Third Session - Thirty-Seventh Legislature

of the

Legislative Assembly of Manitoba

Standing Committee

on

Law Amendments

Chairperson
Mr. Doug Martindale
Constituency of Burrows

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Wednesday, August 7, 2002

TIME – 6:30 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Doug Martindale (Burrows)

VICE-CHAIRPERSON – Ms. Marianne Cerilli (Radisson)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Messrs. Ashton, Chomiak, Mackintosh, Smith, Hon. Ms. Wowchuk

Ms. Cerilli, Mrs. Driedger, Messrs. Faurschou, Martindale, Penner (Emerson), Mrs. Smith

APPEARING:

Hon. Jon Gerrard, MLA for River Heights

Mr. Stuart Murray, Leader of the Official Opposition
Mr. Larry Maguire, MLA for Arthur-Virden

WITNESSES:

Bill 2–The Security Management (Various Acts Amended) Act

Mr. Jeff Kisiloski, Canadian Association of Agri-Retailers
Mr. John Lindsay, Canadian Emergency Preparedness Association, Manitoba Chapter

Bill 21–The Partnership Amendment and Business Names Registration Amendment Act

Mr. Jamie Kraemer, Institute of Chartered Accountants of Manitoba
Mr. Peter Dueck, Institute of Chartered Accountants of Manitoba

Mr. Blair Graham, Thompson Dorfman Sweatman

Bill 23–The Pesticides and Fertilizers Control Amendment Act

Mr. Herm Martens, Private Citizen
Mr. Weldon Newton, Keystone Agricultural Producers
Mr. Marcel Hacault, Manitoba Pork Council

Bill 24–The Securities Amendment Act

Mr. Murray Smith, Manitoba Council of Aging
Ms. Gloria Desorcy, Consumers' Association of Canada, Manitoba Branch
Mr. Greg Bieber, Bieber Securities Inc.
Mr. John Stefaniuk, Canadian Bankers Association

Bill 42–The Off-Road Vehicles Amendment Act

Ms. Dawn Gratton, Executive Director, Snomobilers of Manitba

Bill 53–The Common-Law Partners' Property and Related Amendments Act

Mr. Gilles Marchildon, ÉGALE
Mr. Stephen Copen, Private Citizen
Mr. Tim Preston, GOSSIP
Ms. Donna Huen, Rainbow Resource Centre
Ms. Janet Baldwin, Manitoba Human Rights Commission
Mr. Elliott Leven, Manitoba Human Rights Commission
Ms. Helen Hesse, Private Citizen
Mr. Mike Law, Gay and Lesbian Issues Section, Manitoba Bar Association
Ms. Debra Parkes, Private Citizen
Ms. Maureen Pendergast, Private Citizen
Ms. Sharon Pchajek, Private Citizen
Ms. Karen Busby, Private Citizen

WRITTEN SUBMISSIONS:

Bill 24–The Securities Amendment Act

Mr. Richmond Bayes, Securities Law Section, Manitoba Bar Association

Bill 38–The Public Health Amendment Act

Ms. Shelly Wiseman, Canadian Federation of Independent Business

Bill 53–The Common-Law Partners' Property and Related Amendments Act

Ms. Sara Kinnear, Private Citizen
Ms. Evelyn Braun, LEAF Manitoba Inc.

MATTERS UNDER DISCUSSION:

Bill 2–The Security Management (Various Acts Amended) Act

Bill 21–The Partnership Amendment and Business Names Registration Amendment Act

Bill 23–The Pesticides and Fertilizers Control Amendment Act

Bill 24–The Securities Amendment Act

Bill 38–The Public Health Amendment Act

Bill 42–The Off-Road Vehicles Amendment Act

Bill 53–The Common-Law Partners' Property and Related Amendments Act

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Mr. Chairperson: Good evening. Will the Standing Committee on Law Amendments please come to order? The first order of business is the election of a Vice-Chairperson. Are there any nominations?

Hon. Scott Smith (Minister of Consumer and Corporate Affairs): I would like to nominate Ms. Cerilli.

Mr. Chairperson: Ms. Cerilli has been nominated. Are there any further nominations? Seeing none, I declare Ms. Cerilli elected Vice-Chair of this committee.

This evening the committee will be considering the following bills: Bill 2, The Security Management (Various Acts Amended) Act; Bill 21, The Partnership Amendment and Business Names Registration Amendment Act; Bill 23, The Pesticides and Fertilizers Control Amendment Act; Bill 24, The Securities Amendment Act; Bill 38, The Public Health Amendment Act; Bill 42, The Off-Road Vehicles Amendment Act; Bill 53, The Common-Law Partners' Property and Related Amendments Act.

We have presenters who have registered to make public presentations to Bills 2, 21, 23, 24, 42, and 53. It is the custom to hear public presentations before consideration of bills. Could I ask those persons in attendance who are speaking in French to please make themselves known to the Clerk of the committee if you have not already done so.

Is it the will of the committee to hear public presentations on bills? If yes, in what order do you wish to hear the presenters?

Mr. Scott Smith: The out-of-town presenters first and then people who wish to use French, second, and the bills listed as they are on the Order Paper.

Mr. Chairperson: Normally we deal with French presenters first and then out-of-towners. Is that agreed? *[Agreed]*

I will then read the names of the persons who have registered to make presentations this evening. For the benefit of committee members, those marked with an asterisk are from out of town. Bill 2: Jay Holdnick, Kelly Mathison or John Schmeiser, Cam King or John Lindsay. I apologize in advance if I mispronounce anyone's names.

Bill 21: Len Hampson, Gary Hannaford or Shirley Sommer

Bill 23: Herm Martens, Weldon Newton, Marcel Hacault

Bill 24: Richmond Bayes, Daniel Iggers, Gloria Desorcy, Greg Bieber, Murray Smith, John Stefaniuk.

Bill 42: Dawn Gratton.

Bill 53: Jayne Kapac, Tim Preston, Donna Huen, Kim Segal, Janet Baldwin and Dianna Scarth, Helen Hesse, Gilles Marchildon, Mike Law, Stephen Copen, Debra Parkes, Sharon Pchajek and Maureen Pendergast, Karen Busby.

Is there leave of the committee to hear those persons making the presentations in French immediately prior to out of town? We have already agreed to that.

Those are the persons and organizations that have registered so far. If there is anybody else in the audience who would like to register or has not yet registered and would like to make a presentation, would you please register at the back of the room.

Just a reminder that 20 copies of your presentation is required. If you require assistance with photocopying, please see the Clerk of the committee.

Before we proceed with the presentations, is it the will of the committee to set time limits on presentations?

Mr. Scott Smith: Mr. Chair, I would recommend that we have 15 minutes for presentation and 5 minutes for questions.

Mr. Chairperson: It has been recommended that we follow the usual procedure of 15 minutes for presentations and 5 minutes for questions and answers. Is that agreed? *[Agreed]*

How does the committee propose to deal with presenters who are not in attendance today but have their names called? Shall these names be dropped to the bottom of the list and shall the names be dropped from the list after being called twice? *[Agreed]* As a courtesy to persons waiting to give a presentation, did the committee wish to indicate how late it is willing to sit this evening?

Mr. Scott Smith: I would recommend that we sit until midnight and then reassess the room at that time.

Mr. Chairperson: It has been suggested we sit until midnight and reassess at that time. Is that agreed? *[Agreed]*

I would also like to inform the committee that written submissions have been received from Richmond Bayes, Securities Law Section of the Manitoba Bar Association, for Bill 24; Shelly Wiseman, Canadian Federation of Independent Business, for Bill 38; Sara Kinnear, private citizen, for Bill 53; and Evelyn Braun, LEAF Manitoba Inc., for Bill 53. They have asked that their briefs be included as written submissions to appear in the committee transcript for this meeting. Copies of these briefs have been made for committee members and were distributed at the start of the meeting. Does the committee grant its consent to have these written submissions appear in the committee transcript for this meeting? *[Agreed]*

Bill 53–The Common-Law Partners' Property and Related Amendments Act

Mr. Chairperson: I will now call Gilles Marchildon who will be speaking en français. Will you please come forward to make your presentation. Please proceed.

Mr. Gilles Marchildon (ÉGALE): Merci. Chers membres du comité, ÉGALE–je parle en mon nom personnel mais je siège aussi au conseil d'administration du groupe fédéral ÉGALE et je vais expliquer un peu le groupe, si parmi vous il y en a qui ne connaissez pas ce groupe.

Alors, ÉGALE désire d'abord vous remercier de lui donner l'occasion d'exprimer son opinion sur le Projet de loi 53.

Fondée en 1986, ÉGALE est une organisation pan-canadienne à but non lucratif, vouée à la promotion de l'égalité et de la justice pour les lesbiennes, les gais, les bisexuels et les personnes transgenres qui compte des membres dans chacune des provinces et des territoires du

Canada. ÉGALE est intervenue devant de nombreux comités parlementaires canadiens, comme elle a fait devant ce même comité il y a deux semaines, lors de consultations gouvernementales et aussi dans des causes juridiques, y compris des cas devant la Cour suprême du Canada. ÉGALE s'associe également à de nombreuses activités internationales et initiatives d'éducation publique.

D'un bout à l'autre du Canada, les tribunaux et les gouvernements, malheureusement souvent dans cet ordre, sont en voie de reconnaître le droit des lesbiennes et des gais d'être traités également, en tant que personnes et dans le contexte de leurs relations. En fait, tous les gouvernements, à l'exception des Territoires du Nord-Ouest et de Nunavut, interdisent présentement la discrimination fondée sur l'orientation sexuelle. Au niveau fédéral, la discrimination fondée sur l'orientation sexuelle est interdite depuis 1996.

Pour sa part, la Cour suprême du Canada a statué unanimement que la *Charte des droits* garantit le droit à l'égalité des gais et des lesbiennes. La Cour suprême du Canada a aussi exprimé l'avis qu'en définitive, ce sont les gouvernements et les corps législatifs qui ont la responsabilité de modifier les lois discriminatoires, afin qu'elles procurent les avantages de l'égalité garantis dans la *Charte des droits et libertés*. Plusieurs, de peur de semer une controverse politique au sein de leur électorat, ont malheureusement attendu que les tribunaux ne leur laissent plus le choix avant d'agir.

Le Manitoba doit être félicité de ne pas avoir attendu que les militants de la communauté gaie et lesbienne fassent appel aux tribunaux pour faire valoir leurs droits.

* (18:40)

Les unions des conjoints du même sexe doivent être pleinement reconnues au même titre que les autres unions et ce, tant sur le plan juridique qu'au plan social. C'est là une question de dignité de la personne et d'égalité entre tous les citoyens et citoyennes. La contribution des personnes homosexuelles, autant sur le plan culturel et artistique qu'au niveau social, économique et, oui, politique, a longtemps été délibérément passée sous silence, ignorée ou même niée.

Donc ÉGALE accueille favorablement la volonté du gouvernement du Manitoba de vouloir parfaire le droit à l'égalité des personnes homosexuelles au Manitoba. Le Projet de loi 53 accompagne parfaitement le Projet de loi 34 qui fut récemment adopté par la Législature. Ces réformes législatives et administratives envoient un signal clair à l'ensemble de la société manitobaine que la communauté gaie et lesbienne manitobaine a droit au même respect, aux mêmes droits et à la même considération que les autres.

Je vous remercie de votre attention et il me ferait plaisir de répondre à vos questions.

Translation

Honourable committee members, ÉGALE–I am speaking on my own behalf, but I also am on the national board of directors of ÉGALE, and I will explain a little about this group in case any of you are not acquainted with it. So ÉGALE would like first to thank you for this opportunity to express its opinion on Bill 53.

Founded in 1986, ÉGALE is a pan-Canadian non-profit organization for the promotion of equality and justice for lesbians, gays, bisexuals and trans-gendered persons. It has members in each province and territory of Canada. ÉGALE has been an intervener before many Canadian parliamentary committees, as it was before this same committee two weeks ago, as well as in government consultations and legal cases, including cases before the Supreme Court of Canada. ÉGALE is also involved in many international activities and public education initiatives.

All across Canada, courts and governments, unfortunately often in that order, are in the process of recognizing the right of lesbians and gays to be treated equally, both as individuals and in their relationships. In fact, all governments, with the exception of those of the Northwest Territories and Nunavut, now prohibit discrimination on the basis of sexual orientation. At the federal level, discrimination

on the basis of sexual orientation has been prohibited since 1996.

For its part, the Supreme Court of Canada has ruled unanimously that the Charter of Rights guarantees equality rights to gays and lesbians. The Supreme Court of Canada has also expressed the opinion that ultimately, it is governments and legislative bodies that are responsible for amending discriminatory laws so that they provide the equality rights guaranteed in the Charter of Rights and Freedoms. Many, for fear of sowing political controversy within their electorate, have unfortunately waited until the courts left them no choice before taking action.

Manitoba is to be congratulated for not waiting until the militants of the gay and lesbian community turned to the courts to have their rights respected.

Same-sex unions must be fully recognized in the same way as other unions, from both the legal and the social perspective. It is a matter of the dignity of the individual and of equality among all citizens. The contribution of homosexual persons culturally and artistically, as well as at the social, economic and, yes, political levels, was for a long time deliberately met with silence, ignored or even denied.

ÉGALE welcomes the desire of the Manitoba government to improve the equality rights of homosexual persons in Manitoba. Bill 53 is the perfect accompaniment to Bill 34, which has recently been adopted by this Legislature. These legislative and administrative reforms send a clear signal to all of society that the gay and lesbian community of Manitoba is entitled to the same respect, the same rights and the same consideration as others.

Thank you for your attention, and I would be pleased to respond to your questions.

Mr. Chairperson: Thank you for your presentation.

That concludes the presenters who have indicated they would be speaking in French. Are there any other presenters in attendance who would like to make their presentation in French?

If not, is there agreement from the committee to allow the translators to leave for the evening? *[Agreed]*

Mr. Chairperson: I will now call on the first out-of-town presenter. Mr. Kelly Mathison or John Schmeiser, Director, Canada West Equipment Dealers Association, for Bill 2. That name will be dropped to the bottom of the list.

Bill 23–The Pesticides and Fertilizers Control Amendment Act

Mr. Chairperson: Bill 23, Herm Martens, private citizen. Mr. Martens. Do you have copies of your brief, sir?

Mr. Herm Martens (Private Citizen): No, I do not.

Mr. Chairperson: Please proceed.

Mr. Martens: Thank you, Mr. Chairman.

Honourable members of the Manitoba Legislature, it is indeed a privilege to have this opportunity to voice my concern of a bill, Bill 23 in this case, The Pesticides and Fertilizers Control Amendment Act.

I have been a hog producer for 29 years and have been concerned on how to dispose of the manure in a proper fashion, one that would provide the most nutrient value to my land, to my crop land, spreading it evenly on the land as to not have burnout spots, nor to have underfertilized areas. Another big concern is the smell factor.

We live on the same yard as our hog facility and therefore have already done many of the items listed in this bill on a voluntary basis. I agree with many of the points. However, I do have a few concerns with this bill that kind of jumped out at me. The first one is the 4(1.1), and it reads: "When an inspector signals or requests a person driving a vehicle to stop, the person shall immediately bring the vehicle to a stop and shall not proceed until permitted to do so by the inspector."

Let us not give so much authority as to stop these units before they are safe to do so. This has happened so often in the past.

No one will be hauling manure for more than a few miles, most often only a few hundred yards along a road before turning off and then the unit will be safe off the road. How will these manure officials be identified? We do have a number of want-to-be manure watch people out there. This is just a question and I think we have to make sure that is well identified.

The second and the most major clause that really concerns me is clause 5(1)(a), and it reads: "at any reasonable time and without warrant, enter any business premises, or any premises where the inspector has reasonable and probable grounds to believe that business records are kept, and examine and make copies of such of the following as the inspector reasonably requires to determine compliance with this Act or the regulations:"

Reasonable time, what is a reasonable time and by whose judgment? And without warrant. This is not acceptable. It should and must have, at the very least, a warrant to enter. I took a quick survey in my area as to the commercial manure applicators. All are small businesses run out of their home offices. Not one had a business office as the chemical and fertilizer businesses have.

I am sure each one of these would be very co-operative when approached by one of the compliance officers, but to just march in would not be acceptable. Back on my own farm, I have an office in my house where all my books, records and documents are kept. This law would allow some stranger to just march into my home just because he or she had probable grounds to do so. I sure hope this does not happen, and I hope you make the change that a search warrant is required.

In closing, I want to thank you again for the privilege to present my concern, and I do hope some changes will be made to improve this Bill 23. Thank you.

Mr. Jack Penner (Emerson): Thank you very much, Mr. Martens, for the presentation. You have raised the same issue that we have raised in consultation in what we were led to believe would be an all-party consultative process to ensure that this bill would be written in such a manner as to give comfort to people and especially home-owners and others, that there would be no authoritative encroachment on the rights of individuals in the privacy of their homes. We had made strong recommendations to Government to write this bill in such a manner as is done in other acts. I believe the livestock securities act deals with and prescribes specifically the right of the individual to maintain the privacy of the homes and requires a warrant before entry into a residence.

What you are describing is certainly the case in virtually every farm operation, big or small, that I know of today. In most cases, the offices of those operations are part of the home. Therefore, we indicated very clearly our desire to the Province of Manitoba and the Government of Manitoba that they should enshrine that right in this act as well. We will certainly bring that again to their attention, and we thank you for bringing that to the attention of this committee.

Hon. Rosann Wowchuk (Minister of Agriculture and Food): Mr. Martens, thank you for coming out this evening and expressing your views on the bill. Certainly I appreciate your comments about being a farmer for many years and working to protect your land and applying manure in a reasonable fashion. That is the intent of the bill, also to ensure that, as the industry grows, all people who are applying manure do so in a reasonable fashion and with the proper training. That is not saying that farmers are not applying it properly, but it is to give some certainty to it.

You said you had a concern with the ability to stop a vehicle. You have a concern that vehicles may be stopped on the road for inspection. Could you just explain your concern with that area, please?

Mr. Martens: My concern is stopping these vehicles when it is unsafe to do so in the attempt of feeling I finally have accomplished something. I have got this guy, and he has got something I can give him a ticket for and stop him in such a way that he is out on the road where it is not safe to do. Most of the farm vehicles that do haul manure would love to get off the road and would like to haul all their manure not on travelled roads at all, but stay off

them because of the size and visibility, et cetera, that is out there. That was a concern, that part of it and the fact of having somebody drive up. It has got to be a very clearly marked vehicle that they know who it is that is coming to stop them.

* (18:50)

Ms. Wowchuk: Again, thank you for that advice. It is not the intention of the legislation to have somebody out there policing and following every applicator, giving the authority should there be violations that are causing danger on the road, that there is the ability for the inspector to stop the vehicle. It is not the intention to have a bunch of inspectors out there tracking everybody down and looking for a place to issue a ticket.

Mrs. Joy Smith (Fort Garry): Thank you very much for your presentation. As a result of what we have just heard the Minister of Agriculture say, are you expecting that the minister would get back to you with these changes in the bill?

Mr. Martens: It certainly would be appreciated if I would hear about it. I would sure like to see that happen, yes.

Hon. Jon Gerrard (River Heights): Thank you for your presentation. Your concern is clearly spelled out. We have just dealt recently with another bill which dealt with inspection in the case of animal diseases. There was a clear requirement for a search warrant. This bill needs to be changed so that there is a search warrant requirement, as well.

I would like to ask you, if there were the two amendments made to this Bill, then you would be generally in favour of the rest of the bill, is that right?

Mr. Martens: Most of the bill I would be in favour of as long as it does not jeopardize. There are some of the small farmer things that could be a problem, but certainly the bill, I think, is going in the right direction with its intent anyway. I do agree in principle with the bill. The thing that really concerns me is the fact of somebody marching into my house versus a business downtown someplace. I can see that happening. It is not invading my privacy. But, when it is in my home, I would request some respect for that.

Ms. Wowchuk: I want to clarify again that, under The Animal Diseases Act, there is entry power. Search warrants are only required if entry is denied or if it is the individual's home. In The Animal Diseases Act, there is the ability to enter to seize information if it is necessary. If there is a search warrant required, it would only be issued if someone is denying access to their site of operation or their office, should it be their dwelling. Then a search warrant would be required.

Mr. Chairperson: Thank you for your presentation. The next presenter is on Bill 24, The Securities Amendment Act, Daniel Iggers, Canadian Bankers Association. Is Mr. Iggers present? That name is dropped to the bottom of the list. The next out-of-town presenter is on Bill 53, The Common-Law Partners' Property and Related Amendments Act, Stephen Copen, private citizen. Please proceed.

Bill 53–The Common-Law Partners' Property and Related Amendments Act

Mr. Stephen Copen (Private Citizen): Good evening, ladies and gentlemen, and thank you for allowing me to make a presentation. First, I would like to make it very clear that I am not a lawyer. Secondly, I live in a common-law relationship, and I have two sons from a previous marriage. When I heard about this bill, I did not think much of it until I started looking at some of the detail and what the implications would be to myself, to my partner and to my sons.

I have been in a marriage. Marriage has specific property rights and responsibilities. When you divorce or you die, those responsibilities and property rights are very clear and sometimes extremely difficult to overcome because they cause a lot of issues relative to separation, divorce and the like.

When I looked at common-law relationships, they do not have property rights. This particular bill would give them property rights. When I went through all of the amendments to the various pieces of legislation that are in existence, it is very detailed and complex, and to the number of bills that it would be changing.

Property rights are not the only things that exist in common-law relationships. We all have

responsibilities. It seems to me that, rather than minimize society and individual rights and our choices in those rights, we should ensure that government provides information about what choices we are making. In common-law relationships, if someone does not know that property rights do not exist, they should know or they are going to find out later rather than government legislate property rights within them. Individuals who choose common-law relations should have access to information on the property right differences, and that should be provided by government.

The minister identified in a news release that, with the passage of this bill, education would be provided as to what property rights would be allowed within the bill and common-law relations would have ability to access. It seems to me that, before you pass legislation, you provide information. You ensure that people understand what they are getting into before they step into it. If death or separation ends a common-law relationship, what happens to the property rights of the children from another relationship, especially if it was a marriage?

My two sons, I have a farm, they are working on that farm. They are participating in its activities. They are carrying out day-to-day activities. Sometimes it is a struggle to get them to do some of the stuff, but they are participating. By putting property rights into common-law relationships, you remove their rights for equity in that property, for the capital that they are gaining, although maybe not monetarily, and you are removing the choice that other people have in relationship to that.

I threw the last one out to save space, but same-sex couples, if they need their property rights defined, rather than defining them through the back door of common-law relationships, perhaps it is better to put the ability for them to be married and access property rights through marriage. It just seems to me that: Who is really benefiting from this legislation? We all know that you can step out of the property rights that legislation is defining by getting a pre-common-law relationship agreement signed by a lawyer, as you can get a premarital agreement. Who is going to benefit? The lawyers. They are going to benefit at the front end; they are going to benefit at the back end when there is separation and divorce and death.

So, from my viewpoint, I do not see the need for this legislation. I do not see property rights having to exclude society's flexibility to deal with different relationships because, if marriage has property rights, why should common-law relationships have it?

Thank you very much for allowing me to present.

Mrs. Joy Smith (Fort Garry): I just have a question. Do you mind my asking how long you have been in a common-law relationship in terms of years or months?

Mr. Copen: It was '99.

Mrs. Smith: So, roughly three years.

Mr. Chairperson: I need to acknowledge you, Mr. Copen.

Mr. Copen: Roughly three years, sorry.

* (19:00)

Mrs. Smith: What do you think about the time lines in the bill, where it says things kick in if you have signed a statement of commitment after one year or if you have lived together three years? Did that seem clear to you in the bill, that, after three years, common-law partners have all the benefits property-wise as married couples would have?

Mr. Copen: Again, I would ask: Why not get married? Why are you in a common-law relationship versus a marriage? If you know there are differences in the rights, then get married if you need those rights.

Mrs. Smith: When you were reading through the bill, two things, No. 1, did you feel that a lot of common-law people who are now living in common-law relationships are aware of this bill and aware of the impact it will have on their lives when it is passed?

Mr. Copen: I can only speak for myself. I became aware of it because of news media. Also,

I subscribe to the electronic news releases, and I observed what was being said through that. Whether or not people living in common-law relationships know what is in here, I cannot say.

Mrs. Smith: In your view, after reading the bill, do you think it is reasonable that common-law can be proven or not proven? For instance, after a common-law partner passed away, what would prevent a caregiver, a relative or a friend from saying we had a conjugal relationship? We lived in common law. As a person from the outside who has looked at the bill, is there anything about that aspect that impacted on you?

Mr. Copen: Not really. I did not look at all of the factors of the legislation and all of the detail that were provided within that. I looked at what does this mean to me, what steps will I have to take and what does it impact upon my sons.

Mrs. Smith: Basically, you came tonight to say that you saw no need for this bill at this point in time for common-law relationships, from what we are hearing you say. Is that correct?

Mr. Copen: Correct. I believe that marriage provides all of the property rights, pension rights, et cetera, and that if someone is living in a common-law relationship and the law allows them to be married, then be married. If the law does not allow it, then change the law rather than change the flexibility of individuals in making choices in how they live together and the impact that has upon their children.

Mrs. Smith: When the public find out about this bill in a more knowledgeable manner, and I have to make a statement. I do believe that a large part of the population does not know about this bill, but, having said that, do you think that choices would be limited for people because of the property rights and the pension rights considerations in the bill?

Mr. Copen: Yes, I do. My partner and I talked about marriage. We thought about it. We dabbled with it. We debated it. We agreed that we were going to retain our property. She chooses what she works with and what she works on. I choose what I work with and what I work on. We make definite choices in our lives, and this was one of them. Government now, by passing this legislation or proposing it, is taking away a choice. If we wanted property rights and if we wanted pension, et cetera, et cetera, we would have married.

Mrs. Smith: I really thank you for coming tonight because I think that your presentation was very clear, and your reasons were extremely valid. I just want to personally thank you for doing that.

Mr. Chairperson: Thank you for your presentation. The committee needs to make a decision about how we proceed with bills. Shall we proceed in numerical order, lowest numbers to highest?

Hon. Scott Smith (Minister of Consumer and Corporate Affairs): I would agree with that, that we do proceed in numerical order.

Mr. Chairperson: Is that agreed? *[Agreed]* Beginning then with Bill 2, Jay Holdnick, Canadian Association of Agri Retailers. Could we get your name, sir?

Bill 2–The Security Management (Various Acts Amended) Act

Mr. Jeff Kisiloski (Canadian Association of Agri-Retailers): My name is Jeff Kisiloski.

Mr. Chairperson: Is there leave of the Committee to allow Mr. Kisiloski to present instead of Mr. Holdnick? *[Agreed]* Please proceed.

Mr. Kisiloski: Honourable members of the committee, my name is Jeff Kisiloski, and I am the research co-ordinator with the Canadian Association of Agri Retailers. The Canadian Association of Agri Retailers is a voluntary industry association representing the interests of approximately 80 percent of agri retailers in the crop input sector. Along with administering two professional designation programs aimed at improving the qualification of those individuals providing crop advice to farmers, CAAR also issues numerous publications aimed at enhancing the depth of knowledge on regulatory issues, technological advances and sound stewardship principles. CAAR acts as the contact between the ag retail sector and various regulatory agencies.

On behalf of the Manitoba members of the Canadian Association of Agri Retailers, I would like to thank you for providing us this opportunity to comment on the proposed Bill 2, The Security Management Act. I would like to express my support for the intention of the bill to be proactive to protect the safety of Manitobans. However, there is an inclusion in the proposed bill that relates to The Pesticides and Fertilizers Control Act that our members do have concerns with.

Clause 3.2 of part 5 states that: A person who sells or leases prescribed aerial or ground-based spraying equipment must provide prescribed information to the minister in accordance with the regulations at least 10 days before transferring possession of the equipment. But with the minister's written approval, the transfer may be made sooner.

This proposed clause governing spraying equipment will not permit a retailer to sell a spray application unit to their customers without preapproval from the minister. CAAR believes that the goal of this clause is to prevent the ready access of this equipment to terrorists. However, in practical application, this is an unwieldy and unworkable solution.

Producers purchase a lot of equipment on very short notice to combat critical problems in their crops. For example, a farmer may realize that he or she must buy or lease a sprayer to combat a diamond back moth infestation. However, the purchase would be delayed because they must wait to receive approval from the minister. This would cause an expensive delay for the farmer. Allowing the pest an extra number of days to feed on the crop will devastate its economic potential.

