for distribution? Thank you. The Clerk will distribute. You may proceed, Mr. Tetreault.

Mr. Louis Tetreault (Private Citizen): Members of the legislative committee, my wife and I have resided in the Kiwanis Chateau since its beginning in 1988. Kiwanis is reported to be the first life-lease project in Canada.

The views I express here are primarily my own. However, I have consulted with other residents and accordingly blend their concern with mine. We were pleased to note that Consumer and Corporate Affairs decided to put forth legislation to cover life leases. We feel that it is incumbent on government to deal with possible abuses that might occur and protect tenants without unduly restricting developers. The draft Bill 41 seems to go a long way towards this objective. I might add that I know that this legislation will not be retroactive. So my only concerns are for future developments.

I propose to deal with what we perceive to have been the most severe problems in our tenants experience over the nine-and-half-year residence at Kiwanis, No. 1 being financing. Despite the fact that tenants put up about one-third of the money and the government the remainder by way of mortgage loan, ownership of the building vests with a shell company formed and controlled by Kiwanians. The sponsor has no equity, yet controls the operation.

Section 28 of the bill, the proposed bill, provides that tenants get the protection of a second mortgage. This is to cover their entrance fees, with a possible foreclosure under Section 31. These remedies are somewhat tenuous for tenants, because all the tenants would have to band together, engage expensive lawyers and share what might be left after the first mortgage was satisfied.

Secondly, in our case, the building is situated on land leased from North Portage with rather expensive annual obligations. I would also point out that the tenants were not given a balance sheet during our first four years, even though they were owed several million dollars by way of entrance fees and covered by that second mortgage. I will deal more with this on disclosure.

Our second main concern was construction deficiencies. The Chateau suffered a series of serious construction deficiencies which were years being resolved because the primary contractor became insolvent. The government came to the rescue with an additional loan to pay the arrears in taxes. We wonder whether the problem would ever have been overcome were it not for a $300,000 rebate in taxes arising from an appeal which we received two or three years ago.

We tenants attribute the problem to the fact that too many of the trades were Kiwanians. Essentially, the Kiwanis, who had no equity in the project, sought tradesmen whose prime qualification seemed to be membership in the club. For example, the prime contractor, Montex Limited, had $100 in capital, thus a nominal amount to lose on a contract that was worth $9 million to $11 million.

Section 21(4) of the bill attempts to deal with the release of funds at the time of construction. However, these provisions do not and probably cannot address the quality aspect of the work that is to be undertaken on a construction site.

The third problem is disclosure. Literature prior to the construction led prospective tenants to believe that the tenants would have representation in the decision-making process during the course of managing the project. This was false and premeditated. The Kiwanis applied for corporate documents, incorporation documents, stating that only Kiwanians could be board members. So they shut us out before they even built the building.

Tenants were granted token appearances prior to board meetings to voice their problems and were summarily dismissed when the business of the meeting began. As noted above, the tenants were not provided with a balance sheet despite having $4 million invested in the project until the financial problems were alleviated with a $300,000 tax refund. It appears Kiwanis did not wish to reveal a large deficit and thus scare away tenants.

As a matter of interest, and it is talking about financing again here, Sunday's Free Press showed some poetic licence, how this can occur. The paper stated on page E6 regarding Place Eugenie's life lease, that there is "no-risk financing." Section 38 attempts to deal with this problem and provides for penalties. However, I cannot visualize a judge imposing large fines or prison terms on volunteers from the Knights of Columbus or the Kiwanis for their exuberance in the promotion of their pet project.

In conclusion, the comments I have put forth have been negative, but bear in mind I have been addressing our problems and not the benefits of life-lease living with access to our downtown area without having to go outside, and there are other social amenities that are beneficial. Otherwise, we would not have stayed there for nine and a half years.

Some tenants could not put up with the problems and left. Most vacancies occur from disability or deaths. We have lost 50 people out of 120 suites over the nine and a half years. We realize that the financing has to come primarily from tenants, and we may have had all the bad luck–I am talking about Kiwanis now–regarding the construction deficiency. We feel strongly that active participation in management by tenants is important. I was pleased to note that newer projects recognize this aspect and have tenants on their boards of directors.

