

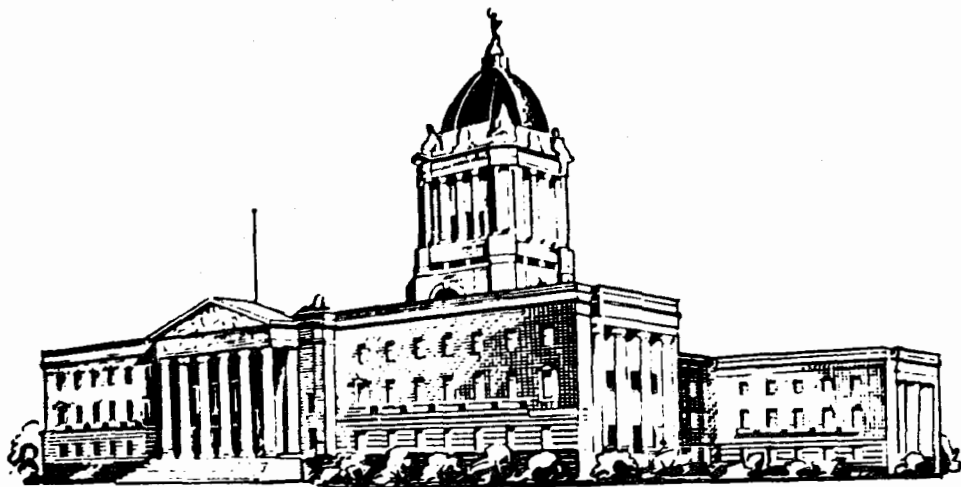


Legislative Assembly of Manitoba

**HEARING OF THE STANDING COMMITTEE
ON
LAW AMENDMENTS**

Chairman

**Mr. William Jenkins
Constituency of Logar**



WEDNESDAY, May 18, 1977, 8:00p.m.

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ME: 8:00 p.m.

CHAIRMAN: Mr. William Jenkins.

MR. CHAIRMAN: Order please. The committee will come to order. Can you hear me at the back of the room? Can you hear me at the back of the room? (No) That's as loud as we are going to get it. This is the first meeting of the Standing Committee on Law Amendments. A committee of 30, or 16 is a quorum. We have a quorum. I will read out the bills that are before the committee for consideration and then after I am through, I'll ask for anyone who wishes to make representation on any bills, come forward to the microphone and give your name and spell it out so that the recorder can put it for Hansard.

The first bill is Bill No. 2, an Act to amend The Securities Act.
No. 4, an Act to amend The Land Acquisition Act.
No. 5, an Act to amend The Expropriation Act.
No. 7, an Act to amend The Provincial Judges Act.
No. 8, an Act to amend The Highway Traffic Act.
No. 14, an Act to amend The Landlord and Tenant Act.
No. 15, an Act to amend The Real Estate Brokers Act.
No. 16, an Act to amend The Garage Keepers Act.
No. 18, The Retail Businesses Holiday Closing Act.
No. 20, an Act to amend The Social Allowances Act.
No. 21, an Act to amend The Real Property Act.
No. 22, an Act to amend The Personal Properties Security Act and other certain Acts relating to personal property.
No. 25, an Act to amend The Buildings and Mobile Homes Act.
No. 27, an Act to amend The Health Services Insurance Act.
No. 28, an Act to amend The Elderly and Infirm Persons Housing Act and Health Services Act.
No. 29, an Act to amend The Snowmobile Act.
No. 30, an Act to amend The Highway Traffic Act (2).
No. 33, an Act to amend The Licensed Practical Nurses Act.
No. 35, an Act to amend The Highway Traffic Act (3).
No. 44, an Act to amend The Marriage Act.
No. 54, an Act to amend The Intoxicated Persons' Detention Act.
No. 64, an Act to amend The Highway Traffic Act (4).

Now if any of the people here this evening wish to make representation, would you come forward, give your name, what bill you want to make representation on and spell your name out so we can get it into the recording.

MR. JACK BASTABLE: My name is Jack Bastable. I am from the Parkview Solo Food Store at 1833 Strath Avenue in St. James, Assiniboia, and I am representing a group of independent merchants who wish to make representation on Bill No. 18.

MR. CHAIRMAN: Thank you.

MR. IAN JESSIMAN: Mr. Chairman, my name is Ian Jessiman. I am appearing on behalf of a group of grocers — independent grocers — in opposition to Bill. 18. I have been asked to also say that I have known me Kenneth Regier, of Winnipeg, the legal firm of Regier and Stewart.

MR. CHAIRMAN: Thank you.

MR. REEH TAYLOR: Mr. Chairman, my name is Taylor, Reeh Taylor. I am with the law firm of Richardson and Company. I wish to address the committee on the subject of Bill No. 18, and I am representing a company called Codville Distributors Limited, which is a wholesale supply house to a large number of retail food stores.

MR. CHAIRMAN: Thank you.

MR. ROBERT B. GOODWIN: Mr. Chairman, my name is Goodwin, Robert B. Goodwin. I am the president of the Manitoba Bar Association which is the Manitoba branch of the Canadian Bar Association, and I wish to speak to Bills 8, an Act to amend The Highway Traffic Act and Bill 18, The Retail Businesses Holiday Closing Act.

MR. CHAIRMAN: Thank you.

PASTOR ALLAN FREED: My name is Pastor Allan Freed, representing the Seventh-Day Adventist Churches of Manitoba. I would like to address myself to Bill 18.

MR. CHAIRMAN: Thank you.

DR. LLOYD BARTLETT: Mr. Chairman, my name is Dr. Lloyd Bartlett. I am a member of the Emergency Medical Service Committee of the Manitoba Medical Association. I am here to speak to Bill 8, The Highway Traffic Act.

MR. NELS THIBAUT: Nels Thibault' Manitoba Federation of Labour, here to speak on Bill 18.

MR. CHAIRMAN: What was name again, sir?

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MR. THIBAUT: Nels, N-E-L-S, Thibault, T-H-I-B-A-U-L-T, for you English who don't know the French name.

MR. DENNIS ALLARD: My name is Dennis Allard. I'd like to speak on behalf of Bill 18 and I am representing The Retail Store Employees' Union. —(Interjection)— For you English people, A-L-L-A-R-D.

MR. CHAIRMAN: Thank you.

MR. GRAEME HAIG: My name is GRAEME Haig, Mr. Chairman. I am here on behalf of the Manitoba Landlords Association, to speak to Bill 14, the bill respecting The Landlord and Tenant Act.

A MEMBER: How do you spell that?

MR. HAIG: In French? Monsieur. I am also here, Mr. Chairman, on behalf of the Winnipeg Real Estate Board to speak respecting Bill 15, amendments to The Real Estate Brokers Act.

MR. CHAIRMAN: Thank you.

MR. W.L. PALK: Mr. Chairman, my name is W.L. Palk, representing 7-Eleven Food Stores (Canada), Limited, and may wish to address the committee with respect to Bill 18.

MR. CHAIRMAN: Thank you.

MR. CHAIRMAN: Are there any other members who wish to address the committee or the members of the delegation? Then we have representation here on four bills, Bills No. 8, 14, 15 and 18. Mr. Green.

MR. SIDNEY GREEN: Mr. Chairman, may I suggest to the committee that we start with those who have fewest representations because their time will be least occupied in terms of the time they have spent here.

MR. CHAIRMAN: Is that agreeable to the committee? (Agreed)

MR. GREEN: Save 18 for the end. Well, I'm suggesting, Mr. Chairman, you have the list of the bill if we could proceed with the bills where least representations are made, then those people will be able to leave without having to wait for the . . .

MR. CHAIRMAN: Bill No. 8 then, Mr. Goodwin.

MR. GOODWIN: Excuse me, Mr. Chairman, did you wish to hear from me on Bill 8?

MR. CHAIRMAN: Bill 8.

MR. GOODWIN: Thank you, I'm sorry. I was discussing Bill 8 with Mr. Goodman.

Mr. Chairman, I have some copies of some notes which I would ask the members to pass around and I have provided a copy to Mr. Goodman, who I take it will discuss them with Mr. Tallin. I understand that there are some amendments to the bill which may or may not answer some of the objections that the Bar Association has to it in its present form.

I should first start by saying that the Bar Association has no disagreement with the apparent purpose of the bill which we perceive to be to keep persons who may be impaired by reason of alcohol or drugs off the road and thereby reduce accidents. It would be against motherhood if we were against that. But our concerns relate to two matters. First of all, to the discretion given to the peace officer by Section 238.1, subsection (1), and secondly to the fact that the driver's licence is to be returned to him by mail, which is set out in Section 238.1(7).

We suggest that the discretion contained in subsection (1) of Section 238.1 is extremely broad and may lead to some abuse' and we would like to see it, if it is possible, related to some objective evidence as to impairment, such as the ALERT reading which would be close to the point where a further test would be required but yet would not be within that range where the peace officer would feel that a test was necessary, or that there would be other evidence of erratic driving coupled with apparent alcohol or drug use, or some other hard evidence of a similar nature.

The second point that we wish to make is in respect to the return of the licence by mail, and our only comment here is that, given the present state of our mail service, for practical purposes the suspension would be much longer than 24 hours. As a matter of fact I have heard of cases where it has taken six days for a letter to come from Portage and Main to the Law Courts Building.

We also note that registered or certified mail usually requires the signature of the addressee acknowledging receipt of the letter, and this, of course, could cause further delay if the addressee wasn't home or wasn't available to receive the mail at the time it was delivered. For this reason we suggest that there should be a personal return of the licence to the driver. Those are the comments of the Association on this bill, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Goodwin. There may be some questions members of the committee may wish to ask. Any members have any questions? Hearing none, thank you. Thank you sir. The next bill with the least representation that I have is Bill No. 15 —(Interjection)— Oh, [Bartlett on 8. Dr. Bartlett.

DR. BARTLETT: Mr. Chairman and Members of the Committee, I speak as a private citizen, not a member of the Emergency Medical Services of the Manitoba Medical Association, but I've been interested in the problem of drinking and driving for many years. We see in our line of work many the results of these accidents. I spent New Year's Eve several years ago sitting up all night trying to comfort two young daughters whose mother had been killed by a drunken driver and if any of you

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ave ever seen this experience, it is shattering, believe me.

MR. GREEN: I'm sorry, Doctor . . .

DR. BARTLETT Can you hear me?

MR. GREEN: It's not your fault, we usually get a little more volume out of microphones but we're not getting it and I wonder if you could speak up a little bit.

DR. BARTLETT: I'm sorry, I don't think the microphone is working.

MR. GREEN: No, it's not your fault at all.

A MEMBER: I think it's the fan over there. If we could have the fan shut off.

DR. BARTLETT: That's better. I repeat that I'm here as a private citizen, not in my capacity as a member of the Emergency Medical Service Committee, although I was asked by the chairman of that committee to appear here tonight.

I have been interested in the problem of the drinking driver for many years. Two years ago I spent I New Year's Eve trying to comfort two young children whose mother had been killed by a drinking driver. Now that's a shattering experience.

I fully support the amendments to this bill that have been submitted to me tonight. I even would go step further and I would question the right of any government to permit anyone to drink and drive, period. I know this is a revolutionary idea, but I propose this idea and I'm not putting it as an amendment but if you're interested I will take two or three minutes to give you my views on that.

First of all, the non-smokers have been quite successful in obtaining for themselves the right and privilege of not being exposed to the hazards of cigarettes from other smokers in public places, in airplanes, in trains, and so on.

Now, by what right does a government expose non-drinkers to the first, that hazards of the drinking driver? In view of these facts' alcohol is the greatest single factor in traffic accidents; that a prime reason for social drinking is behaviour modification; that unexpected circumstances arise at times on the road when the safe operation of a motor vehicle is difficult or impossible. There must therefore be at some times occasions when even small amounts of alcohol increase this hazard. These are points I'm making and I would like you to disagree with any one of them, if you can.

The current law says, in effect, that you can drink to a certain blood level and still drive. It is impossible for a drinking person to foretell with any accuracy when his blood level reaches any given point. The law therefore, the current law, is an invitation to the entire public to drink and drive.