Moving up the chain, that would affect the farmer, Manitoba Crop Insurance and related suppliers. This will also put retailers in Manitoba at a considerable disadvantage because there is no equivalent legislation in the two neighbouring provinces. Most of the land that is farmed in Manitoba is in the southern portion of the province and borders Saskatchewan, Ontario and the United States. As such, if a farmer needs to obtain a spray unit very quickly, they will travel to one of these three areas to purchase and implement on short notice.

Retailers have a well-developed relationship with their customers. Most retailers know their customers by name, how much land they operate and the crops they grow. Retailers have a record of their customers' information on file for tax purposes and for invoicing. Currently, under PST legislation, retailers are required to obtain a section, township and range number from the farmer in order to qualify for provincial sales tax exemptions. With the high level of knowledge that a retailer currently has on their customer, CAAR is proposing that having the land description on file, along with the customer's name, should exempt them from having to go through the 10-day exemption process. If they do not have this information readily available on the customer or if the customer is new to the retailer, they must establish an account prior to making the sale. This account would include all information on the new customer, including appropriate photo identification and references.

In conclusion, CAAR appreciates being given the time to comment on this bill. We would like to work with you to find a mutually satisfactory resolution to this issue.

* (19:10)

Hon. Rosann Wowchuk (Minister of Agriculture and Food): Thank you for your presentation. I want to say that I appreciate your offer to work with us on this very important issue. Indeed, we have been working with the aerial applicators industry as we develop this.

You have expressed a concern with the clause of prescribed aerial and ground spraying equipment and the need to get approval before that sale can take place. I want to make you aware that this does not apply to agriculture equipment. In the regulation, there will be an exemption for agriculture equipment. This will apply to aerial applicators and ground spraying equipment that is not agricultural equipment. So there are some exemptions that will apply, that will be in the regulation.

I want to tell you that we are also prepared to work with you to see that the sale of equipment moves quickly. This is not intended to slow down the sales. It is intended to ensure that, should there be an attempt to obtain

equipment for a purpose other than commercial application as equipment in a farming operation or other such area, it is so that it can indeed prevent it from happening. But the agriculture equipment that you would be selling, and I would ask that you comment on that, if you would be comfortable with the fact that agriculture equipment, sprayers, would be exempt in regulation from this clause.

Mr. Kisiloski: Yes, we would definitely like to see that exemption in there because of the knowledge base in the industry of the customers.

Mr. Jack Penner (Emerson): Thank you very much for your presentation. I find the minister's comments somewhat interesting in saying now, after we have had significant discussions in the all-party committee and an assurance from the Minister of Justice that this bill would be changed and the wording of this bill would be changed and amended to exclude ground-based spraying equipment and also refer to and change the wording in this act that would give assurances to the aerial applicators that they would not have to dismantle their equipment at the end of every day, which would, in fact, be illegal, as I understand it, according to Canadian law. So we truly appreciate what you are saying.

We look forward to the Minister of Justice making the amendments to this bill instead of just the regulation, because regulations can be changed at the whim of the Cabinet or the minister making presentation to Cabinet. So we think this needs to be enshrined in the legislation to assure that farmers and applicators, especially–and we call them air tractors, as you probably do, as well, is the planes that are used for spraying–need to have the assurance that they can, in fact, operate and utilize their equipment and also purchase if and when they wreck one of their equipment. Moths lay a lot of eggs in one day, and most of the applications of these kinds of materials, as all of us know that farm, must very often be done within hours and cannot wait a day or two. So we truly appreciate the concerns that you expressed, and we will certainly try to ensure that the Government will stand by its word and amend this bill to relieve your anxieties.

Hon. Jon Gerrard (River Heights): Thank you for raising concerns. In the comment that was made by the minister about differentiating between sprayers for agricultural and non-agricultural purposes, I would just like to make sure that we are not, in some instances, dealing with sprayers, which could be used for more than one purpose, and whether there are going to be complications in using that sort of differentiation as opposed to using what you would propose, changes which would recognize the way that people in the agricultural industry operate and the requirement for understanding and being able to know who you are dealing with.

Ms. Wowchuk: I did indicate that there is a part of the regulation that comes with the bill that defines equipment, but the Member for Emerson is accurate, where we did have discussion about amending the bill, and it is our intention to do an amendment that will clearly ensure that grounds-based spraying equipment used for farm purposes will not be placed into a prescribed class. We have had all-party discussions on this, and it is our intention to bring an amendment forward on it, but there is also a regulation that clarifies the types of equipment, as well.

Mr. Chairperson: Thank you for your presentation. The next presenter is Cam King or John Lindsay, Manitoba Chapter of the Canadian Emergency Preparedness Association. Please identify yourself.

Mr. John Lindsay (Canadian Emergency Preparedness Association, Manitoba Chapter): I am John Lindsay, the incoming president of the chapter.

Mr. Chairperson: Please proceed.

Mr. Lindsay: Mr. Chairman, thank you for this opportunity to express our support for this bill and to present our views on the need for further enhancements in Manitoba's emergency management system.

In particular, we wish to comment briefly on the amendments proposed to The Emergency Measures Act and The Fires Prevention Act.

The Manitoba Chapter of the Emergency Preparedness Association, or CEPA Manitoba, has a mandate to promote emergency preparedness in the province. The chapter consists of emergency managers in the public, private and non-government sectors. All our members shared in the sorrow of the tragic events of September 11 and the subsequent anthrax incidents.

Events such as these serve as a powerful reminder of the responsibilities emergency managers and first responders bear for our communities. The lessons learned in such a tragic loss of so many lives, including those who are rescuing others, must not be ignored. CEPA Manitoba wants to work with the Government of Manitoba and other agencies to ensure these lessons are applied locally and to threats that are real for us every day.

While September 11 drew the world's attention to the threat of terrorism, it also shows how a plane crash, a building collapse or an unusual disease outbreak, regardless of the initial cause, can impact on our society. We must learn to consider all hazards that face our communities. Our emergency management systems must be capable of dealing with a wide range of situations, not just the last one to be reported on the six o'clock news. We must also understand how different emergencies, whether the result of a natural phenomena, a technological accident or a malicious act, share many common consequences that we need to handle.

In the emergency management literature and international best practice, this is known as taking an all-hazards approach. CEPA Manitoba encourages the government to formally adopt an all-hazards approach so that our communities are not caught off guard by the impact of a hazard that has gone unidentified. The risks we fail to examine or even refuse to acknowledge do not simply disappear. Instead, it is all too often these situations that escalate to become the worst disasters because they are overlooked or undervalued.

If we in Manitoba look back at the events of the past six months alone, we see a pipeline explosion, a rain derailment, a forest fire, flooding, a plane crash on a city street and, most recently, the introduction of a new disease. The future of Manitoba is sure to hold more emergencies of a similar sort, tornadoes, blizzards, industrial accidents, pandemics, that will continue to test our community's ability to resist, cope and recover. Understanding the hazards facing our communities is the first step in a comprehensive emergency management program.

Comprehensive emergency management is the process through which a community lessens the harmful effects of a hazard's impacts. Its aim is to affect both the extent of the impact and ability of the community to deal with the effects. This process involves four components: mitigation activities that reduce or eliminate the potential harm from hazards; preparedness activities that ensure our communities are ready when an impact occurs; response activities that address the immediate consequences; and recovery activities that focus on returning the community to its pre-impact state and, when possible, improving the community's ability to deal with any future risk.

* (19:20)

This comprehensive emergency management process is often seen as a cycle, though, in practice, activities relating to all four components are underway simultaneously. Furthermore, activities must involve and pervade all sectors of a community, including individuals, local groups, non-government organizations, the private sector and all levels of government. Emergency management is a process that must be integrated into normal practices to be truly effective.

Comprehensive emergency management has become the internationally accepted best practice since it was first described in 1979 in a report prepared for the U.S. governors' association. Emergency management is now a model adopted by countries that face significant risks, such as Australia, New Zealand and the United States. Considering all the attention that is being paid to the success of New York State and New York City in dealing with the World Trade Tower collapses, it is worth noting that this response has been achieved within a comprehensive emergency management framework that those jurisdictions have been applying for years.

CEPA Manitoba promotes the comprehensive emergency management model. It is important that it is adopted as a complete package, as each component strengthens the other. It is not enough to only focus on improving our response measures if we cannot also recover in the long term and work to prevent future harm. At the same time, it remains critical to maintain a level of preparedness so we can respond when needed. A balance of all four parts is the key to comprehensive emergency management.

CEPA Manitoba supports the intention of the bill to reinforce the requirements for municipal preparedness. At the same time, it encourages the government to lead by example and to continue to improve its own departmental emergency management programs. CEPA Manitoba is pleased to see the Interagency Emergency Preparedness Committee, a group which brings together provincial and federal departments with municipal and non-government organizations, gaining new support and prominence within government.

Another important lesson from September 11 is the value of effective emergency scene management through an incident management system. Designed to co-ordinate the activities of the diverse agencies responding to a disaster site, incident management systems are a vital tool for emergency managers. In the months since September 11, we have also seen that disasters affect a community in many ways that require other management tools. The process of healing our populations, both physically and emotionally, calls for different methods, while the tasks of rebuilding our community's infrastructure and its spirit need other special skills. In time, the needs of a community will return to the problems of risk assessment, hazard mitigation and public preparedness, which all have best practices of their own.

CEPA Manitoba supports the wider adoption of an incident management system to improve emergency response activities. The association also calls on the Government to put equal support into the development and implementation of mitigation, preparedness and recovery activities.

Last year, the minister responsible for The Emergency Measures Act invited comments as part of a review of Manitoba EMO. The Security Management Act will address one of the outstanding issues identified in this review and highlighted by the attacks in the Untied States. CEPA Manitoba recommends the Government maintain the momentum by initiating a complete review of its emergency management legislation and organizational structures. CEPA Manitoba will continue to offer objective advice and promote the adoption of emergency management best practices in our province. Thank you for your attention and consideration.

Mr. Gerrard: Thank you for the presentation. As I understand the presentation, what you are suggesting is that there really should have been a broader review in changes so that the legislation would address the issue of a comprehensive emergency management approach. I would like to ask you two specific points that perhaps you could comment on: One is this legislation would change quite significantly the role of the Fire Commissioner, and whether you would comment on the role of the Fire Commissioner under the changes and how you see if that is appropriate or not; second, what specific changes you might suggest to this bill that would bring it more into line, direct it at a comprehensive emergency management system.

Mr. Lindsay: On the first point, the role of the Office of the Fire Commissioner, yes, the amendments do increase their involvement in emergency management. I believe that our submission is, as you first pointed out, calling for a wider review. I believe the changes that this bill proposes were made to address a specific need following September 11 and to specific issues that were raised in that event but does not necessarily address the full range of concerns that were raised in the minister's review a year earlier, that our province needs to see changed.

The act does not make it clear how the relationship between the Manitoba Emergency Measures Organization and the Office of the Fire Commissioner will be following the adoption of this bill. It does offer an opportunity for the municipalities to be submitting plans to EMO and submitting reports to the OFC. There should be some clarification, eventually, as to how those two reports will match.

Mr. Gerrard: The point that you made, that the bill does not adequately clarify the relative role

of the Fire Commissioner versus the EMO, could you expand on that a little bit and whether that might create problems in responding to emergencies and to dealing with them sequentially in a comprehensive fashion?

Mr. Lindsay: I am not sure how it will affect the response, but in the preparedness time, the act will have the municipality submitting an emergency plan to the Manitoba EMO and then submitting an annual report to the Office of the Fire Commissioner on its ability to respond. Being able to decide whether a plan is effective, you need to know whether or not you have got the resources in place to be able to enact it, and to be able to assess the ability of resources in place, you understand the plan that is proposed. So having one go to EMO and one going to the Office of the Fire Commissioner may create a gap, but, again, that may be something that can be resolved through co-ordination. It is just not clear in the act how that will be handled.

Hon. Steve Ashton (Minister of Transportation and Government Services): I would like to thank the presenter. I have had the opportunity to obtain the input of the Canadian Emergency Preparedness Association, and I appreciate the brief. I think certainly we had an ongoing review as the presenter is aware of the Emergency Management Organization, and I appreciate the comments in the brief.

Obviously, what we are dealing with, with this particular bill, we looked at any and all initiatives that would help us deal with, quite frankly, the key lesson from September 11, which is you have to expect the unexpected and try and predict the unpredictable. I appreciate the comments that are in here, and also I certainly appreciate the advice and the offer of objective advice. I have appreciated it up until now and thank the presenter. I think the brief is an excellent one because it points to the fact that this is a bill that deals with particular circumstances and particularly identified weaknesses. Obviously, we will have discussion about the weakness in previous systems, but, obviously, you have to be prepared on an ongoing basis. So I appreciate the ongoing objective advice. Thank you very much.

Mrs. Joy Smith (Fort Garry): Thank you so much for your presentation. I found it to be very helpful. Basically, what I am hearing you saying is that what this bill reflects is response activities to an emergency situation, plus plans that are submitted and looked over. What you are saying, basically, to support and enforce the bill you need a comprehensive emergency management which deals with mitigation activities and preparedness activities and also recovery activities in addition to the response activities that are outlined in this bill. Am I correct in that?

Mr. Lindsay: Certainly, the bill was drafted in a social and political context following events of September 11, events that were ongoing with the anthrax events. So it is definitely focussed on response aspects of the acts, and, again, our association would like to see a more comprehensive review looking right from what we can do to risk-assessment mitigation, preparedness response and recovery.

Mrs. Smith: I am wondering if your organization was contacted before this bill was drafted to get you expertise in this area.

Mr. Lindsay: No, we were not. Mr. King, the past president, and myself did meet with the minister in January to seek some clarification of some of the issues, in particular, actually, the issue that Mr. Gerrard raised, but, no, we were not consulted prior the drafting of the bill.

Mrs. Smith: Do you see it as imperative that some amendment should be placed in this section to reinforce it? You mentioned resources in place, and that is a concern that members on our side of the House have expressed ongoing throughout this bill, that, No. 1, are the resources in place to manage the intent of the bill?

Mr. Lindsay: I am probably not in a position to comment on whether the organizations have the resources in place to act on the recommendations, but, again, I believe the entire provincial emergency management structure, not just the Government, but the private sector and the non-government agencies need to come together in a more wider review.

Mr. Stuart Murray (Leader of the Official Opposition): Thank you very much for your presentation. I have just a question for you, and then I have a follow-up. You are with the

Manitoba Chapter of CEPA. Are there other chapters throughout Canada? Does every other province have a chapter?

* (19:30)

Mr. Lindsay: We are a new association in the last four years. Not every province has a chapter. Some of the chapters are still forming. There is also a national chapter representing organizations such as the Red Cross that have a national perspective.

Mr. Murray: I just wondered if you have had discussions around the legislation Bill 2 with other chapters in other provinces. I wondered if you have had those discussions, if they are pressing their provincial legislature to follow something similar or if they have any other comments to be made.

Mr. Lindsay: Only informal discussions. The legislation across the country varies a fair bit in terms of the requirements placed on municipalities, and so each province is, I think, reacting to the events of September 11 in their own way.

Mrs. Smith: Are you saying that perhaps this part of the bill or some of the bill could be a knee-jerk reaction to the September 11 issues, but rightly so in terms of the phenomena that did happen, that it made us more aware, but now we have to be very careful in terms of how we put things together in this area?

Mr. Lindsay: I would not characterize them as knee-jerk, but I certainly think that disasters are a social process, and the management of them is so, as well, in that there were political pressures following September 11 that drove which points came on to the bill first and drove the speed at which it was put forward.

Mr. Chairperson: Thank you for your presentation.

Bill 21, Len Hampson, Certified General Accountants' Association. Is Mr. Len Hampson present? That name goes to the bottom of the list. Gary Hannaford or Shirley Sommer, Institute of Chartered Accountants of Manitoba.

Bill 21–The Partnership Amendment and Business Names Registration Amendment Act

Mr. Jamie Kraemer (Institute of Chartered Accountants of Manitoba): Mr. Chairman, I am Jamie Kraemer.

Mr. Chairperson: Is there leave for Mr. Kraemer to present instead of or in addition to Mr. Hannaford? *[Agreed]*

Mr. Kraemer: Good evening, Mr. Chairman, ladies and gentlemen of the committee. As I said, my name is Jamie Kraemer. I am the elected president of the Institute of Chartered Accountants of Manitoba. With me today are Peter Dueck, the chair of the institute's legal liability task force and Blair Graham, a partner with Thompson Dorfman Sweatman, the institute's lawyers.

As you know, we are here to provide our comments on Bill 21, The Partnership Amendment and Business Names Registration Amendment Act. We are delighted that the Manitoba Government has introduced this legislation which, if passed, will allow CAs, as well as members of a number of other professions, to form limited liability partnerships or what we will refer to as LLPs. The CA profession has long been of the view that the current liability exposure faced by our members in public practice is excessive and unfair, and we support the introduction of this legislation.

While we are generally supportive of the bill as drafted, we do have a number of suggestions which we believe would further improve Bill 21. I will now ask Mr. Dueck and Mr. Graham to speak more specifically to where we would suggest further improvements to the legislation.

Mr. Peter Dueck (Institute of Chartered Accountants of Manitoba): Thank you and good evening, ladies and gentlemen. Let me begin my comments by providing a bit of background and some comments on the evolution of LLP legislation elsewhere. This will provide some context to our suggestions for further improvements to Bill 21. LLP legislation was first introduced in the United States in the early 1990s. Its primary purpose was to ensure that an innocent partner is not held responsible

for liabilities arising from negligence, wrongful acts or misconduct committed by another partner, employee, agent or representative of the partnership.

The reason for this is that a partner in Winnipeg, for instance, should not lose his or her home, car, life savings and all personal assets because of the negligence of a partner working on an engagement, say, in Halifax or Vancouver, for which the Winnipeg partner had no role.

Excluded from relief are the negligent partner and the partner who has direct supervision and control of the negligent person. As well, all of the assets of the partnership, including insurance and, say, the partner's capital accounts and any other assets of the partnership, of course, are available to satisfy any legal claims.

Currently, most U.S. jurisdictions and four other provincial jurisdictions in Canada have implemented some form of LLP legislation. The other four provinces are Ontario, Alberta, Saskatchewan and Quebec. Additionally, a number of other provinces are at various stages of considering LLP legislation.

We want to comment on seven particular areas that we believe could be improved, and I am just going to outline those areas and then have Mr. Graham speak more specifically to them: The first is that of the full shield, or what is known as the full shield, versus the partial shield. Our observations in that regard is that LLP legislation more recently has tended to be towards the full shield as opposed to the partial shield of liability; secondly, some clarification on direct supervision and control of employees and agents by partners of the firms or the partnership; thirdly, multidisciplinary partnerships and how they would fit into this particular circumstance as well as extraprovincial LLP registration related to that aspect; No. 5, distribution of partnership property and joint and several liability of authorizing partner, which is related to that. Lastly, matters dealing with governing body certification of partners.

So, with that introduction and background, I will ask Mr. Blair Graham to provide some further details.

Mr. Blair Graham (Thompson Dorfman Sweatman): Good evening, ladies and gentlemen, and thank you for your patience. This is a technical act, and I appreciate what a heavy agenda you have for the balance of the evening, so I will try, although dealing with some technical points, to put it in terms that is easier to relate to than simply the minutiae of the legislation.

Peter has already indicated that the first point that I wanted to address is partial shield versus full shield. Peter has already explained that the essence of this legislation and why it is so warmly embraced by both the Institute of Chartered Accountants and every other professional organization that I have talked to is that it essentially protects innocent partners' homes, assets and property against the negligence of partners that they may not have had anything to do with or files that they may have had no knowledge of.

The distinction between full shield and partial shield is that partial shield legislation basically speaks to protecting partners, innocent partners, against negligent acts on behalf of other individuals, whereas the full shield also extends that protection to include contractual obligations of the partnership. Typically, most professional partnership, whether in law, medicine, engineering, accounting, dentistry, there will be contractual obligations that a partnership has to its bank, to its landlord, etc.

Interestingly, the jurisdictions in Canada that have implemented LLP legislation, initially Ontario and Alberta, opted for the partial shield approach. Saskatchewan is now, in my respectful submission, adopting the appropriate approach, and they are going full shield. That is actually consistent with the recommendations that have been made both in the United States and in Canada. The reason for that is that I think there is a recognition that, if you simply go the partial shield route, you are undermining your essential objective because, if Winnipeg or Brandon or Thompson partners are faced with major liability claims as a result of the negligence of a Toronto or a Minnesota or a Minneapolis or a Chicago partner and the assets of the firm are inadequate to protect that, that will spook the bankers and the landlord, et

cetera, and so those entities will essentially be looking to go after the individual assets of individual partners. In that context, unless you put in the full shield protection, there is a possibility that you are essentially undermining the rationale and objective of the legislation.

The other issue that is interesting and applies to all of my comments is that, in a sense, what this legislation is hoping to do, I believe, one of the social policy purposes is to keep the best and the brightest professionals interested in staying in Manitoba. I am not overstating that point. People leave Manitoba for a variety of reasons and people come to Manitoba for a variety of reasons, all of us here are Manitoba boosters, but when a young professional, male or female, is contemplating what is best for the development of their career, they will, at some level, consider this type of legislation in other provinces and that will go into the mix in terms of whether that person chooses to stay and provide the citizens of Manitoba with the benefit of their education and vigour or whether the person may choose to go.

* (19:40)

The second item of concern–I will dwell mostly on the first and second items and the pace of my remarks will accelerate when we get to the others, so bear with me, please–is one that I emphasize is a real concern, not only to the accounting profession but to other professions in Manitoba as well. This is the issue with respect to supervision and control of employees and agents. Again, this is a situation where, notwithstanding the fact that we are completely supportive of the principle of the legislation, we think a detail is being lost that may undermine the legislation.

In legislation in many other jurisdictions, there is a specific element that provides that a partner who is directly supervising an employee or somebody else working on the project is liable for the negligence or loss caused on that project. That makes perfect sense. Nobody is attempting to shirk that. A partner with direct supervisor responsibility should basically have to answer for errors that are made on the project, but I think inadvertently the language that is used in the draft legislation potentially can speak to partners who do not have direct responsibility for the supervision being rendered liable.

I will make specific reference to the provision that we are concerned about. It comes to pass in section 75(2)(b), which is an exception to the protection that is afforded. It basically indicates that protective section will not operate to protect a partner from liability if the negligence, wrongful act or omission, malpractice or misconduct was committed by an employee, agent or representative of the partnership for whom the partner was responsible in a supervisory role. I think the simple addition of the words "direct supervisory role" or some other words to connote direct supervision on the project would cure the mischief we are worried about.

What we are specifically worried about is the managing partner of the Winnipeg, Brandon or Thompson office who manages the office and has a great deal to do with implementing the office's business plan, et cetera, et cetera, but is not directly involved in supervising specific individual projects. That person, with this language, could be caught within the embrace of the legislation.

Madam Vice-Chairperson in the Chair

Similarly, many accounting firms are organized so that students are overseen by a committee. It is not that the committee oversees their work on every project, but it oversees to make sure they are attending regularly, they are functioning well while they are taking their courses, they are relating well to clients, they are receiving feedback from the partners they are working for. If that type of committee is brought within the embrace of this section all of the partners who serve on that committee could be rendered liable. What will happen in that situation is in order for a major accounting firm to have someone take on the role of managing partner or chair of the committee supervising students or members, in order for that person to do that, he or she will say, well, if I am going to be exposing myself to liability by doing so, I would like my other partners to indemnify me. As soon as those indemnifications are brought in to bear, then the purpose of the legislation is defeated because they all become responsible.

I do not think the draft bill intended that. I think the draft bill, the section in other respects is well drafted. I just think there is a technical issue there that needs to be addressed.

In order to fulfil the commitment I made to you a few moments ago, my comments with respect to the remaining items will be accelerated. Most of these are certainly of a technical variety and are covered in the paper we have distributed.

Next issue is multidisciplinary partnerships. Bill 21–

Madam Vice-Chairperson: Excuse me, Mr. Graham.

Mr. Graham: Yes.

Madam Vice-Chairperson: I just wanted to let you know you have two minutes remaining.

Mr. Graham: Yes, and I can do it in two minutes, thank you.

Madam Vice-Chairperson: Thank you.

Mr. Graham: Bill 21 does not contemplate the registration of multidisciplinary partnerships. That is understandable because in Manitoba multidisciplinary partnerships are not contemplated by the legislation, but many other jurisdictions do contemplate multidisciplinary partnerships. Therefore, what we are advocating is a recognition by the law in Manitoba that when a multidisciplinary properly registered limited liability partnership, properly and lawfully incorporated in another jurisdiction in Canada, seeks to be registered here that such registration be permitted.

The next item of concern we have relates to distribution of partnership property. This relates to section 85 of the partnership act. Section 85 restricts distributions of partnership property for Manitoba limited liability partnerships, but there is an exception for payments made as reasonable compensation for current services provided by a partner.

We have two technical concerns with that section. Firstly, it is unclear whether the words "services provided by a partner" refer to administrative services provided to the partnership, such as a managing partner would provide, or services to a client.

The second concern we have is the relationship between the compensation and the parallel to a person who is being paid as an employee. The point we would make with respect to that is because employees do not bear the same risk as partners, their compensation rates are usually disproportionate. So the likely result of this exclusion will be to restrict ordinary course payments to people who otherwise are entitled to them.

The final point we would make with respect to section 86(2), we simply recommend the insertion of the word "knowingly," be inserted before the word "authorizes." So again we are looking at catching partners who knowingly authorize a distribution that would otherwise be inappropriate.

Madam Chair, those are my comments. Thank you very much for your patience.

Madam Vice-Chairperson: Thank you for your presentation, Mr. Graham. Are there any questions?

Hon. Scott Smith (Minister of Consumer and Corporate Affairs): Thank you, Mr. Graham et al., for your presentation. Your counterparts and many of the folks throughout Manitoba who were consulted on this had raised some of the issues you have raised here tonight, and the difference between partial shield and full shield, which is probably the long-term debate that has been going on all through North America for some time.

You are quite right. Some of the changes are slight but the intent of the legislation I think is quite clear to protect the innocent partners from negligence of other partners unknowingly being done.

I can tell you, with your comment on page 3 of your brief: Supervision and control of employees and agents, it is something I intend to do tonight in bringing forth an amendment in the section, I believe you were saying 75(a), with the terminology of direct or directly. It is

certainly something I intend to bring forth tonight.

As well, in section 84(4), I also was involved in that section as well. I am not sure if you highlighted that section in here or whether you did not, but it certainly affects that section as well. That is something other counterparts, other folks have brought to my attention. I will be bringing that forth tonight later on in the legislation.

Your comments regarding multidisciplinary had been brought forth. You are right. It is not involved in Manitoba and a lot of the other provinces are not seeing it as of yet. It is not a concern. If it has been raised with any vigour from either the legal or the accounting profession, that was taken into consideration when we drafted the bill. I thank you for your comments and your suggestions and some of the comments will be brought forth later tonight.

* (19:50)

Hon. Jon Gerrard (River Heights): Thank you. You presented pretty clearly the advantages and the need to make some significant changes to this legislation. I want to thank you. It seems to me the change to include multidisciplinary partners would be important to make at this juncture because it is quite likely that is going to be emerging in the next year or two. You do not want to be in a position to have to amend the legislation all that frequently. So making that change here would be fairly easy and would seem to me to be important to do. Maybe you could comment.

Mr. Dueck: Yes, just to comment on that, there is an evolution where multidisciplinary partnerships do exist in other jurisdictions, for instance, in Europe and the like. It is certainly anticipated there are some partnerships currently that are operating with accountants and lawyers for instance in the same partnership. It would permit those particular arrangements to go forward as you say without having to amend this and to present a problem with how they present themselves across Canada in terms of how they are able to register and present themselves. So we think that is true.

Mr. Jack Penner (Emerson): I just wanted to thank you for your presentation. I think you make some very valid points. Your suggestions here would, in my view as well, improve the bill substantially.

However, I wonder whether you could tell this committee whether there has been any consultation with you or your organization by the minister or the Government before this bill was actually put before the House and whether you had any input into the drafting of this bill.

Mr. Dueck: We have had consultations with various members of the Government and their representatives in part of the drafting of this bill. Yes, we have.

Mr. Jack Penner: Thank you.

Madam Vice-Chairperson: Thank you very much for your presentation.

Bill 23–The Pesticides and Fertilizers Control Amendment Act

Madam Vice-Chairperson: We are going to proceed now to Bill 23, The Pesticides and Fertilizers Control Amendment Act. The first presenter on the list is Weldon Newton from Keystone Agricultural Producers.

Mr. Weldon Newton (Keystone Agricultural Producers): Thank you very much, Madam Chair. It is on behalf of Keystone Agricultural Producers that I present tonight–

Madam Vice-Chairperson: Mr. Newton, I just have to stop you for one minute so I can identify you for Hansard and make sure everyone has the copy of your brief. Okay, Mr. Newton, please proceed.