Our people wish to thank Ian Anderson and his team for their efforts. They have set a framework to protect tenants to the extent possible by legislation. We wish you well in your efforts to blend the interests of developers, financers, contractors and tenants. Thank you for listening to some tenants' concerns.

Mr. Chairperson: Thank you, Mr. Tetreault.

Hon. Mike Radcliffe (Minister of Consumer and Corporate Affairs): Thank you very much, Mr. Tetreault, on behalf of the department for your presentation today. We feel it is very important that members of the public do come forward and participate in legislation of this nature, and I thank you for your paper.

We will take these views into account, obviously, in the administration of this legislation, and it is very important that we be aware of these concerns. Thank you, sir.

Ms. Marianne Cerilli (Radisson): Mr. Tetreault, I am wanting to ask, according to your last comments, you are suggesting that there should be tenants on the board of the life-lease condo corporation. Is that what you are recommending? Do you not think that there would be, I guess, enough input through the annual report mechanisms that are in this bill, or are you recommending that the bill include a requirement that tenants would be on the board for the corporation?

* (1220)

Mr. Tetreault: I am speaking primarily of Kiwanis which I have had the most experience with, but I would suppose my comments reflect what should happen for those nonprofit organizations.

They are there to provide help for aged people, and their interests should be our interests because it is voluntary and it is nonprofit. So I do not know how they could exclude the best of 120 tenants and take only their members, the Kiwanians, and say we have a better board because we have Kiwanians. So, yes, I do not

know that that could be legislated, but that would be my recommendation.

Ms. Cerilli: It sounds like a good recommendation to me. My other question would be, from your involvement with life-lease condominiums, do you think that the annual meeting requirements that are outlined in the bill so that there is financial information presented to the tenants at an annual meeting, that they have an opportunity to ask questions--do you think that there needs to be more than that available to tenants? You do not think that the kind of input you would like to see happen by having tenants on the board could be met simply through the annual meeting as it is outlined in the bill?

Mr. Tetreault: Going back to the terrible experiences we had nine years ago, no, the annual meeting would not be enough for that. We had continuous problems. There was no insulation in many of the suites; the air conditioning and cooling systems were disastrous. People had to move out of the common room because they could not stand the cold. So this has to be done on an ad hoc basis. Now I grant that we can always go and complain to the manager, but we did not seem to be getting anywhere, and I think feedback from the board of directors would be more satisfactory to the tenants than feedback 18 months hence about how successful the project was.

Mr. Chairperson: Any further questions?

Ms. Cerilli: I want you then just to summarize for me the difficulties that you had with your experience with these types of condominiums and how it was ultimately resolved in your case.

Mr. Chairperson: I am going to ask committee members to direct their questions to the bill and speak pertinently to the bill. This asking the member about problems that they have had in the past on their specific project does not deal with this bill. I would ask that we retain our comments in order to comply with the time lines that we are dealing with today. So I ask you please to direct your questions to the legislation specifically.

Ms. Cerilli: I have to reject that recommendation from the Chair or question it. From hearing the kind of concerns that we have, then I think we can find out if there are any kind of changes or amendments that would be appropriate in the bill. We have just heard one example where specifically the presenter said that there were outlined requirements in the bill for the annual meeting that are not going to be sufficient. I think we have a very good suggestion for the bill. I hope the minister is open to considering that. It seems reasonable that they would have tenants on the board that manages the condominium.

I think that there may be other recommendations like that for amendments to the bill that we would learn from listening to specifically how, in this case, any difficulties were resolved to see if maybe there could be improvements to those mechanisms.

Mr. Chairperson: The responsibility of the committee, and I would remind all committee members of this, is to hear the legislation, to deal with the legislation, to hear amendments specifically and recommendations by the general public to the committee, and not to consider specifically problems on given projects that we are debating.

So I ask for the indulgence of the committee simply to direct your questions and comments to the legislation.

Point of Order

Hon. Harry Enns (Minister of Agriculture): On a point of order, and I say this very sincerely, one of the singular institutions that we still abide with in this Manitoba Legislature, unique across the land, I might say, is that before passing legislation we hold these committee hearings where we invite the general public, people with specific and vested interests, to come and talk to them about the proposed legislative changes.