One of the first effects of alcohol is removal of inhibitions, therefore a person who starts with good intentions may exceed the current 80 milligrams percent and soon lose his good intentions. The practicality of the present law allowing a degree of drinking and driving is shown by this utter failure to control the present problem of drinking and driving.

I ask you therefore, by what right, what justification can a government give anyone legal permission, while under the influence of alcohol, to aim a missile weighing several tons down the highway at 60 or 70 miles an hour where the clearance between vehicles is only a few feet? To me this absolutely untenable.

Now, I offer that as way of introduction to my current support of the present amendments. I think the present amendments have not gone near far enough. I think you can't do anything less than what they propose. I think that some day in this country and in other countries, the legal limit for blood alcohol will be zero. That's all I want to say, Sir.

MR. CHAIRMAN: Thank you, Dr. Bartlett. There may be some questions some Members of the committee may wish to ask. Do committee members have any questions of Dr. Bartlett? Mr. Jorgenson.

MR. JORGENSON: I noted an article in one of the daily papers — I forget who made the statement but the statement was made to the effect that within ten years mankind would be able to control the problem of drinking completely. It would no longer become a problem. Have you any knowledge of that article or how that could be achieved?

DR. BARTLETT: I have not seen it; I have no knowledge of it. From my present knowledge, I don't see how that would be possible. The problem of drinking has been on this earth as long as civilization and I don't see any new knowledge that will enable us to control it.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Dr. Bartlett, I wonder if you would just comment on the bill before us which I would like that you had an opportunity to read.

DR. BARTLETT: Yes, I read it today.

MR. PAWLEY: It was amended to delete the words "twentyfour" and replace them with the words "twelve-hour suspension." Do you see any problem there?

DR. BARTLETT: No, I don't see any problem; I think it's probably preferable. I agree with the 12-hour limit.

MR. PAWLEY: Why would you say it could be preferable?

DR. BARTLETT: I think it's more practical. I think you're more likely to achieve it than you are with a twenty-four. I see no objection to the twelve. It's the fact of doing it; the fact of producing a strong

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deterrent that appeals to me.

MR. PAWLEY: Now, with the present Alert Machine, as you know, being calibrated at milligrams per 100 millimetres, I've heard some concern that this in fact would be quite an extreme step, this type of legislation, because motorists would find themselves having their licence suspended at the 50 milligram level. I gather from your remarks that you feel, if anything, that our existing code legislation doesn't go low enough in dealing with this problem?

DR. BARTLETT: That's right.

MR. PAWLEY: And you feel there is impairment, there is influence at 50 milligrams, at the low level, in some instances?

DR. BARTLETT: I do. The problem is that one of the factors in operating a motor vehicle judgment, and it's difficult to measure judgment. Experiments set up designed to test the effect of alcohol on a person's behaviour are usually based on physical performances, reflexes, but they cannot measure judgment. Yet one of the effects of alcohol is to remove judgment. This is why it is used at parties; this is why behaviour modification takes place with alcohol, judgment is affected. There is ample evidence that there is behaviour modification at a level of 50 and even at less. There is even evidence that the accident rate is increased at this level.

MR. PAWLEY: Increased at the level of 50 milligrams.

DR. BARTLETT: The level of 50, right. Yes.

MR. PAWLEY: Could you list for us the countries which have a 50 milligram legal limit?

MR. BARTLETT: No, I could not.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman. Dr. Bartlett, I would like to ask for your opinion on a matter that would be helpful to me anyway in addressing myself to this bill, and that is whether you feel that the Alert Program and the Roadside Testing Program that has been in place, particularly in the last two years specifically in the City of Winnipeg, undertaken by the Winnipeg Police Department, has had a significant effect in reducing social drinking and the hazards of social drinking in the community generally? Would you have an opinion on that?

DR. BARTLETT: No, I don't. I wouldn't have an opinion and I don't have any figures so I couldn't

MR. SHERMAN: So you wouldn't be able to suggest to the Committee that that has reduced whatever tendencies may have existed in society to overindulge at various functions?

DR. BARTLETT: No, that's a statistic, no.

MR. SHERMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: Any further questions committee members may have? Hearing none, thank you very much, Dr. Bartlett.

The next bill we have with the least representation on is Bill No. 15, Mr. Ken McKenzie representing the Winnipeg Real Estate Board. Is Mr. McKenzie here this evening?

MR. GRAEME HAIG: I'm here, Mr. Chairman, on behalf of the Winnipeg Real Estate Board. My name is Graeme Haig.

MR. CHAIRMAN: Yes, I have you, Mr. Haig, but I also have someone who has filed with the Clerk's Office, a Mr. Ken McKenzie.

MR. HAIG: Yes, well I am appearing in Mr. McKenzie's place. Mr. Chairman, gentlemen, we have had an excellent opportunity of consulting and conferring with counsel for the Securities Commission on the amendments which are before you and in the vast majority of instances they are . . . I would hope that before you this evening, I could obtain some clarification from counsel for the Securities Commission or from the Committee as to the precise language of Section 6(a)(1) which was an uncertain statement in the text which we have. What I read when I read it, Mr. Chairman, is that it says, "Arrange for the offer or the resale of the real estate, that is, offering to purchase." That would appear to be a typographical error. Ah, we have an amendment which will rectify my problem in that regard, Mr. Chairman, so I'll go on.

On Section 7, there is a proposal to add Section 26(1) to the bill, a section which provides that the broker will hold deposits as a trustee, and not as an agent, and in principle, the Board is in agreement with the Securities Commission that this is an appropriate amendment. Where we have run into difficulty is over the manner and method of describing the responsibilities of the broker in handling these trust funds. It is our hope, Mr. Chairman, that the committee will seriously entertain the following changes to this section and I would read them to you.

Deleting in the fourth line, at the end of the line, the word "same", and in the fifth line, the word "as stakeholder", and in the sixth line, the words, "shall have the same remedies at law as stakeholder", and adding at the end of the paragraph, the following words: "shall, if necessary, for the resolution of such dispute, pay the deposit into court by way of interpleader."

If I may clarify the purport of those suggestions, Mr. Chairman, the section, if amended in that fashion, would then read as follows:

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"Subject to Subsection (2), a broker who receives a deposit on any trade in real estate, shall hold it as a trustee on behalf of both or all the parties to the trade, in accordance with their respective rights under the offer or contract, and not as an agent for any one of them. And he shall have the responsibility to pay or account for it, to the proper party, and in the event of any dispute between the parties in respect of the deposit, shall, if necessary, for the resolution of such dispute, pay the deposit to court by way of interpleader."

Now, Mr. Chairman, essentially, what we are endeavouring to do is to remove from this section reference to a "stakeholder" because this is a definition beloved of lawyers, but not understood by the public nor the real estate profession at all. We feel that the same results can be accomplished in ordinary English in the manner suggested by me on this occasion.

We would also like to suggest that the last line of paragraph 26.1(2) be amended by deleting the words "of the other party or parties" and substituting the words "either of the parties." As the section presently stands, it proposes that the trust arrangement contemplated by the preceding paragraph, may not occur if a contract or offer has been prepared or approved for use in that trade by a solicitor entitled to practise in Manitoba, who is acting on behalf of, and the old section read, "of the other party or parties."

Now it is my view, Mr. Chairman, that as the Act presently reads, it more correctly says that the Act does not govern offers to purchase on single family dwellings, where they're prepared by a competent solicitor, and it's our view that very often, in actual practice, the two solicitors involved in a complicated transaction of this kind will agree that one of them, who may be a better draftsman than the other will actually prepare the document, but it is a joint effort of the both of them. We feel that if the exemption is to be made, which it properly should, that we shouldn't restrict it to offers made only by the purchasing party's solicitor.

There is one other recommendation that we would make to the committee, Mr. Chairman, and it occurs with respect to paragraph 26.1(3)(b). That section, as it presently reads, says that except as permitted by the regulations, a real estate broker shall not invest trust money, but shall keep it in his trust account. It is the view of the Board, Mr. Chairman, that where the parties who are entitled to the money might so wish, that the broker should be authorized to invest that money, and we would suggest that in addition, after the word "regulations" which reads to this effect: "or directed by the parties to a transaction should be made." The section would then read, "except as permitted by the regulations, or directed by the parties to a transaction, the brokers shall not invest trust moneys, but shall keep it in his trust account."

Those are the matters, Mr. Chairman, with which we are concerned. The bill, as a whole, is, in our view, and in the view of the Board, a desirable and worthwhile improvement to The Real Estate Brokers' Act.

MR. CHAIRMAN: Thank you. There may be some questions members of the committee may have. Mr. Wilson.

MR. WILSON: . . . have the trust account money again for clarification. In their discussions with the government, has there been any indication that after this bill passes, that they might look upon this area of investing of moneys held by real estate brokers, that they might indicate that the interest, since it's unearned, might go to a government fund similar to the Law Society of Manitoba?

MR. HAIG: Mr. Chairman, basically, I believe that it was probably the intent of the Securities Commission that that particular section not proceed.

MR. WILSON: Right.

MR. HAIG: And I believe that is the case, is it not, Mr. Minister? The sections respecting interest on brokers' trust accounts.

MR. CANTLIE: Yes, on the information obtained to date, it appears that the amounts of money involved, are not likely to be very large after one takes into account the cost of operating the scheme.

MR. HAIG: Right.

MR. CANTLIE: And until we've had a further chance to amplify that information, I think it would be wise to proceed with that plan, because we may end up by setting up a very elaborate scheme and collecting very little.

MR. HAIG: Right. We, fortunately, had that opportunity to discuss it with Mr. Cantlie and with the Commission. We were in possession, through the Board, of the best available figures as to what probable revenue could be reduced in those circumstances, and it was a very uncertain benefit that might be attained. Consequently, Mr. Cantlie and myself, on behalf of our respective principals, agreed that it probably should be postponed for at least a year to permit us to research the amounts of money which would be involved, and the amounts of interest which might be generated.

MR. WILSON: The reason I raised it is during second reading it was discussed in the House, and I'm glad it's been put to rest. I didn't think it was a good idea.

MR. HAIG: No.

MR. GREEN: Mr. Chairman, on a point of order, there was no such suggestion, and I think it could be clarified as to what was suggested. It was suggested that the real estate brokers might

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suggest taking the interest from this fund and have the brokers promote a scheme of education for the public from the purchasing and selling of homes. There was no suggestion whatsoever that would go to the consolidated revenues of the province. It was suggested that the interest could be used, perhaps by the agents, to engage in education to people such as the Member for Wolesey, as how people should or should not react in purchasing homes to the benefit of the brokers themselves and a scheme suggested by the brokers. But there was no suggestion whatsoever that it go into the Consolidated Fund, and I am glad the scheme has not been put to rest, but will be considered by the brokers.

MR. CHAIRMAN: Any further questions? Hearing none, thank you; Mr. Haig.

MR. HAIG: Thank you.

MR. CHAIRMAN: Mr. McKenzie is not here. I had no other persons wishing to make representation on Bill 15.

Bill 14, an Act to amend the Landlord and Tenant Act. Mr. Don Ayre.

MR. AYRE: I'm Don Ayre, Executive Vice-President of the Housing and Urban Development Association of Manitoba. The man who is making a presentation on this, Mr. Richard Smith of Smith Agencies, is out of town today, and he has asked if he could make representation on Tuesday for us.

MR. CHAIRMAN: The committee will not be sitting on Tuesday.

MR. GREEN: I think that you would be taking a chance.

MR. AYRE: Then I will read his presentation, if I may.

MR. GREEN: That's right.

MR. AYRE: It's in the first person I think I will read it in that vein. Mr. Smith is of Smith Agencies and is very long in experience in management of apartment dwellings, and I'd like to read it as he has written it.

"Mr. Chairman, ladies and gentlemen, my name is Smith. I'm here to speak on behalf of the Housing and Urban Development Association of Manitoba, officially, and unofficially, on behalf of the Building Managers Association of Greater Winnipeg, and on behalf of my own office, the Smith Agency Limited.

"I have spent my entire business life in the property management business and its related line. The older I get, the less time I have for" — and I should add that he is slightly older than myself — "The older I get, the less time I have for outside business activities as the day-to-day routine of proper management takes more and more time. This may be because I'm getting older. It may also be because our industry is being subjected to more and more government interference. Interference that has been legislated with the best of intentions, but is legislated by people who have never been in the property management business, and who haven't been able to foresee the painful results of this legislation, only the beneficial results. Those beneficial results have not been universally beneficial either. Often they benefit one group of people at the expense of another.