Mr. Newton: It is on behalf of Keystone Agricultural Producers that I present our organization's positions with respect to Bill 23, The Pesticides and Fertilizers Control Amendment Act. KAP is a democratically controlled general farm policy organization representing and promoting the interests of agricultural producers in Manitoba. It is an organization run and funded by its members, the farm units throughout Manitoba.

Over the past years our organization has supported the need for the survival of the family

farm in an economical and environmentally sustainable manner. We have concerns that this legislation could have an impact on the family farm by limiting farmers' options with respect to transport and application of manure, and also to increase the paper work that is required of small operators.

Our main concern is the impact that this legislation could have on a small livestock farmer who has or wishes to spread on a neighbouring property. In section 2(2.2) it states that: "No off-farm manure applicator shall apply manure to land that he or she does not own or lease, or cause manure to be applied, unless the person applying the manure holds an off-farm manure applicator's licence issued by the minister." Does this mean that a producer cannot transport his operation's manure and give it to a neighbouring farmer for application on that property unless he holds a commercial or an off-farm application licence? This practice is currently happening throughout the province. Does this legislation dictate that those farmers would then have to acquire a commercial licence or an off-farm applicator's licence to continue such activity?

If so, the cost to a small livestock farmer of obtaining a commercial applicator or off-farm applicator licensing cannot be very substantial, and in fact if he has to hire a commercial operator this would not be a sustainable practice for those small operations.

Another concern we would like to raise is related to section 2.1, which states that no person shall act as a manure management planner unless he or she has the qualifications prescribed in the regulations. While we understand this relates directly to those planners who develop plans for a fee, your press release announcing this legislation states that this is being implemented to ensure consistent planning methods across the province.

In the event that farmers develop their own manure management plans, how does the Province ensure consistency without enforcing farmers to become certified for the plan to be acceptable by provincial standards? As a question, is this the first step to having all manure management plans either done or either certified by a P.Ag. If that is the case, I believe that is overkill.

To obtain a commercial applicator's licence, a person must take training related to manure nutrient management planning, equipment calibration, spills and liability issues associated with manure management handling, transport and applications and carry insurance defined by the regulation.

As the livestock industry in this province expands, so does the need for commercial applicators; therefore, it is up to our Government to ensure that acquiring such a licence is not too onerous. There is also a need for an awareness component so that applicators are conscious of the regulations and the impact of non-compliance.

In cases where casual labour is employed to operate spreaders, it should only be the supervisor that in fact is required to be the certified applicator. This would then allow for the continuous operation of the equipment with the normal staff turnover that occurs in many parts of the province and also with the shortage of labour in some areas of the province.

We have to ensure that agriculture is not negatively impacted by this legislation. In closing, we would like to thank you for the opportunity to present on Bill 23 and hope that your Government will give the utmost considerations with the concerns we have raised tonight and especially with the potential impact of these regulations and the paperwork on the family farm. Thank you very much.

Madam Vice-Chairperson: Thank you, Mr. Newton.

Mr. Chairperson in the Chair

Hon. Rosann Wowchuk (Minister of Agriculture and Food): I, too, would like to say thank you for taking the time to make a presentation and raise issues on behalf of farmers in Manitoba. I want to also thank you for your suggestions about the need for the awareness component. Certainly that will be an important part as we move forward with changes to ensure that farmers are aware of the

legislation and the need to comply, so thank you for that one.

You raised a concern. You talk about the concern, the need for this. You are concerned that this is going to be onerous and have a negative impact on small operators. I want to tell you that this applies to operators that have operations now over 400 animal units and then as it goes to 300 animal units it will apply there. They have a requirement to file manure management plans, we will move to that one.

Also, you have raised a question in section 2(2.2) about no off-farm manure applicators. Indeed, I want to say to you yes, that means that someone will have to get a licence, and that is more aimed at the person who has a larger operation but does not have enough land for their operation. It is to ensure that that person is applying to other land, has the qualifications, has taken the training and/or hires a commercial applicator.

You also raised a question about the costs. I want to assure you that it is not our intention to have the cost of this training to be an onerous cost, just as the training for a pesticide licence that farmers can take is not an onerous expense, but gives the training to ensure that there is adequate information there. I know many farmers do their own application now, but this is a precautionary step to ensure that this manure continues to be handled in a sustainable way.

I just want to share those things with you and thank you for bringing your suggestions forward on the need for more information being out there when this legislation is passed and the need to work with producers throughout the province.

* (20:00)

Hon. Jon Gerrard (River Heights): The minister has indicated that this legislation, in the not too distant future, should apply to farmers where there is 300 livestock waste units or more. I would just ask you to comment on the effect that will have where you have a farmer who falls into the category who would like an arrangement with a neighbour to be able to spread some of the manure on their cropland. Is that, as the minister indicated, going to be easy to resolve under this legislation or will it be a problem which occurs repeatedly?

Mr. Newton: While I appreciate the intent of the legislation, I guess I have a concern that even the potential to apply small amounts for my neighbour will not be there because I have to have an off-farm applicator's licence. So, I guess technically I could not give them enough manure to put on his garden by the way I read that there right now, and that is a concern. So I realize there is an element of scale in here at some point, but again the flexibility and for the small amounts in many cases, if you run out of land for a few acres and I have to have this licence, that deters the operator that is right at the borderline of where the cutoff is at 300.

Ms. Wowchuk: I just want to ask Mr. Newton, when the course is designed for commercial applicators and if the course is at a reasonable price, do you think farmers would take the opportunity to take the training just so that they would have the information as a precaution to have the licence should they run into a situation, as you are outlining here, that one year you might need to spread a little bit of manure on somebody else's land and you can protect yourself or get a licence so that could happen? Do you think farmers would take that step to get that licence just in case they might need it?

Mr. Newton: I do not believe they will line up at the steps of ACC to take it, and I think the case where the farmer in fact gets caught with this may be a case in which he did not foresee it, but also it is an added cost that is going to be involved for that producer that is at that borderline size and has some financial implications for him. Again, it means maybe I should just get twice as large and then have to go the whole commercial route, and then it has some other implications for the community.

Mr. Chairperson: Is there leave of the committee for Mr. Penner and the minister to ask more questions? *[Agreed]*

Mr. Jack Penner (Emerson): Mr. Chairperson, thank you to the committee for allowing leave.

This bill and a number of other bills are imposing we believe, in some instances,

significant cost, especially to the small producer. The licensing fees alone are questionable. The fees themselves can be set by regulation and/or at the minister's will, and we do not know what they are going to be. Yet, we know that farmers in Manitoba today are asked to operate with incomes at relatively half of what our American neighbours now receive under the new U.S. farm bill. This additional cost, we believe, is going to impose significant further costs to our operations, and whether we like the application of the licensing provision and/or the training aspect is probably totally immaterial as far as this bill and this Government are concerned.

Can you tell, as the head of the farm organization, this committee how you would prescribe to deal with on-farm and even neighbour-to-neighbour application of what we call natural fertility products on an ongoing basis without having these regulatory processes and/or training, additional training processes because farmers probably have, in most cases, dealt with these matters since they were born through the operations of their own farms and where they grew up? Can you tell this committee how you would change the legislation in order to accommodate the ongoing operation of an organic farm operation that this would allow to proceed with?

Mr. Newton: Well, certainly anything that adds additional costs and paperwork. We are getting snowed under with paperwork in all of agriculture now and not always for the best of reasons, in my humble opinion. This makes it more difficult for the smaller operation to continue to survive. This has been the backbone of our communities and I think will still continue to be the backbone of most communities if they are allowed to continue to survive and do not have unnecessary financial resources put on them, and it is the family farm I am talking about here. It is completely different when you are talking about investor barns or multiples and I realize families, and that can also be a larger operation, but it is those that are near the threshold. You have brought it down to 300; it used to be 400, so you are bringing it smaller and those units are not probably financially stand-alone units for a total income for a family. So it is becoming more onerous and more difficult to have that as a part of an operation.

Mr. Chairperson: Thank you for your presentation. With the leave of the committee, I would like to encourage a presenter on another bill, Bill 24, to present now since he is not feeling well. If Mr. Smith would like to present on behalf of the Manitoba Council on Aging on Bill 24 then he can go home a little earlier. Is there leave of the committee? *[Agreed]*

Bill 24–The Securities Amendment Act

Mr. Murray Smith (Manitoba Council on Aging): Thank you, Mr. Chairman, and committee members for your courtesy.

I am Murray Smith. I chair the Manitoba Council on Aging. I am here to speak in support of Bill 24 and congratulate the Government in proposing one feature which will be new in Canada, namely, the possibility of seeking financial restitution for losses suffered from investments under the unusual circumstances that the adviser has violated the legal requirements or a professional code.

My experience in Manitoba includes substantial work as a volunteer with Manitoba Society of Seniors. In the course of preparing tax returns and offering volunteer laypersons financial advice to members of that organization, I have come across a couple of instances which illustrate the value of legislation that is being proposed. I have not encountered many such situations, but they are extremely important to the individuals concerned.

I would quote you two examples. One is a gentleman who had long planned to utilize his RRSP assets to distribute some of his funds to his three children. There was something like $75,000 involved in his plan. Over a period of time he had thought this out and maintained it, as what he was planning to do when he reached age 69 was to cash in his RRSPs and give the money to his three children. I asked him whether he was aware of the tax implications of this as it all would become immediately taxable. Yes, but he thought that was worthwhile.

Was there any alternative? As a matter of fact there was, because he just sold his farm and he had more than $75,000 sitting in Canada Savings Bonds or GICs or some other readily

accessible non-registered money. It took me over two hours to get him to shift his grounds and accept that he would be $30,000 better off to use the money which was non-registered than to de-register the money which he had carefully put into his RRSPs.

* (20:10)

Since the same point comes up in the next example, I will make it clear. The money taken out of the RRSP is immediately taxable in the year it is taken out, you lose the advantage of the tax shelter for subsequent earnings within the shelter and, thirdly, the money which was non-registered continues to earn taxable interest. So you lose in three ways. It is easy to see how the cost piles up. Now that was a man who had figured it out by himself. You might react and say, clearly, a case where he would have benefited from professional advice.

Now the second example is of a woman who withdrew $5,000 from her RRIF in the year that I was talking to her. I asked her whether she had any alternative. Yes, she had non-registered money sitting in a bank account. She had non-registered money in straightforward investments which she could have used. Was she aware that when she took out $5,000 it was probably costing her $3,000 in taxes which were unnecessary and could have been paid at a much later date greatly to her advantage? Well, yes. Had she done this before? Yes, this is about the fourth or fifth time that I have done this.

So we are talking about $20,000 or $25,000. I suggested to her that this had cost her perhaps half of that money in premature payment of the taxes, paying it now instead of 20 years down the line. I am always astonished that people want to pay their taxes sooner than they have to. But, she said, this is what my accountant told me to do.

I am not trying to malign the accountancy profession, but it shows that even people who are pretty knowledgeable about tax laws can give or seem to give advice which is inappropriate. Certainly that is what this bill is dealing with. I know that there are references to scams and there are references to negligence, but I suspect that the basic point of the legislation is to identify instances in which the advice has been inappropriate for the client.

I want to stress the point because of my connection with seniors work, that this legislation is particularly important to seniors. Seniors have often encountered difficult financial decisions, investment decisions, only as they shift from being employed members of the community to being on pensions or living on their savings. These decisions are sometimes new and sometimes tricky.

I want to emphasize the point that for seniors what we generally call security is highly important. I do not mean by that that they wish to be sheltered from all risk. I mean rather that to them predictability is very important. They like to know that they can stay in their housing. We have heard these arguments about property taxes of course. They like to know that when they have to make a change there will be a seniors home or a personal care home available to them. They do not have to go and reinvent the whole system to accommodate themselves. We know that their concerns about health care are very much along the lines that the health care should be there when they need it.

They also like to have their income predictable. It was largely predictable while they were employed. They would like something similar in their retirement. Over the last year or more we have seen many instances where incomes have been drastically affected by events in the markets over which individuals have little understanding and no control.

So I think that the obligations of those who offer financial advice are pretty important and that people who are working as professionals in this field must take responsibility for the effects of their advice, their services where they are not living up to their responsibilities, or where they are not proceeding in the best interests of the client and offering inappropriate and risky advice.

There are existing appeals by the client. You can deal directly with the firm from which you have got the advice, and that is of course a prime recommendation as it is in so many situations. There is an arbitration method which is available

but very seldom used and the results are not enforceable.

The new system of an ombudsperson is being established, but nobody knows how well that will succeed because it has not been tried. Therefore, I think a neutral, effective method of appeal is needed and that the proposed legislation offers that. I note the point that it offers it to the small investor, not to the sophisticated, wealthy person or to organizations with large assets. It is to protect the small investor who is, in my opinion, the most vulnerable.

I want to draw attention to the change in the appeal mechanism. It has in the past been possible to appeal a decision of the Securities Commission to the Court of Queen's Bench which might logically lead to a second level of appeal to the Court of Appeal. What we are doing in this case is catching up with B.C., Alberta and Saskatchewan and skipping out of step, which would really be a repeat of the hearing held before the Securities Commission. So I certainly support that.

I have ascertained also that if the decision of the Securities Commission is being challenged to the Court of Appeal the commission would remain involved, that the commission staff would assist the client in conducting an appeal before the Court of Appeal, and I think that is highly appropriate. I believe that once the commission has made a decision, it should support that by assisting the client as appropriate. Otherwise we are going to be back in the old situation where the individual cannot sustain the cost, a law case in the Court of Appeal, where the firm or the financial adviser is more likely to have resources to continue to resist the proposal for restitution.

Thank you very much for your patience. I appreciate the opportunity to present on behalf of the Manitoba Council on Aging.

Hon. Scott Smith (Minister of Consumer and Corporate Affairs): Thank you very much, Mr. Smith. Sorry that you are not feeling well. The insightful presentation you made tonight is a very deep and thorough grasp of what this bill does attempt to accomplish. As you have mentioned, there are more and more Manitobans investing for their retirement, and more and more small investors and people into the marketplace. This really does just equip investors with an efficient and effective self-protection tool, another tool. You had mentioned the arbitration system and some of the others that are there now. This really is intended to run parallel with that, to add another tool for investors, and, in fact, maintain investor protection in the market integrity that investors demand. You highlighted a lot of those points and I certainly do appreciate the presentation you made here tonight.

* (20:20)

Mr. Chairperson: Thank you for your presentation.

Bill 23–The Pesticides and Fertilizers Control Amendment Act

Mr. Chairperson: We will now return to Bill 23 and Mr. Marcel Hacault, Manitoba Pork Council. Please proceed.

Mr. Marcel Hacault (Manitoba Pork Council): On behalf of the Pork Council, I am pleased to present our organization's view on Bill 23, The Pesticides and Fertilizers Control Amendment Act. The Pork Council represents hog farmers of Manitoba in an advocacy role and on policy development. Its mission is to foster sustainability and prosperity of the pork industry for the good of hog farmers and all Manitobans. The Pork Council supports, in principle, the direction the Government has set out in Bill 23 for additional requirements regulating the application of manure. The Pork Council does have however a few general concerns that we would ask the committee to consider in its deliberations.

I would like to apologize to the Minister of Agriculture (Ms. Wowchuk) right away because we did not seek some time with her office to discuss some of these concerns beforehand. So some of them are a bit new to her.

To continue, the Pork Council strongly believes that when a producer contracts the services of a custom applicator, the producer should not be held directly responsible for any

misapplication of the manure by the custom applicator. The licensed manure applicators must be aware of and held solely responsible for compliance with all applicable laws and regulations relevant to their industry.

Under the issuing of licences and permits, for reasons of administrative efficiency the Pork Council recommends that section 3.1 and section 6 be changed so that the director rather than the minister be authorized to issue licences and permits issued under the act. Under the licensing process, the Pork Council recommends that the process of licensing of custom manure applicators should not be onerous. We would recommend that what is needed is that the applicator understand the provisions of The Livestock Manure and Mortalities Management Regulation and demonstrate the ability to calibrate the equipment making up the application system. The licence granted to custom manure applicators should not require renewal until such a time as the regulation is amended. I would even foresee a process that could allow for licensing over the Internet.

With regard to the proposal to licence off-farm manure applicators in a new section, 2.2(2), Pork Council recommends that this provision be removed from the amendment act. The stated purpose of the amendment act is to address the application of manure from large livestock operations. This particular provision would only affect small farmers, in our mind. All large producers, currently 400 animal units and greater, and under the province's proposed change to 300 animal units are required to file manure management plans and are, therefore, already covered under the livestock manure and mortalities regulation of The Environment Act. As such, they will be covered under the proposed provisions governing third-party manure management plans and planners.

Furthermore, those large producers that contract the spreading of their manure will be covered under the commercial manure applicator section of this amendment act. The proposed change would provide minimal environmental stewardship benefits while imposing significant enforcement and compliance problems on department officials and small farmers. In addition, small farmers are in frequent contact with the local ag rep and producer associations, both of whom regularly provide them with information on the importance of manure as a valuable fertilizer and of good environmental stewardship.

It would appear that the proposed amendments are meant to increase public confidence with the process of manure application. In the opinion of the Pork Council, these amendments should deal with risks associated with manure application by custom applicators. They would ensure that the applicators are familiar with all relevant regulations and that applicators are able to properly calibrate their equipment. This would minimize any risks associated with the custom application of manure and protect the environment. Thank you.

Hon. Rosann Wowchuk (Minister of Agriculture and Food): Thank you, Mr. Hacault, for your presentation. I want to also thank you for your input. There has been a lot of discussion with the pork industry with regard to manure application and the requirement for training. I know we have had discussion about the need for training. As I hear what you are saying here, are you now saying that there is not need for a course, for formal training as we have proposed, but rather it should be more that the applicators should be familiarized with the livestock manure mortality regulations and the ability to calibrate equipment? Are you saying in your recommendation that would be adequate without having a course as we have proposed and discussed in the past?

Mr. Hacault: I just want to clarify. Initially, when we had talked, I was under the impression that commercial applicators would have to go through a licensing process. After reading the proposed amendments, there is the commercial application licence and then there is the off-farm application licence. In my mind, the off-farm licence does nothing to add and complicates the whole act. The requirement for commercial applicators to have a licence and the requirement for livestock over 400 or 300, whatever the case may be, to have to comply with manure management fills the intent. Really, the off-farm part does not add to the whole intent of the act.

Ms. Wowchuk: In our view, as the industry grows, we are looking to manage the application

of manure in the province and ensure that it is applied sustainably. Your closing comment was bothering me somewhat when you said it appears the proposed amendments are meant to increase public confidence rather than dealing with risks associated with application.

I do not know where you are coming from when you are saying it is cosmetic. Our goal is definitely to ensure the safe and long-term sustainability of manure application. We both know that there is a growing livestock industry in this province. I think you explained that in your comments, but if you have further comments to add to that, I would want to hear those.

I have only one other thing that I want to add. You have asked for a change to section 3(1) and section 6 to be changed so that the director rather than the minister has the authority to issue a licence. I just wanted to tell you that that is written in legislation. Sometimes it is written director and sometimes it is written minister, but in reality the minister has the authority to pass on that responsibility to the deputy minister or to others. So it can go either way in legislation. That does not mean that it is solely the minister's responsibility. It is a delegated authority that comes with that.

Mr. Hacault: I am not sure if there was a question in that.

Ms. Wowchuk: No, I was just looking for clarification on your closing comment about cosmetics rather than really dealing with risks associated. Do you really believe that what is being proposed in this legislation is more with cosmetics than really dealing with better management and sustainable application of manure?

Mr. Hacault: Okay, I apologize for my lack of clarity. Those comments, in a sense, were directly attributable to that off-farm licensing provision where I feel that really that does nothing to add because I do not feel there are a lot of risks. Really, the burden of applying that section does nothing really to add to the act.

Hon. Jon Gerrard (River Heights): I wonder whether there is an opportunity here to include all that needs to be included under the commercial licence, because as the minister has explained, we are dealing with people who would have 300 livestock units more and why necessarily have two licences when, in fact, one could be used to incorporate everything that is needed. I think that is what you are trying to say, is it not?

* (20:30)

Mr. Hacault: Yes. If I could add to that, in further discussions we feel the larger units are controlled under the manure management mortalities regulation, and if they hire a custom applicator, then the custom application licence would clear that. What I would suggest, I guess–and it does not have to be part of the act, maybe it is just an activity the Department of Agriculture would like to undertake–is with a lot of the field days that they take with some of the awareness that we do as Pork Council is that to incorporate some of those elements into that education process with the farmers just to build their understanding.

But the intent, and where I had come from initially was when I hire a custom applicator, I expect them that if I tell them I want 85 pounds of nitrogen on my land and my manure tests at this level, that he has the capability and I have the assurance that when he does his application it will be done at that. This licensing of the custom applicator should do that.

Mr. Chairperson: Is there leave for Mr. Penner to ask a question? *[Agreed]*

Mr. Jack Penner (Emerson): Thank you very much for your presentation, Mr. Hacault. I think what you have indicated here is probably a measure of reality that I think all of us as legislators should address at some point in time. It would appear to me that by your last comments, which I take very seriously and which says that it would appear that the proposed amendments are meant to increase public confidence, I think is a very real statement, and I think the minister is attempting to do that.

I wonder though, Mr. Hacault, if you and your organizations have ever given any consideration to recommending to government

that there might be a consumer training program to help the consumer understand the difference or the acceptability of fertility nutrients that are naturally produced compared to commercially produced and how and what the difference is and how environmentally more friendly domestically and/or naturally produced fertility materials can be to the land. I believe that farmers in many instances would much, much sooner apply the natural products because they might in fact be deemed much safer.

I know in our operation when we apply anhydrous ammonia it can be a very dangerous operation if you do not know what you are doing and, therefore, the training that is prescribed in fact is needed to protect the operators in most cases, because it can kill you if you are not careful. However, it is very seldom ever that you will be physically damaged by the smell that emanates from a natural fertilizer such as manure. There are other natural fertilizers, as we know, but most of them develop a smell because of the ammonia content in the material, and that of course is what kills you when you allow anhydrous ammonia to get out of control on you.

So I wonder, Mr. Hacault, whether you might at some point in time, as an organization, come forward with recommendations to educate Mr. and Mrs. Consumer out there as to the natural advantages of using natural fertilizers in comparison to others.

Mr. Hacault: In response to that, I could say that the Pork Council does invest significant dollars in research into the Livestock Manure Management Initiative, and we have always encouraged the Province to participate in that also.

The reason we have encouraged them to participate is because producers are investing money and we feel that if the Province would invest money then everybody would have a vested interest in sharing those results with the consumer. We would do our part on the Pork Council. I assume the Government would do the same on their behalf, but then you would have real information to share with the consumers, research dollars and research that is done in Manitoba. I guess that is the tack we have been taking is encouraging the Manitoba government to invest in research.

Mr. Chairperson: Thank you for your presentation.

Bill 24–The Securities Amendment Act

Mr. Chairperson: The next bill is Bill 24, The Securities Amendment Act. Mr. Bayes submitted a written submission, so he will not be making an oral presentation. Next is Gloria Desorcy, Manitoba Branch of the Consumers Association of Canada. Is Ms. Desorcy here? Please proceed.

Ms. Gloria Desorcy (Consumers' Association of Canada, Manitoba Branch): Good evening. My name is Gloria Desorcy and I am here today on behalf of the Manitoba Branch of the Consumers' Association of Canada, CAC Manitoba.

CAC Manitoba is a volunteer, nonprofit, independent organization working to inform and empower consumers and increase awareness of consumer issues in Manitoba. On behalf of CAC Manitoba, I would like to thank the committee for the opportunity to present our brief comments on Bill 24, The Securities Amendment Act.

CAC Manitoba, along with many other organizations around the world, bases much of its work for consumers on a set of eight consumer rights and responsibilities. One of these is the right to compensation. Consumers have the responsibility to seek redress when they have purchased unsatisfactory goods or services and for many types of goods and services in the Manitoba marketplace legislation already exists that helps consumers fulfil that responsibility. When, however, consumers lose money because the terms, conditions or regulations of The Securities Amendment Act have not been complied with, the process of seeking redress can be costly and time consuming, often outweighing the benefit to the consumer of the compensation.

I would just like to add here that, as was so eloquently described by the presenter from the society on aging, what he said about seniors is very true for consumers in all age groups. For many of the consumers that contact us in our office, even a small investment loss can represent a big change in their plans for the

future, so I just would like to make that clear and suggest that you keep that in mind.

Bill 24 takes a giant step towards making this type of redress more accessible and affordable for consumers in this province. CAC Manitoba wishes to commend the Government of Manitoba for recognizing the needs of investing consumers.

We strongly urge the Government of Manitoba to approve Bill 24, The Securities Amendment Act. Our association would like to recommend that two things should accompany this new legislation: first, firm plans to inform and educate consumers about the new opportunities for redress that this amended legislation would afford them and specific information on how to access the process; and secondly, regular reviews of the maximum amount of compensation allowed, to ensure that the legislation continues to meet the needs of the average individual consumer.

Thank you for your time and attention this evening.

Hon. Scott Smith (Minister of Consumer and Corporate Affairs): Thank you very much, Gloria, for your presentation. I know through your association that you deal with matters such as this, and in Mr. Smith's presentation obviously it mentioned seniors, but you probably see it from all age groups and all walks of life.

The one thing that the Securities Commission, just to advise you, is doing is they are starting to take on a road show, as they like to call it, on some of the services and things that they do throughout the province of Manitoba. I know last year it was in Brandon. Quite frankly, it was extremely well attended on some of the services and accessibility on things that are presented, so it is something that we are considering is adding that piece. If the legislation does go through, this will be in that forum, informed to consumers at presentations throughout Manitoba as we move outside the city of Winnipeg for the first time and start to inform consumers both in the rural areas and other cities around the province.

Hon. Jon Gerrard (River Heights): Thank you for your presentation. In the last point, in which you suggest there should be regular reviews of the maximum amount of compensation allowed, I wonder whether you think that there should be in the bill provision for reviews every year, every other year, every three years basis.

* (20:40)

Ms. Desorcy: Well, I would suggest that I would leave it to the committee to determine what would be the most efficient and effective method of making it happen, but I think wherever it needs to be, you know it needs to happen, it is important that it happen. As I think you recognize, amounts of investment that are appropriate and sufficient to sustain people when they are seniors and when they are retired have changed over the years and will continue to change over the years, so while this may be an appropriate upper cap now, it may not always be. So, in whatever way, it would be most appropriate and most efficient to ensure that.

Mr. Gerrard: In sort of watching the results of legislation which has been enacted in the past, it seems to me that it in fact has been most effective where it has been included in the legislation that it be reviewed at a particular interval. What would you suggest would be a sort of reasonable interval for having the reviews?

Ms. Desorcy: Well, I have to say I did not really come with a suggestion in mind for an interval. I guess the concern that it would be reviewed was our biggest concern. I suspect yearly would not be required. Every three to have five years? I do not know.

Mr. Chairperson: Thank you for your presentation.

The next presenter is Greg Bieber of Bieber Securities. Please proceed.

Mr. Greg Bieber (Bieber Securities Inc.): Good evening, Mr. Chair, the Minister of Consumer and Corporate Affairs, Minister Smith, the committee and fellow colleagues at the Manitoba Securities Commission.

I am here as president of Bieber Securities, which is a Manitoba full-service investment firm

that has been in existence since 1995. I have also had the opportunity to be on the Investment Dealers' Association local council as chair, now past-chair and now a citizen with a little time on my hands, as you volunteers know. Also, I volunteer as an offshoot of the Securities Advisory Committee, which is also an offshoot of the Manitoba Securities Commission. So I am somewhat familiar with what has been taking place since March.

First of all, I want to say I have a new-found respect for politicians. I had no idea the hours you worked, absolutely none. So I certainly appreciate that and I certainly appreciate democracy for the opportunity to give our voice in something like this.

The first thing I want to say officially on what the Government is discussing along with the securities commission is that we are definitely in favour of ensuring that our industry remains at the utmost of integrity and that investor confidence stays at the highest level. When one of my colleagues in the industry gets in the news for something they broke the rules doing, it has an effect on me, it has an effect on my clients. My clients say: Greg, can it happen to me? Can it happen to you? So we are all one, we are literally all one. We are all affected. So I want to say that I like the area you are going in. We are not totally comfortable on Bill 24, and I am going to talk about that.