You are absolutely right, Mr. Chairman, we are here to deal with legislation, but what this exercise does it allows committee members to broaden their scope, their understanding of how a bill or how amendments will impact on individuals or on businesses. Just a moment ago, we heard from concerned people about farm machinery, how my proposed amendments would impact, and I think we ought not to be too limiting in

allowing us to examine presenters who of their own time and volition come and speak to us.

Mr. Chairperson: The honourable minister did not have a point of order. It is, however, accepted as good information and advice.

Ms. Cerilli: I would just like to add to that. I was just going to say as well on the same point of order–

Mr. Chairperson: On the same point of order of which there was none. A new point of order?

Point of Order

Ms. Cerilli: On a new point of order, then. Mr. Chairperson, we are here as legislators to hear from the general public who often will draw on their own experience to provide us with advice. I think it is up to us then to interpret how that experience can be applied to legislation. I do not think that often members of the general public would have all the details of legal language in place to make specific recommendations. I think that is our job: to draw from the experience and the comments of the general public to decide if there are appropriate amendments to the legislation.

That is what we are here to do, to provide the minister with some recommendations and suggestions of how he can improve this bill. So I think any experience that we can draw from the public would be useful to that end.

Mr. Chairperson: Thank you very much, Ms. Cerilli. It is not a point of order, however. Again, I take it as good advice.

* * *

Mr. Chairperson: Ms. Cerilli, on another question.

Ms. Cerilli: Okay, that means you are going to allow me to continue asking questions, which I appreciate.

So I would like to go back to Mr. Tetreault then and ask if he would answer the question. In your experience, which you said was horrible, how was it resolved? You described a few things since I have been at the table here about the problems with insulation, the problems with air conditioning, the fact that when you went to the manager things did not seem to be resolved. So I am wondering, in your case, how the problems that the tenants were having eventually resolved.

Mr. Tetreault: There are provisions in other acts, and, of course, as a layman I cannot name them, where the developer holds back money from the contractor, and some of the major problems are resolved in that manner. They were able to get money in the holdback. But this went on for two and a half or three years which, if you knew of the value of interest at that time, represents a considerable cost to the tenants.

The other way they resolved the problems was to get some of our people–one of our tenants was an engineer, and he gave them recommendations on the air conditioning. That is another reason why I think members of the residentials could be on the board. Whether it should be–I think I said should be–but that is one of the other reasons.

The problems, though, that were not resolved were the people who left because of problems. They left and took off, and we had 15, 20, 30 percent vacancies, which is added to the other tenants' bill at the end of the year.

So we were saved by the government who loaned us extra money. I guess they did not want to have an empty building, so they saved us. I do not know how much money they put into the repairs in addition to the holdbacks. I do not know, because we were not given the figures. So there are other laws that help people with construction deficiencies.

Ms. Cerilli: So one of the things that happened in your case, then, is that your rent was increased, your monthly costs were increased, because of all the vacancies?

* (1230)

Mr. Tetreault: The monthly costs of the tenants is a fraction, based on square feet or number of suites, of the whole total expense. So if the whole total expense is divided by 80 instead of 120, that is the cost to the tenant. As I mentioned before, Kiwanis has no money in it. Nobody has money in it except the tenants.

Ms. Cerilli: So, then, in answer to my question, when there was a 15 percent to 30 percent vacancy in the complex, your cost went up per month. This is one of the areas, I think, that could be amended because there are consequential amendments in this legislation to amend The Residential Tenancies Act. Tenants are supposed to still be able to appeal rent increases through the residential tenancies' process when they are a tenant in a life-lease condo.

So I am wondering if that was attempted in your case. When your rents were going to go up because of the vacancies, did anyone go to the Residential Tenancies Branch to appeal their rent increases?

Mr. Tetreault: I have heard tenants say they were going to go there. I did not, myself, because it is my understanding that The Tenancies Act does not apply to life lease. Then in my comments here, I made the comment that I expect the tenants to pay the bills. I expect them to pay the bills. Therefore, if they are to pay the bills, they should have some responsibility in the management.

Ms. Cerilli: That is a very good point, and I see the minister is making some notes there, so I am hoping that he is going to seriously consider an amendment that will ensure that tenants are part of the board. But I am also wondering if you have any suggestions on how to ensure that tenants have the ability to appeal their rent.