"We are glad to see Bill 14 and to recognize it as an attempt on the part of the Manitoba Government to correct some of the inadequacies and inequities of The Landlord and Tenant Act. We understand it does not, in any way, concern itself with The Rent Stabilization Act.

"Several years ago, I appeared before you during the hearings concerning the then proposed new Landlord and Tenant Act. I was one of many. I think everyone in the property management business has had his doubts about the establishment of the office of the Rentalsman. I can tell you today, from our experience, that is our office's own personal experience, the Smith Agency, the Rentalsman Office has been a benefit for both the tenant and the landlord. The tenant has a place to go with his complaints if he feels he is not getting a fair deal from the landlord, while the landlord, knowing that the Rentalsman's Office generally is fair in its decisions, often encourages tenants to take their problems to the Rentalsman. As a result, many little nagging problems are settled this way.

"The concerns that we expressed about the then proposed new Landlord and Tenant Act have been justified in many ways. As government interference in regular routine of a predominantly fair and equitable industry increases, so does the polarization of the principals of that industry, the tenants and the landlords. "For three generations, our office has practised the best relationship possible between our office people and our tenants. There is nothing so satisfying as going through an apartment building and being met by several of your tenants, all of whom are generally glad to see you. This relationship is harder and harder to maintain, as every time one reads the paper or turns on a radio or TV set, he is told that the landlord is something less than gallant, that he is only there to get as much rent from the tenant as he can extract, and to give as little service in return, etc., etc.

"Gentlemen, I say that no one can put in a lifetime in property management business if these are his goals. The tenant does not need the government's protection against such an individual. The housing shortage has never been so great that a tenant couldn't leave that kind of landlord. So we say that we welcome Bill 14, we do so because it is an indication that government understands that current legislation is not working to the best of advantage of all concerned, and is doing something about it.

"What we want to draw your attention to today, are the relatively few points where we think Bill

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in error. When a relationship between the landlord and tenant has broken down to the point where it is necessary to require the tenant to move, or the tenant has overstayed his leasehold rights, the length of time required for the disposition of the case becomes a serious question. Every day that a tenant continues to occupy, or continues in occupancy of a suite that he is not legally entitled to, for which he has not paid rent, whereby the occupying of which he has caused chronic disturbances to other tenants of the building, compounds the problem. The quickest action possible on the part of the judge, is most desirable.

"Clause 18 of Bill 14 calls for a Rentalsman's report to be made available to the judge. In fairness, we should have no quarrel with this requirement. In fairness to the other tenants and the landlord alike, we think that the time limit of say, three days, be set, during which the investigation, if one hasn't already been made, can be made and the results provided to the judge.

"Clause 20 of the bill, in a nutshell, says that the landlord may only raise his rent once in a twelve-month period. While this does not seriously affect rental units let on an annual lease basis, it does affect very seriously, rental accommodation made available on a month-to-month basis, and it will eventually affect every tenant, with or without a lease in the province. Traditionally, Winnipeg suites have been rented on an annual lease basis to give stability to the industry. This is a good thing, both for the tenant and landlord, as each knows just what his financial obligations are for the ensuing year.

"There are, however, both tenants and landlords who prefer a month-to-month agreement. These are the people who cannot, for one reason or another, foresee a year in advance. The tenant may want to move, and not be willing to accept the responsibilities of subletting an apartment under lease. The landlord, especially in this time of inflation, may not have the ability or the expertise to calculate the rent that he will require to cover increasing costs over a twelve-month period. He is much more comfortable, and the situation is much more equitable if he calculates quarterly, or semi-annually, when he has a better knowledge base for his rent calculations. We say that it is better for the landlord and tenant alike, in this type of situation, if there can be more than one rent adjustment in a twelve-month period. The landlord can be much more equitable if his requirements of clairvoyance are for shorter periods than twelve months. The tenant would pay rent on a more equitable basis, and often would pay less rent over the twelve-month period involved. -/

"When one gets right down to it, a month-to-month rental agreement is the most fair and equitable type of tenancy agreement. Administered by a fair landlord whose rent requirements vary only with the costs of operation, the month-to-month agreement provides the tenant with his most reasonable, as well as his most equitable rent, as the rent requirements closely follow the changes in cost of operation. The bugaboos of catch-up rents and anticipation of greater than actual operation costs, both of which are often present in an annual tenancy agreement's rent requirement are eliminated. Why legislate against the fair landlord? We urge you to abandon Clause No. 20, and let Section 116 of the Landlord and Tenant Act alone. At any rate, the provisions of Clause 20, are part of the rent stabilization legislation, and shouldn't become part of The Landlord and Tenant Act, even if they are justified.

"Section 22 of Bill 14 really affects few, if any, of the members of either HUDAM or the Building Managers Association. We feel that we must object to it, although we sympathize with the request for the legislation, the reasons for which were outlined to us by Mr. John Mason. We feel that the relationship between an employer and an employee is different than the relationship between a landlord and a tenant, and that Section 123(2) should be left out of Bill 14 entirely. If it is really needed, it should become part of the legislation brought forward by the Department of Labour.

"May we suggest one further amendment to The Landlord and Tenant Act be included in Bill 14. Paragraph 101(1) of the Act states: 'A landlord or a tenant may give notice to terminate either orally, or in writing.' We suggest that a lot of misunderstanding and a lot of trouble could be avoided if the section could be amended so that notice to terminate by either landlord or tenant, was required to be in writing. Spur of the moment notices, given under duress, often lead to more trouble. We suggest that this kind of trouble will be eliminated in a lot of cases, where the principal giving notice has taken a time to prepare and sign an acceptable written notice.

"We thank the government for its concern about the relationship between tenants and landlords. We ask that if in amending its legislation, to provide more equitable ground rules for the industry, there be taken not to penalize the vast majority of tenants and landlords by imposing overall restrictions that should be reserved for those on both sides who disregard the law of common decency in their dealings with fellow-men."

Thank you very much. That's on behalf of Mr. Richard Smith who was to present for our association.

MR. CHAIRMAN: Thank you, Mr. Ayre. Mr. Green wishes to ask a question.

MR. GREEN: Mr. Ayre, with regard to the one increase per year, I don't think that that. . . It seems to me that that is not a major problem while the Rent Control Legislation is in existence because the general thing to do would be to increase the amount as allowed by the legislation once during the year and then you wouldn't be permitted another increase. Isn't that correct? If the tenant was paying

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\$100.00 at the beginning of the rental period and they were allowed, let's say a 10 percent increase the rent could go to \$110.00. Wouldn't that be the usual situation? Then you couldn't increase it again until the . . .

MR. AYRE: While the rent controls are on, yes, that is true.

MR. GREEN: With regard to the situation in the absence of controls or if that situation did not prevail, would you agree that to at least a single tenant, that it's not fair to increase the rent, even on monthly tenancy, more than twice in a year. I can understand your position with regard to changing tenants, but what if it's the same tenancy for a 12-month period running? Do you envisage a situation where a man could say that in July he's going to increase the rent, and a tenant who is quite satisfied with that increase stays there on the assumption that they're going to be there for some period, and then in January when it's difficult to move and things are more costly and children are in a school should the tenant be subjected to another increase in rent when they have sort of considered — the same tenant, I'm not talking about a new tenant?

MR. AYRE: We're talking, really, not of increases in rent. Aren't we talking of a lease situation

MR. GREEN: I think you said that the bill says that you can only increase the rent once in a year

MR. AYRE: That's right.

MR. GREEN: You were complaining about that in a monthly tenancy.

MR. AYRE: That's right.

MR. GREEN: And I'm dealing with the monthly tenancy. I say that if a person gets a place in September, let us say, when the children start to go to school, or gets an increase in September decides that she's going to keep it, should she be subjected to that in January again, in the middle of the year, if it's the same tenant?

MR. AYRE: Now you are saying you would prefer to see it half-yearly rather than yearly?

MR. GREEN: No, I don't think I said that. I said that if it's the same tenant, as distinct from changing tenancy which you have put, it seems that a tenant, once the rent has gone up once in a year, should have some security that that's going to be the rent until the next year comes along. If it's the same tenant, I think you . . .

MR. AYRE: I think what you would have to get into here is you're legislating in terms of an annual or an increment and I think that what we're saying is that possibly the Landlord and Tenant Act is not a place to discuss the Rent Stabilization Act and that's what is happening in this confusion.

MR. GREEN: That may be. I'm not even saying that you're wrong but you indicated that where there are different tenants in the same year, that it's a problem. I'm wondering if it's as much of a problem if it's the same tenant in the same year?

MR. AYRE: I really couldn't answer that because I think that would vary from case to case. I think what the industry is asking is for the flexibility to remain between the landlord and the tenant rather than have it legislated and in particular not to have the Landlord and Tenant Act contain elements of the Rent Stabilization Act and get that blurb, particularly when we're trying to move towards, with hope, a phasing out or at least decontrol situation.

MR. GREEN: I can understand that.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: Mr. Ayre, even though you're reading the report for Mr. Smith, maybe I might have to ask somebody else this question, but under 110.4 what do you envision as some of the problems pertaining to this report from the Rentalsman or his designated person? Do you envision that a staff person will be in the courtroom or do you envision a written report that could be sent over by messenger or presented to the court? How do you envision that particular section being carried out?

MR. AYRE: Is that the one that refers to the involvement of the Rentalsman's office when a tenant is being evicted or whatever?

MR. WILSON: What I'm talking about is a situation where you've had a tenancy-landlord relationship break down, and where you had an overholding tenant and under 110.4 it says "Before hearing an application, the judge may require the Rentalsman to provide him with a report of an investigation conducted by the Rentalsman or any person on behalf of the Rentalsman in connection with the matter." I'm just wondering if you have any views on that? You talked about delays and you figure this may add to the delays in coming to a decision.

MR. AYRE: I think what we saw in that, that it could require a written report and certain involvement of some staff person from the Rentalsman's office and that that would necessitate some delay in time. We did envision a written report.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Ayre, you made reference to Section 123, Subsection 2 dealing with a possibility of happening on a mining construction camp or any industry, etc. Do I understand from you that you would think that this could conceivably be an intrusion of another agency or a third party into collective agreements that have been reached where there would be provision for the processing of grievances in arbitration or what have you and that your reference to that was based principally on

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that, that there are provisions contained in other acts for the resolving of these types of differences?

MR. AYRE: That's right and we specifically saw in some instances that room and board or living situation is involved in the person's actual employment and that is also a confusion.

MR. CHAIRMAN: Are there any further questions of Mr. Ayre? Hearing none, thank you very much.

Mr. Don Douglas, representing Thompson, Dorfman and Sweatman.

MR. DOUGLAS: Excuse me, I am here in a watching capacity and simply wanted to be notified of the hearings; I will not be making any presentation.

MR. CHAIRMAN: Thank you. Manitoba Landlords Association. Mr. Sid Silverman.

MR. HAIG: I don't look like Mr. Silverman, Mr. Chairman; I was invited by him to appear and to present the brief on his behalf, on behalf of the association that he represents. —(Interjection)— I now I can't; I'll never make it in his league but apart from the humour, I can read almost as well as he can, Mr. Green.

My name, Mr. Chairman, is Graeme Haig and I have been asked to read to you a brief prepared by the Manitoba Landlords Association on their behalf.

MR. CHAIRMAN: I can assure you, Mr. Haig, that the Committee is a bit disappointed not being able to hear Mr. Silverman.

MR. HAIG: Mr. Chairman, we're going to take that into consideration and there will be whipped cream on the strawberry shortcake before we're finished.

The brief, Mr. Chairman, reads as follows: The members of the Manitoba Landlords Association, an Association of some 400 members, most of whom are landlords of buildings consisting of less than three units, wish to bring to your attention in its brief today, several provisions of the Landlord and Tenant Act and dealings with the office of the Rentalsman, which provisions or practices they feel, unfairly prejudice many of the landlords of this province and in some cases work to the detriment of both the tenant and of the Province of Manitoba as well as of the landlord. In the course of this brief on behalf of the association, we intend to detail these matters for your consideration and hopefully the amendments of the relevant Statutes or of the practices arising from them, can result from these observations.