Just a little bit about the stock markets in the last ten years. It is incredibly difficult when you have a stock market atmosphere where you have the Dow Jones rise four times in value, where you have an index called the Nasdaq rise ten times in value, where you have the Toronto Stock Exchange rise some four or five times in value. It is very difficult to have excesses of that nature and not get manic investors and/or people in our industry that have financial and human excesses at the highest level. We are experiencing a significant decline in the stock market. So that is definitely clearing that up. Those excesses do reverberate through our investment community and, no matter who the regulator is, it is very difficult to capture it all.

We are of the view at our firm, and tonight I speak only from Bieber Securities' perspective that Bill 24 is, in its current state, inappropriate and also hurtful to the capital markets in our own province. We feel it is not necessary, certainly not for IDA member firms. We are part of an association called the Investment Dealers Association. We think with respect to the bill that there is duplication involved in mechanisms that are already in place to protect the investor.

First of all, in the Investment Dealers Association there is a program called arbitration which is mandatory. We must use it and virtually 100 percent of all the disputes are handled there. Now it is not handled. There are not a lot of disputes that go to arbitration. We think the reason is that our firms are settling with the clients, especially the small claims. We feel that that is handled in a lot of cases. So we feel that that arbitration is acceptable as well, as it is really in its early stages. It has just been born in the last three years.

It was mentioned earlier tonight there is something called the Financial OmbudsNetwork which is going to start in September. That is really collectively a number of organizations that get together for the consumer, basically to pick up the phone and dial an 800 number with a complaint if they have an issue about something that has happened in their respective industry. It is like the Bankers Association where if there is a complaint registered and, following an investigation of which there is no cost to the investor, it is found there are penalties to be imposed, there is no binding penalty but what there is is public pressure for the advisor or the company that if they do not follow suit, they will be in the press.

Now, I am in the investment business and I have a lot at stake because my name is on the door. All I have is my reputation. I cannot afford any negative publicity. If something were to happen in our firm, God forbid, and I were to get a phone call saying, you were wrong, you have to pay back somebody $5,000 or $10,000 or $20,000 or $30,000, you know darn well we are going to pay that because we do not want it to get out in the public. That is our penalty, let us pay the penalty and move on. That has worked at the banking association level. The public pressure often can be, I think, almost worse than the binding which is what arbitration is all about. Nonetheless, you have these two mechanisms in the arbitration, rather the ombuds-services, really new, very new. So it will start in September.

We also think that the regular court system, the one that is in existence, works. We also feel the bill, any expenses will be covered by Manitoba taxpayers. There will be no cost to the complainant but there will be an infrastructure that will need to be set up at the Securities Commission level that will be borne by the taxpayers.

If it is structured–the next three points are really more for the lawyers to spend time with, but this is what we see anyway–it makes definitely more appeals more difficult and it favours the Manitoba Securities Commission and the complainant. We think that creates an uneven playing field, at least from our understanding of it. We may have a misunderstanding but that is what we see.

Any appeals that would be made by the Manitoba Securities Commission are really almost, for all intents and purposes, denied because of the process that would be put in place, the Court of Appeal versus the Court of Queen's Bench. So if there was an error in judgment in assessment by the MSC or there was a wrongdoing there is really no opportunity to correct that, especially when we are dealing with livelihoods.

Now keep in mind, as I go through this, make no mistake about it; if somebody is not playing by the rules we do not want them in our industry. I want to remind you of that. That is the context of which I am talking.

Also, the powers the MSC get, again, this is from our understanding, the lawyers can spend more time with this and talk about it with you in that regard, but the powers they would be receiving would be unprecedented, something I do not think is seen in Canada or the U.S. and even in other countries. It does not seem to be consistent with their regulatory mandate. In essence, it is almost like creating another civil court system.

I know in the discussions I have had with the Government and also the MSC that this is the first of its kind to be implemented in Canada. We think it is okay not to be implemented, not to be the first of its kind. There is a reason it has not been implemented already.

I also understand that the securities laws are sought out to be uniform. The Canadian securities administrators are all putting together their thoughts to create a uniform securities act. We understand that may hinder its development.

Again, those last three or four points were really more for the legal community to spend time on, but this is what we see, as entrepreneurs in the community.

We think, if passed–I think this would be of more interest to you, especially in light of what the Government has stated–that the legislation will discourage further entrance into our industry, due to additional regulation. It is challenging to enter the industry at the best of times.

When we started our company in 1995, we put up $250,000 in regulatory capital. Now, with all the other regulatory costs, it would be close to $1 million, if we were to open up today. Not a lot of people are prepared to do that. It does not make for an entrepreneurial environment. Less firms mean less vibrant capital in this Province and less vibrant capital means less prosperity in our province. We know that the Government, all governments, are interested in supporting the development of capital markets. We do not think this bill is consistent with that particular direction.

* (20:50)

As far as our firm goes, we would be at a severe disadvantage if we were in a hearing at the MSC and if experts were required versus, let us say a large firm, for defence in terms of the costs involved, as a smaller firm versus a larger firm. God forbid we were ever to be in that position. We also think the appeals would be very costly and difficult to obtain, so what would really be the point of appealing them.

I just wanted to give you sort of a taste of what is happening in the financial services industry right now. We think the regulation that is creeping in from all over is starting to stifle innovation and growth. Well, just look at the current industry. That speaks volumes. Financial markets are clearly in a bear market. When you take a market down 40 percent from top to

bottom in New York and 50 percent in Toronto, we are in the longest bear market since the Second World War, 844 days long and counting. That is a bear market. We think we are definitely there but we are definitely in a bull market in regulation.

There is also something called the Mutual Fund Dealers Association. Now Bieber Securities is a member of the Investment Dealers Association. There were, over the years, a number of mutual fund representatives that started in the industry but were not regulated. They did not have their own association. I am not sure exactly to what extreme the number of complaints would have been from that particular industry. I suspect it would be a lot higher, because our industry has been around for over 70-80 years attempting to get it right in terms of regulation. We are certainly not perfect, but their industry, their association rather, is just getting started, so they would probably need some time to let their policies and procedures season.

Our association has made some great strides, some significant strides in their policies and procedures dealing with regulation, especially when there was an oversight review of the IDA back in the year 2000. So the IDA basically had to make a number of changes and they did, and, we think, very much for the good. Also the industry is facing new and rising costs, very, very difficult for the barriers of entry.

Based on what I have said, again, from our viewpoint, we are suggesting the following. I personally know how strong the Government feels about this particular bill in its current state. I want you to know I respect their position and honour their position. So I am glad to have the opportunity to at least give our voice on how we feel about it.

One, we would prefer that the restitution bill be removed completely. I know that is bold but why not start there. Secondly, we would rather see them, if that does not work, postpone legislation for at least a year to allow the Government and the Securities Commission more time to develop this legislation, as well as have another history of the arbitration program and to see how the ombuds-service is actually working in serving the consumer. It really seems that the regulatory environment is playing catch-up and the pendulum is swinging to the extreme the other way. If there is modification, I am certainly not an expert in law so I do not claim to be, but there are a lot of very good securities lawyers in town the Government can seek in terms of opinions.

In the last recommendation, this is not news to Minister Smith, or Chair Murray of the Securities Commission, but I truly believe–this is my personal view and I know my industry feels this way–in self-regulation. The Investment Dealers Association is a self-regulatory organization which has yet to have the opportunity to be granted an official SRO in the province, although we have worked together on what they call a de facto method, but when that opportunity arrives and we know we are in queue at the Securities Commission we would also like to see the opportunity of us having the official opportunity to investigate and enforce our own matters, with of course oversight by the Securities Commission, which is done in various provinces.

I am not sure if we are in the right format but I wanted to sort of give you a flavour of how we see the industry and how we see it from our view as a firm and also from the bill as we see it.

I really want to thank each and every one of you on behalf of my colleagues at Bieber Securities for the opportunity to share with you. Regardless of whatever decision you plan to make, our goal is to serve passionately, effectively and ethically to assist Manitobans, the ones who want to be assisted, to assist them to achieve and reach their financial goals. After all, wealth is freedom and we would like them to have more freedom. Thank you.

Mr. Scott Smith: Thanks for your presentation, Greg. I know we have had the opportunity over the last year or so to speak at length on this matter, consulted with you and in fact the folks from the IDA and your national organization as well. Although we disagree on the reasons for the bear market, I think a lot of people would agree right now that the bear market is caused mostly by the inappropriate actions that have been dealt in the market over the last period of time. There are a number of reasons for the bear market, obviously.

On your initial front page here I notice the duplication process that you mention. I know it was brought up by a previous presenter, Mr. Smith, when he had mentioned the arbitration process. In fact you had mentioned the new process that will be open soon, the national Financial Services Ombudsman. I guess we both feel it will probably be a good service and a convenient service for a lot of people to access. But quite frankly, as Mr. Smith put it, I did not put it, something that needs teeth in it, the arbitration service, although it works for some people does not have the satisfactory teeth that a lot of investors have mentioned to me and certainly this does.

The commission, and you mentioned just going on a little further, you have in your statement here that the costs may impede the industry in some way. I can tell you that in fact the commission opens a flow, where there is a regulatory breach that is sufficient to review the licence of an individual or firm, and that is not going to change. That will be done and it is being done anyway and in fact this just gives the aggrieved investor the opportunity to be compensated at that time and at that end without incurring the expense of court costs afterwards in something that would be imposed by the Securities Commission if they in fact had the opportunity to do it. So it is not an increase in staffing costs. That is for sure. It is files that are being opened now and would be just an addition to it, and it is not an imposition to the industry that I see.

Certainly, there is no assessment being considered for this at all. Frankly, the folks that should not be assessed, just the ones that are the ones that are in breach of it should be the ones that are charged, not everybody for someone else's negligence. That is just one comment I wanted to make, and certainly I do not see it discouraging the capital markets, I see it frankly as going the other way and giving investors, folks out there and creditors something that is tangible and they feel more secure about getting into the market. So I guess we disagree on that particular issue; we have talked about that before, but I appreciate your views, and I know from other views and appreciate the IDA being consulted over the last year on the matter.

Mrs. Joy Smith (Fort Garry): Thank you for your presentation. Certainly it is quite pointed and quite different from what we heard earlier in the evening. You said that members of the Government have gone on record stating they support the development of the capital markets, and the result of this bill is not consistent with your statement. Would you elaborate on that just a bit more other than what you have already said in your presentation tonight?

Mr. Bieber: I do not know what more to say other than I think it speaks for itself. I think that any government would want to see the capital markets robust, you know, not just this particular Government of the day. Regulation hurts our industry if there is too much of it. If we are too stifled. The barriers to entry to somebody who wants to come into our business, you want to open up an investment firm, forget it, it is just not going to happen, and we have two venture capital funds in this province, our Crocus and Ensis. Some of them have exit strategies. Let us say they buy an investee company and they want to take it public because that is an exit strategy; that is how they are going to make the shareholder's money.

Well, where are they going to go? There are three firms in town that are independent that are small enough to handle it. The other firms are too large. They just will not deal with anything, $10 or $15 million, well, that is even low, I mean $25 million. But an investee company that is in one of the funds which is in a lot of taxpayers', a lot of Manitobans' hands, you know, they need to make some money, and one of the ways is for the investee companies that are bought in to get sold in the public market as what they call IPO, an initial public offering. If you have few firms to distribute that, there are few firms for opportunities, that is just only one example of how the capital markets can be hindered.

Mr. Chairperson: Is there leave of the committee for Mr. Gerrard and Mr. Faurschou to ask a question? *[Agreed]*

* (21:00)

Mr. Gerrard: Yes, I would like to take that last question a little bit further. At a time when we are trying to develop some high tech industries and firms which will need IPOs and capital to grow in Manitoba, it is a significant concern that investment capital might go elsewhere rather than here as a result of legislation like this. So I

would like to get your comment on what will happen with the movement of the capital as a result of this, and I would also like you to comment a little bit more on the statement which says that this will hinder efforts to develop and harmonize the security laws across Canada and how important it is to have harmonized security laws.

Mr. Bieber: I am not sure how to answer the first one, and I might defer the second one to a lawyer. Other than companies going public to raise money, the other avenue would be through private investment. I am not sure how that really applies here.

So I go back to what I was saying earlier where you just have too few numbers of investment firms, opportunities to get into the industry are virtually nil, market conditions aside and very little distribution. It just does not make for a robust capital market at the level where start up business is. Venture capital are one notch up of start up businesses. You just do not get that level of capital. It is difficult at the best of times. This is not Alberta.

But now we are all in the same boat because market conditions are like that. It is just difficult, at the best of times, to get capital for start up companies, or companies one notch up. So any barrier to assist capital markets is a hindrance because we have so few opportunities right now.

As far as the harmonization of the securities laws in Canada, my only comment on it is that the Canadian Securities Administrators are creating something called The Uniform Securities Act and they are all getting together to talk about it, and to make it simple, and efficient, and less bureaucratic. This bill goes the other way. It goes in the opposite direction. Then you have another province, like British Columbia, where they are going the other way. They are not into regulation, they are into re-regulation. They want less regulation. So you have these factions happening at the Securities Commission level right across the country. We do not think that helps the process.

Mr. David Faurschou (Portage la Prairie): Thank you for the opportunity to question the presenter this evening. I appreciate the presentation I heard this evening. If we were to follow the process through on an appeal basis, the individual company, which obviously has a claim against it, and the Court of Appeal modifies the commission's particular judgment, is there opportunity to recapture, as you view the legislation, the expenditure necessary to go to a Court of Appeal by the company?

Mr. Bieber: Can you clarify? Recapture the expenses involved, or the restitution?

Mr. Faurschou: I was specific to court costs, legal expenses by the company that has filed the appeal.

Mr. Bieber: I think it would be inappropriate for me to comment on that on the basis that I am not a lawyer and they would have a better understanding. There may be lawyers behind me and they may be able to tackle that question.

Mr. Chairperson: Thank you for your presentation, and thank you for your new found respect for politicians, since we are here until midnight, and possibly 1 or 2 a.m.

The next presenter is John Stefaniuk, representing the Canadian Bankers Association. Please proceed.

Mr. John Stefaniuk (Canadian Bankers Association): My name is John Stefaniuk. I am here on behalf of the Canadian Bankers Association. Mr. Dan Iggers, who was registered will not be attending on behalf of the Canadian Bankers Association this evening.

Mr. Bieber has stolen much of my thunder and, having done so, we will not extend the evening any more than we have to. I know you have a lot of work ahead of you on other bills as well. The concerns of the Canadian Bankers Association are also well expressed in the written submission which has been presented by Mr. Bayes which I encourage you all to refer to as well, because he does a good job addressing the same sorts of concerns that the Canadian Bankers Association has in relation to this bill.

I am going to restrict my comments on the bill those areas that the CBA has identified as being either unfair, unnecessary or potentially

unconstitutional. These areas are detailed in the written submission prepared by Mr. Law.

The first element is in relation to the compensation orders. There has been some discussion of that and there is an understanding of the sentiments behind this part of the bill, but there seems to be a bit of a disconnect between what some of the presentations tonight have dealt with and what this part of the bill actually relates to. It is not an insurance mechanism and it is not something that deals with negligent advice given by brokers or investment advisors. It is something that deals with malfeasance, activities that are contrary to the provisions of The Securities Act or regulations. So it is not a compensation scheme, a substitution for Small Claims Court or going to court if someone alleges that they received negligent advice from someone who is regulated under The Securities Act.

It only covers situations where the activities go to the point of being breaches of the legislation itself or the regulations thereunder. In that respect, the Canadian Bankers Association, whose members own the largest investment brokers and advisors in Canada, do not see a flood of complainants who would fit the bill, for lack of a better term, who are not adequately addressed in existing processes and procedures, including the arbitration mechanism that has been referred to through the Investment Dealers Association.

For small matters, there are existing processes through the courts. If it is that small, if it is below the $7,000 mark, there is a Small Claims Court we all have access to. If it is below the $50,000 mark, there is an expedited process through the Court of Queen's Bench in which many of the formal procedures are whittled away to reduce the cost and to increase the expedition and expediency of the process, so a lot of that is already in place.

* (21:10)

What is left are the allegations where there is an allegation that there has been a breach of the act or a breach of the regulations, breaches of other policies of the commission. The unfairness aspect comes in where there is an automatic liability on the part of the employer for determinations against employees on the part of the commission. There is no due diligence defence that is provided. There is no opportunity given for the employer to give its case. There is no requirement to give notice to the employer that one of its employees is made the subject of an investigation where that employee could be the subject of one of these orders and the employer therefore liable for up to $100,000. That is an element of unfairness that needs to be addressed.

The assignment of the adjudication of what is essentially a civil claim to the Securities Commission, which traditionally has held a protective role in Canadian securities legislation and not a compensatory role, and then by deeming the employer to be absolutely liable for the penalty that is assessed against the employee, is something that is only achieved at the loss of basic fairness. Mr. Bieber has already spoken about the arbitrational alternative. I will not go into that in any detail.

As part of that basic element of fairness, too, the commission, which is appointed in its protective role, is no substitute for an independent judiciary and access to the courts in our submission is quite important. By limiting access to the courts, even on appeals from the Securities Commission, to appeals to the Court of Appeal on leave only severely curtails the ability of any party to have any realistic or reasonable right of appeal.

I make part of my living by taking appeals to the Court of Appeal on municipal assessment issues where leave is required. Leave to appeal is seldom granted. It is granted in circumstances where there are errors in law or jurisdiction, but no matter how interesting the conclusions are in terms of the facts of a case that the trier of fact may arrive at, the Court of Appeal is not going to investigate those facts, is not going to look into it further. By going to the Court of Queen's Bench, the appellant has that opportunity and then, again, to the Court of Appeal to settle any outstanding questions of law. That is something that will be clearly lost should this bill be enacted in its current form.

The elements that are of concern that are potentially unconstitutional or where there are elements of arguments as to their con-

stitutionality are those that grant to the commission, essentially, a judicial power to order compensation. Those questions have been dealt with by the Supreme Court of Canada to a certain extent, and it is the Canadian Bankers Association's submission that this legislation raises the same types of issues.

Similarly, Bill 24 empowers the commission to make compensation orders where there has been a failure to comply with non-statutory instruments such as a direction of the commission, a written undertaking or a condition of registration. None of these things are legislation or regulations or statutory instruments and, by providing the commission with this power, it is submitted that this is contrary to the powers of the commission to enforce non-legislative instruments. An Ontario Court of Appeal case has already held that a regulator may not impose mandatory requirements enforceable by sanction through non-statutory instruments.

The last point that Mr. Bieber also raised was the harmonization issue, and the Canadian Securities administrators are working towards a uniform securities act. With all respect to the minister, this moves us away from that process. Manitoba should look to measures which ensure the greatest possible alignment with the securities regulators throughout Canada for purposes of efficiency and access to capital markets for the benefit of the province as a whole.

Madam Vice-Chairperson in the Chair.

Again I thank the committee for its indulgence and for the opportunity to present this evening. I encourage the minister and the Government that should the bill be enacted in its present form some considerable period of time be allowed before its proclamation so that additional consideration may be given to some of these elements that have been raised so that, if necessary, appropriate amendments could be introduced at a later date to deal with these issues.

Madam Vice-Chairperson: Thank you for your presentation, Mr. Stefaniuk.

Mr. Scott Smith: Thank you for your presentation, Mr. Stefaniuk.

One point that you raised, and I imagine it is in your brief, is the automatic accountability of the absolute liability of the employer. In fact, when you read the legislation that is not the case. It is on a case-by-case basis and is reflected in the legislation as "may" and will be looked at. The term "absolute liability" is probably not one I would use, but certainly you are open to your comments. The case-by-case basis is what would be looked at. As well, on the constitutionality, we have had considerable opinions on the constitutionality and I imagine, if we put a number of lawyers in the room they may come up with a solution but I think they may disagree on certain points. We fully know that constitutionality is in place and meets the needs.

The consultation, due to the constraints, you had mentioned the Canadian Securities Administrators. You mentioned harmonization. Our chair of the Securities Commission here is on that panel, a panel of six, across Canada. Due to time constraints, they are not able to look at this, but they are looking at the introduction of restitution throughout Canada in a secondary stage or a secondary track as they go along. They have time lines. This is not one that could go on, but it is something that they are very interested in and have been following very thoroughly. It is something that they will be considering. It is something that they will be looking at as harmonization across the country. It is something that we have been consulted with here in Manitoba on exactly the legislation we are looking at drafting. That is being looked at on the harmonization model. A great deal of attention is being paid to the province right now on the bill that we are presenting here in front of Manitobans.

Your other comments, we have seen in some of the briefs. Some of the information I have from yourself and some from the banking industry. I appreciate your views and your taking the time to come out tonight to present.

Mr. Gerrard: Thank you for the presentation. I would ask you to comment on three points. The bill would appear to remove the normal democratic right of appeal as you have indicated. Second, I would ask you to comment on the impact of this bill, if it were passed, on banks, banking activities and banking practices in Manitoba. Third, I would ask whether the association was consulted before the bill was drafted.

Mr. Stefaniuk: In answer to the questions, my understanding is that there was industry consultation through other industry organizations. There was some discussion with members of the industry in relation to the concepts although I have no personal knowledge of the extent to which the Canadian Bankers Association was involved in any consultation.

* (21:20)

The question of rights of appeal, the Canadian Bankers Association has always, whenever I have been involved in any submission to this committee or other committees of the Legislature or to the government of the day, supported the maximum access of members of the public, individuals and anyone involved in proceedings before any tribunal to allow the fullest opportunity of appeal through whatever course of action is available. In this case we do not support the reduction of avenues of appeal. We are not aware of any demonstrated need for the reduction. We are not aware of any abuses of the process, multiplicity of proceedings or those kinds of things occurring.

In fact I know there is a theory that this reduces those multiplicity proceedings in that the Securities Commission is an expert tribunal, but even expert tribunals are known to make mistakes. This allows the opportunity to have an independent party which has an independent office, which has a scope and aspect that is much broader than the area of securities act enforcement alone, to look at the matter with a fresh pair of eyes and give it the broadest possible re-examination. It is always open for the parties to confine the issues the courts will deal with on appeal.

The last element of your question, with leave of the Chair, if you could remind me.

Mr. Gerrard: It was banking activities, the impact on banking activities in Manitoba.

Mr. Stefaniuk: The impact on banking activities in the province of Manitoba, well, I guess there are a number of things that come to mind, some of which were raised by Mr. Bieber. The business across Canada in commercial legislation generally looks toward certainty and uniformity as some guiding principles, where possible. There are always elements of regional variations and some needs for those kinds of–

Madam Vice-Chairperson: I am sorry, Mr. Stefaniuk. I am going to have to interject because your time has expired for the presentation and the question period. So thank you very much for your presentation.

Mr. Stefaniuk: Thank you very much.

Bill 42–The Off-Road Vehicles Amendment Act

Madam Vice-Chairperson: We are going to move on to Bill 42, The Off-Road Vehicles Amendment Act.

There is one presenter on this bill, a Dawn Gratton from Snoman Inc. Ms. Gratton, you can proceed.

Ms. Dawn Gratton (Executive Director, Snomobilers of Manitoba): Madam Chairwoman and members of the committee, my name is Dawn Gratton and I am the executive director for the Snowmobilers of Manitoba. I would first like to thank you for changing the date of the meeting on Bill 42 to accommodate our presentation.

Allow me to present the following as background information. Snoman, the Snowmobilers of Manitoba, is the organization that represents 48 snowmobile clubs throughout the province. Our mission is to provide strong leadership and support to our member clubs to develop and maintain safe and environmentally responsible trails to further the enjoyment of organized snowmobiling in Manitoba. We are committed to promoting safe, responsible riding on Manitoba snowmobile trails by continuously improving safety standards, programs and enforcement through proactive leadership, stakeholder partnerships, public education and driver training.

Mr. Chairperson in the Chair

Annually, Snoman sells over 12 000 trail permits and our member clubs maintain over 10 000 kilometres of trail. We are a volunteer-

based organization with approximately 4000 members.

Snoman is governed by a board of directors that is made up of two representatives from each of our five regions. Snoman is an active member of the Canadian Council of Snowmobile Organizations, the International Snowmobile Congress and the International Association of Snowmobile Administrators. We have also been consulted for various government projects on safety, legislation and land use.

The intent of this presentation is to express the concerns of the Snoman board of directors on Bill 42, the amendment to The Off-Road Vehicles Act. The Snoman board and office staff have received a lot of feedback in response to the introduction of the proposed legislation changes. Very few of the responses we have received have been supportive or positive.

Bill 42, which addresses the identification decal, introduces an imprudent driving charge and clarifies the authority of local jurisdictions to regulate operating speeds, does have points of merit, however, also raises many concerns.

We are concerned primarily that the identification decal provision has been put forth separate from the mandatory registration issue. We did agree to support the decal, even though we had serious doubts as to its ability to save lives, provided there were no exemptions from registration. Our support, as I have just described, was noted in the September 25, 2001, minutes of the Snowmobile Safety Working Group when we presented a motion carried by our board to that effect. We once again clarified our support at a meeting of the working group, as shown in the minutes of October 12, 2001, and in Snoman's submission to the department of Driver and Vehicle Licencing on the draft of the report of the working group.

We are aware that the Snowmobile Safety Working Group has been reconvened and divided into subcommittees, one of which is to address the issue of mandatory registration. We have offered to sit on that committee but have a real issue with the timelines. We are cited in every media release as supporting the identification decal when the committee developed to discuss our qualifier has not even met yet.

In a survey of selected Canadian jurisdictions, performed by Transportation and Government Services and cited in the report of the Snowmobile Safety Working Group, Manitoba currently has the highest number of types of exemptions from mandatory registration. The report goes on to estimate that more than 28 percent of snowmobiles being operated, a figure Snoman considers to be conservative, are unregistered. Snoman is calling for mandatory registration so the actual number of snowmobiles and their distribution can be determined. This will allow for improved targeting of safety and public awareness campaigns, training and resources, and an ultimate reduction in the number of serious injuries and fatalities. Other jurisdictions have been successful with implementing an exemption from fee, as opposed to an exemption from registration. Snoman would support looking into the various options that could be available.

Snoman does support the introduction of an imprudent driving offence and, although local jurisdictions may not have the expertise or background knowledge of snowmobile operating speeds, we support legislation that will allow those jurisdictions to control snowmobile traffic in populated areas.

We feel the current Off-Road Vehicles Act is a very useful tool for enforcement officers but if changes are required it should be to increase the fines for breaking the current laws. Over the last snowmobile season, despite variable snow conditions in certain areas, our membership witnessed a great increase in enforcement presence on the trail system. We believe, with increased enforcement and stricter penalties for offenders, behaviours will change.

In addition, the way in which this legislation was put forth, mainly without any logistical information for the snowmobiler who will ultimately be affected, has added to the non-support of this bill. We previously had a decal system for snowmobiles in Manitoba that was not popular with the snowmobilers and was not enforced. The riding public does not differentiate between that decal system and the proposed one

and they simply see it as another provision that only the law-abiding citizens will comply with. Our membership has spoken and the board of directors is considering revoking their support for this provision.

In an e-mail from the office of the Minister of Transportation and Government Services (Mr. Ashton), it is explained to a concerned snowmobiler that Bill 42 is enabling legislation that will allow for regulatory changes in the future and that the changes proposed by the working group in regard to decals will not be immediately enacted in law if the bill is passed. If it will not be immediately enacted then Snoman feels we should take the time to fully address public concern. We ask that the mandatory registration provision be discussed prior to the passing of Bill 42 and that Snoman be consulted, as the representative for the Snowmobilers of Manitoba, about possible implementation dates and strategies should the amendment go forth in the future.

I look forward to following the progress of this important matter and I thank you all once again for the opportunity to present to you this evening.

Mr. Larry Maguire (Arthur-Virden): Thank you, Ms. Gratton, for your presentation. You have made it very clear here, I think, exactly what your intent is in regard to this, that you are not against the bill particularly. Your estimate, and you think it is conservative, is that 28 percent of snowmobiles presently operated in the province of Manitoba are not registered.

Ms. Gratton: Yes, we believe, from discussions we have had with enforcement officers who had experience in northern communities. Also from our board's experience in rural areas, they feel that estimate is conservative, yes.

* (21:30)

Mr. Maguire: You then, Ms. Gratton, would be calling Snoman, you are certainly looking for mandatory registration, but do you think that any initiatives that could be taken or energies or fiscal use that could be presented would be better used to enforce the mandatory registration, then. Is that clear?

Ms. Gratton: Yes, mandatory registration is something that could be looked at, definitely, but any resources that are available we do feel would be better put into enforcement of the current legislation that is in place. We think The Off-Road Vehicles Act in itself is a very, very useful tool for enforcement officers. They have expressed that to us, and we have seen increased enforcement this year and are extremely pleased with it. We would like to give that a chance.