Currently in Manitoba, under The Residential Tenancies Act, if you live in a regular apartment, you have the chance to appeal your rent if it is above and beyond the rent guideline, if the landlord is going to increase the rent above and beyond the rent guideline. Because of the nature of a life-lease arrangement, we want to make sure that there are still similar provisions under the legislation for you to appeal any rent increases.

So I am wondering if you reviewed those sections of the bill that apply to The Residential Tenancies Act applying to life lease and any recommendations for how it would work appropriately. How should a tenant be able to appeal a rent increase, given what you have said, that the rent goes up based on the occupancy of the apartments?

Mr. Tetreault: I do not have an answer for that because I maintain my original position that we have to pay the bills. So the only protection that we have is some active participation in where the money goes, if it is being frittered away wastefully or whatever. I cannot see, and I am not a lawyer, legislation that would force nonprofit organizations to reduce rent because who would pay it? So I cannot see any recommendation to that effect.

Ms. Cerilli: Maybe I could just ask is there an agreement on when this committee is going to complete?

Mr. Chairperson: This committee will complete at a later time. I had thought we would finish hearing the presenter–Mr. Tetreault was the last presenter on the list–and that we might then reconvene the committee at a future date to hear clause-by-clause presentation on the bills, if that is the will of the committee. But I will ask that question once we have finished the presentation.

Ms. Cerilli: I had one other question that I wanted to ask you. When you were talking about the tenants entering the apartment, it sounded like some of the units were finished and some of them were not, so there were tenants that entered before all of the apartment was completed.

Mr. Tetreault: The entrance into the apartment was regulated. Apparently, it goes by the inspection of the city. If a suite is ready for entrance, they occupy it. So there were no abnormal entrances in the way that I think you are describing. When I said there was no insulation in some suites, they found that out after the people were frozen out of the suites, and then they had to fix seven or eight that did not have insulation between suites and not even insulation from outside to inside. So, whether they left or got it fixed quickly, I do not know because my suite was not affected that way.

Ms. Cerilli: I think what I will have to do is read your presentation and then direct some of the other questions I have to the minister. I am also wondering, when the tenants that decided to leave your complex left, if they had problems getting their money out.

Mr. Tetreault: I do not know of anybody that had undue problems getting their money back. The contract we have allows 90 days, and I do not know of anybody that had more than five or six months. There may have been some that long, but I do not know of any.

Ms. Cerilli: One of the provisions under this legislation is that–and the minister can correct me if I am wrong–the tenants now, once they have given proper notice that they want to terminate their lease, the corporation has I believe it is 90 days to return the money to return the full amount. Do you believe that time period is reasonable, or do you think that is a little long in the interest of the tenant?

Mr. Tetreault: Yes, to be short. The reason I believe it is reasonable is that we are into a life lease, so a life lease in my case might be 50 years, thank goodness, so three months is not a hardship. There is some provision, I believe, for those who die to get it earlier, to the estate. But again, I do not see that that is a major problem. If it were 90 days, I do not see a problem.

Ms. Cerilli: One final question. Mr. Tetreault, this legislation outlines requirements for information, and it must be provided to tenants prior to them entering into a life lease. I am wondering if, first of all, you read the discussion document that went out to the community that outlined a list of what was possibly to be included in that disclosure. Did you see that? It was a green booklet that looked like this.

Mr. Tetreault: Yes.

Ms. Cerilli: It listed quite a large number of items that could be included in the disclosure prior to a tenant entering into an agreement to lease one of these condos. The minister has only chosen to include two of these in the bill. The rest is going to be in regulations. So my question is: is there anything that you really think has to be disclosed to tenants prior to them entering into a life-lease agreement that is either in this list or, from your own experience, should be included in the bill?

Mr. Tetreault: I do not think that there is a requirement to legislate what goes into the prelease disclosure, because it is in the interests of the landlord to provide the good parts of the tenancy, and at the same time he will provide a copy of the lease that gives you the bad parts, if you want to read it very carefully, of what is going on when you sign up. But what the complaint was, was that the disclosure was not factual. That is the different story.

Mr. Chairperson: Are there any other questions or comments? Thank you very much, Mr. Tetreault, for your presentation.