In a number of cases brought to the attention of our association, it has been reported that the rentalsman's office has acted in a most arbitrary manner in setting dates for Hearings and in the granting of adjournments. I am sure it goes without saying that whenever disputes are being dealt with at a hearing, it is most important that both the tenants involved and the landlord should be present at the same time in order to hear the evidence being presented and to have an opportunity of applying to the same. In a number of the cases reported to this association, dates have been set for hearings which were not convenient to one or other of the parties and in some cases, adjournments have been granted for the convenience of one party, but when it has been known that the other party would be unable to be in attendance. In still other cases known to this association, the tenant has been late in arriving at the hearing and the landlord has been kept waiting an inordinately long period of time for the arrival of the tenant.

That is sometimes true with the rent cheques also, I'm told, Mr. Chairman.

It is recognized that the setting of dates and times for hearings can be most difficult. If attempts to get a convenient time by means of telephone calls cannot be worked out to the satisfaction of all parties, Mr. Chairman, it is the recommendation of the association that provision be made for notification of all parties involved by registered mail giving reasonable notice of the date of the hearing. In this regard, we would suggest at least 10 working days would be a reasonable notice of hearing.

Many of the complaints brought to the attention of the association against the office of the rentalsman relate to an apparent bias or prejudice on the part of the Rentalsman and his staff against the landlords. This bias is observed in the manner in which the regulations are interpreted by the rentalsman's office in favour of the tenant, and the failure of the Rentalsman to take action against a tenant when the tenant is acting in breach of the Landlord and Tenant Act. One small example of this type of apparent bias is the action of the Rentalsman's office whenever a lock is changed on a suite. When a landlord does this, the Rentalsman's office reacts immediately and strongly against the landlord. If, however, it is the tenant who has changed the lock, then the Rentalsman's office makes little or no fuss about it and has often refused to take any action against the tenant whatsoever.

In a number of cases reported to this Association, a tenant or a newspaper article have referred to the condition of premises. Members of the Rentalsman's office in those circumstances have, we are advised, gone to the City Health Department and complained to the city about the condition of premises without first checking with the landlord of the premises or the previous tenants; nor have they, we understand, made any attempt or request to obtain a Condition Report on the premises. In any of the cases reported, the Rentalsman's office has taken the position that the landlord is responsible and has failed to take into account the possibility, often the case, that the condition of the premises has been a result of the actions of tenants who have caused much, if not all, of the damage.

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This apparent bias in the Rentalsman's office that there is no such thing as a bad tenant should not be condoned or allowed and staff members should be made to realize that the landlord is entitled to the same conduct and consideration as given by the Rentalsman's office to the tenants. In those cases where it is clearly shown that a tenant is himself, or herself, in breach of the Landlord and Tenant Act then we submit that the Rentalsman's office should be most careful in accepting a complaint from a tenant and acting on that complaint.

The association recommends that the size of security deposits now required to be paid by tenants should be increased from the present one-half month's rent to a full month's rent. It is a simple fact of life in today's economy that a security deposit of one-half month's rent simply does not provide adequate protection to the landlord with respect to damages caused by the tenant. If there are no damages then of course the deposit will be returned to the tenant upon his vacating the premises.

Consideration should be given to a provision that a member of a recognized Landlord Association and a member of a recognized Tenants Association should be entitled to be present at any arbitration hearings which are conducted under the Landlord and Tenant Act. Such attendance would be for the purposes of observation only and it would be intended that these persons would be in a position to report to their respective associations on the fairness of such hearings and to assist in bringing to the attention of the proper authorities any problem areas which become evident through those proceedings.

Landlords, Mr. Chairman, are compelled to give written notice to tenants as verbal notice is not satisfactory in court nor under the Act. However, tenants are not compelled to give written notice. In addition to this, the landlord must give a proper 30-days' notice to vacate. If the tenant does not give 30-days' notice, experience suggests that the Rentalsman refuses to take any action against him.

If a tenant vacates premises without giving the landlord proper notice according to his lease or the Landlord and Tenant Act, thereby causing the landlord additional expense and inconvenience, the tenant, it is suggested, should forfeit his security deposit.

When a tenant does not have the money to pay the rent, he has, in the experience of the association, sometimes deliberately caused damage and then appealed to the Rentalsman to request that repairs be made before he pays his rent. He uses this as a delaying tactic so as to avoid the payment of rent. It is recommended that the Rentalsman order the tenant to pay the rent before taking the complaint, and then investigate that complaint.

It is the experience of the association, Mr. Chairman, that some tenants deliberately pay rent with NSF cheques, knowing, it is suggested, that they have no funds to cover those cheques. It is the hope of the association that consideration be given to allowing for automatic termination of the lease without notice where it can be demonstrated that an NSF cheque was deliberately given in payment of rent.

It is recommended by the association, Mr. Chairman, that where a tenant has been given notice for causing excessive damage in excess of the security deposit, and if the tenant has been taken to court to be evicted as a result of these damages, the security deposit should remain with the landlord and not, as is presently required, be lodged with the Rentalsman for such further action on the case and on a case which has in fact at that stage already been decided in the civil court.

It is recommended, Mr. Chairman, that the Rentalsman set aside special evenings for court hearings or arbitrations between landlords and tenants, many of whom are unable to take off time from work during the day. I think this is a reasonable request having regard to the circumstances of the people concerned.

The view of the association, Mr. Chairman, is that a \$10.00 fee for permitting subletting is a farce. The onus is on the tenant to secure a good sub-tenant; the landlord must in the final analysis still give his final approval and therefore in many instances he is required to spend considerable time interviewing, checking credit and making other reasonable enquiries concerning the proposed subtenant. As a result, the sublet fee ought in these circumstances, it is suggested, be increased to approximately \$30.00.

Mr. Chairman, when a tenant vacates the premises without leaving a forwarding address with the landlord and the landlord wishes to serve documents on the tenant but is prevented from doing so because he does not know the address, and where a dispute arises involving the Rentalsman who is informed by the tenant of the new address, it is suggested that the Rentalsman should be required to make the new address available to the landlord. As the act presently stands, Bill 14, Section 87(1) states that the Rentalsman's office "may" give this information. It is suggested, Mr. Chairman, that that is not adequate and the word "may" should be made mandatory and changed to "shall."

This portion of the brief I have submitted, Mr. Chairman, and I believe Mr. Silverman has some additional words to add to it.

MR. CHAIRMAN: There may be some questions, Mr. Haig, that members of the committee may wish to ask you. Are there any questions? Hearing none, thank you. Mr. Silverman.

MR. SILVERMAN: Tonight, Mr. Chairman, gentlemen of the committee, I will not keep you very long. I would like to make just a few comments which may be to the interest of this committee and

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These comments will be very short.

My first comment, I would like to read a little letter which I have received from one of my tenants and states plainly, "Mr. Landlord." All of a sudden he doesn't even remember my name. He was with me for two years, and for the two years it was Silverman. Now, he doesn't even know, it's "Mr. Landlord." Then he goes on, saying, "I'm leaving for a vacation." He's leaving for a vacation. He doesn't have to get my permission, he leaves every year for a vacation. I don't, but he does. And then he goes on to say, "I will pay you the rent when I return." In the meantime, he hasn't got the rent, he doesn't have enough money for the vacation. It's already the third of the month. "I'll pay you the rent when I return, if I have any money left over from the vacation. I would like you to take this into consideration. If I get short, I'll write you, and you'll send me a few dollars. You know that I may pay you back. But I don't want to pay you with any interest. Don't count on that. And don't go to the Rentalsman because I didn't get the rent." He states, "He is always on my side anyway, so it won't help. I'll save you walking there, riding there, take a ride to spend your gas or any time to go to him.

"I would like to inform you that I don't want you to take me to court, and this is just a reminder that the Rentalsman will anyway take you three months to get rid of me, and even then, I don't know whether you will get rid of me, because I may have a few dollars to pay you on account and then I'll stay on, in accordance with the Landlord and Tenant Act. I read it all through, and I know what it means, and the Rentalsman is on my side in my favour, because I had to take a vacation.

"I may have the rent by then, after the three months. Don't worry. If I don't pay you, don't worry about it, you'll get the rent from another tenant. The other tenant may overpay \$2.00 and by considering for a whole year, you'll get the rent that will apply to my suite. I hope you will look after my suite," he says.

"Although it states in my contract that the suite will be occupied by only one person, however, because I went for a holiday and I won't be there, I've taken in a cat. Please feed the cat and water it too. I'll look after it. Because if I find the cat has suffered any sickness or whatever, I'll take action against you. Don't forget to change the litter. You have to go see that my suite is in good order. Don't light any cigarettes that will start the smoke detectors and disturb all the other tenants, and when I come back I don't want to hear such a thing has happened,

"If I'll take action, I'll go to the Rentalsman. You find any damages, don't blame me. It's wear and tear. The only thing is, there are bigger holes now since I moved in, but don't worry about it. You can't blame me for it. The Rentalsman is on my side, ask him and you'll find out that you've got very little rights. As a matter of fact, I don't think you have any rights at all. All the rights are on my side. I'm even protected by the Human Rights Act. You have to consider that you have no rights and your name is only on the title. You've got to pay the bills, I assure you, but forget about my bill that I have to pay you. In three months time you will receive, if not all, a certain part. Never mind paying your bills, because I know that you will pay them, and I wouldn't have to worry about you, and don't worry about me, even if I don't pay you the bills. Yours truly."

However, this isn't as much as what I have to go through with the Rentalsman. I don't know if any of you have had the experience of coming into the Rentalsman's Office. I had this experience. I came in in the afternoon. I had to wait, and I asked, what is the commotion. There was a siren. I heard the siren coming up, and all of a sudden they carried out a fellow. I said, "What's the trouble?" "It's just a landlord had a heart attack." So I went to the girl, "Is that correct, a landlord had a heart attack?" "That's nothing," she says, "he's only the second one this year. You wait until Bill 14 comes in, there will be more."

Then, you sit a little longer, and the officers of the Rentalsman, they go for coffee. They let you wait, then they come out and inform you that the tenant has not arrived yet, that you'll have to wait a little longer. You have already waited about two hours in there. Finally the tenant did arrive, they bring him out and say, "Well, will you enter a special room for the landlords and tenants?" I come into the room, and it's a long table, practically as long as this table, and there's six officers marching in. Two officers are sitting in the front, I'm sitting on one side, one of the officers across from me and one is chairing the meeting, and two officers are sitting at the end. Finally, the tenant comes in and he is sitting close to the officer. I can't understand it. I wasn't going to do anything to the tenant anyway, so why would he sit over there, but that's his place. I'm sitting all alone on the one side of the long table. All of a sudden, the Chairman says, "Don't say a word. Anything you are going to say, it'll be held against you. And if you should speak two words, I'm going to send the case over to the Attorney-General's office. You will be convicted, \$1,000, immediate payment, whether you have it or not. If not, we're going to garnishee or put a lien on your property." I'm sitting there, and I say to him, "I haven't said a word yet, Mr. Chairman." "Oh, you want to talk? I'll give you two words." So I didn't know what to say to him. So I said, "What are the two words I may say to you?" He says, "Why are you here?" "Why am I here? I have a complaint. The tenant doesn't pay the rent. Other than that, everything is fine."

"He didn't pay the rent? Have you got any documents that he didn't pay the rent?" "Sir, it has been

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proven, he has admitted that he hasn't paid the rent. The only reason he says he didn't pay the rent was because he didn't have the rent to pay." However, the Rentalsman says, "Well in that case, we have to take off five minutes." He goes out of the room. He doesn't go out himself. Of course, out of the five officers, there's a lady too. She takes the notes. Everybody goes out and I'm sitting across from the tenant. The tenant looks at me and I'm looking across to the tenant. I say, "Why didn't you pay the rent?" He says, "Why should I pay you, you're a rich landlord." I said, "How do you know I'm rich?" "If you wouldn't be a rich landlord, you are a slum landlord. Even if my suite is very nice, but still call you a slum landlord."

During that period of time the officers come in, silent. I haven't said a thing. I don't say a word, I says, "Silence." And the room is very silent.