Mr. David Faurschou (Portage la Prairie): I appreciate the work that has gone into your presentation here this evening. Obviously, there has been a great deal of consultation before this document has been written amongst your membership. So, in a nutshell, you are proposing that this legislation be amended with the withdrawal of section 21.1, and removal of section 68(r), because as you have outlined, it is premature to adopt these sections as there is dialogue still continuing on registration and mandatory registration specifically.

Ms. Gratton: Not only with the mandatory registration, we also understand that the manufacturers themselves as an association will be looking, minimum two years, they are going to be designing an area on the cowling of the snowmobile, where this decal is looked to be placed, for a decal. Many other jurisdictions are calling for one, and we think that it would be better to wait and see what they are going to prescribe or talk with them. We are a member of the administrators who are working with the association of manufacturers to come up with this decal-size placement, and they will be starting to design that into their snowmobiles, as we understand. So we think that it would be, maybe, better to wait and see what they come up with. They will probably have a lot of consultation from many experts on that.

Mr. Faurschou: In regard to jurisdictions which you have mentioned elsewhere, could you enlighten the committee as to whether Manitoba is sort of trailing the pack, leading the pack, on this legislation?

Ms. Gratton: As I mentioned before, we have had a snowmobile decal in the past, quite some years ago, so I guess in that respect we were leading the pack at the time. Other jurisdictions in the States, and Ontario has tried it. A lot of people have gone to the decal, gone away from

the decal, gone back to the decal. There is no clear consensus whether it is the way to go or not. Ontario, for example, right now has a permit decal. It is about yea big and it is not really visible. It is reflective but, you know. So everyone is doing something different right now, and until we can all get together and decide what we are going to do, the manufacturers have a hard time. But we are trying to work with them and come up with something that will be, sort of uniform and international.

Hon. Steve Ashton (Minister of Transportation and Government Services): I appreciate the brief. I can indicate, first of all, I appreciate the input of Snoman and the support for the impaired driving offence. Also, in Canada again, there has been an increase in general penalties which will affect a number of offences including the improved driving offence. I think it is a point well taken that you have to have some consequence to people when people are charged. I appreciate the position of Snoman in terms of both decals and mandatory registration, and Snoman I know is aware of being part of the process. One of the reasons no final decision was reached in terms of mandatory registration was the lack of consultation involving northern or remote areas. That was actually cited in the report. I can indicate that indeed the reference to e-mail is correct, that this is essentially an enabling provision, and certainly you point out some of the developments with manufacturers.

I believe, quite frankly, that it is pretty clear that there will be provision for decals within the next year or two. That is the information we have received. Decals are used in 15 northern states, two Canadian jurisdictions, including our neighbour in Ontario. I know I actually have a lot of snowmobilers in my area, and I think people have to realize that the point of the decals is the current licence plate appears in a pretty invisible part of the snowmobile, right by where you put your feet.

I do appreciate this, and indeed the intent of this legislation again was to provide. Quite frankly, and I have said this to snowmobilers directly, I think it is just a question of when we bring in the decals. They are being redesigned by the manufacturers. I appreciate people do not want to affect the design, but, quite frankly, one of the major concerns for the police was in terms of identification, and this is a parallel track.

I appreciate the concerns that have been raised, and I can indicate, as is in the case in the brief, that we certainly do see the need to proceed with discussions on the registration, how it might work, how broad it would be. So I do see a connection that is pointed here. We may have some disagreement. I realize there are some snowmobilers who are dead set against decals. I appreciate the difficulty Snoman has been in, but I certainly appreciate the feedback. We will certainly be cognizant of it as we proceed further on this bill and the ongoing consultations. There are other provisions of the working group which were not implemented, quite frankly, because they involve some further work, as well.

Mr. Chairperson: We have run out of time. Is there leave of the committee for Mr. Faurschou to ask one short question? *[Agreed]*

Mr. Faurschou: Thank you very much. I appreciate the indulgence of the committee. Just in relationship to your organization and the snowmobiling public, your organization represents what percentage of the operators in the province? I will not get another chance to thank you very much for all of your work put into this and to the member organizations that have studied this legislation.

Ms. Gratton: As to the percentage that we represent, according to figures provided to us by the Department of Driver Vehicle and Licensing, March 2001, there was 21 400-odd snowmobiles registered. We sell over 12 000 trail permits. Our membership is about 4000. *[interjection]* A part of it, yes, definitely. How many are unregistered? We are not sure.

Mr. Chairperson: Thank you for your presentation.

Ms. Gratton: Thank you.

Bill 53–The Common-Law Partners' Property and Related Amendments Act

Mr. Chairperson: Finally, Bill 53, The Common-Law Partners' Property and Related

Amendments Act. First presenter is Jayne Kapac. Ms. Kapac, are you still here? That name is dropped to the bottom of the list. Tim Preston, representing GOSSIP. Please proceed.

Mr. Tim Preston (GOSSIP): Good evening. I have a written submission.

Good evening. My name is Tim Preston. Thank you again for the privilege of speaking to you. I am speaking tonight on behalf of the group organizing on same-sex issues and principles. We are not just a clever acronym. We are an ad hoc group of writers, activists, lawyers who eventually formed the GOSSIP group in June of 2001 when the Government introduced Bill 41.

* (21:40)

Many GOSSIP members, however, are affiliated with other organizations such as the Rainbow Resource Centre, ÉGALE, which is Canada's national lobby group for the gay and lesbian community and their families, the Manitoba Bar Association, which is the gay and lesbian issue subsection, the Canadian Bar Association represented by the Sexual Orientation and Gender Identity subsection; the Gay and Lesbian Lawyers' Association; the Manitoba Association of Women and the Law and the Women's Legal Education and Action Fund, LEAF, which I understand has submitted a brief in unequivocal support of this proposed legislation.

GOSSIP's position, that marital property and intestacy laws should apply to common-law relationships, is strongly supported throughout the gay/lesbian/bisexual and transgendered community here in Manitoba.

Why does GOSSIP support the extension of marital property laws to common-law relationships? If Bill 53 becomes law, the principle of equal division will also apply. That principle, that does apply to married couples, will apply to common-law relationships once the relationship has lasted for three years or if the parties have registered their relationship as a registered domestic partnership.

It is important, I think, that this legislation recognizes that if parties do not want property to be divided equally, they can opt out of this regime. Opting out can be done by a simple written agreement, except for certain pension plans which require independent legal advice. It is interesting to note that Nova Scotia's marital property laws, which did not give rights to a common-law heterosexual partners, were held to be contrary to the equality guarantees in the Charter and they were declared unconstitutional.

Marital property laws recognize that both partners make equal, although perhaps different, contributions to the financial well-being of a relationship and, therefore, a presumption of equal division is the fairest presumption to make if the relationship ends, unless the parties have specifically agreed otherwise. They also ensure that the more financially vulnerable partner is protected if that partnership breaks down. Thirdly, it provides an expeditious method for resolving potential disputes.

I think it is important to know that formal surveys of most people living in common-law relationships show that they have given little thought to what should happen if their relationship breaks down or, in the case of many heterosexual common-law couples, they mistakenly believe that marital property regimes do apply to their relationships. Family law lawyers have confirmed, before the review panel on common-law relationships, that many heterosexual common-law couples mistakenly hold these beliefs.

Some people object to the extension of marital property regimes on the ground that some common-law couples have chosen this form of union in order to avoid marital property regimes. However, people who do not want their relationships governed by marital property regimes, that is, those few people who have actually come to agreements with their partners on how to deal with property–that would be very few people–are not affected by this legislation, as long as they have put their agreement in writing.

GOSSIP and its members have participated in discussions on whether to support extension of marital property regimes to GLBT relationships. It has been discussed at public forums, at the committee hearings last summer, during the

common-law review panel submissions and consultations through e-mails, discussions, in the media, Swerve magazine, Manitoba's GLBT newspaper, and in private conversations throughout this time frame from June 2001. Almost no one involved in these events has disagreed with the GOSSIP position. Given this high degree of consensus, GOSSIP supports the extension of marital property laws to common-law relationships because each of the three rationales that I have just discussed applies.

Why does GOSSIP support the extension of intestacy laws to common-law relationships? Well, based on everything that this committee has heard since last year, apart from dependents relief legislation, common-law partners have no right to anything from their partner's estate if their partner dies without a will, patently unfair. GOSSIP asserts that common-law partners should have the right to their partner's estate because, in the vast majority of common-law relationships, the deceased person would want that for their surviving partner. It is interesting to note Alberta's intestacy laws fail to give intestacy rights to a common-law same-sex partner and were held to be contrary to the equality guarantees in the Charter and declared unconstitutional in court.

Gay and lesbian and bisexual and transgendered people are all too familiar with the horror stories of families of origin insisting on asserting their right to a deceased person's estate, notwithstanding the fact that the person has lived with someone in a committed common-law relationship for many years, and this committee has heard those incidents as outlined by various speakers here. Now, GOSSIP basically urges the Government to proclaim in force The Intestate Succession Act amendments as soon as this law receives Royal Assent to ensure that this particular injustice ends as soon as possible.

Why does GOSSIP support the enactment of a registered domestic partnership regime for common-law relationships? Well, initially, GOSSIP had expressed its opposition to a registered domestic partnership regime because we believed it would relegate our relationships to a second-class status if they are our only option and because few people would actually register and, therefore, hardships would continue to be experienced by members of our community. As well, in other jurisdictions, registered domestic partnerships have only applied to private property rights and not to other laws affecting conjugal relationships, like the right to claim public benefits.

Bill 53, however, proposes a form of registered domestic partnership that overcomes some of these problems. Common-law couples can register their relationships, and, upon registration, the common-law relationship would be recognized immediately under all statutes touching on common-law relationships, rather than having to wait out whatever time period specified by statute. In other words, early on in a relationship, a couple can opt in if they wish by registering, but, if they do not opt in, the statutory time frames apply. In particular, after three years, they are automatically in the intestacy and marital property regimes until they take steps to opt out. GOSSIP, therefore, does support this form of registered domestic partnership created by this bill, as some common-law couples may want to have their relationships recognized in this way and also to speed up the time for acquiring various rights and obligations.

In closing, GOSSIP applauds the Manitoba government for introducing Bill 53 because, together with the amendments it made last year through Bill 41 and last week or a couple of weeks through Bill 34, ensures that common-law, same-sex relationships are fully recognized on an equal basis in Manitoba law. We embrace the notion that extending laws to protect members of our community also means that these laws will require that we fulfill obligations. Bill 53 is a positive step forward in granting full legal equality to the gay, lesbian, bisexual and transgendered community.

* (21:50)

This submission, by the way, is supported by 109 signatories, which were called in the last 48 hours and also, I would venture to say, speaking on behalf of a lot more people than that, but those are the signatories that we have been able to call on short notice. Thank you very much.

Mr. Chairperson: Thank you for your presentation. The next presenter is Donna Huen representing Rainbow Resource Centre.

Ms. Donna Huen (Rainbow Resource Centre): Thank you for this opportunity to present to the Standing Committee on Law Amendments. I am representing the Rainbow Resource Centre serving Manitoba's gay, lesbian, bisexual, transgendered and two-spirited communities. We have been operating for the past 31 years providing information, referrals and peer support to the GLBTT community and their families and friends. In addition, we provide anti-homophobia training to professionals and pre-professionals in the social service, health care and education fields, so that when members of our communities interface with these systems, they are treated with dignity, respect and equality.

I am speaking to the bill introduced by the Manitoba government, Bill 53, The Common-Law Partners' Property and Related Amendments Act. The Rainbow Resource Centre supports the introduction of this bill.

In the course of our work at the Rainbow Resource Centre, we come in contact with individuals who have experienced the death of a same-sex partner or the end of a long-term same-sex relationship. For those individuals, the pain of such losses is often compounded by the absence of rights to financial security, rights and corresponding obligations currently limited to married people. This Government has recognized that while it cannot change the legal definition of marriage–that is up to the federal government–its commitment to equality means that it must extend the same rights and responsibilities to people living in common-law relationships.

In practice, Bill 53 means that the more financially vulnerable members of common-law relationships are protected when those relationships break down. Those members of our community who wish to remain financially autonomous can agree as a couple to opt out by signing an agreement to that effect, and those who want the new regime to apply early in the relationship can opt in by registering their domestic partnership. Otherwise, the three-year rule applies. We think that this is a fair system that accommodates the diversity of views and relationships within our communities.

We understand that the Government intends to delay the coming-into-force date of at least some parts of the bill until after the Supreme Court decides a Charter of Rights challenge to matrimonial property laws and to conduct a public education campaign. However, we see no reason to delay the portions of the bill dealing with intestacy laws. The Government could prevent further injustice to members of our communities who are left with no rights to their partner's estate or to deal with funeral arrangements, et cetera, by making that portion of the bill effective as soon as it is passed.

The statutes being amended by Bill 53 will recognize and protect the status of gay and lesbian relationships to as near to full equality under the law as is possible without legal marriage. We encourage this Government to now take the remaining steps needed to ensure our full equality under the law. We ask you to pass Bill 53, and we ask you to strongly urge the federal government to change the legal definition of marriage to include same-sex couples.

The Canadian Charter of Rights and Freedoms guarantees people of all sexual orientations freedom from discrimination and equal benefit of the laws. This Government has done the correct and just thing by introducing Bill 53. Anti-discrimination provisions are always a positive move in the right direction. Congratulations on your efforts to ensure full equality to gay and lesbian common-law couples. Thank you for your time this evening.

Mr. Chairperson: Thank you for your presentation.

The next presenter is Kim Segal. Is Kim Segal in the room? That name is dropped to the bottom of the list. Next is Janet Baldwin and Dianna Scarth, Manitoba Human Rights Commission.

I think you will need to introduce yourselves.

Ms. Janet Baldwin (Manitoba Human Rights Commission): We shall. Good evening. This is not Dianna Scarth. Representing the Manitoba Human Rights Commission are Commissioner Elliot Leven, my colleague; Dianna Scarth, our executive director; and myself as chairperson of the Manitoba Human Rights Commission.

Thank you for the opportunity to speak to Bill 53, The Common-Law Partners' Property and Related Amendments Act. We wish to speak in support of the bill.

The Manitoba Human Rights Commission, the ministers' Human Rights Code prohibits discrimination on the basis of a number of characteristics, including sexual orientation and married law family status. These protections extend to several areas or activities such as employment services or programs in housing, although not directly to some of the property laws covered by Bill 53, but in addition to our responsibilities with respect to enforcement of the anti-discrimination provisions of the code and public education, we have a number of other responsibilities. Two of these have brought us here today.

The code charges the commission with the promotion of the principle that we are all free and equal in dignity and rights. It also requires that we further the principle of equality of opportunity and equality in the exercise of civil and legal rights regardless of status. We carry out our responsibilities in the light of the Charter of Rights and Freedoms and of international instruments that affect Canada, such as the Universal Declaration of Human Rights, and the foundation of these undertakings and of our code is the recognition of the individual worth and dignity of every person.

Now some members may recall that we appeared before you two weeks ago to voice our support for Bill 34, The Charter Compliance Act. That act, together with last year's act, to comply with the Supreme Court of Canada's decision in *M. v. H.* and with Bill 53, addresses a number of issues of discrimination on the basis of married law or family status and sexual orientation. These acts will go far to eliminate the systemic discrimination that common-law partners and in particular same-sex common-law partners have faced. Last year we urged the Government to amend a number of statutes, particularly with respect to family property so as to extend rights and responsibilities to common-law couples, and we support Bill 53's extension of family property laws to common-law couples whether of the same or the opposite sex.

Now my colleague, Elliot Leven, is going to talk about some of the specific amendments proposed by Bill 53.

Mr. Chairperson: Is there leave of the committee for Mr. Leven to speak? *[Agreed]*

Mr. Elliot Leven (Manitoba Human Rights Commission): Thank you. When the Human Rights Commission representatives met with the review panel on common-law relationships last year, we made a number of recommendations. We are pleased with the realization of many of these recommendations in this legislation, including the extension to common-law partners of laws that determine the division of property on the breakdown of a marital relationship or death of a spouse. We believe that quality principles require that this legislation be extended to common-law partners.

In the case of *Walsh v. Bona*, the Nova Scotia Court of Appeal held that marital property legislation which denied benefits to a common-law partner infringed the Charter of Rights. The court found that the definition of spouse in Nova Scotia's legislation as either a man or a woman who are married to each other violated the Charter of Rights and that this violation was not justified as a reasonable limit.

Manitoba's marital property, the act, is similar to Nova Scotia's legislation at that time, and although we await the Supreme Court decision on the Nova Scotia case, the commission is of the view that equality principles do require that our legislation be extended to common-law couples. As Justice Flynn speaking for the Court of Appeal in the Nova Scotia case found, the Marital Property Act perpetuates the view that unmarried partners are less worthy of recognition or value as human beings or as members of Canadian society equally deserving of concern, respect and consideration.

In the Supreme Court decision in *Miron v. Trudel*, Justice McLachlin as she then was, noted that there is some recognition that distinguishing between cohabiting couples on the basis of whether they are married or not is not in step with current social values or reality. She observed that recognition that it is often wrong

to deny equal benefit of the law because a person is not married, could be found in the fact that some benefits have already been extended to unmarried partners who have cohabited in a conjugal relationship. These include child and spousal support and rights to claim on the basis of unjust enrichment and the law of trust.

* (22:00)

There are a number of other reasons for the inclusion of same and opposite-sex common-law couples in the scheme of legislation that governs the distribution of property when the relationship ends or one of the partners passes away. Marital spouses enjoy these protections and it is only fair and equal that common-law partners who are after all similarly situated to marital spouses enjoy them as well. These amendments will protect the financially more vulnerable partner in a relationship, which is an especially important consideration where children are involved.

Bill 53's extension of property laws to common-law partners is required to provide equal benefit of the law regardless of marital or family status. The extension of these benefits and obligations to all common-law couples, regardless of whether they are same or opposite sex, is consistent with sound human rights principles and practices.

Now many common-law couples, especially those of the opposite sex, may already believe that they are protected by The Wills Act or by property legislation such as The Marital Property Act. For them, Bill 53 aligns their legal rights and responsibilities with what they already believe to be the case. For some, however, especially those in same-sex common-law relationships, the changes brought by Bill 53 and the earlier acts may lie outside of their knowledge or expectations.

It is important that common-law partners be informed as to the effect of Bill 53 on their lives and the choices that they have to opt out of some of the rights and obligations created such as those in The Family Property Act. We recommend that the Government of Manitoba embark on an educational campaign with respect to the legislative changes brought by these amendments.

Chairperson Janet Baldwin will now make some additional comments and conclude our submission. Thank you.

Ms. Baldwin: Now, Bill 53 also creates a registry system, of course, that permits common-law couples to be governed by property and other legislation prior to meeting the cohabitation period set out in the various amended statutes. This system, in our view, is a step in the right direction and may be all the provincial government can do at this time, but the need for it would be much less if same-sex couples could marry. Of course, there are opposite-sex couples who, for various reasons, cannot marry either, for example, religious reasons, they may still be married to someone else or the unwillingness of one of the partners to commit to marriage.

In regard to the question of the right to choose to marry of same-sex partners, we stated before the review panel last year and directly to the minister that many of the legislative and social inequalities faced by gays and lesbians flow from the legal barrier that precludes same-sex couples from making that choice to marry. We have recommended before that the Manitoba government monitor the cases that are challenging the constitutionality of the restriction of marriage to opposite-sex couples only and prepare to intervene in support of the applicant should these cases proceed to the Supreme Court of Canada.

Now since we last appeared before this committee, the federal government has announced that it will appeal the decision of the Ontario Superior Court in Halpern. That court unanimously held that it is unconstitutional to bar same-sex couples from marrying. We urge the Government of Manitoba to publicly declare its support for that decision and to encourage the federal government to act immediately to end discrimination in the laws governing marriage, and we again ask that the Government of Manitoba prepare to intervene in support of the applicants if, and when, these cases proceed to the Supreme Court of Canada.

Last fall, in a similar case in B.C., Mr. Justice Pitfield held that restricting same-sex couples from marrying was discrimination under

the Charter but was saved by section 1. While we were disappointed with this decision, which is also now under appeal, I would like to quote from his judgment, where he said: The distinction between opposite-sex and same-sex relationships in the marriage context excludes the latter from a social and legal institution of considerable importance and tends to perpetuate the stereotypical and frequently critical community view of gays and lesbians. The Manitoba Human Rights Commission views the current restriction of marriage to opposite-sex couples not only as discriminatory but as an unreasonable and unjustifiable limit in a free and democratic society.

The amendments that are proposed in Bill 53 together with last year's amendments and the amendments in Bill 34 will address a great number of inequities faced by common-law partners, whether of the same or opposite sex. We congratulate the Government for moving forward on this important package of legislation that advances equality rights. We hope that this restructuring of the laws governing conjugal and family relationships will serve as a foundation for the Government's commitment towards ending discrimination in the laws governing marriage. Thank you. We will be happy to answer questions.

Mr. Chairperson: Thank you for your presentation. The next presenter is Helen Hesse. Please proceed.

Ms. Helen Hesse (Private Citizen): Honourable ministers, members, ladies and gentlemen, my name is Helen Hesse. Just to introduce myself, I was born in Manitoba. I have also lived in other provinces, other countries. I am a married woman, a mother of four sons. I believe firmly in equality and justice for all in our province and our country of Canada. I am speaking as an individual, but I am also a member of PFLAG, which is Parents, Families and Friends of Lesbians and Gays. It is an international organization that offers support to members of the LBGTG community and to families and friends–I do have copies for everyone, by the way–and also engages in education and advocacy on behalf of our members and of the community at large.

I wish to commend the current Government on having introduced and passed Bill 34 and for having introduced Bill 53, which is under discussion this evening. Once this bill has passed, and I sincerely hope that it does, Manitoba will, I feel, will be in the forefront in this country for rights and responsibilities for all common-law couples, opposite-sex and same-sex equally.

Before I had learned about these bills and started to educate myself, I had naively assumed that common-law couples had either the same or similar distribution of property as married couples upon a breakdown of the relationship or the death of a partner. Since then I have learned how wrong this assumption was. I commend the Government of Manitoba for proposing fair and equitable solutions to this issue so that a surviving common-law partner can inherit upon the death of the intestate partner, although I still personally recommend making a will, that property acquired during a common-law relationship can be divided in an equitable and fair manner upon the breakup of the relationship.

It is also extremely important to me that this legislation pertain to all common-law relationships, both opposite-sex and same-sex. I feel that the guidelines for defining what constitutes a common-law relationship, time lines and the registered domestic partnership and also the possibility of opting out of the division of property if both partners agree, that these are fair.

Now, I am speaking as a mother whose sons either have been or may be in common-law relationships. In that regard I applaud Bill 53 and find that unfortunately some other provinces are not as farsighted as our Government here, but, hopefully, they too will amend their legislation, because, as we all know, our population is a very mobile one. At the moment some of my sons live elsewhere.

Now, three of my sons have the option of marriage as things stand at the moment with the attendant rights, responsibilities and portability within the country, but one does not have that choice as yet. I therefore urge the Government of Manitoba to be supportive of same-sex marriage when the federal government has seen the light and changed the legislation in that regard, or, better still, to urge the federal government to proceed with allowing same-sex marriage.

I also urge this present Government, once the bill has been passed, to continue to seek other avenues to make life more equitable for Manitobans of non-heterosexual orientation. There is still a lot to be done, especially in the area of public education, for instance, so that young people can feel safe in their schools, so that couples can walk hand in hand in public without being yelled at or worse, in short so that Manitobans of non-heterosexual orientation can simply be themselves without encountering misunderstanding and prejudice. Thank you.

* (22:10)

Mr. Chairperson: Thank you for your presentation. The next presenter is Mike Law, Gay and Lesbian Issues Section of the Manitoba Bar Association.

Mr. Mike Law (Gay and Lesbian Issues Section, Manitoba Bar Association): I have some papers as well. Good evening, Mr. Chair, Mr. Minister, members of the committee. I am here to present on behalf of the gay and lesbian issues subsection of the Manitoba Bar Association. Our subsection applauds and supports this legislation towards ensuring the recognition and equality of same-sex relationships.

Over the past year our subsection has appeared before all the committee hearings and made a presentation to the review panel on common-law relationships. We feel that Bill 53 represents the combination of the rights, obligations and responsibilities that we maintain same-sex relationships are deserving of receiving.

In particular, three acts which are being amended we strongly support: The Marital Property Act; The Intestate Succession Act; and The Vital Statistics Act. In particular, the changes to these statutes will ensure that vulnerable partners will be protected upon the breakdown in their relationships.

The Marital Property Act amendments acknowledge that both partners in common-law relationships contribute equally to the relationship, even if they do so in different ways. The amendments proposed ensure that vulnerable partners are protected when a relationship dissolves and provide a mechanism by which the partners' respective rights can be enforced.

Many persons, in my view, in same-sex and in opposite-sex relationships, common-law relationships, hold the mistaken view that property rights vest in their relationship after a certain period of cohabitation. The amendments to The Marital Property Act provide persons with the rights and obligations many of them assume they already have. In other words, we feel that the amendments simply bring the law into line with pre-existing assumptions about the law regarding common-law relationships.

With respect to The Intestate Succession Act, our submission applies with equal force. The extreme examples of disappointed expectations are found most often in relationships if one common-law partner dies without a will and the surviving partner is left with little or nothing. Despite the advice and encouragement by lawyers such as myself, it is surprising how many people do not actually have wills. The proposed amendments to The Intestate Succession Act we feel are based on sound public policy. Most persons who have lived with their common-law partner for a period of three years, the law should presume, wish their estate to be left to their surviving partner upon their death.

We also support the changes in Bill 53 under The Vital Statistics Act which permit those who wish to abridge the time limitations set out in the various statutes and register their relationships to immediately do so. This permits those who wish to speed up the vesting of their rights and responsibilities to do so. Alternately, those who do not wish this regime to apply to them can opt out quite easily. This provides couples with the means to arrange their affairs differently than provided for in the law with the ability to do so. That is the opting-out or the speeding-up rights. Those who choose to have their relationships governed by law will have the rights and responsibilities bestowed upon them which are grounded in principles of both responsibility and equality.

I am not here today with a resolution that has been passed by the full Manitoba Bar Council only because there has not been a bar

council meeting between the time that this bill was tabled and the time I am standing here today. I can say that a year ago, when I appeared on the first of these three bills, there was a resolution passed that would urge the Government of Manitoba to amend all of its laws to comply with the Charter in as comprehensive a fashion as possible. We feel that this does this, along with the other two bills.

So the Gay and Lesbian Issues Subsection supports the legislative amendments contained in Bill 53. Again we applaud the Government for taking a proactive approach towards equality rights in this province. Thank you.

Mr. Chairperson: Thank you for your presentation. The next presenter is Debra Parkes.

Ms. Debra Parkes (Private Citizen): Good evening, members of the Standing Committee on Law Amendments. I am a professor of law at the University of Manitoba. I teach and research in the area of constitutional law, specifically in the area of the Charter of Rights and Freedoms. I am appearing today as a private citizen, but I am drawing on my research under the Charter.

I appear today to speak in support of this bill, Bill 53, The Common-Law Partners' Property and Related Amendments Act, the essence of which, as the other presenters today have gone over, is applying marital property and spousal intestacy rules to common-law relationships, of course of both same and opposite sex, as those changes to the definition of spouse generally have been made, or of common-law partner.

The first point I wanted to make was about the process and what I view as a proactive approach to remedying discrimination. As this committee is no doubt aware, the Supreme Court of Canada will hand down a decision in Walsh and Bona's case about marital property laws and limiting those to married couples. In keeping with its earlier decisions and the general trends in anti-discrimination law, there is a good chance that the court will find the exclusion of, in that case, opposite-sex, common-law partners from marital property laws to be unconstitutional.

Another case in Alberta, there was a Charter challenge to the exclusion of same-sex partners from intestacy laws. That was similarly successful, again at a lower court level, though, in that case. However, the Manitoba government's decision to act proactively to remedy discrimination in these areas without being forced to do so by the courts is a positive step for, I think, the citizens of Manitoba as well as for the democratic process. Justice Minister Mackintosh has said that the Government is committed to making the changes in Bill 53 because they reflect sound public policy and are, in the Government's view, the right thing to do.

Critics of the Charter of Rights often argue that the Charter has weakened democracy by putting important decisions in the hands of unelected judges instead of elected representatives. Academics, popular writers, particularly in this last year, with the 20th anniversary of the Charter, have been talking about this. They will continue to debate that question. I think virtually all of those people will agree that it is best for important and complex public policy decisions of this kind, dealing with complex rights and on a whole regime of division of property, for those decisions to be made by Legislatures rather than courts, with the kind of research, consultation, debate and attention to detail that go with the legislative process.