What is the will of the committee? Should we rise now and leave the clause-by-clause considerations till future calling of the committee?

Mr. Edward Helwer (Gimli): Mr. Chairman, I believe we should rise now, and then the House leaders can perhaps come up with a time suitable that we can carry on to deal with the clause by clause.

Mr. Chairperson: Is that agreeable? [agreed]

Thank you very much. Committee rise.

COMMITTEE ROSE AT: 12:39 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Re: Bill 37–The Farm Machinery and Equipment and Consequential Amendments Act

I am unable to attend your committee meeting to present my arguments for revisions to this bill, due to prior commitments on June 11, 1998.

The Farm Machinery and Equipment Act provides farmers with many important legislated benefits including a mandatory warranty period on new machinery and a mandatory warranty period on replacement parts for farm machinery. Unfortunately, The Farm Machinery and Equipment Act does not treat all purchasers of farm machinery equally. Custom operators of farm machinery have been specifically excluded from any and all protection under this legislation. However, a farmer who purchased the same equipment as a custom operator is protected by the act, provided that the annual usage for custom operations does not exceed 50 percent of the total annual usage. This creates a double standard and does not reflect the significant changes that have taken place

in agriculture and in the custom operations industry in recent years.

The Farm Machinery and Equipment Act was initially passed in 1971. At that time, almost all farming operations in Manitoba were completed with machinery purchased by farmers for their own personal use on their farmland. In 1971, custom operators were rare, with the most common custom operations being custom grain harvesters.

Today, custom operators are very prevalent in Manitoba and are involved in virtually all types of farming operations. The demand for custom operators to perform farming operations has increased dramatically in the last 25 years with the peak growth occurring in the last seven years. Some of the current custom operations available in Manitoba include pesticide and herbicide applications, fertilizer applications, manure spreading, seeding, baling, tillage and harvesting. The ownership of these custom operations is also very diverse and includes grain companies, independent fertilizer and chemical dealerships, farmers and contract operators.

However, regardless of who owns and operates the custom equipment, the farm consumer of the custom services is the one who pays the final bill. The farm consumer inevitably pays for any delays in getting his crop sprayed due to lower yields, higher weed infestations, later seeding dates in the case of preseeding spraying, and any increased costs of the custom operation is also passed on to the farm customer. The delays and increased costs could be due to delays in getting repair parts on time, delays in delivery of new machines, or they could be due to a lack of warranty on repair parts.

UGG has experienced many incidents with custom operations that have adversely affected our farm customers. In some of these incidents, repair parts made to implements of husbandry lasted as little as one hour to several months. In May 1998, we were forced to pay for repair parts a second time before our fertilizer applicator at Fannystelle could resume spreading fertilizer. The initial repair parts had lasted for 70 acres or about 45 minutes of field time. Not only did we have to pay the second expensive repair bill on a COD basis, the breakdown left the machine sitting in the farmer's field for about four days delaying his seeding operations. We have also encountered many similar costly experiences with our Custom Field Sprayers with similar delays being suffered by our farm customers.

We know that UGG is not unique in our experience with this problem. I have talked to other custom operators who have said they could not afford to keep a piece of equipment once it went off the factory warranty due to the constant repair bills, many of which were for components that had been recently replaced.

Proposal:

Based on the information outlined above, The Farm Machinery and Equipment Act should:

Recognize and treat custom operators and farmers on an equal basis as they are both purchasing and using farm equipment for farming purposes.

High clearance sprayers and fertilizer floaters (both three- and four-wheel units) need to be added to the list of farm machinery with a specific warranty period. Both types of equipment should have a minimum of an 800-hour or two-year warranty.

Repair parts for the above items should also have a minimum 500-hour or one-year warranty or the balance of the original warranty period where more than 500 hours or one year remains on the original warranty period.

The warranty should also be transferable within the time or hourly limit period.

The combination of an hourly limit and a yearly limit on the warranty period will ensure that the machinery manufacturers are not penalized by a custom operator or farmer who has a high hourly usage rate for the equipment in question.

Thank you for your consideration of this presentation.

Sincerely,

Glenn Dickson
Project Manager, CPS Equipment and Facilities
Engineering and Construction, UGG