"Now, I would like you to listen to my determination. I have determined, according to the evidence that has been given before me, you are guilty." "Mr. Chairman, why am I guilty?" "Why did you come here in the first place?" "If he had paid me the rent, I wouldn't be in the second place. I wouldn't be here at all." "However, I'll tell you what I'll do with you. You have been a very nice landlord. I'll give you ten days to appeal if you so desire." "Thank you," I said to him.

"However," he says, "I'm going to write a letter to the court that you are not satisfied with my determination which was examined very carefully." He did examine the case very carefully. The evidence was there that the tenant admitted himself that he didn't pay the rent because he didn't have the rent. But he determines that the tenant is right, and he's going to write to the courts, his determination that I'm wrong and the tenant is right. So he writes a letter to the courts, telling the courts, "The tenant has a right to stay there. He may find the rent in a few weeks or a few months, and ask the court to dismiss the case." He's already made me guilty and he's already been in favour of the tenant. And so on, it goes on.

In a particular case where one of my tenants was disturbing the other tenants, and it specifically states that anybody that disturbs anybody else, the landlord has a right to give him notice. It so happened that I did give him notice. When it came before the Rentalsman, he had exactly two words. He says, "What do you mean they disturbed the tenants? I can assure you even if you have evidence of all the tenants written to me that this particular tenant is disturbing them, and I say to you that the tenants in the building are wrong. And this tenant is right. They are disturbing him. I'm going to write to the other tenants, and say it's none of their business. If one tenant wants to make commotion and drink beer at 12 o'clock at night and throw his wife out of the room, he has a right to do that."

And this is what happens at the Rentalsman's Office. I can go on tonight, I can assure you, with many stories with regard to the Rentalsman, with regard to his office, where I can assure you that the landlord has no rights whatsoever. These rights have been taken away from him. Tonight, I suggest to you, gentlemen, that you take into consideration our brief which was presented to you on behalf of the Manitoba landlords, and see. We ask you once again that the landlord and the tenant should have equal rights, because as of today the landlord was not treated the same as the tenant. I think anybody has a right to be treated fair. We have not been treated fair. This is why we presented a brief, in order to make these recommendations and in order to be treated just as good as a tenant, because many landlords have worked very hard in order to make some investment, in order to get a few dollars out of their investment. But the way it is at the present time, we feel that the tenant has all the rights and most of the landlords are holding the bag. With this I conclude, and I say thank you for permitting me to say a few words.

MR. CHAIRMAN: Thank you, Mr. Silverman.

MR. SILVERMAN: If anybody has any questions, I can reply to them very nicely. If Sid Gree hasn't got any questions, I don't know. I was waiting for him to ask me a certain question. It's all right I'm not the Rentalsman, I'm not asking you to be silent. You can speak if you so desire.

MR. CHAIRMAN: Mr. Bilton.

MR. BILTON: Mr. Silverman, you've told us a very interesting story tonight. Obviously, you have not been satisfied with the Rentalsman. If you are dissatisfied with the Rentalsman's behaviour, or the way he treated you, why didn't you go to the Minister and complain?

MR. SILVERMAN: We did. Who said we didn't?

MR. BILTON: You didn't mention that.

MR. SILVERMAN: He said the Rentalsman is right. The Rentalsman said the tenant is right, and the Minister says that the Rentalsman is right.

MR. BILTON: The Minister didn't take up your cause at all.

MR. SILVERMAN: He did. He has a lot of sympathy with us. He said, "I sympathize with you know the trouble you're going through, but we are very sorry we can't help you in that respect."

MR. CHAIRMAN: Order please. I would ask the delegations not to applaud. We are under the same rules as the House here. Thank you, Mr. Silverman.

MR. SILVERMAN: You're very welcome. I hope we'll meet soon again.

MR. CHAIRMAN: Mr. Patrick.

MR. PATRICK: Mr. Silverman, I have a question in respect to investment property. At the present

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ne, investment property seems to be in a depressed situation. Is that because of the regulations that we have, or what is the problem.

MR. SILVERMAN: The problem is, Number 1, the destructive tenants, they stay for two months, and they move out in the middle of the night, and they have done damages to the extent of \$850 within two months. You can't find them. If you go in and do all these repairs that the tenant has created, you have to pay out immediate money, but under the Rent Stabilization Act, you can't increase it. No matter what type of money you spend, it may be utilities, it may be water or gas or expenditures on repairs, you cannot increase your rent until a period of twelve months and this is our main trouble.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: On the serious side, and I think it is serious when it takes, according to you, three months to get someone out, what would you like to see if you have a destructive tenant or a tenant that doesn't pay. How can you envision we can streamline it so you can get him out faster.

MR. SILVERMAN: Three days.

MR. CHAIRMAN: Order please. I would ask the delegation not to applaud. Please co-operate with the Chair. Mr. Silverman.

MR. SILVERMAN: If not sooner. Because the longer he stays, the worse it gets. The more damages he creates. He likes it. He loves it. He breaks all the windows, and the following morning, the Health Department makes you put in the windows, and three days later, he has to install the same windows he installed three days ago. Not only that, when I make a statement of three months, I have seen cases which have taken five months. Believe you me, five months of rent has been lost by some of the landlords, plus the damages. Then, I ask you a question, through the Chairman: Is that a right or right of a tenant to be able to move out in five months and not to pay the rent and yet the landlord has to return his damage deposit even if there is \$1,000 worth of damages? He has to return the damage deposit with interest to the Rentalsman; he likes to have a hold on us. He feels good when the damage deposit returns to him. Then he deals with it. Even if there is . . . Well, he says, you can't give it. Eight hundred dollars worth of damage. He says it's wear and tear; you broke the windows; it's wear and tear.

MR. WILSON: My comment then is, the Rentalsman now has a designated person — in other words, you're really not dealing with the Rentalsman now on all occasions, are you? I mean, for instance, the condition of the suite — if you want to get hold of that damage deposit, somebody has to come out to look and see if your claims are valid. Does the Rentalsman or his agent allow you anything for labour for your own work, say, you were to paint the suite yourself?

MR. SILVERMAN: Not only doesn't he allow anything for your labour if you do it yourself, in one instance the paper on the kitchen wall was ripped off in the centre of the wall. All we ask is to repaper the wall. The Rentalsman suggested we should buy a small piece of paper and put on a patch and he gave us \$5.00 for the patch. So we have the cheque; we don't know what to do with the cheque. We are holding it and we may decide to buy a frame and frame it. And he said, "with compliments of the Rentalsman." Five dollars to repaper a wall.

MR. CHAIRMAN: Any further questions?

MR. WILSON: Yes, Mr. Silverman, you had a complaint about tenants changing the locks. How do you think that should be overcome? What role should the Rentalsman play if the tenant changes the locks?

MR. SILVERMAN: The same way . . . as the landlord. When a landlord would change a lock, and God forbid that the tenant would go and make a complaint that the landlord changed a lock, he doesn't even wait to write to you. He telephones you and he says, "Now look, you know what the law is under The Landlord and Tenants Act. You have changed the lock. Immediately we have a case." Immediately he says that he has a case and he'll send it over to the Attorney-General's office and you'll be subjected to pay \$1,000 for changing that lock. This is very interesting. We have reported to the Rentalsman that the tenant has changed a lock. He didn't phone the tenant and he didn't tell them anything. He says he did. I said, "What do you think I'm here for? The tenant changed the lock and I can't even get in and God forbid if he leaves the taps of the sink open and the water will go down to the first floor, spoil the ceiling and everything else. How am I going to get in?" "That's nothing, you can break a window." He gives me the idea I can break a window but he wouldn't tell the tenant that he is intravening The Landlord and Tenants Act.

So, you see, it's always one-sided. I can't do it, you can do it. Why? If I can't change the lock, then the tenant shouldn't be able to change the lock. If he's after the landlord, then he should be after the landlord and tell him that, "You have no right to change the lock." Why? Why is the tenant always right no matter what the heck he does?

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Chairman, I was going to suggest that there is a lot here that has no relation to the bill and I don't want to cut Mr. Silverman off but the fact is that there are other people waiting to speak on other bills and I suggest that those people who wish to be entertained, that they stay after other delegations and ask questions of Mr. Silverman. But there are other people here to speak on

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other bills and I think that in view of the fact that we are not dealing with the bill itself but rather the unique relationship between Mr. Silverman and the Rentalsman, that perhaps we should hear that after the other delegations.

MR. SILVERMAN: Mr. Chairman, I would like to reply to Mr. Green. Number one, it does relate to the amendments to The Landlord and Tenant Act. We suggest to you tonight that the amendment should be put in in the Act, that the tenant and landlord should be dealt — they should have equal rights and when I'm suggesting about the lock, I'm just giving an example and it's not entertaining, it's not even funny. If I would change your lock then I would like to see what you would do to me. Well would you like to reply, Mr. Green.

MR. GREEN: I would like to suggest, Mr. Chairman, that we proceed with the other delegation and that if people wish to be entertained, that we will have it after the delegations on the other bills.

MR. SILVERMAN: After that, we'll charge money, we will sell tickets.

MR. GREEN: You may have a lot of buyers.

MR. SILVERMAN: You're not kidding.

MR. CHAIRMAN: Order please. Are there any further questions? Hearing none, thank you, Mr. Silverman.

MR. SILVERMAN: You're very welcome.

MR. CHAIRMAN: Bill No. 18, The Retail Businesses Holiday Closing Act. Mrs. Johansson representing the United Church. Mr. Sid Soronow. Mr. J.F.R. Taylor.

MR. J.F.R. TAYLOR: I'll put my jacket on, Mr. Chairman, and give your committee the respect it deserves.

MR. CHAIRMAN: You can take your jacket off if you like.

MR. TAYLOR: I'll leave it on for the moment, thanks, Mr. Chairman, unless things get a little too hot.

I am appearing, Mr. Chairman, on behalf of Codville Distributors Limited which is a wholesale food distributor and which supplies foodstuffs and other items to a very large number of retail food stores in Manitoba. I have some submissions to make to your committee and I hope to be able to persuade you first of all that Bill 18, in its present form, is not constitutional and should be scrapped. Secondly, that there's still room for improvement in some of the Sunday observance legislation that confronts us and that there are some constructive suggestions we hope to make to you to that end.

May I just take the time of your committee for a few moments to go back a little bit in time because I think we have to see Bill 18 in its present legislative context. The background: The basis of Sunday observance legislation in Canada, as most of you are well aware, is contained in the Lord's Day Act which is a Federal Statute, Chapter L-13 of the Statutes of Canada of 1970. That Statute, as we know has been upheld by the courts as being constitutional on the basis that it is in substance criminal law and it's therefore a proper field for Dominion legislation. So you have the Federal Statute that is now in force which says, with deference, what I suspect a lot of Bill 18 is trying to say right now. The Lord's Day Act of Canada already says in Section 4 that it is not lawful for any person on the Lord's Day except as provided in the Statute and except as provided in any Provincial Acts — we'll come back to that in a moment — it's not lawful for anybody except in those circumstances to sell or offer for sale or purchase any goods and so on. In other words, you can't carry on business on a Sunday under the Lord's Day Act of Canada unless somewhere in the Federal Statute there is a permission for you to do so or unless a provincial legislature opens up a door to permit it. Of course, the Manitoba Legislature has done that and we'll come to that in a moment.

Some other activities are also forbidden in Section 11 of that same statute — or at least some are forbidden — but in Section 11 there are some exceptions which fall within the general framework of what the Statute calls "work of necessity or mercy." Included in the latter group there are such things as work for the relief of sickness and suffering, including the sale of drugs and so on, as well as the delivery of milk for domestic use and the work of domestic servants and watchmen, from which phrase you will see that that Statute was put together in 1907 and not 1977.

You will notice from the language of Section 4, that's the Prohibition Section, that provincial governments across Canada are permitted, they are given the right to exempt certain activities from the Lord's Day Act, and the Province of Manitoba has done just that of course. We have the Lord's Day Manitoba Act which is called An Act to provide for certain exceptions to the Lord's Day Act of Canada. This House put that into force, I think, in its present form in about 1964, with a couple of small amendments in the next couple of years.