So, I am here today to commend the Manitoba government for its commitment to extending equal rights and responsibilities to common-law partners as a matter of principle rather than waiting and claiming the court made me do it, as we tend to see.

In terms of the content of Bill 53, you have my written submission. It generally echoes what you have heard today. In terms of equality theory and constitutional law, people talk about claims for redistribution and claims for recognition. I think this bill does both in terms of redistributing economic resources and other social goods, and recognition of relationships and individuals who have been devalued in society. So I think it is a positive step for the reasons that you find in the GOSSIP brief, as well as the Rainbow Resource Centre and some of the other ones that you have before you.

Also, though, as a matter of women's equality, something that we have not been talking a lot about so far tonight, the enactment of marital property laws in the first place was an important move for women's economic equality. It recognized the unpaid contributions of women. We distributed financial resources to women on the breakdown of marriages. Of course, in some cases, there are men who are beneficiaries of redistribution of property.

However, as LEAF, the Women's Legal Education and Action Fund has noted in its brief to this committee, it is a written brief as I understand, women continue to do much more unpaid work and continue to face disadvantages in the paid work force, whether single, married or living common-law. So the reasons for marital properties law making sense for married couples also continue to apply for heterosexual common-law couples. So, again, in terms of same-sex couples, you have heard the reasons why, and I did sign onto the GOSSIP brief. I am one of those 109 people there. So I will not go into that.

* (22:20)

Just as a final point, though, I would like to say one more thing. That is just about avoiding, what I call, the erosion of public responsibility. While I support the bill for the reasons set out in my talk today and in the GOSSIP submission, I share the concern of some feminists, some anti-poverty activists that a focus on redistribution in the private realm–so, between spouses, really only assists people who have wealthy partners and may deflect attention away from the need for a collective public support of those in need. I hope we can agree that the economic well-being of individuals should not be contingent on the wealth of ex-spouses.

So I urge the Government to reinvest in public programs such as social assistance, health care education and income security and not to see Bill 53 as a reason to otherwise erode public responsibility for Manitobans in need. So, if there are no questions, I will conclude there.

Mr. Chairperson: Thank you for your presentation. Next are Sharon Pchajek and Maureen Pendergast. Please identify yourselves.

Ms. Maureen Pendergast (Private Citizen): Hi. I am Maureen Pendergast.

Ms. Sharon Pchajek (Private Citizen): I am Sharon Pchajek.

Ms. Pendergast: I have a written copy here for you. With your permission, Sharon has asked me to speak for her.

Hello. Good to see you again. Just over a year ago we appeared before a legislative committee to express our concern that this Government, their approach to recognizing, through laws, full equality for gay and lesbian people did not go far enough. We are happy to be here tonight to tell you that your work to correct that is almost complete.

Bill 53 is one of the final steps in a package of amendments that you have brought in, that the Government has brought in that finally extends the rights and responsibilities of full citizenship in this province to us all. The extension of marital property and inherent succession laws, interstate succession laws to same-sex couples through common-law provisions is crucial. Without their protection, people in our community have no recourse if their relationship ends and their financial claim to a fair portion of their joint assets goes unheeded by the person that they are leaving.

Couples in our community who are unfortunate enough not to plan for each other's death and who die intestate will no longer be dismissed as nothing more than a roommate by the law after a lifetime of joint earning, planning and dreaming. We know personally of the damage that the existing law does in the case of intestate succession. We are the friends of a Winnipeg woman who lost her partner prematurely to cancer within this past year. Our late friend died without a will, and there is now the likelihood that her blood relations will be wanting to use the law as it currently stands to lay claim to some of the assets in her estate. In fact, the letter has already been received that requests certain pieces of furniture and jewelry to be sent to one of the parents at the expense of the estate, although everything is frozen at the moment because she has died intestate. The surviving partner has to deal with all of the mortgage payments and bills and parts of living your life and paying your way on a reduced

income with no resolution yet, because this is frozen. It is a legal mess.

Under the law, our late friend's family can do this. They can lay claim to anything they want that the two of them spent just about a decade accumulating. I have been asked to act as the administrator of the estate. We are in the process of finalizing that as a way to try to mediate this situation. Under the law, if I administer this estate, even though I believe I know what my late friend's wishes were regarding provisions for her family as well as her partner because we had discussed it, it does not matter. I am going to be forced to settle this estate differently than her wishes if I am pushed in that direction by her family. I have no recourse. That is currently the law.

This bill is coming too late for our friends, but it will prevent other people in our community from finding themselves completely unprotected and at the whim of people who may or may not respect their place in their partner's lives. To that effect, we are urging you to please proclaim this legislation as quickly as possible. Delaying the date for this bill to come into force because of dealings at another level of law will just reproduce the problem that we have had for years. It continues a patchwork quilt of laws that no one is quite sure how to understand. It leaves again a higher risk of people in our community being unprotected. Your Government's amendments have come a year too late for our friends, but you can ensure this does not happen to one more person with prompt action. Thank you.

Mr. Chairperson: Thank you for your presentation. Last but by no means least, Karen Busby.

Ms. Karen Busby (Private Citizen): Good evening, honourable Chair and other committee members. My name is Karen Busby. I am a law professor at the University of Manitoba. I believe I am the last presenter, but do not worry, I am going to be short.

I support Bill 53 and I congratulate the Manitoba government for introducing it. This bill, together with the amendments made through Bill 41 last summer on economic benefits and burdens, both private and public, and Bill 34 on adoptions, conflicts of interest and end-of-life issues, will ensure that people in common-law relationships, both same- and opposite-sex, will be given the same benefits, burdens, protections and obligations under law as people in marital relationships.

Manitoba's laws will be as comprehensive as they can be. This is a major achievement for this Government. It will be rightly remembered for this. In the last year, especially after the review panel on common-law relationships was established, I have spoken to hundreds of people, queer and straight, about whether or not Manitoba's property laws should be changed. Almost no one that I have spoken to is opposed to the amendments being made by this bill. I am especially pleased that LEAF, the women's Legal Education and Action Fund, one of Canada's leading equality-seeking organizations, and ÉGALE, a national organization for queer people and their families, have both filed briefs with this committee supporting this bill. I have no hesitation asserting on the record that this bill enjoys a high degree of public support.

Why do I support the amendments proposed by The Common-Law Partners' Property Act? Let me tell you three stories, true stories, although the names have been changed and the genders have been made intentionally ambiguous to demonstrate why.

Sheldon and Chris were together for seven years. Shortly after they met, Sheldon bought a house, and a few months later Chris moved in. They figured out the cost of utilities, added in the mortgage and taxes, and split the cost. They fixed up the house, spending more than $15,000 on it. They did most of the work themselves, including extensive landscaping, taking out firewalls that had been put up when the house was a rooming house, and finishing all the wood trim. The house was in a rough neighbourhood, the west Broadway neighbourhood, but they were actively involved in community organizing, going to meetings to oppose conditional uses, seeking out illegal rooming houses and reporting them, and so on. Then they broke up, and Sheldon sold the house for double its purchase price. Sheldon said to Chris you can have the money back that you contributed in renovations, but that is it. Sheldon is right under

current law, and there was not much Chris could do about it. Under the amendments proposed by Bill 53, Chris would be entitled to the increase in the value of the house while they were together. As this is the fairest outcome in this situation, I support Bill 53.

Story No. 2: Mike and Enid were together for 15 years. A year ago, Enid was diagnosed with cancer, and, within six months, she died. Mike, who ran a small business, neglected this business during Enid's illness in order to look after her. The terminal stage of Enid's cancer, mercifully, was very short, but Enid never accepted that she was going to die and, therefore, refused to write a will. Anyway, she thought her affairs were in order with Mike designated as the beneficiary of a life insurance policy. As it turned out, the life insurance policy was designated to Enid's estate.

Enid's parent are entitled, by current intestacy laws, to the estate. They are also entitled to Enid's collection of photographs, to any furniture and household effects she paid for, to any gifts that Mike gave to Enid and even to Enid's dog. The sad thing in this situation is that Enid's parents intend to make this claim.

Madam Vice-Chairperson in the Chair

* (22:30)

Under the amendments proposed by Bill 53, Mike would be entitled to Enid's estate. As, without a doubt, this is what Enid and most people in Enid's situation would have wanted, I support the amendments being made to the intestacy laws by Bill 53.

I also echo the amendment proposed by many other presenters this evening, that the amendments being made to The Intestate Succession Act be enforced upon this bill receiving Royal Assent and not upon proclamation.

The final story: Anne and Gus had been together for more than 20 years. Theirs is a traditional relationship, except in one way. They never married. Anne supported Gus while he finished medical school, and they moved around the country with him while he developed his career. When Gus took over a practice in a small town, Anne could not find paid work. A few years later, she had her first child. She is still at home, and this is an arrangement which suits everyone just fine.

Last summer, I asked Anne if she knew what would happen to property acquired during the relationship, especially to RRSPs and to other retirement savings. She said that it would be divided equally. That is what the law required because they had children together.

Anne, who is my sister, did not believe me when I told her that she was wrong about the law. Anne is not alone in her mistaken belief. We have heard Helen Hesse speak of her misconception of the law this evening. As Mike Law has noted, lawyers will confirm the pervasiveness of this misapprehension.

Last summer, I did an informal survey of 100 heterosexual people in common-law relationships and asked them what the law provided about what would happen to property acquired during their relationship. All but one person in this survey believed that marital property laws applied to them. The one person who knew what the law was, was someone who had been through a break-up.

I hope that Anne and Gus will stay together forever, but I support Bill 53 because, if they break up, the amendments made by this bill reflect what they believe the law to be. Moreover, it is the most equitable form of distribution of property they acquired through joint, albeit different, contributions throughout their relationship. Thank you.

Madam Vice-Chairperson: Thank you for your presentation. I am going to now call out the presenters that were not in attendance previously. If they are not here, their name will be dropped off the list. Kelly Mathison or John Schmeiser from Canada West Dealers Association, going once, going twice, three times. Daniel Iggers, Canadian Bankers Association, not here, I see someone shaking their head. Len Hampson, Certified General Accountants' Association, once, twice, no. Jayne Kapac, not here; and Kim Segal is not here.

Mr. Chairperson in the Chair

Mr. Chairperson: That concludes the list of presenters that I have before me this evening. Are there any other persons in attendance who wish to make a presentation?

Seeing none, is it the will of the committee to proceed with detailed clause-by-clause consideration of Bills 2, 21, 23, 24, 38, 42 and 53? *[Agreed]*

Bill 2–The Security Management (Various Acts Amended) Act

Mr. Chairperson: We are beginning with Bill 2. Can we have the minister for Bill 2? Does the minister or ministers have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): I just have some very brief comments. First of all, this is omnibus legislation which is relatively unique in Manitoba, although there are three bills like this this session, so the way that we are proceeding with all omnibus bills, this one included, is that while I have overall carriage of the bill as House leader, the ministers will account and respond and move amendments to their respective acts. So the ministers who have amendments are here.

I want to, as well, just note that we have had some consultations with the Opposition. I think that has been valuable, and there are a number of amendments that will be moved as a result of those consultations. There may be other amendments, but the ones that we are proposing are certainly I think in whole or in part due to consultations to strengthen the bill, to clarify the bill.

Mr. Chairperson: Do other ministers wish to make an opening statement?

Is there leave for the Minister of Transportation and Government Services (Mr. Ashton) and/or other ministers to speak? *[Agreed]*

The Minister of Transportation and Government Services, for an opening statement.

Hon. Steve Ashton (Minister of Transportation and Government Services): Mr. Chairperson, I just wanted to add to the comments of my colleague that there are a number of changes in this act, certainly in the area that I am responsible for, the Emergency Measures Organization. I think the amendments that are in place in terms of requiring emergency preparedness programs and plans are important.

I also note, Mr. Chairperson, that there are some very important amendments here in terms of broadening the Fire Commissioner's role in responding to emergencies. I think recent events have demonstrated that this bill has validity above and beyond perhaps some of the original focus.

I know there has been some suggestion, Mr. Chairperson, in terms of a potential conflict between the Fire Commissioner's office and EMO. I can indicate, as minister responsible for EMO, that that is not the case. In fact, the two agencies work very closely, and this will enhance the ability of EMO to respond to emergencies.

Mr. Chairperson: Does the critic from the Official Opposition have an opening statement?

Mr. Jack Penner (Emerson): I just very briefly want to indicate to the ministers who have been working on this bill and those of us who have partnered with the provision of a Security Management Act that we think will suffice for at least the near future, we are quite pleased at the openness with which the ministers and the Government approached this and the dialogue we have had in proposing a final draft of a bill. I understand that the minister is going to be presenting some of the amendments that we had been seeking, and we are very pleased with that. We believe this bill in the long term will serve the province of Manitoba well.

Mr. Chairperson: Is there leave for Mr. Murray to speak? *[Agreed]*

Mr. Stuart Murray (Leader of the Official Opposition): I would like to also echo that I think there has been a lot of time, effort and energy put into Bill 2. I would certainly like to applaud the members of our caucus who took a number of issues seriously enough that they wanted to bring some amendments forward to improve it.

Specifically the Member for Emerson (Mr. Jack Penner), the Member for Charleswood (Ms. Driedger) and the Member for Fort Garry (Mrs. Smith) I think put a lot of time, effort and energy working with caucus. I would like to acknowledge their time, effort and energy in this. I would also like to acknowledge the Government's ability to work with our critics to ensure that those amendments were looked after. I think the intent for this Bill 2 initially was to try to bring the Legislature together for the purpose of establishing a security bill that was intended to ensure that Manitobans had a sense of safety. I think that with the work of all legislatures I believe that we have come pretty close to satisfying that. So I would like to acknowledge from the government side their ability to listen and work with our members of caucus. It is much appreciated.

* (22:40)

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

Clauses 1 and 2.

Mr. Jack Penner: I think there was a suggestion that section 2 be amended. Is the Government not proposing an amendment to section 2 of the bill? This basically deals with the products for agricultural use. I am sorry. This is under the provision of the pesticides control, I believe.

Mr. Chairperson: Clauses 1 and 2–pass; clause 3–pass; clauses 4 to 6(2)–pass; clauses 7 to 9–pass.

Mr. Mackintosh: Minister responsible for Emergency Measures.

Mr. Ashton: We can pass 10(1). The two amendments deal with 10(2). This in regard to concerns that were identified by the Opposition and response to the Attorney General.

Mr. Chairperson: I am having difficulty hearing you, but I think you said your amendment is at 10(2).

Mr. Ashton: Pass 10(1). The members are on 10(2).

Mr. Chairperson: Clause 10(1)–pass. Clause 10(2).

Mr. Ashton: I note that there was some discussion of this earlier and there was an exchange of correspondence back and forth. This deals with the section involving the emergency plans. There were two amendments I will be introducing. Just to explain–

Mr. Chairperson: Excuse me, Mr. Minister. Could you read your amendment and then speak to it after it is been ruled in order?

Mr. Ashton: I just wanted to explain there are two amendments. I will explain it afterwards, but just so that people know there is a second part coming. I will explain it afterwards, Mr. Chairperson. I move

THAT the proposed subsection 8(2) of ***The Emergency Measures Act****, as set out in subsection 10(2) of the Bill, be amended by striking out* "When a program or plan is submitted under clause (1)(d) or subsection (3) to the co-ordinator for approval," *and substituting* "After a program or plan has been submitted under this section to the co-ordinator."

Mr. Chairperson: It is moved by the honourable Mr. Ashton,

THAT the proposed subsection 8(2) of **The Emergency Measures Act**, as set out in subsection 10(2) of the Bill, be amended by striking out "When a program or plan is submitted–

An Honourable Member: Dispense.

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

Mr. Ashton: Just briefly, I am moving the two amendments. I indicated that. This addresses the concern of the existing plans which have been submitted to the co-ordinator for review, will now have to be resubmitted for the co-ordinator for his or her approval. This was not the

intention of the new provisions. The first amendment clarifies that the co-ordinator may review both the plans already on file and the new plans that are submitted after the act is amended, and the co-ordinator may approve them or refer them back to the local authority for further action.

I have a second amendment, but I will save the explanation for that once we deal with this.

Mr. Chairperson: Amendment–pass.

Mr. Ashton: I have a further amendment. I move

THAT subsection 10(2) of the Bill be amended by adding the following after the proposed subsection 8(8):

Transitional
8(9) A program or plan that was submitted to the co-ordinator before this subsection came into force is not required to be resubmitted under clause (1)(d). But the co-ordinator may approve it or it refer it back to the local authority under subsection (2).

Mr. Chairperson: The amendment is in order. I has been moved by Mr. Ashton, that subsection–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense.

Mr. Ashton: The second amendment adds subsection 8(9) for greater clarity. It clarifies the existing plans do not have to be resubmitted, but it allows the co-ordinator to either approve the existing plans or refer them back to the local authority for further action. The responses to some of the concerns that were raised by the members of the Opposition were very helpful, and I think this deals with the intent of the correspondence that was looked at.

Mr. Chairperson: Amendment–pass; clause 10(2), as amended–pass; clause 11(1)–pass; clauses 11(2) to clause 14–pass; clauses 15 and 16–pass; clauses 17 to 19–pass; clauses 20(1) to 20(3)–pass; clauses 21 and 22–pass. Shall clauses 23 to 25 pass?

Hon. Rosann Wowchuk (Minister of Agriculture and Food): Mr. Chairman, I have an amendment in section 25.

Mr. Chairperson: Then we will deal with the clauses up to 25. Clause 23–pass; clause 24–pass.

Ms. Wowchuk: Mr. Chairman, I have two amendments in section 25. I move

THAT the proposed subsection 3.1(4) of ***The Pesticides and Fertilizers Control Act****, as set out in section 25 of the Bill, be replaced with the following:*

No provision of spraying equipment
3.1(4) No person shall, directly or indirectly, provide aerial or ground-based spraying equipment to another person if he or she has reason to believe the other person will use it for the unlawful application of a substance.

Mr. Chairperson: The amendment is in order. It has been moved by the honourable Ms. Wowchuk that–dispense.

Ms. Wowchuk: Mr. Chairman, I just want to clarify this amendment in that this section of the bill restricts the use of both aerial and ground spraying application to the application of plant nutrient or the management of a pesticide. After we consulted with industry partners, such as the Manitoba Aerial Applicators Association, they indicated that crop dusters are sometimes used for other legitimate purposes such as aerial photography, forest fire fighting, pilot training, only to mention a few. This amendment recognizes that these are normal business practices, that these planes are used for other than crop dusting, and that this equipment is used for other purposes.

Mr. Chairperson: Amendment–pass. We have another amendment to clause 25.

* (22:50)

Ms. Wowchuk: Mr. Chairman, I do have another amendment for that section. I move–

Mr. Chairperson: I need to seek leave to revert back to clause 25. Is there leave? *[Agreed]*

Ms. Wowchuk: I move

THAT the proposed subsection 3.3 of ***The Pesticides and Fertilizers Control Act****, as set out in section 25 of the Bill, be amended by adding,*

"or the person designated by him or her," *after* "minister".

Mr. Chairperson: The amendment is in order. It has been moved by the honourable Ms. Wowchuk

THAT the proposed subsection 3.3–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Ms. Wowchuk: Mr. Chairman, in Bill 2, the provision requires that a person who becomes aware that a controlled product is missing must report it to the minister. In discussion with the Opposition, there was concern that the reporting to the minister was too restrictive and it was agreed to clarify that and have reports submitted to the staff responsible for administering this part of the legislation. That was the concern that was raised and that is the change that is being made here.

Mr. Chairperson: Amendment–pass; clause 25 as amended–pass; clause 26–pass.

Mr. Jack Penner: We can either do this here, or we can do it on Bill 23, and it would be the same provision because Bill 23 is part of this securities act. So I would be willing to leave this. I am advised that we should do this in Bill 23 instead of doing the amendment here. So we will leave that today.

Mr. Chairperson: Clauses 27 and 28.

Ms. Wowchuk: Mr. Chairman, I have an amendment to section 28.

Mr. Chairperson: Clause 27–pass.

Ms. Wowchuk: I move

THAT the proposed clause 8(c.1) of ***The Pesticides and Fertilizers Control Act,*** *as set out in section 28 of the Bill, be replaced with the following:*

(c.1) prescribing equipment or classes of equipment for the purpose of the definition "aerial spraying equipment" in section 1;

(c.1.1) prescribing equipment or classes of equipment, other than equipment used primarily in agriculture, for the purpose of the definition "ground-based spraying equipment" in section 1.

Mr. Chairperson: The filed text is different than what the minister read. Would the minister please read the filed text into the record, I believe the last sentence (c.1.1).

Ms. Wowchuk: (c.1.1) prescribing equipment or classes of equipment, other than equipment used primarily in farming, for the purpose of the definition "ground-based spraying equipment" in section 1. *[interjection]* As written.

Mr. Chairperson: The amendment is in order. It has been moved by the honourable Ms. Wowchuk that–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense.

Ms. Wowchuk: In Bill 2, our intention was to address security concerns related to aerial application equipment and large-scale urban application equipment such as commercial-sized urban foggers.

We are not interested in regulating ground-based agriculture application equipment, and we intended to exclude this in regulation. However, in discussion with the Opposition, it was agreed that this exclusion take place in the act rather than in regulation.

This is consistent with our intent and is reflected in the proposed amendments that excludes equipment used for primary farming.

Mr. Chairperson: Amendment–pass; clause 28 as amended–pass; clauses 29 to 33–pass; clauses 34 to 38–pass; clauses 39 and 40–pass; clauses 41 and 42–pass. Clause 43.

Hon. Dave Chomiak (Minister of Health): I have an amendment for clause 43.

I move

THAT section 43 of the Bill be amended by adding the following after the proposed subsection 11.1(1) of ***The Public Health Act:***

Presentation of identification
11.1(1.1) In exercising a power under this section, a medical officer of health must, upon request, present his or her certificate or other means of identification prescribed in the regulations.

Mr. Chairperson: The amendment is in order. It has been moved by the honourable Mr. Chomiak

THAT section 43 of the bill be amended by adding the following after the proposed–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Chomiak: I thank the Opposition for their assistance in helping to improve the bill.

Mr. Chairperson: Amendment–pass.

Mr. Chomiak: I have a second amendment within the same section. I move

THAT the proposed subsection 11.1(9) of the English version of ***The Public Health Act*** *as set out in section 43 of the Bill be amended by adding* "reasonably" *before* "considers".

Mr. Chairperson: The amendment is in order. It has been moved by the honourable Mr. Chomiak

THAT the proposed subsection–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense.

Mr. Chomiak: I again thank the opposition for assistance in this regard.

Mr. Chairperson: Amendment–pass; clause 43 as amended–pass; clauses 44(1) to 45–pass; clause 46–pass; clauses 47 to 49(1)–pass; clauses 49(2) to 49(4)–pass; clause 50–pass; clauses 51(1) to 52–pass; clauses 53 and 54–pass; clauses 55 to 58–pass; clauses 59 to 60(2)–pass.

Mr. Mackintosh: I move:

THAT section 61 of the Bill be amended by striking out "February 1, 2003" and substituting "November 1, 2003."

Mr. Chairperson: The amendment is in order. It has been moved by the honourable Mr. Mackintosh–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Mackintosh: This just recognizes that, because of the expected date of passage of this bill, I think it is important that the amendments operate for at least one year. That was the intention, and so we are just shifting the date.

Mr. Chairperson: Amendment–pass; clause 61 as amended–pass. Clause 62(1).

* (23:00)

Mr. Mackintosh: I move:

THAT section 62 of the Bill be replaced with the following:

Coming into force
62 This Act comes into force on the day it receives royal assent.

Mr. Chairperson: The amendment is in order. It has been moved by the honourable Mr. Mackintosh–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Mackintosh: Since the bill was not passed in the fall, the conditional and delayed coming into force provisions are not required. Bill C-36 came into force in December of 2001, so now we can bring this into force on Royal Assent.

Mr. Chairperson: Amendment–pass; clause 62 as amended–pass. Table of contents.

Mr. Jack Penner: I would like some clarification, Mr. Chairperson. I have had some significant discussions during the course of the evening with the Minister of Agriculture (Ms. Wowchuk) in regard to a motion to amend Bill 23. I was going to do it under this bill. I was advised it would be better to do it under Bill 23.

The amendment I was going to propose is an amendment that I believe provides a provision

under law that would protect the sanctity of the home from the invasion of an inspector without warrant. As the bill is currently written and as Bill 23 is currently written there is no provision for a warrant to be issued prior to an inspector coming to a private dwelling, a home, which might contain records in respect to Bill 2 and in respect to Bill 23, and Bill 23 is being amended by The Securities Amendment Act.

I believe all of us, all of us in this room, honour the sanctity of a home and specifically a dwelling that houses our children and our family. For that reason, I was going to propose this amendment to Bill 2. I was advised that it would be a better suit under Bill 23, and I am willing to proceed with that.

I am now advised by the minister that she and her colleagues might not support this amendment, and I would strongly urge that we have this discussion prior to passing Bill 2, because I think it has an impact on Bill 2 and is part of what I thought we had agreed to in ensuring that this was an all-party process that would give us the ability to go out in public and say we all supported this.

I hope that we can get some concurrence prior to passing Bill 2 in order that we are satisfied that we will put forward the motion in Bill 23 and be able to deal with it positively in that respect.

Mr. Mackintosh: Well, I think there are two points that I wanted to make here. The first is that the amendment that the member has in mind is germane to Bill 23 because it arises in the context of the regime on manure applicators, and, of course, it was raised by the presenter here in the context of Bill 23.

But I know what the intention of the Member for Emerson (Mr. Jack Penner) is, and it is a good intention. That is to guard against people barging into homes. But I have just worked my way through this, and it has been kind of a tortuous process, I admit. I thank the Legislative Counsel for this. But the actual implication of that amendment, which should be considered under Bill 23–I just want to go through this–would actually be to allow for invasiveness of a dwelling because right now the legislation only allows for invasiveness of business premises, I understand.

* (23:10)

So while I understand his intention, the actual outcome will be the opposite of what his intention is. In other words, if he is going to bring in an amendment to make it similar to the warrant provisions of the other agriculture legislation, he is actually opening up the range of premises that can be entered into under the manure applicators' regime.

I think we should welcome that discussion because we share his intention, and that is why we are not inclined to support it. But it is a Bill 23 issue as far as we can see. It is about the manure application bill, and that is where the whole issue arises. I think we should have whatever discussions, and we can continue these discussions after tonight, but I think we should be really cautious. I say well-intentioned, but, unfortunately, the outcome will not be what the member I think intends.

Mr. Chairperson: Committee members, we seem to be debating an amendment to a different bill.

Mr. Jack Penner: I just want to remind the members of a section that we just passed. That was section 43, and 11.1(3) of this bill that we just passed would be in my view concurrent with what I am proposing for Bill 23. That section says: On application by a medical officer of health, a justice may at any time issue a warrant authorizing the medical officer of health and any other person named in the warrant to enter and inspect a dwelling.

That is all we are asking for under Bill 23, exactly those same provisions, that there be a warrant issued for entry into a private residence before entry is granted. If entry should be refused upon request, that there then be a warrant issued. That is very similar to this and I think it behooves all of us, all of us that are law makers to add some consistency to all our bills.

I think entry of a dwelling, whether we do it under Bill 2 to be consistent with what is contained under The Medical Act provisions, under The Securities Act, or whether we do it

under Bill 23 is immaterial to me because, in essence, we are really amending Bill 23 by amending The Securities Amendment Act. All I am asking is that we provide some consistencies in drafting, in passing into law, bills and laws of this province.

Mr. Mackintosh: This is The Public Health Act part here, but if the member's amendment is accepted, Justice now could allow for entry into a home, by warrant. Under the existing law, the homeowner can say no and that is the end of the matter. So I think we should be careful here. If the member wants consistency, he has a point, but if he wants to protect the premises, then the amendment will do the opposite.

Mr. Jack Penner: So what the minister is saying is what we should have done then in order to protect the sanctity of the home is remove the warrant application for entry into a dwelling under section 11.1(3) in order to be consistent with section 43 of the The Securities Amendment Act. Well am I right, or not? I am asking for legal advice.

Mr. Mackintosh: Under this act there was a policy decision made that there should be entry allowed into private homes. That is a decision and I think we should support that. It is a different issue when you get into the manure applicator's regime because that kind of right was not sought. Two different regimes, one is The Public Health Act.

Mr. Jack Penner: I respect the legal opinion, but I would like that legal opinion in writing and I will accept that tomorrow, but that legal opinion I will accept in writing.

Mr. Mackintosh: You know what? That is a great suggestion because it is a complex thing. Symmetry looks good, right? Sometimes you have to watch, though. What does symmetry produce? I think that is what the issue is here. So, look, do not go there. I wanted to go there, I thought we needed some levity today.

Look, I thought that that was a good suggestion and Legislative Counsel will do whatever they can to put together a written explanation as to what the impact would be of the member's amendment on the pesticides regime. Okay?

Mr. Chairperson: I am advised that we should do clause 62 again. So is there leave of the committee to go back and just read it again? We are not going to do it any differently. We just want to get it into the record accurately. Is there leave to revert back to clause 62? *[Agreed]*

Clause 62(1) to 62(3) as amended–pass; table of contents–pass; preamble–pass; enacting clause–pass; title–pass. Bill as amended be reported.

Bill 21–The Partnership Amendment and Business Names Registration Amendment Act

Mr. Chairperson: The next bill is Bill 21. Does the minister responsible for Bill 21 have an opening statement?

Hon. Scott Smith (Minister of Consumer and Corporate Affairs): No, I do not at this time, Mr. Chair.

Mr. Chairperson: We thank the minister. Does the critic from the Official Opposition have an opening statement? No. We thank the member.

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

Clauses 1 and 2(1)–pass; clauses 2(2) to 4–pass.

Mr. Scott Smith: Mr. Chair, I do have two amendments in this section 5.

Starting with the first one, I move,

THAT the proposed clause 75(2)(b), as set out in section 5 of the Bill, be amended by adding "directly" after "partner was".

Mr. Chairperson: The amendment is in order. It has been moved by the Minister of Consumer and Corporate Affairs–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Scott Smith: We are amending the clause to provide the partner in the Manitoba LLP loses his limited liability, where the negligence, wrongful act or omission, malpractice or misconduct was committed by an employee, agent or representative of the partnership and the partner was directly responsible for that person in a supervisory role. We are adding the word "directly" to the clause to make it consistent with the similar LLP legislation you see right across Canada and the U.S.

Mr. Chairperson: Amendment–pass. Shall Clause 5 pass?

Mr. Scott Smith: Again, I have another amendment to add into this section. I move

THAT the proposed clause 84(4)(b), as set out in section 5 of the Bill, be amended by adding "directly" after "partner was".

Mr. Chairperson: The amendment is in order. It has been moved by the Minister of Consumer and Corporate Affairs–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Scott Smith: Again, Mr. Chair, this is a companion clause that does identically to what the last clause did.

* (23:20)

Mr. Chairperson: Amendment–pass; clause 5 as amended–pass; clauses 6 to 8–pass; clause 9–pass; clauses 10 and 11–pass; clause 12–pass; clauses 13 and 14(1)–pass; clauses 14(2) to 15(2)–pass; clauses 15(3) to 16(3)–pass; clauses 16(4) to 18–pass; enacting clause–pass; title–pass. Bill as amended be reported.

Bill 23–The Pesticides and Fertilizers Control Amendment Act

Mr. Chairperson: Does the minister responsible for Bill 3 have an opening statement?

An Honourable Member: 23.

Mr. Chairperson: 23.

Hon. Rosann Wowchuk (Minister of Agriculture and Food): No, Mr. Chairman, not at this time.

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

Mr. Jack Penner (Emerson): Well, very briefly. I just want to reiterate what I said. We will deal with this bill in committee. However, we will reserve the right to make amendments during the final process in the House, if we find that we have legal advice that, what I suspect is the case here, that we reserve the right to bring in the amendment that I have proposed here.

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

Clauses 1 and 2–pass; clause 3(1)–pass; clauses 3(2) to 5(1)–pass; clauses 5(2) to 5(5).

Mr. Jack Penner: I would pass 5(2), and I would then propose that subsection 5(3) of the bill be amended by adding the following after the proposed subsection–

Mr. Chairperson: Okay, Mr. Penner. Clause 5(2)–pass. Clause 5(3).

Mr. Jack Penner: Mr. Chairman, I move

THAT subsection 5(3) of the Bill be amended by adding the following after the proposed subsection 4(1.1):

Warrant to enter a dwelling place
4(1.2) An inspector may not enter a dwelling place except with the consent of the occupant or under the authority of a warrant.

Authority to issue warrant
4(1.3) A justice who is satisfied by information on oath that

(a) the conditions of entry described in this section exist in relation to a dwelling place;

(b) entry to the dwelling place is necessary for a purpose relating to the administration of this Act; and

(c) entry to the dwelling place has been refused or there are reasonable grounds to believe that entry will be refused;

may at any time issue a warrant authorizing the inspector and any other person named in the warrant to enter the dwelling place, subject to any conditions that may be specified in the warrant.

Let me read that last part again: may at any time issue a warrant authorizing the inspector and any other person named in the warrant to enter the dwelling place, subject to any conditions that may be specified in the warrant.

Mr. Chairperson: Committee members, there was a small error in 4(1.3) in (a). Is it agreed that we accept it as printed? *[Agreed]*

The amendment is in order. It has been moved by the Member for Emerson–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Jack Penner: Well, again, I want to indicate to the committee that it is my view that in order to add some consistency to legislation, and having been at this for some years, and having co-chaired a legislative review committee for some eight years, it is, in my view, important that not only consistency be provided in law, but the protection and the sanctity of a dwelling place needs to be honoured by legislation. I firmly believe that this does that, and I think this provides the same kind of protection from unwanted entry as is given in Bill 2 and in other bills.

Another bill that has received the same consideration is the bill that we just passed this last week, the livestock disease control act. Similar provisions are in that bill as well. I would strongly recommend to the committee that we pass this amendment.

Ms. Wowchuk: The member raised this under Bill 2 and the Minister of Justice addressed the issue and will provide some information in writing. The concern is that the member's amendment may have the opposite effect of what the member is proposing and that is to protect the privacy of a person's home. This may be working in the opposite direction, so we cannot support the amendment.

Mr. Chairperson: The question before the Committee is shall the amendment pass.

Voice Vote

Mr. Chairperson: All those in favour of the amendment, say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Nays have it. The amendment is accordingly defeated.

Clause 5(3)–pass; clause 5(4)–pass; clause 5(5)–pass; clauses 6 and 7–pass; clause 8–pass; enacting clause–pass; title–pass; Bill be reported.

Bill 24–The Securities Amendment Act

Mr. Chairperson: The next bill is Bill 24. Does the minister for Bill 24 have an opening statement? We thank the minister. Does the critic from the Official Opposition have an opening statement? We thank the member.

During the consideration of a bill, the enacting clause and the title are postponed until all the clauses have been considered in their proper order. Also, if there is agreement from the Committee, the Chair will call clauses in blocks that conform to pages with the understanding that we will stop at any–*[Agreed]*.

Clauses 1 and 2–pass; clauses 3(1) to 3(6)–pass; clauses 3(7) to clause 5–pass; clause 6–

pass; clause 7–pass; enacting clause–pass; title–pass. Bill be reported.

Bill 38–The Public Health Amendment Act

Mr. Chairperson: The next bill is Bill 38. Does the minister have an opening statement?

Hon. Rosann Wowchuk (Minister of Agriculture and Food): No.

Mr. Chairperson: We thank the minister. Does the critic from the Official Opposition have an opening statement?

Mrs. Myrna Driedger (Charleswood): My comments are short on this bill, but I do want to note particularly that I do agree with the Government's main goal with this legislation and that is to reduce the number of solvent abusers. However, I do not believe that this legislation is going to achieve that goal. I have a number of concerns about the methods the minister is suggesting, especially those that target vendors in this bill.

* (23:30)

The *Free Press* has written an editorial that actually is a fairly harsh rejection of the bill. In fact, they labeled their editorial *Sniff Law Dangerous*. The Canadian Federation of Independent Business, while they respect the Government's main goal in terms of what the Government wants to do in terms of reducing the number of solvent-addicted Manitobans, but even the Canadian Federation of Independent Business feels that Bill 38 is a heavy-handed approach that will create significant difficulties for small business.

Firstly, I am concerned about the minister's ability to refuse, suspend or cancel retail licences if intoxicating substances are provided to people who would abuse them. How are retailers supposed to determine a consumer's intended use when purchasing a legal product? Has the minister considered the reciprocal discrimination charges a retailer could face if they wrongly suspect an individual of purchasing substances to use as intoxicants? David Chartrand has made some fairly significant statements about this. I will not repeat them. I did comment on them in second reading, and I think he has put forward some substantive concerns.

Certainly, on another topic, I would wonder whether the minister has any concerns about the compromising position he is putting business owners and employees in in terms of their own safety. Has he considered that by refusing to sell intoxicants to a solvent abuser, that, in fact, the salespeople may face retribution and have their own safety put at risk?

Another concern is that agents, whether they are police officers or medical officers of health, can enter premises and seize items when they have reasonable grounds to believe they are going to be sold for sniff. They can do this without any warrant at all, just based on their own judgment of reasonable grounds.

I take issue with the inability to appeal if one is found guilty of selling an intoxicating substance to a solvent-addicted person. The amendment provides a substantial level of discretion to the justice. On top of that, the formal rules of evidence do not apply, and, therefore, the justice of the peace is not bound by the rules of law respecting evidence applicable to judicial hearings. In fact, really, Mr. Chairperson, this is nothing more than a kangaroo court, and hearsay and anonymous complaints could be accepted as evidence. Finally, then, the order of a justice is not subject to appeal, and given the severe consequences to a business placed in a situation where they can actually lose their livelihood, the ability to appeal is critical, and there is no opportunity for appeal in this. I do not understand that whatsoever.

So one has to question how does the minister justify eliminating a vendor's fundamental right to due process. I think that was a large part of the harsh rejection of the bill by the *Free Press* in their editorial, and I would wonder if the minister would consider amending the bill to ensure that due process remains unencumbered.

With those few comments, Mr. Chairperson, I will just make a final one, I guess, because in 1988 amendments were made to The Public Health Act based on a private member's bill from the then- MLA for St. Johns. Those amendments imposed penalties for selling

intoxicants–mainly gasoline, for instance, and nail polish remover–to minors who did not have a note from their parents.

I would be interested if the minister could indicate and had any knowledge of how many fines might have been handed out after this amendment was actually put in place in 1988. I mean, was that as substantive a bill then as this is a substantive bill now that is actually going to have any real effect at preventing people from sniffing? It certainly does appear to be an attack on business. According to, certainly, the Canadian Federation of Independent Business, they feel that this is a heavy-handed approach that will create significant difficulties for small business.

So based on those concerns, Mr. Chairperson, while I do appreciate that there are good intentions around trying to improve things and trying to make lives better for people who sniff and trying to create a healthier situation, I do not think this bill is going to do it, and we cannot support the bill.

Mr. Chairperson: We thank the member. During the consideration of a bill, the preamble, the enacting clause and the title are postponed until all of the clauses have been considered in their proper order. Is it agreed that we call clauses in blocks to conform to pages? *[Agreed]*

Clause 1–pass; clause 2–pass; clauses 3 and 4(1)–pass; clauses 4(2) through 6(1)–pass; clauses 6(2) and 7–pass; preamble–pass; enacting clause–pass; title–pass. Shall the bill be reported?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Mr. Chairperson: All those in favour of reporting the bill, say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it.

An Honourable Member: On division.

Mr. Chairperson: On division.

The bill will be reported on division.

Bill 42–The Off-Road Vehicles Amendment Act

Mr. Chairperson: The next bill is Bill 42. Does the minister responsible for Bill 42 have an opening statement?

Hon. Steve Ashton (Minister of Transportation and Government Services): No.

Mr. Chairperson: We thank the minister. Does the critic from the Official Opposition have an opening statement?

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

Mr. Chairperson: We thank the critic for the Official Opposition.

During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Is it agreed that we call clauses in blocks that conform to pages? *[Agreed]*

Clauses 1 to 3–pass; clauses 4 to 9–pass; clauses 10 to 13(1)–pass; clause 13(2)–pass; clauses 14(1) to 16(2)–pass; clauses 17(1) to 21–pass; clauses 22 and 23–pass; clause 24–pass; clause 25(1) pass; clause 25(2)–

Mr. Jack Penner (Emerson): Before we pass this bill, I wonder if I could have one question?

Mr. Chairperson: Sure.

Mr. Jack Penner: Mr. Chairman, this bill identifies in a number of places the requirement of decals that will be required by legislation. I have had a number of owners of these snow machines especially ask why are we going to deface their machines with decals? These are expensive whether we want to call them toys or recreational vehicles or whatever we want to call them, these are expensive machines. They have

nice finishes on them and many of the people that own these machines take great care not to deface them. They think that the decaling of these machines is going to deface their machines. They are asking why it cannot be a simple plate put on a machine to identify it if that is the purpose of the machine or why the decals are required? So I might ask the minister whether he can give us a bit of a response on that.

* (23:40)

Mr. Ashton: Indeed, there was some discussion of this earlier with the presentation, but I can indicate that first of all, 15 states and 2 provinces have decal requirements. Currently manufacturers, because of the significant number of states and significant population and certainly one of the provinces, Ontario, are looking at bringing in as part of the upcoming models, provisions for decals. The report that we put in place identified decals as being important. This is a very significant priority from the police authorities because they have indicated, I think, what is obvious to anybody that operates a snowmobile or knows the situation, that current identification through the licenses is not really very visible.

We have indicated that the report talked also about the recommendations in terms of compulsory registration. There are other provisions in the report that we did not proceed with, but I note--and I believe we are currently on 24, we are dealing with 25(2). One of the reasons why this section is specifically identified as coming into effect by proclamation rather than Royal Assent is because it is the only provision of the bill that is in that category because I think as it became clear with discussion with Snoman earlier, obviously there are a number of issues that would have to be dealt with prior to implementation. We are not anticipating, certainly in the upcoming season, in applying the decals.

I do know the concern. I have received e-mails, I know people in my own community. I think it is important for people to recognize manufacturers are moving in the direction right now clearly of an attachment of decals because they provide for better identification. One of the major issues for our law enforcement authorities was proper identification.

I understand all the design work that goes into the front part of a snowmobile, but at some point in time I think we are going to clearly have decals back in place. That is the trend in 15 states, 2 provinces. It is I think a legitimate request by the police authorities. It was agreed to in principle with Snoman qualifying. This was indicated here earlier that they felt it should also be accompanied by compulsory registration. That is under review right now. When I say compulsory registration, we have a significant number of exemptions. There might be exemptions, but without getting into great detail the bottom line here is that is why it is here. It is something that will provide better identification.

I would urge members of the committee support this. It is not for immediate implementation, but I believe decals will come to this province, will come to virtually any province that is interested in proper identification of snowmobiles.

Mr. Jack Penner: Mr. Chairperson, I wonder whether the minister could explain what these decals will look like. Will they be big numbers, or will they be big letters? What will they do, and how will they provide identification?

Mr. Ashton: I am sure I could arrange to get samples, certainly photographs of samples from other jurisdictions, but once again, this would be something that would be implemented. One of the reasons we are not bringing it in currently is, quite frankly, you would have to work out the specific details. I would anticipate we would be consulting, particularly with Snoman. I think they made some legitimate points earlier. I know the critic has raised similar points with me privately, as well, so that is why, once again, it is not listed for immediate implementation. If members wish to vote against decals, that is their prerogative. But the real question is are you in favour of the principle of decals? Our position as the Government is, quite frankly, that we see this happening. We see manufacturers moving in that direction. We think it would provide much better identification for our police authorities.

Mr. Jack Penner: I am wondering whether the Minister of Transportation is looking next at

providing decals for the Porsches, the Cadillacs and the BMWs that are in this town and whether that would give better identification to the authorities, as well. When they drive by and see these big letters on the side of the car as decals, I wonder if that is the next step.

Mr. Ashton: Well, I assume the drivers in the Porsches are not driving in a way in which their feet are covering the licence plate, as occurs with snowmobiles. I think the member's question is facetious, and I think if the member has difficulty with decals then I would suggest he vote against them. I think in doing so, I do not think he has given credit to the fact that Snoman, for example, their concern, by the way, that was raised in committee is that the decals should also be part of a review of exemptions in terms of registration, and that is an ongoing process. I really think the member is missing the point here.

I would advise him to talk to the RCMP and talk to the law enforcement authorities. I think he will get from them a fairly clear indication of why decals were considered. I want to indicate again that we are not implementing this immediately. This is a proclamation. It is the only part of the bill that is in that case. We have listened to the snowmobile community, but quite frankly I think the member's comments are facetious in this particular case. If he wants to vote against decals, that is fine, but I think his comments about Porsches really do a disservice to what is used in 15 states and 2 other provinces.

Mr. Jack Penner: Well, Mr. Chairperson, I am a bit surprised at the minister's attitude in this. I know the time is late, but I think he is a bit short-fused, and I respect that. I mean, that is his prerogative, but I want to say this to him: I am not being facetious because if you are going to spend $15,000 to $20,000 on a piece of equipment, whether it is a new car or a new recreational vehicle, these people take pride in those vehicles, and I think there are other ways to clearly identify a machine.

Whether you want to provide for putting the licence on the front and back of the machine where it is more readily visible, that is one option, but if you put big, gaudy decals on the side so that somebody can identify a machine going by, I think there are other options that could be used to provide the identification process without destroying the looks of the machine.

Mr. Chairperson: Shall clause 25(2) pass?

Mr. David Faurschou (Portage la Prairie): Mr. Chairperson, I would like to move an amendment to 25(2).

Mr. Chairperson: Go ahead.

Mr. Faurschou: Mr. Chairperson, I move

THAT subsection 25(2) of the Bill be amended by striking out "a day to be fixed by proclamation" *and substituting* "September 1, 2004".

Mr. Chairperson: The amendment is in order.

It has been moved by Mr. Faurschou

THAT subsection–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Faurschou: Mr. Chairperson, I believe that the submission by the Snowmobilers of Manitoba, through the presentation brought to us by Dawn Gratton, indicated that they were wanting to be certain that there would be sufficient time allowed for discussion with snowmobilers here in the province of Manitoba, as well as time for the manufacturers to be able to modify their decaling, their cowling, however the modifications are to be done to incorporate the requirement for decals.

This allows for a minimum period of time. It takes away the uncertainty of leaving it open, as it is currently in text in this legislation. I believe if this is not adequate time, then it can be amended at a later date, but I believe any responsible government should not leave it open and up in the air for concerns that have been voiced here this evening.

I believe the amendment is a friendly amendment and enhances the legislation, and I

believe members of the Government side of the House can see their way through to supporting this amendment which affixes a date rather than leaving it open.

Mr. Ashton: Mr. Chairperson, I think it is a useful amendment. I am just attempting to obtain legal advice on this. I want to make sure that we are not putting a rigid deadline in place. I appreciate the member is reflecting what was our intent, which is not to have immediate implementation upon Royal Assent.

* (23:50)

So if the member could just bear with me for a moment, I am trying to determine if we can perhaps work on this amendment with one slight adjustment that would not tie it in.

Perhaps if I could help expedite this, what I am trying to see if we can do is get something that has the suggested time frame that the member has, that the proclamation would be no earlier than September 1, 2004.

I just want to be careful that if we are two years down the line we do not have to amend the legislation if we are dealing with decals and we are not ready, if there is still consultation ongoing or the rest of it.

What I was going to suggest, if I could, so we could pursue this, if we could perhaps look at a report stage amendment. If the member would be prepared to withdraw this right now, I would be prepared to entertain a report stage amendment. In fact, I want to indicate that I think the suggestion September 1, 2004, is a helpful one and is certainly consistent with our intentions.

Mr. Faurschou: I appreciate the minister's sincerity, and I do believe his comments have merit. I would be prepared to withdraw the amendment at this time subject to the minister's comments that he is making a commitment to enter into it. The date is significant. It is prior to the entry into another season. It is also, though, allowing for two years, which the manufacturers themselves have admitted that 2003 is their projected date to have the modifications to the cowling and decaling to allow for this implementation. They are also concerned that they might not meet that on all models. They are looking for another year, at the very least.

Mr. Chairperson: Is there leave of the committee to withdraw the amendment? *[Agreed]*

Clauses 24 to 25(2)–pass; enacting clause–pass; title–pass. Bill be reported, on division.

Bill 53–The Common-Law Partners' Property and Related Amendments Act

Mr. Chairperson: Does the minister responsible for Bill 53 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): We have a few minor amendments to make throughout the bill.

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

Mrs. Myrna Driedger (Charleswood): I have a brief opening statement. With this bill, The Common-Law Partners' Property and Related Amendments Act–*[interjection]*

Mr. Chairperson: Could I call the committee to order. I am having difficulty hearing the Member for Fort Garry. Try again.

Mrs. Joy Smith (Fort Garry): I have a brief statement on Bill 53. I have to put some remarks on record about this bill. There has been much examination of this bill. The intent of the bill, although I am sure the intent was well meant, it is, quite bluntly, a faulty bill. There is much wrong with this bill. The main part is this bill, in our view, for members from this side of the House, there is no benefit to common-law partners because of the part in the bill that, over and over, states the one-year and three-year period where common-law partners cohabit or have conjugal relationships. That is outlined in the bill over and over again: a person who, not being married to the deceased or cohabited with him or her in a conjugal relationship, one, for a period of three years immediately preceding the death of the deceased or for a period of at least one year immediately preceding the death of the deceased and they are together the parents of a child, et cetera, et cetera.

Through every part of this bill, whether it is through The Civil Service Superannuation Act or whether it is through the piece that I just read from The Fatal Accidents Act, again, we have those two timelines. A common-law partner of a person under The Civil Service Superannuation Act means (a) another person who with the person registered a common-law relationship under section 13.1 of the Vital Statistics Act or (b) another person who not being married to the person cohabited with him or her in a conjugal relationship (1) for a period of at least three years if either of them is married or (2) for a period of at least one year if neither of them is married.

No matter what part of this particular bill we look at or what act it is referring to in this bill, it has the two time lines of either one year or three years where the common-law partners are proven to be common-law partners because, for one year, they have had a conjugal relationship or three years, whatever. The fact of the matter is there is no way to prove this. For instance, if there is a common-law relationship and someone dies, this could be an administrative nightmare for lawyers and for judges. There is no proof that this indeed is a common-law relationship. For instance, it leads to fraudulent claims from caregivers, from friends, from relatives, and over and over again, we would see supposed common-law relationships in the court system.

This does not help same-sex couples. This does not help heterosexual common-law partners. This does not help anyone. So, for such a faulty bill, members on this side of the House cannot support a bill that would again put a strain on the court system, be an administrative nightmare for both lawyers and judges and for the common-law partners to go through the trauma of something like this happening or for someone who has a caregiver who, after the person is deceased, claims to have a common-law partnership. I mean, how do we prove that? The only one that can prove it is the deceased, and, of course, we all know that is impossible. So, when you look through the bill, it is quite amazing to see how it was developed. That was one of the main reasons, and also the fact is the other part is taking choice away from people.

People choose to be common-law partners often because they do not choose to intertwine their property and their financial systems in the relationship. I know of one such instance where a couple wanted to live together for a period of time to see if that worked out. They did not want their finances and their property intertwined, and they lived together for the better part of 12 years before eventually they did get married and they were under the act that governs marriages. There is a difference. So, with a common-law relationship, with a marriage relationship, the public has freedom of choice to make that choice. For these two reasons and multi-other reasons, when you go through the bill clause by clause, this is a faulty bill, and this is something that cannot be supported because members on this side of the House do not see the merits of this bill in helping anybody for any reason. It is not well developed. So those are my opening statements on Bill 53, and, having said that, definitely there is no support on this side of the House for this bill.

Mr. Chairperson: The hour being midnight, we need to canvass the committee.

Hon. Scott Smith (Minister of Consumer and Corporate Affairs): Mr. Chair, as you have mentioned, it is twelve o'clock. All presenters have presented. I would suggest that we move until we complete this final bill.

***** (24:00)

Mr. Chairperson: Is it agreed that we complete clause by clause of this last bill? *[Agreed]* During the consideration of a bill, the table of contents, the enacting clause and the title are postponed until all other clause have been considered in their proper order. Is there agreement we proceed in clauses, that I will call clauses in blocks that conform to pages? *[Agreed]*

Clause 1–pass; clause 2–pass; clauses 3 to 5(1)–pass; clauses 5(2) to 5(4)–pass; clauses 5(5) to 6(3)–pass on division; clauses 6(4) to 7(1)–pass on division; clauses 7(2) to 8–pass on division; clauses 9 and 10(1)–pass.

Mrs. Smith: I would like to just take note that, from the beginning of the passing of this bill, we would request that it be all on division so far because, as I said in my opening remarks, members on this side of the House do not support the bill. So we would like to clarify that.

Mr. Chairperson: Is there leave of the committee that all clauses up to this point have been passed on division? *[Agreed]*

Clauses 9 and 10(1)–pass on division; clauses 10(2) to 10(4)–pass on division; clauses 10(5) to 10(7)–pass on division; clauses 10(8) to 10(12)–pass on division; clauses 10(13) to 10(16)–pass on division; clauses 10(17) to 10(21)–pass on division; clause 10(22)–pass on division; clauses 11 and 12(1)–pass on division; clauses 12(2) to 12(6)–pass on division; clauses 12(7) to 13(2)–pass on division; clauses 13(3) and 13(4)–pass on division; clauses 13(5) and 13(6)–pass on division.

I am advised that, if you want it passed on division, you need to say so.

Clauses 13(7) to 13(10)–pass on division; clauses 14(1) to 14(4)–pass on division; clauses 14(5) to 15(4)–pass on division; clauses 15(5) to 15(7)–pass on division; clauses 15(8) to 16(4)–pass on division; clause 16(5)–pass on division. Shall clauses 16(6) to 16(8) pass?

Mr. Mackintosh: We can pass 16(8).

Mr. Chairperson: Clause 16(6)–pass on division; clause 16(7)–pass on division; clause 16(8)–pass on division.

Mr. Mackintosh: I move

THAT the following be added after subsection 16(8) of the Bill:

16.(8.1) Section 3 is amended by adding "or 2.1" after "section 2" wherever it occurs.

Mr. Chairperson: The amendment is in order. It has been moved by the Minister of Justice–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Mackintosh: This amendment corrects an error. Section 2.1 extends application of the act to common-law partners, and reference to section 2.1 was inadvertently omitted from section 3.

Mr. Chairperson: Amendment–pass on division; clause 16(8) as amended–pass on division; clause 16(9)–pass on division; clause 16(10)–pass on division; clauses 16(11) to 16(13)–pass on division; clauses 16(14) to 16(17)–pass on division; clauses 16(18) to 16(21)–pass on division; clauses 16(22) to 16(26)–pass on division; clauses 16(27) and 16(28)–pass on division; clause 16(29)–pass on division.

Mr. Mackintosh: I move

THAT the proposed section 25.1, as set out in subsection 16(30) of the Bill, be amended by adding "described in subsection 2.1(1)" *after* "in respect of common-law partners".

Mr. Chairperson: The amendment is in order. It has been moved by the Minister of Justice–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Mackintosh: This amendment was brought to our attention by Ms. Sara Kinnear as well as the others. This one clarifies where common-law partners are described.

Mr. Chairperson: The question before the committee is: Shall the amendment pass? The amendment is passed on division.

* (24:10)

Amendment–pass; clause 16(30) as amended–pass on division; clause 16(31)–pass on division; clauses 16(32) and 16(33)–pass on division; clauses 16(34) to 16(37)–pass on division; clause 17–pass on division; clause 18–pass on division; clauses 19(1) to 19(4)–pass on division; clauses 19(5) to 20(2)–pass on division; clauses 20(3) to 21(2)–pass on division; clauses 22(1) to 22(3)–pass on division; clauses 23(1) to 23(3)–pass on division; clauses 23(4) to 23(6)–pass on division; clauses 23(7) to 23(9)–pass on division; clauses 23(10) to 23(14)–pass on division; clause 23(15)–pass on division; clauses 24 to 25(2)–pass on division; clauses 25(3) to 25(5)–pass on division.

Mr. Mackintosh: We can pass 25(6).

Mr. Chairperson: Clause 25(6)–pass on division.

Mr. Mackintosh: I move:

THAT subsection 25(7) of the Bill be replaced with the following:

25(7) Section 17 is amended

(a) by adding the following after clause (a):

(a.1) there is a declaration in the will that it is made in contemplation of the testator's common-law relationship with the person the testator subsequently marries; or

(b) by adding "or" at the end of clause (b) and by adding the following after clause (b):

(c) the will fulfills obligations of the testator to a former spouse or common-law partner under a separation agreement or court order.

Mr. Chairperson: The amendment is in order. It has been moved by the Minister of Justice–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Mackintosh: This amendment prevents a will made in contemplation of a common-law relationship from being revoked if the parties to the common-law relationship subsequently get married.