The present Manitoba Act, as you will be aware, permits movies in theatres and concerts and recitals and almost every kind of sport excepting for some strange reason, automobile and moto bike racing, boxing and wrestling. Why these are excepted is something of a mystery but that's irrelevant for present purposes.

So the first point, Mr. Chairman, that we would like to make about Bill 18 is this, that while the Dominion Statute specifically allows a provincial legislature to exclude a given activity from the Lord's Day Act — in other words, it allows the province to permit certain things to be done — what I

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does not do is to permit the provinces to enlarge upon the prohibitions that are contained in that act, since this would amount to an exercise by the provinces of criminal jurisdiction and would be constitutionally an invalid intrusion into the powers of the Federal Government.

So I'm suggesting to you, Mr. Chairman, that the very strong probability, therefore, is that Bill 18 is beyond the powers of the Province of Manitoba. It would amount to invalid legislation and it would serve only to make the Manitoba Legislative Assembly appear ridiculous. More important, it would further weaken the already eroded respect of the average citizen for the laws which govern his life.

If members of this committee would like some judicial precedent for the proposition that Bill 18 is almost undoubtedly *ultra vires* of this Legislature, there is the case of the Crown against Walden, which is a 1914 case. I can give anybody the citation of it if you want it. It's a decision of the British Columbia Court of Appeal and it involved a statute not dissimilar in spirit from the one that you are dealing with today in Bill 18; and there a baker was prosecuted for baking and selling at the retail level two loaves of bread. The case went to the Court of Appeal in B.C. and they tossed out the prosecution — there's quite a lengthy and very learned series of judgments of that court, all for two loaves of bread — but they concluded that the Provincial Statute was invalid.

So we are suggesting to you that the Federal Statute that is now in force contains all the prohibition that is needed. It's already a criminal offence to open any store for business on a Sunday in Manitoba, except to the extent that the Manitoba Legislature says you may stay open. So you don't need any more statutes to confuse the issue and if I may be forgiven an aside, Mr. Chairman, I deem it to be relevant — one of the factors which, in our respectful submission, tends to bring legislative bodies into low esteem, is the passage of such a welter of new legislation every year that the public simply gives up trying to read it or understand it. The legal profession gives up trying to read it or understand it, if they ever started to try, and the Members of the Legislative Assembly themselves very often give up trying to read and understand it.

We earnestly suggest to the members of your committee that you would be doing your electorate and coincidentally yourselves a great service if you would resist most forcefully every suggestion by anyone who feels that it would be nice to pass a law. It's imperative before any statute goes through your House, which is also our House, that every member should ask himself a very simple question, "Is this bill absolutely essential for the good order and government of Manitoba?" If you can't give that question an unhesitating "yes," then the bill should be shelved or better still, tossed out.

In the present instance, Mr. Chairman, there is already legislation on the books to achieve the very objective of Bill 18. The statutory duplication is only likely to prove unconstitutional and there's a much greater offence, it's going to prove to be an undoubted waste of time.

There's another very important section in the Federal Lord's Day Act dealing with the enforcement of the existing legislation and that's Section 16 which says in effect that the Crown cannot prosecute under that Act without the Attorney-General's consent. That effectively leaves in the hands of the Cabinet of the day the ability to formulate policy in light of the changing needs of the community. Maybe that's all that you need; I suggest that it isn't but at the moment you have all the legislation in place that you could possibly want without any more.

To a sociologist or a civil servant or indeed to a politician, provided it's his party that's in power, that kind of a system has much to commend it because it provides flexibility but it leaves the final decision in each case in the hands of the governing party. That's a concept of what we might call "selective enforcement" which is a philosophical anathema to most lawyers and I think you would agree, rightly so.

The earmarks of a good statute, Mr. Chairman, are these, if we may suggest them: Firstly, it must be necessary; it must be necessary. Secondly, it must be fair and it must be non-discriminatory. I ask you to sort of put these criteria against the side of Bill 18 and see if Bill 18 measures up in its present form. Is it necessary; is it fair and non-discriminatory? Thirdly, it must be certain, that is to say, every citizen must be able to know exactly where he stands and under what circumstances a given course of action will be permissible or forbidden.

Now, there's no question, no question at all that the present legislation does not measure up to those criteria. In particular — this is the statute that is now in force, the Federal Statute — in particular it does not meet the last one. It doesn't meet the test of certainty because nobody knows today whether, if he opens a store next Sunday, he's going to be prosecuted or going to be ignored. It will depend, at least in theory, upon the temper of the Attorney-General of the day.

Having said all that, and while expressing some unhappiness, Mr. Chairman, with the legislation that is now on the books, the fact is that until very recently it has worked remarkably well in practice, and it may be — I don't recommend this to you — but it may be that, provided the Attorney-General is prepared to make known Cabinet philosophy, if there is one on this subject, and makes known any changes in that philosophy well in advance, then no new legislation is needed on that account because you've got what you need. I don't suggest that that's the ideal solution by a long shot, but it's certainly one. It's certainly preferable to passing wasteful legislation which serves no purpose at all.

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As your committee will be aware, Mr. Chairman, from its own neighbourhoods, up until ver recently, up until today in fact and certainly until the latter part of 1976, there were many food store open throughout Manitoba of all shapes and sizes and they opened for business on Sundays. Man of them felt they had to do so in order to stay alive. And it was only in the tail end of last year that on or two of the larger chain stores decided to open, that the Retail Clerks Union, with some representations from the churches, came to the Minister and they reached an agreement, as understand it, with the Minister, that they would, the larger stores would close on Sundays for th time being to let the government decide what kind of new legislation it wanted to put together. I hav to say, Mr. Chairman, that I'm disappointed in what has emerged. There's the old Latin tag about th mountain being in labour and the ridiculous mouse being born, and I'm afraid that's what we have i Bill 18. Mr. Chairman, I hope to persuade the Minister of Labour that I'm not taking personal potshot at him, I just don't appreciate this current bill.

MR. PAULLEY: Many do that, sir.

MR. TAYLOR: In passing, if I may just comment' Mr. Chairman, while Bill 18 makes no mention c food stores specifically, it would therefore allow hardware stores and barber shops and clothin stores and everybody else to stay alive if they want to, and open on Sundays, provided they don employ more than three people at a time.

A MEMBER: It's not so.

MR. TAYLOR: It seems to do so. The simple fact is that none of these other kinds of business ha even indicated a desire or an intent to open on Sundays and the principle *raison d'être* of Bill 18, surel is to regulate retail food openings on that day. It appears to be, because we don't know what othe kinds of retail business are the subject of this.

But let me come to some recommendations. You've got a long night ahead of you and many mor people, almost as voluble as I to listen to. The law needs some clarification, Mr. Chairman, obviousl Sunday observance laws, or at least their enforcement, are an unhappy example of legislation see through a glass darkly. I should note that Bill 18, even in its present form, even if you should decide i your wisdom to keep it and not change it all, surely has to have some changes made to it, som essential changes.

For example, Section 4 Subsection (1) is surely intended to refer, in its opening words, to Section 2 and 3, not just to Section 3. Section 4(1) should therefore refer to 2 and 3. Section 5 in its first lin should surely refer to Sections 2, 3 and 4. Section 5(b) even now, makes it very far from clear whethe the draftsman means to exet stores that have no more than three employees at any given time, c three employees in the aggregate in the course of a year.

I think you're going to have a little fun in the courts with Section 5 as it now exists. Section 6 call for an already overworked Cabinet, or at least one of its members, to concern themselves wit approving and signing special permits so that stores throughout Manitoba in areas of emergency c concern can stay open. I can foresee many applications for permits by grocery stores and generl stores of all kinds, in all the resort areas of the province, and if the Minister wants to sift through a those applications in any one year, I say the best of British luck to him. I don't imagine he woul appreciate the task, Mr. Chairman.

A MEER: He could use a rubber stamp.

MR. TAYLOR: Rubber stamps? I didn't think that this Cabinet knew the meaning of the phrase, M Doern.

Section 10 of the present Bill 18, Mr. Chairman, is the worst monstrosity of all. It contains th inevitable power to regulate — without which no statute seems to be complete — the bureaucrat delight, and Section 10 should be wiped out in its entirety, even if the rest of your bill stays intact, M Chairman, an unhappy fate for the bill to remain alive. Because Section 10 is much worse than th rest of the statute, and inherently most dangerous. It's an apparent intent to allow the Cabinet t make regulations having nothing to do with the rest of the body of that statute whatsoever. Section 1 is horrendous, Mr. Chairman, and should be jettisoned immediately.

These are some of the more obvious and superficial flaws, Mr. Chairman, and perhaps the resu of an overworked draftsman. As we have said, even the present statutes need improvement, eithe intrinsically or in their enforcement. There are four ways, Mr. Chairman, in which the governmen the House can try to achieve these improvements in the present law.

Firstly, you can do it by working, or trying to work in concert with the other provinces. It's possib to do this once in a while. Persuade the parliament of Canada to update the federal statute in a varie of ways, not the least of which by increasing the penalties. I submit that the penalties called for in B 18 are a little out of sight, particularly the minimum one. But still, I would have to agree that th penalties should be increased. The maximum fines today under the Federal Act, to a large national c international chain, are akin to the ten pound sterling fines that used to be levied every Mond morning against London's West End harlotry, they were kind of a hooker's licence fee. That's one wa that you can try to improve the present legislation, Mr. Chairman, trying to get the parliament c Canada to do something about its statute.

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Secondly, and I suggest this is the least line that you should take — the worst one — you can go ahead with something like Bill 18. You can pass another provincial statute, this one of doubtful alidity, to render unlawful that which is already unlawful. If you like to waste your own time by doing that, well I bless you, but I think it will be frustrating in the extreme.

The third thing that you can do, Mr. Chairman, is to amend the present Lord's Day Manitoba Act — and this might be a sensible approach to it — in order to make lawful those activities which by Bill 18, is now sought to make lawful. I don't know why you need Bill 18. Why not just amend the present Lord's Day Act of Manitoba, and make lawful that which you want to make lawful.

The fourth thing that you can do, and I again don't recommend this, is to continue the practice of what I have called selective enforcement which has prevailed hitherto, making no changes in the statute law, but relying on the federal Lord's Day Act and letting the Attorney-General decide who is going to be persecuted and who isn't.

Now, it will be for this committee, in its recommendations to the House to formulate the best venues of approach. We can only offer some alternatives to you, Mr. Chairman. Please don't misunderstand our submission. We're telling you that we think Bill 18 is, to put it gently, not very good, but we don't advocate leaving matters unchanged. We think that something should be done. There are some remedial steps that are needed. Up to the present time, successive governments of Manitoba have maintained the position that there is a recognizable need for retail food stores to be open on Sundays. There's been some argument with the unions, with the churches, with the retailers themselves about the size of the operation, and I must confess that philosophically I find that hard to understand, why a 3,000 foot store should be closed and a 2,400 foot store should be open. The size of the store, the size of the operation, really shouldn't make a blind bit of difference. There is a recognizable need, and I don't think anybody has suggested that that is not so.

I have no doubt that in the pattern I see emerging in Bill 18, the government is motivated by a desire to do two things, to serve the wishes or the needs of the public at large, and at the same time, to protect the small, independent merchant from what it thinks are the ravages of the large chain store operators. Mr. Chairman, in theory that may sound like quite a commendable approach, but I'm going to suggest to you that it doesn't work. What happens is that a discrimination results. Large corporations with a great number of small, so-called jug milk stores, have been effectively immune from prosecution, while independent operators of larger stores, have either been prosecuted or threatened with it. So you see, what happens when you bring in a bill like this, you wind up with the very sort of discrimination that you didn't want. The small independent operator gets hanged by the heels, and the large national or multi-national chain stays in business. There are absurdities which flow from this, with which I won't bore you because time is marching, but we can give you a number of examples of what happens when you introduce legislation of this kind, to show you how discriminatory it becomes.

The point is that there is an inherent danger in this discriminatory enforcement of the law as it now exists, and as it would be carried forward into Bill 18, because that's what we're doing. We're saying you can stay open if you don't have more than three people in your employ. That's effectively giving statutory form to what has become the practice of the Attorney-General's Department to date, and I will say to you that this is discriminatory. What happens, then, is that one class of store is given a virtual monopoly on Sunday selling without fear of competition from any other retailers in the same line of business, and the major victim becomes the consumer, who becomes, in effect, a captive hopper and who's forced to pay higher prices for most of the products that he can get on a Sunday.