Mr. Chairperson: Amendment–pass; clause 25(7) as amended–pass on division; clause 25(8)–pass on division; clauses 25(9) to 25(11)–pass on division; clauses 25(12) and 26–pass on division; clauses 27(1) to 27(3)–pass on division; clause 28(1)–pass on division; clauses 28(2) and 28(3)–pass on division; clauses 28(4) and 29–pass on division; table of contents–pass on division; enacting clause–pass on division; title–pass on division. Bill as amended be reported on division.

What is the will of the committee?

Some Honourable Members: Committee rise.

Mr. Chairperson: Committee rise.

COMMITTEE ROSE AT: 12:14 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Re: Bill 24

On June 25, 2002, the Securities Law Section (the "Securities Section") of the Manitoba Bar Association met to discuss Bill 24, which proposes to amend The Securities Act (Manitoba) (the "Act"). A number of concerns regarding Bill 24 were identified. Those concerns were considered sufficiently important so as to warrant a formal submission to the Cabinet committee responsible for considering Bill 24.

Our submission is comprised of two parts: (i) a submission as to why enacting Bill 24 is inappropriate at this time; and (ii) a submission with respect to the deficiencies of Bill 24.

Part I Enacting Bill 24 is inappropriate at this time

The Uniform Securities Act

Recently, the Canadian Securities Administrators (the "CSA"), the umbrella organization of the provincial securities commissions (the "commissions"), established a Uniform Securities Legislation Committee. As its name suggests, the mandate of that committee is to develop uniform securities legislation (the "Uniform Securities Act") for adoption by the provinces, including the Province of Manitoba. In the course of fulfilling its mandate, the Uniform Securities Legislation Committee is reviewing and considering all aspects of securities legislation in Canada. Ultimately, the Uniform Securities Act will reflect that which, in the view of the Uniform Securities Legislation Committee, balances the competing goals of securities regulation–the protection of the investing public and the fostering of fair and efficient capital markets. The Uniform Act Committee expects to have the Uniform Securities Act finalized by December, 2003.

Bill 24

Bill 24 proposes two significant changes to the Act. First, it proposed to limit the right of appeal of a person affected by a Commission decision (the "Limited Right of Appeal"). Second, it proposes to give The Manitoba Securities Commission (the "Commission") the power to order that a person pay to another person compensation for financial loss in certain circumstances (a "Restitution Power"). To the knowledge of the Securities Section, no other

jurisdiction in Canada has adopted, or proposes to adopt, the Limited Right of Appeal or the Restitution Power (unless such provisions are ultimately incorporated into the Uniform Securities Act).

Bill 24 is being introduced approximately 18 months before the expected completion date of the Uniform Securities Act. We respectfully submit that there are no clearly identifiable policy concerns that warrant either the adoption of the Limited Right of Appeal or the granting of the Restitution Power to the Commission prior to the completion of the Uniform Securities Act.

Recommendation: The Securities Section recommends that Bill 24 not be proceeded with at this time and that the policy concerns for the proposed amendments be identified and articulated to the Uniform Securities Legislation Committee for its consideration.

Part II Deficiencies of Bill 24

The Limited Right of Appeal

The Act currently provides that a person affected by a Commission decision has an automatic right to appeal such decision to a judge of the Court of Queen's Bench.[1] The Act further provides that, on appeal, the judge may hear evidence and argument in respect of the matter appealed.[2]

The policy reason behind the current appeal provisions of the Act is that, because the Commission has extraordinary powers, such as, for example, the power to freeze property an the power to levy administrative fines of up to $100,000 the exercise of such powers should be subject to judicial review. The current appeal provisions provide a person affected by a Commission decision with an effective means of obtaining a judicial review of the decision though the ability to appeal, as of right, to a judge who can hear evidence and argument on appeal. The current appeal provisions of the Act provide a fundamental protection against any unfair or improper exercise of Commission powers.

The Limited Right of Appeal proposed by Bill 24 changes the appeal rights and the appeal process relating to Commission decisions as follows: (a) a person affected by a Commission decision would no longer have an automatic right to appeal the decision. The right to appeal would be conditional upon the court granting leave for appeal;[3] and (b) the forum for an appeal of a Commission decision (provided that leave is obtained) would change from the Court of Queen's Bench of Manitoba to the Manitoba Court of Appeal.[4] Furthermore, the provision permitting the court to hear evidence and argument on appeal would be repealed.[5]

The Securities Section respectfully submits that the Limited Right of Appeal proposed by Bill 24 would, in most case, not be an effective means of appeal. By changing the forum of the appeal to the Manitoba Court of Appeal, Bill 24 largely removes the protection against unfair or improper exercise of Commission powers. The Manitoba Court of Appeal would be concerned only with questions of law, not questions of fact. In circumstances where the Commission has not made an error of law, but simply an incorrect finding of fact, the person affected by such a decision would have no effective right of appeal. Bill 24 largely erodes the protection against an unfair or improper decision.

There is nothing wrong with the current appeal rights and appeal process. The policy basis for the current appeal provisions is sound and there is no compelling policy reason to adopt the Limited Right of Appeal.

Recommendation: The Securities Section recommends the deletion of subsections 3(1)-(8) of Bill 24, which propose to repeal the current appeal provisions of the Act and replace them with the Limited Right of Appeal.

Granting Restitution Power to the Commission

The Act currently provides the Commission with a number of powers. These powers include, among others, the ability to freeze property, the ability to levy administrative fines of up to $100,000 and the ability to prohibit a person from trading in securities. The power to levy administrative fines is a power that other commissions in Canada do not possess. Bill 24 would further increase the powers of the Commission by granting a Restitution Power.

No other Canadian securities regulatory authority has a Restitution Power. The Five Year

Review Committee (the "Ontario Committee") responsible for reviewing the Securities Act (Ontario) recently released its draft report[6] (the "Ontario Committee Report"). On the issue of whether the Ontario Securities Commission (the "OSC") should be granted a Restitution Power, the Ontario Committee noted that the United Kingdom recently enacted the Financial Services and Market Act 2000 (the "U.K. Act") which granted a Restitution Power to the Financial Services Authority (the "FSA") (and the court) and recommended that the OSC monitor the experience in the United Kingdom, including the practical implications of granting a Restitution Power to the FSA.[7] The Ontario Committee did not recommend that the OSC be granted a Restitution Power. It recommended that the OSC monitor the practical implications of the exercise of the Restitution Power by the FSA.

The Ontario Committee concluded that the lack of a Restitution Power was consistent with the objective the OSC: "The lack of such a power is consistent with the objective of regulatory legislation in general and the ["OSC's"] public interest jurisdiction, which is protective, not remedial. This is also consistent with the powers of securities commissions in other provinces and territories in Canada and in the United States and Australia, none of whom currently has the direct power to order restitution or compensation."[8]

Recommendation: The Securities Section recommends that the practical implications of the granting of the Restitution Power to the Commission be identified and considered prior to granting a Restitution Power to the Commission. Practical implications include, among others, the effect on issuers wishing to raise capital, the effect on directors' and officers' errors and omissions insurance for Manitoba companies, the effect on Manitoba capital markets of having laws different than other Canadian jurisdiction and the interplay of Bill 24 with recently enacted class action legislation.

With respect to specific aspects of the Restitution Power contained in Bill 24, the Securities Section respectfully submits as follows:

1. Granting a Restitution Power to the court (rather than the Commission) would achieve a similar regulatory objective, harmonize Manitoba laws with those of other Canadian jurisdictions and avoid a constitutional challenge.

In most other provinces, the commissions can apply to court for a declaration that a person has not complied with securities law. If the court makes such a declaration, it may make any order that the court considers appropriate, including issuing a restitution order. Annexed hereto as Schedule "A" is section 128 of the Securities Act (Ontario), which is a typical example. Such a provision allows the Commission to take action in appropriate cases by giving the Commission standing to go to court for a remedy.

We note that giving the Commission standing to proceed to court would achieve the regulatory objectives of the Restitution Power. It would further deter capital market participants from contravening securities laws (if additional deterrence is necessary). In addition, the costs of the court proceeding would fall to the Commission, not the complainant. This would allow a complainant's action to proceed without having to incur costs.

We further note that if the Province of Manitoba were to enact a provision similar to section 128 of the Securities Act (Ontario) which grants a Restitution Power to the court (not the Commission), it would harmonize Manitoba laws with other jurisdictions.

A further reason for preferring a Restitution Power to be in the hands of a court (rather than a commission) is the possibility of a constitutional challenge of a commission's Restitution Power on the grounds that it contravenes section 96 of the Constitution Act, 1867. The constitutional argument is complex and it is not necessary to consider it here.[9] The Securities Section would simply point out that it has found no court decisions which would provide guidance as to how a court would apply the test laid down by the Supreme Court of Canada to the grant of a Restitution Power to a commission. Given that a Restitution Power of the Court would achieve the same regulatory objectives as a Restitution Power of the Commission, but without the possibility of a constitutional challenge, if a Restitution Power is desirable, it should be granted to the court rather than the Commission.[10]

2. There is no public policy reason for requiring a request of the director as a condition precedent to the exercise of the Restitution Power.

Under Bill 24, the Commission may only exercise its Restitution Power if, among other things, it receive a request from the director of the Commission to make such an order. Given the significance of the restitution remedy, the absence of objective criteria upon which the director would be permitted to or prohibited from making such a request is not appropriate. The importance of having objective criteria is magnified given that Bill 24, as drafted, provides that a request for a restitution order by the director cannot be the subject of an appeal. We recommend that the policy reasons for empowering the Commission to make an order only upon the director's request be clearly articulated and reconsidered. If Bill 24 retains the director's request as a condition precedent, we recommend that Bill 24 specify objective criteria upon which the director may make a request in circumstances that do not satisfy the objective criteria.

3. There should be no Restitution Power for breach of a non-statutory instrument.

As it is currently drafted, Bill 24 would empower the Commission to make a restitution order in the absence of a breach of statutory instruments, such as the Act, regulations and Commission rules and, in addition, where there has been a failure to comply with non-statutory instruments such as the following: (a) a direction of the Commission; (b) a written undertaking made by the person to the Commission or the director of the Commission; or (c) a term or condition of the person's registration.[11]

Although the term "direction" is not defined in the Act or Bill 24, presumably it includes the policies and written interpretations issued by the Commission.[12] The Securities Section respectfully submits that a Restitution Power is not appropriate in circumstances where only a policy or written interpretation issued by the Commission has been contravened.

While policies and written interpretations of the Commission play an important, and arguably essential, role in securities regulation, they do not have the force and effect of law. The attempt of commissions to make laws through the guise of policy statements was considered by the Ontario Court of Appeal in the leading case of *Ainsley Financial Corp. v. Ontario (Securities Commission)*.[13] In *Ainsley*, the Ontario Court of Appeal held that a regulator cannot impose mandatory requirements enforceable by sanction through non-statutory instruments. The court stated:

"The time limits on the use of (non-statutory) instruments must also be acknowledged. A non-statutory instrument can have no effect in the face of a contradictory statutory provision or regulation. . . . Nor can a non-statutory instrument preempt the exercise of a regulator's discretion in a particular case. . . . *Most importantly, for present purposes, a non-statutory instrument cannot impose mandatory requirements of enforceable by sanction; that is, the regulator cannot issue de facto laws disguised as guidelines.*" [emphasis added]

In striking down a policy of the OSC, the Ontario Court of Appeal stated as follows:

"The threat of sanction for non-compliance is the essence of a mandatory requirement."

The Securities Section respectfully submits that granting a Restitution Power to the Commission in circumstances where a Commission policy statement or written interpretation has been contravened would result in Commission policy statements and written interpretations being mandatory requirements enforceable by sanction. This could result in a court rendering those non-statutory instruments (or the exercise of the Restitution Power in relation to such a contravention) invalid for the reasons articulated in the *Ainsley* case.

The Securities Section further submits that the granting of the Restitution Power in relation to other non-statutory instruments, such as conditions of registration and written undertakings, is invalid on the grounds that these non-statutory instruments would be elevated to the status of law. Conditions of registration or undertakings relate to a person's fitness for registration under the Act. If a condition of registration or undertaking to the Commission is not complied with, the consequence to the

person is the suspension or cancellation of the person's licence. For the reasons articulated in the *Ainsley* case, the Commission should not be empowered to issue de facto laws through the imposition of conditions of registration and/or requiring written undertakings.

We further note that, in other Canadian jurisdictions where a court may make a restitution order, such order may only be issued where the court finds, among other things, a breach of securities law of the jurisdiction, where "securities law" means the securities legislation, the regulations made under such legislation and a decision of the relevant securities commission or the director of such commission to which the person is subject. It is noteworthy that the definition of "securities law" does not include non-statutory instruments such as policies and written interpretations of the Commission.[14]

4. Persons against whom a restitution order may be made should be entitled to receive notice of a hearing/court proceeding

Bill 24 does not explicitly require any notice to be provided to a person or company against whom a restitution order may be made (i.e. an employer of a person who is alleged to have contravened securities law). A notice requirement should be mandated in Bill 24.

5. The inability of a person against whom a restitution order is issued to bring a third party claim may result in unfairness

Bill 24 does not provide for the ability of a person against whom a restitution order may be issued to bring a third party claim. In a civil court proceeding, such person could name a third party who may be responsible for the loss, in whole or in part. This inability to bring third party claims may result in unfairness.

6. The barring of a civil action by a complainant may result in unfairness

Bill 24 would bar a person from commencing a civil court proceeding for the same loss, once the Commission opens a hearing where a claim for financial loss is one of the matters before it. There would appear to be grounds for barring a civil action on the basis of preventing a complainant from commencing two proceedings simultaneously, or withdrawing from the Commission proceeding where the complainant does not believe that the result will be favourable and commencing a civil action immediately thereafter.

There are, however, a number of procedural issues that should be clarified in Bill 24, for example:

If, after a Commission hearing commences, a class action commences in another jurisdiction, would the complainant be barred from being a party to those proceedings? If so, would that be in the best interests of Manitoba investors?

Is there any restraint on when a director may request the Commission to issue a compensation order? Does such a request have to be made prior to commencement of a civil court proceeding or can it be made after the commencement of the proceeding? Can a request of the director be withdrawn? If so, it would appear that the complainant would still be barred from bringing a civil action.

The policy concerns for barring a civil action should be clearly identified. The Securities Section is not satisfied that Bill 24 has addressed the procedural issues that may arise in connection with barring a civil action by a complainant. Given the severe consequences of such provision, the practical consequences should be fully explored prior to enacting Bill 24.

The foregoing comprises the Securities Section's submission regarding Bill 24. Thank you for allowing us the opportunity to be heard on this important matter.

Richmond J. Bayes, Chair
Securities Law Section of the Manitoba Bar Association

Footnotes:

[1]Subsection 30(1) of the Act.
[2]Subsection 30(2) of the Act.
[3]Subsection 3(1) of Bill 24, repealing subsection 30(1) of the Act and adopting proposed new Subsection 30(1.1).
[4]Subsection 3(1) of Bill 24, repealing subsection 30(1) of the acct and adopting proposed new subsection 30(1).

[5]Subsection 3(2) of Bill 24, repealing subsection 30(2) of the Act.
[6]"Five Year Review Committee Draft Report– Reviewing the Securities Act (Ontario)" released on May 29, 2002.
[7]p.128 of the Ontario Committee Report
[8]Ibid
[9]In Reference re Amendments to the Residential Tenancies Act (N.S.) (1996) 1 S.C.R. 186, the Supreme Court of Canada set out the following factors to be considered in assessing the constitutionality of a provincial grant of jurisdiction: (1) Does the challenged power or jurisdiction broadly conform to the power or jurisdiction exercised by Superior, District or County Courts at the tie of Confederation? (2) Is the function of the provincial tribunal concerned with a private dispute which it is called upon to adjudicate through the application of a recognized body of rules and in a manner consistent with fairness and impartiality?) and (3) If the power or jurisdiction of the provincial tribunal is exercised in a judicial manner, does its function as a whole in its entire institutional context violate section 96?
[10]Although not explored in our submission above with respect to the Limited Right of Appeal, the removal of the right to appeal in respect of the exercise of the Restitution Power by a commission or a court may be also be subject to a constitutional challenge on the authority of the Supreme Court of Canada decision in Reference re Amendments to the Residential Tenancies Act (N.S.)(1996) 1 S.C.R. 186.
[11]Section 6 of Bill 24, adding subsection 148.2(3)
[12]National Instrument 14-101 Definitions defines "securities directions" as the policies and written interpretations of the securities regulatory authority in a jurisdiction.
[13](1994), 6 C.C.L.S. 241 (Ont. C.A.)
[14]For example, see the definition of "Ontario securities law" in subsection 1(1) of the Securities Act (Ontario).

Schedule "A"
Ontario Securities Act

128.(1) Applications to court – The Commission may apply to the Ontario Court (General Division) for a declaration that a person or company has not complied with or is not complying with Ontario securities law.

(2) Prior hearing not required – The Commission is not required, before making an application under subsection (1), to hold a hearing to determine whether the person or company has not complied with or is not complying with Ontario securities law.

(3) Remedial powers of court – If the court makes a declaration under subsection (1), the court may, despite the imposition of any penalty under section 122 and despite any order made by the Commission under section 127, make any order that the court considers appropriate against the person or company, including, without limiting the generality of the foregoing, one or more of the following orders:

1. An order that the person or company comply with Ontario securities law.
2. An order requiring the person or company to submit to a review by the Commission of his, her or its practices and procedures and to institute such changes as may be directed by the Commission.
3. An order directing that a release, report, preliminary prospectus, prospectus, return, financial statement, information circular, takeover bid circular, issuer bid circular, offering memorandum proxy solicitation or any other document described in the order, i. be provided by the person or company to another person or company; ii. not be provided by the person or company to another person or company; or iii. be amended by the person or company to the extent that amendment is practicable.
4. An order rescinding any transaction entered into by the person or company relating to trading in securities including the issuance of securities.
5. An order requiring the issuance, cancellation, purchase, exchange or disposition of any securities by the person or company.
6. An order prohibiting the voting or exercise of any other right attaching to securities by the person or company.
7. An order prohibiting the person from acting as officer or director or prohibiting the person or company from acting as promoter of any market participant permanently or for such period as is specified in the order.

8. An order appointing officers and directors in place of or in addition to all or any of the officers and directors of the company then in office.
9. An order directing the person or company to purchase securities of a security holder.
10. An order directing the person or company to repay to a security holder any part of the money paid by the security holder for securities.
11. An order requiring the person or company to produce to the court or an interested person financial statements in the form required by Ontario securities law, or an accounting in such other form as the court may determine.
12. An order directing rectification of the registers or of the records of the company.
13. An order requiring the person or company to compensate or make restitution to an aggrieved person or company.
14. An order requiring the person or company to pay general or punitive damages to any other person or company.
15. An order requiring the person or company to disgorge to the Minister any amounts obtained as a result of the non-compliance with Ontario securities law.
16. An order requiring the person or company to rectify any past non-compliance with Ontario securities law to the extent that rectification is practicable.

(4) Interim Orders – On an application under this section the court may make such interim orders as it considers appropriate.

Richmond J. Bayes
Securities Law Section
Manitoba Bar Association

* * *

Re: Bill 38

On behalf of the Canadian Federation of Independent Business (CFIB) and our many members who sell solvents/intoxicating substances (such as convenience stores and hardware stores), I am writing you to provide feedback on Bill 38, The Public Health Amendment Act.

By way of background, CFIB is a non-partisan, non-profit, political action organization with membership comprised of over 102,000 small- and medium-sized enterprises (SMEs), with 4,700 members based in Manitoba. Our members are located in every region of the province, and with diversity in activity that closely parallels that of the province's economy.

CFIB was formed on the following philosophical foundations:

To promote and protect a system of free competitive enterprise and to strengthen the entrepreneurial culture in Canada;

To give independent business a greater voice in determining laws that govern business and the nation; and,

To identify and eliminate obstacles by all levels of government that unnecessarily inhibit the viability and growth of independent business.

It is important to state that CFIB agrees with the Government's main goal with respect to intoxicating substances, which is to reduce the number of solvent-addicted Manitobans. However, many of our members believe Bill 38 is a heavy-handed approach that will create significant difficulties for small business.

Of primary concern is the ability of the minister to refuse, suspend, or cancel licences under The Gasoline Tax Act, The Motive Fuel Tax Act, and The Retail Sales Tax Act if intoxicating substances are provided to people who would abuse them.

The Honourable Dave Chomiak, Minister of Health, states, in the government news release of June 24, 2002, "People who sell or buy these types of products for their intended use should not worry about this legislation. These provisions are intended for those few people who deliberately sell these everyday products to be sniffed as a drug or abused as an inhalant, contributing to the serious harm suffered by too many Manitobans."

CFIB cautions this is an extremely difficult issue for business owners to address as they are faced with the challenge and legal responsibility to determine a consumer's intended use when purchasing a perfectly legal product. The store

owner will not only fear the legislative repercussions if an error in judgment is made, but the harm their business may suffer if they offend a customer and face charges of discrimination. The consequences to employers who unknowingly break the law are far too extreme.

Bill 38 assumes the average store clerk will always be able to identify a solvent-addicted person and has the skill and confidence to refuse the purchase. In fact, Bill 38 may put the safety of store clerks and cashiers at risk who refuse a customer that they believe may be misusing a solvent. Should a customer threaten an employee who refuses to sell the merchandise, he/she is forced to choose between making the sale to ensure personal safety, and breaking the law. Similar to a bank robbery, safety must be the primary concern of the employee and employer. Therefore, any law must recognize extenuating circumstances that are associated with addictions and the lengths addicts will go to in order to support their habit. The refusal, suspension or cancellation of any operating licence is far too harsh of a punishment should a business be placed in a situation where the customer threatens staff who refuse their purchase. While many managers or employers would attempt to intervene in this situation, it is almost impossible for the employer to monitor every transaction in a store.

In addition, CFIB oppose the lack of opportunity to appeal in the event a person is found guilty of selling an intoxicating substance to a solvent-addicted person. First, the amendment provides a significant amount of discretion to the justice. Second, the formal rules of evidence do not apply, therefore the Justice is not bound by the rules of law respecting evidence applicable to judicial hearings. Lastly, the order of a justice is final and not subject to appeal. Given the severe consequence to a business placed in the situation, the ability to appeal is critical.

CFIB recommends Government strike out the section which provides for all licences issued under The Gasoline Tax Act, The Motive Fuel Tax Act, and The Retail Sales Tax Act to be refused, suspended or cancelled if a person/business sells intoxicating substances to a solvent-addicted person.

CFIB supports government initiatives to reduce the number of solvent-addicted persons in Manitoba. Employers are able to play an important role in raising awareness and providing information to employees. However, the responsibility in addressing this issue cannot lay solely on the shoulders of business. Situations may arise when personal safety will take priority over this proposed law. Bill 38 fails to recognize the extenuating circumstances that would make this legislation ineffective and potentially dangerous. The consequences for breaking this piece of legislation are far too great.

Shelly Wiseman
Director, Provincial Affairs
Canadian Federation of Independent Business

* * *

Greetings Mr. Sale:

I think I am in your riding, but to be honest I cannot remember. I currently live on Edmonton Street, and will soon be moving to Kylemore Avenue. Even if I am not in your riding, perhaps you can look after my request, or forward it to someone who can look after it. I am writing to you about Bill 53, which, among other things, amends The Wills Act to include references to common-law partners where spouses are mentioned. I notice that a lot of the changes made are very similar to those made by Saskatchewan last year. There are a couple of things that Saskatchewan did that we did not do that I think might be problematic.

I was hoping you could forward my comments to the committee. For instance:

Generally speaking, a testator must be an adult in order to write a legally valid will. However, every province's wills act or its equivalent allows a minor to write a legally valid will if at the time of writing the minor was married or a member of the armed forces in active service.

Saskatchewan's wills act now also recognizes a will written by a minor who was cohabiting in a spousal relationship at the time the will was written. The section in Manitoba's Wills Act that deals with wills written by a

minor, section 8, does not appear to have been amended to include this.

In all common-law provinces and territories, a will or part of a will is automatically revoked by marriage unless the will was written in contemplation of marriage. Manitoba's amended Wills Act will also state that a testator's will is revoked when a person with whom the testator has cohabited becomes his or her common-law partner, unless the will was made in contemplation of the common-law partnership. Some other exceptions exist, but will rarely be invoked.

Unlike the recent amendments to Saskatchewan's wills act, the amendments to Manitoba's Wills Act do not currently provide for the possibility that after having written a will in contemplation of a common-law partnership with a particular person, the testator then marries that same person. Currently, as the amendments stand, it appears to me that the testator would have to re-execute his or her will prior to marrying his or her common-law partner. This seems a rather unnecessary complication.

Could you forward my comments to the committee responsible for this bill, please? Thanks.

Sara Kinnear
Winnipeg MB R3C 1P7
e-mail: sara.kinnear@investorsgroup.com

* * *

Re: Bill 53

ABOUT LEAF:

LEAF, the Women's Legal Education and Action Fund, is a national non-profit, volunteer organization founded in 1985. Our goal is to advance the equality of women in Canada through litigation, law reform and public education using the Canadian Charter of Rights and Freedoms.

LEAF has participated in over 130 cases and has helped women win landmark legal victories in crucial areas such as:

Spousal and child support
Sexual harassment and violence against women
Discrimination in employment
Pregnancy discrimination
Reproductive choice, and
Social assistance

LEAF has undertaken more Charter litigation than any other equality-seeking group and has been involved in the most important women's equality cases at the Supreme Court of Canada. LEAF's work is unique in the world and has provided a model for other equality-seeking groups.

LEAF is committed to a vision of equality which is called real or substantive equality. This model of equality is founded upon two basic ideas:

That there are groups in society whose members have historically been treated unequally (women, persons of colour, persons with disabilities, lesbians and gays, to name a few).

That the purpose of the equality provision of the Charter (Section 15 and 28) is to prevent discrimination and to help members of disadvantaged groups overcome the effects of discrimination.

This model of equality was adopted by the Supreme Court of Canada in *Law Society of British Columbia v. Andrews* [1989] 1 S.C.R. 143. It is well established that Governments must ensure that legislation and government policy comply with the Charter; however the Charter may require that Governments do more than just refrain from discrimination. In the recent case of *Dunmore v. Ontario (Attorney General)* 2001 SCC 94, the Supreme Court of Canada held that governments have a positive obligation to extend protective legislation to unprotected groups. Although that case concerned agricultural workers, the Court recognized that, in some circumstances, governments have an obligation to remove barriers to the exercise of rights.

The equality provisions of the Charter provide as follows:

Section 15: Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic

origin, colour, religion, sex, age or mental or physical disability.

Section 28: Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

We should also note that the Supreme Court of Canada has held that discrimination on the basis of sexual orientation and marital status is prohibited by Section 15.

It is because of LEAF's ongoing commitment to equality that we are presenting here today.

LEAF's POSITION CONCERNING BILL 53:

Leaf commends the Government of Manitoba for its proposed amendments to Manitoba legislation affecting common-law partners. Due to the courage of Premier Doer, Minister Mackintosh and their honourable colleagues, many Manitobans will have access to rights and benefits which have previously been denied to them.

In particular, we applaud the Government of Manitoba for its proactive approach on this issue and not waiting from the Supreme Court of Canada to speak. Too often, governments refuse to act unless an individual begins (and often competes) litigation, an expensive, time-consuming and exhausting process. The principled approach of this Government was demonstrated by the words of Minister Mackintosh in his speech to the legislature on July 22, 2002.

". . . whether or not the Constitution absolutely requires property legislation to be amended to include both same-sex and opposite-sex common-law partners as a matter of policy, it should be done. Mr. Speaker, it is the right thing to do, in our view."

We support the government for this giant step towards equality and human dignity for all people living in intimate or interdependent relationships. As Minister Mackintosh acknowledged in his speech to the Legislature on July 22, 2002, this act gives legal effect to the common (mis) understanding that marital property law and other relationship legislation apply equally to common-law and married partners. Women in common-law relationships are at a particular disadvantage whether due to their responsibilities for children and the home or their inequality in the workforce. Women in common-law relationships face considerable hardship upon the breakdown of their relationship because they do not have the rights that married partners take for granted.

We particularly support this bill for extending rights and obligations without regard to the gender of the partners. For too long, lesbian and gay Manitobans have been excluded from the protection of the law without rational justification. While some might object to extending such protection on the grounds that doing so will "threaten" the traditional family, we have yet to see a coherent explanation of how that could be so. Discrimination and bigotry against gays and lesbians is, unfortunately, prevalent and we applaud the Government for its courage in proposing amendments which challenge and counteract that bigotry.

We are pleased to give our support to this bill. At the same time, we urge the Government of Manitoba to continue its leadership role on this issue. This legislation cannot be seen as the end of the story but rather one giant step towards the goal of full equality for people living in intimate and interdependent relationships.

Respectfully submitted,

LEAF Manitoba Inc.