In any recommendations — and you'll be glad to know, Mr. Chairman, I'm near the end of my little oration — there are three alternatives open to the government in any recommendations that emerge from your committee, it seems to me, and I submit these for you.

Firstly, you can recommend a totally closed Sunday, if you wish, in which all retailing of every kind, would cease. This would be very unpopular with a large and growing larger segment of the population, which finds it very convenient for a lot of reasons to shop on Sundays. While it wouldn't be an ideal solution, it would at least represent a return to impartiality, which we do not have today and which is not embodied in Bill 18. If you want to close down everything in sight, fine, that's your privilege. It's at least fair and it passes the test.

The second thing that you can do — I don't recommend it to you, but you can do — is to get into a kind of selective store opening, with some form of licensing system based on criteria which do not discriminate against any one food retailer or any class of retailer. For example, the automobile service stations in some areas, take Greater Toronto — if you must, please take it — they operate to a plan which ensures that in each neighbourhood on every Sunday, there is at least one service station functioning. The same kind of licensing, I suppose, could be made applicable to retail food stores. I don't recommend it, but it's possible.

The third alternative, Mr. Chairman, would stem from a recognition that while most forms of retail trade are not essential on Sundays, the ability to buy foodstuffs on a Sunday surely is. If Bill 18 contemplates, as it does, the selling of booze, cigarettes, or fruit, then surely the selling of most other

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basic kinds of foodstuffs are as essential. Now, if that's the case, then, Mr. Chairman, the third alternative seems to commend itself mostly, and that is to allow all food retailers to remain open on Sundays, if their own economic considerations and consumer demand so dictate. For the life of me, I cannot rationalize for myself the purpose of saying, "You're in the food store business, but you shall close; you're a food retailer, but you may remain open," simply because one is a few square feet larger than the other or has to employ one more person than the other. The rationale escapes me.

And this alternative, Mr. Chairman, that is of allowing all food retailers to stay open on a Sunday, it may not be too palatable to traditionalists, it may not be palatable to some food chains because most of them have a collective agreement which calls for at least double time for working on Sundays. That might indeed serve to keep many of them closed. That's their problem. They would at least have the privilege of opening if they wanted, like everybody else in the same class of business. So that alternative, this opening of all food stores, may not be too palatable to many, but I suggest to you, Mr. Chairman, that in the long run it may prove to be inescapable, as consumer demand, indeed the general public, increases the demand for the right to shop at their own convenience. That demand, I think, is going to continue to grow, certainly for essentials such as foods.

We don't think that a change of that kind is going to result in sort of wide open Sunday legislation. We don't think that every food store is going to stay open. The economics of it just won't permit it. We think that a lot of food stores would still elect to remain open on Sundays, but you would have a law which was non-discriminatory, which met the public need, and which met the other criteria that I put to you a little earlier.

Strangely enough, I may say, Mr. Chairman, that while you may hear differently from our friends in the union ranks this evening, we have not been able to discover any employee resistance in our retail customers. We asked them, and we asked their clerks, "What do you think about it? Are you unhappy about the concept of Sunday work scheduling?" And almost without exception, they say "No, as long as it is not lawful for an employer to make us work on a Sunday." And that's the other suggestion that I want to put to you, Mr. Chairman, and that is another sort of a double-barrelled suggestion, that in opening food stores entirely on Sundays, you should have two limitations. First of all — and you can do this by amending the Lord's Day Act of Manitoba — it should not be lawful for any employer, as a condition of employment, to require his employees to work on a Sunday, and secondly, that no store, food or otherwise, should be open before noon on a Sunday. We have great concern in the communities of Manitoba about church going, and the fact that by opening up retail selling we should erode church congregations. Fine, that's something with which most of us can sympathize. We don't need to shop for food before noon, surely, so that if you have those two riders, I don't know what else you need to do.

In conclusion, Mr. Chairman, we suggest to you that no person in Manitoba in a non-essential business should be required to work on a Sunday as a condition of employment. The Honourable the Minister of Labour could perhaps tack that on as a rider to the bill that he's currently stickhandling through the House dealing with conditions of employment. Secondly, that the retail food trade should be allowed, to the extent that the trade itself wishes and that the public seems to require it in any given location, to stay open for business on a Sunday, without regard to size, because size doesn't seem to be a reasonable criterion. There should be no implied or expressed discrimination between different kinds of food stores, and stores should be required to remain closed until noon.

You will be pleased to know, Mr. Chairman, that I am prepared to shut up, unless some of you members have questions they'd like to level at me.

MR. CHAIRMAN: Yes, I have two members already. Three now. Mr. Green.

MR. GREEN: Mr. Taylor, I don't want to deal with the substance of your remarks, but just some of the details. First of all, I would agree that in looking in Section 10, it appears that it may have been very broadly drawn, probably because draftsmen protection that it says, "not inconsistent" — if you'll read the last line before (a) and (b) "the Lieutenant-Governor-in-Council will make regulations no inconsistent with any other provision of this Act."

MR. TAYLOR: Read on, Mr. Green, then read on.

MR. GEN: Yes. But these provisions must not be inconsistent with any other provision of the Act and the Act . . .

MR. TAYLOR: It's not inconsistent with the Act to say that Reeh Taylor may not stand on his head at Portage and Main, but it has nothing to do with the rest of the substance of that . . .

MR. GREEN: The Act says that you shall not open on either a Saturday or a Sunday, which I noticed that you studiously avoided talking about, but the fact is that if the Act says Saturday and Sunday, would it not be inconsistent for the Lieutenant-Governor to make a regulation talking about Monday?

MR. TAYLOR: No, it wouldn't be inconsistent with the Act, it would be just unrelated to the Act.

MR. GREEN: Well, then I go back to the other part of Section 10 which says "the Lieutenant-Governor may make such regulations and orders as are ancillary thereto." So it might be the word

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ancillary to" and "inconsistent with" would preclude, I would think, the Lieutenant-Governor from talking about Monday.

MR. TAYLOR: The word, I think, "ancillary" qualifies orders, doesn't it, "Orders ancillary to the regulations."?

MR. GREEN: Well, I think that we are sparring for nothing. I believe that the regulation section needn't be as broad as it is but I do indicate that there are some protections in the regulation section.

MR. TAYLOR: Mr. Green, perhaps, let me, with the Chairman's permission — like you, I don't want to belabour this point too much — but first of all, I, like I'm sure your good self and every other lawyer, shiver when I see a governmental power to make yet more regulations. It's a very dangerous method of governing a country. Now you're going to hear from the Bar Association, I think' on this question of section 10 so maybe I should stay away from it.

MR. GREEN: I started off by saying that I think the regulation section is a little broader than necessary but I did want to try to get you to acknowledge — I can't force you — that it's not quite as embracing as you said it was.

MR. TAYLOR: I asked myself the question, Mr. Chairman, and through you to Mr. Green, whether section 10 is needed. If it's the intent of the government . . .

MR. GREEN: I don't even disagree with that. I am merely indicating that it doesn't give unlimited powers; that it probably would not permit the Lieutenant-Governor to talk about Monday or Tuesday or Wednesday. However, I would concede that this section needn't sit as stood and therefore I don't want to argue about it. Now you've also indicated that you believe that this act would make it possible to open up a hardware store or any other stores on Sundays. Now, isn't that prohibited by the Lord's Day Act?

MR. TAYLOR: No, Sir, because the . . . the Federal Lord's Day Act?

MR. GREEN: Yes.

MR. TAYLOR: The Federal Lord's Day Act says that you can't open a hardware store unless the Province of Manitoba allows you to. I'm saying that under Section 5, I think it is, 5(d), am I right, of Bill 3, that doesn't refer to food stores, just says you can open any store in Manitoba on a Sunday as long as you don't have more than three employees.

MR. GREEN: But if we assume that this is not an amendment or an exception to the Lord's Day Act, which I do assume by the way, then the Lord's Day Act would prohibit the opening of hardware stores and other stores and that the reason that grocery stores have always been open on Sundays is that they have been permitted by the Lord's Day Act.

MR. TAYLOR: With deference, again Mr. Chairman, through you to Mr. Green, what concerns me this: I don't think that it matters whether you call Bill 18 another Act to provide certain exceptions to the Federal Lord's Day Act, the nomenclature of the bill is unimportant, Bill 18 by any other name is still a bit of a skunk in the nostrils of some of us, Mr. Chairman. The problem being that the Manitoba Legislature is permitted by the Federal Statute to pass legislation — doesn't matter what it's called, is any statute which purports to make lawful what would otherwise be forbidden by the Federal Statute. And that's what Bill 18 is doing.

MR. GREEN: Do you believe that the Government of Manitoba would be prohibited from making it unlawful to open up a store on a Thursday?

MR. TAYLOR: No.

MR. GREEN: Well then if they can say it's unlawful to open up a store on a Thursday, why can they not say it's unlawful to open up a store on a Monday or a Sunday, as long as they are not dealing with the provisions of the Lord's Day, which this act does not do.

MR. TAYLOR: But it does, Mr. Chairman.

MR. GREEN: This Act deals with Saturday and Sunday, one of which is my Lord's Day, the other one of which is your Lord's Day, but the fact is that this act does not deal with the Lord's Day, it deals with Saturdays and Sundays.

MR. TAYLOR: That's correct, but once again it's a matter of nomenclature, Mr. Green.

MR. GREEN: I repeat, do you agree that the Province of Manitoba could legislate completely *intra vires* to close on a Thursday?

MR. TAYLOR: Yes, I do indeed.

MR. GREEN: Then you say that it would be *intra vires* for us to legislate to close on a Thursday but we cannot legislate to close on a Sunday?

MR. TAYLOR: That's correct because this is a field in which the Parliament of Canada has already pre-empted the subject and once that's happened we're out as the Court of Appeal in British Columbia has told us.

MR. GREEN: Is it possible for the Province of Manitoba to legislate that people shall only be permitted to work six days a week?

MR. TAYLOR: Sure.

MR. GREEN: And that would be labour legislation?

MR. TAYLOR: Sure. That's perfectly proper.

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MR. GREEN: Would it be possible for them to specify that they can only work on six days of the week and give an alternative for various days? —(Interjection)— Pardon me?

MR. TAYLOR: And one of them shall not be Sunday?

MR. GREEN: And one of them shall not be Sunday, yes. Doesn't that indicate quite clearly that we are not in any way attempting to legislate religiously, which you have tried to advise us to do by talking about Sunday morning, but we are attempting to legislate the number of days in which people are going to find the possibility of working because we don't want them to agree to work seven days even if they want to, even if you pay them triple time?

MR. TAYLOR: Mr. Chairman, I'm in a little bit of a dilemma. I would be delighted to debate at great length with Mr. Green or any of the committee the legalities of the thing. Perhaps what we should do there is to recommend that it be referred back to Legislative Counsel to deal with the constitutionality of it. I say to you simply that in our submission — I wish it were otherwise, you know, it would be nice if we had a free hand . . .

MR. GREEN: But you really don't know, do you?

MR. TAYLOR: Does anybody know anything until the court has spoken. All I can give you, Mr. Green, is the best opinion that I can come up with . . .

MR. GREEN: And that opinion . . . for instance, the last case that Manitoba had on the Lord's Day Act, which I happen to be intimately acquainted with, the magistrate found that it was a violation; the county court judge found that it was a violation; four judges of the Court of Appeal found that it was a violation, there wasn't a single dissenting judge in the Province of Manitoba, and the Supreme Court of Canada found that it wasn't a violation. So you can't very well with any degree of certainty stand here and tell us that this act is *ultra vires*. If six judges in the Province of Manitoba could be unanimously wrong, then Ray Taylor or even Sid Green could be wrong.

MR. TAYLOR: I don't know whether either you or I should be prepared to admit that, but of course . . .

MR. GREEN: You have stayed away completely, Mr. Taylor, from the fact that this Act does not deal with Sundays. It deals with Saturdays and Sundays.

MR. TAYLOR: It deals with many other days as well as just Sundays. I'm just telling you . . .

MR. GREEN: But the days on which it talks about retail establishments closing are Saturdays and Sundays. Does it make any difference to you that this is an attempt at legislating not the observance of any religious observance, which is what the Lord's Day Act deals with, but legislating the opening of places where people would be available to be employed and working and specifically the discrimination of over three employees indicates that it's a statute intending to deal with labour relations and not religious observance.

MR. TAYLOR: These are submissions, Mr. Green, say, that we might make to the Supreme Court if we had to get there, but surely the point, Mr. Chairman, that I'm trying to make is that while we believe that Bill 18 is unconstitutional, at least in part, we're trying to point to you a better way to do it. We think you can accomplish much the same ends in a non-discriminatory way by simply adding to or amending the present legislation of the province — you don't need a new Bill 18 — and you can do so without discriminating between different kinds of stores in the same business just because they happen to be of different sizes.

MR. GREEN: If we can assume for the moment — which I know you don't want to assume but I'll try to get you there anyway — that this does not attempt to create exceptions to the Lord's Day Act, then you would recognize that hardware stores and other works which cannot be described as works of necessity or use of similar words, are prohibited from opening on Sunday by virtue of Canadian legislation, found by the courts to be within its competence and criminal, under the Lord's Day Act.

MR. TAYLOR: No, I would say even in that event that Bill 18 opens up that gate.

MR. GREEN: I have asked you to try and make an assumption which you won't assume.

MR. TAYLOR: I make that assumption.

MR. GREEN: If this bill does not make exceptions to the Lord's Day Act, which it doesn't purport to do, then those things are prohibited under the Lord's Day Act.

MR. TAYLOR: If I am to assume that Bill 18 makes no exceptions at all to the Lord's Day Act, then yes, you are quite right.

MR. GREEN: So then hardware stores and the other things that you are worried about, are they prohibited under the Lord's Day Act?

MR. TAYLOR: So are food stores.

MR. GREEN: Food stores are not prohibited from opening under the Lord's Day Act.

MR. TAYLOR: Yes, Sir. The only kind of food delivery that is not prohibited in it is the delivery of milk to the home.

MR. GREEN: Mr. Taylor, the fact is that for many many years in the Province of Manitoba those stores that were food stores and had other commodities for sale used to put up wire partitions so that they could stay open on Sunday. So there was a certain recognition that these were works of necessity for the supply of food under the Lord's Day Act.

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MR. TAYLOR: Maybe, Mr. Green, you and I are taking up far too much of the Committee's time. I'll happily debate it with you . . . I hope the committee is getting the message, Mr. Chairman.

MR. CHAIRMAN: Order please. Mr. Doern.

MR. DOERN: Mr. Chairman, I listened with some interest to Mr. Taylor on this bill and it sort of reminds me of the story of the blind man and the elephant. I feel like I'm clutching one of the legs and I'm swinging from the tail because we don't seem to be talking about the same bill.

I understand your version of history to be as follows: that there were a few large stores open and then the government brought in a bill. It was as simple as that. There was no problem before and there is just the actions of a couple of stores which led to the bill. I would ask you this, do you not see or admit that there is a problem with retail outlets being open seven days a week or 24 hours a day, that this has an adverse effect on the employees in the business and that this would probably result in higher prices? Do you not see any problem with seven day a week operations of retail stores?

MR. TAYLOR: I would see a potential problem if all retail food stores stayed open seven days a week, Mr. Chairman. I think that the likely result, if all food stores were in fact to stay open seven days a week might well be to push up the retail food prices, yes, I would. I'm not so sure that that is not preferable to discriminatory legislation which permits some merchants to stay in business and others not to. I have suggested to you, though heaven knows who can prove it — we can't prove it until we see it — but I've suggested to you that in our view it is highly unlikely that all retail food stores would stay in business. For example, Mr. Christophe's union is one of the stronger ones in this province and I would be astonished if at the next round of collective bargaining, the Retail Clerk's Union did not negotiate its way out of any Sunday opening or any obligation to work on Sundays. On the other hand, I think a lot of its members would welcome that opportunity, you know. So I do not know but I suspect that certainly the larger stores which have a higher payroll, would shy right away from opening on Sundays — as they have hitherto. They don't want to because it's too damned expensive and yet they still have to keep their prices down to compete. If everybody is opening then I expect prices would go up but I don't think this would happen.

MR. DOERN: Just on a second point: My experience from talking to people is that they are opposed as employees to working in effect on the weekends, but I understand from your experience, you encountered no problems with people . . .

MR. TAYLOR: No, but please do understand the point. I don't suggest for a minute that any employer in a non-essential industry, and for this purpose I even include food stores and foodstuffs as non-essential, I don't suggest that any employer should have the right to require an employee to work on a Sunday. I think that's vital and I think that in Mr. Russ Paulley's labour legislation that's easily cured. So that any objection that employees as a body, through their unions or as individuals might have to Sunday opening could quickly be cured. It should be unlawful for any employer to require somebody to work on a Sunday as a condition of employment.

MR. DOERN: A final point: You apparently have some problem understanding or appreciating a limitation in terms of size. You seem to feel this was a difficult concept but for instance, in the case of highway vehicles and so on, their there are weight restrictions, height restrictions, width restrictions, length restrictions, etc., and to me this is simply, I suppose, an arbitrary figure but one that I suppose differentiates between a small store and a larger store.

MR. TAYLOR: But, you know, Mr. Chairman, with deference to Mr. Doern, I don't think that analogy really holds together, to try to suggest that a highway weight restriction which is intended to promote safety and to keep intact the road bed, is analogous to forcing a retail store to close or stay open. I'm sorry, Mr. Doern has lost me . . .

MR. DOERN: Well, then, how would you differentiate between a small store and a large store?

MR. TAYLOR: I wouldn't.

MR. DOERN: You just regard them all as stores, whether it's a one-man operating or 3,000 employees they are all the same?

MR. TAYLOR: Surely. I don't think it's proper to differentiate between them. Why should one? You see, Mr. Doern, if I may Mr. Chairman, many people are ready to decry the large chains in anything whether it's retail food or whatever. But they forget that when they are talking about larger stores, they are also talking about the reasonably large-sized privately owned, independently-operated store owned by the chap who has worked his way up from a very small operation, expanded by the sweat of his own brow. He's the chap who would be kept out by this same legislation and to me it's totally improper. I would sooner see open free competition, which will keep prices down and will keep people employed, rather than discriminating against the larger fellow. There's nothing evil about size in here — in spite of Russ's elephant. Would you like to get the next man up at bat, Mr. Chairman.

MR. CHAIRMAN: I have, Mr. Sherman.

MR. SHERMAN: Thank you, Chairman. Mr. Taylor, on the question of constitutionality or non-constitutionality and your view in that area, are you familiar with the Ontario legislation which is

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somewhat similar — and I emphasize only somewhat similar because there are major differences but somewhat similar to this legislation and are you knowledgeable of any conflict between this legislation in Ontario and the federal and provincial Lord's Day legislation in Ontario?

MR. TAYLOR: I am somewhat familiar with the Ontario statute, Mr. Chairman. I must confess I have not examined it from a viewpoint of constitutionality. It contains, incidentally, as I recall it similar kind of discrimination. It goes a step further as I recall it, says that food stores can stay open on Sundays if they have no more than three employees — three, four or five — and no more than 2,400 square feet of store area, I think. I am not aware that that has been tested in the courts. I would like to see it tested because, as I see it, it probably wouldn't hold up either. Maybe it has been tested, I do not know.

MR. PAULLEY: It's not contained in this Act.

MR. SHERM: But as far as you know in your experience, Mr. Taylor, that has not been tested and found to be in conflict with the federal Lord's Day statute?

MR. TAYLOR: Not so far as I know, Mr. Chairman, no. Mr. Taylor for an opinion.

MR. TAYLOR: It will cost you, Mr. Sherman.

MR. SHERMAN: It's the only way I can get a free one out of him, I'm sure of that. It's been suggested in some quarters that the present legislation in Manitoba with respect to Sunday closing and Sunday operations really recognizes only one religion and that in the context of the religious mosaic of the province that this kind of legislation would be more understanding of the mix. Would you envision the possibility of being able to put into legislation which would take the form of an amendment to the provincial Lord's Day Act a provision that would permit people to opt out on a Sunday basis, or a Saturday basis, based on religious conviction?

MR. TAYLOR: Yes, I would; I see no reason why you can't. The federal statute as I apprehend it is really totally permissive. It permits the province to do almost anything it wants as long as it does so properly and I'm suggesting that we're not going about it properly in Bill 18. I think that by amending the Lord's Day (Manitoba) Act, which is a strange name for it, by amending that properly we could do exactly what Mr. Sherman has in mind, Mr. Chairman.

MR. SHERMAN: A final question, Mr. Chairman, related to Section 10 on regulations and that position that Mr. Taylor put to the Committee and the subsequent discussion with Mr. Green. I must confess that my reaction to Section 10 parallels that of Mr. Taylor's, but I had it pointed out to me that there is a saving aspect because of the powers residual in municipalities to set their own by-law relative to the operations of retail businesses, retail enterprises. I don't believe that to be the case. I don't see any saving feature of that kind either in the existing legislation or in this legislation and I just wondered if Mr. Taylor would elaborate, Mr. Chairman, on the strenuous position he took with respect to the regulation section and how damaging it could be.

MR. TAYLOR: If I may then, Mr. Chairman. I'm concerned about Section 10 in two ways. First of all, I suggest to you that it isn't necessary. Apparently some kind of regulation is contemplated, heaven knows what, but if the government of the day at any time wants to regulate the number of hours in a week or in a day, that anyone may work then in my respectful submission, we should do that by statute, not by Order-in-Council. We should do it by statute where it gets properly debated and where people have an opportunity to make submissions and the matter becomes public knowledge. Orders-in-Council seldom, if ever, become public knowledge until somebody gets into trouble and has to go and find out what was said two years ago by a Cabinet. So the whole concept of government by Order-in-Council is one that I find abhorrent unless absolutely necessary, unless it's something in which the government of the day needs to do a little nut and bolt tightening and an adjustment from time to time. I don't suggest that that is needed here at all. Now that's on the broad plane. It seems to me that Section 10 is not necessary and just is one more introduction of what I call "the bureaucrat's delight," and a nightmare to the rest of us.

Secondly, and focusing more upon the exact wording of Section 10, Mr. Chairman, with respect and deference to Mr. Green, I still believe that that statute as presently drawn enables the Cabinet to legislate by Order-in-Council on matters that were never in the contemplation of Bill 18, were never in the contemplation of the Legislature, if that ever goes through.

You can do exactly as you like in the realm of hours of work, which isn't covered by Bill 18; it has nothing to do with it. So that the two are just poles apart. They don't have anything to do with each other. They're not even kissing cousins. Those are my two strenuous objections to Section 10, Mr. Chairman.

MR. SHERMAN: Mr. Chairman, I understand and I appreciate Mr. Taylor's elaboration of his position. But just briefly, what I want to get from him as a lawyer is his assurance that he doesn't see any powers now residual in municipalities, such as the City of Winnipeg or any other, that would in effect circumscribe or proscribe this particular section.

MR. TAYLOR: Now that's rather a dangerous statement for me to make, to say that there are none because that implies I know all the law and I'm a long way from knowing that; I know of none, Mr. Chairman, I know of none and that's all I can tell you.

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MR. SHERMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Taylor, I have listened with a great deal of interest to your presentation right, as indeed you would expect me to, as the sponsor of this terrible piece of legislation.

I note that you have concentrated your remarks on the Sunday aspect and possibly the religious effect of the bill and I think, sir, that you would agree with me that having studied the bill as you have, you will find no reference to religion in the bill. So we're dealing with a day and not a religious concept unless through misinterpretation, in my opinion.

You sort of attempt to bring in, in your presentation, the religious factor which is a part of a similar piece of legislation in the Province of Ontario. — (Interjection)— If you don't mind I'm mentioning it as well as the sponsor of the bill and I'm sure, my honourable friend, that you would not deny me the privilege of saying what I want to say, too.

But apart from that, Mr. Taylor, there is another purpose contained in Bill 18 that you have not made any reference to. And do I take it, by the absence of any reference, that we have your support, that is in the definition of the word "holiday," wherein stores would be required to close on New Year's Day, Good Friday, etc., etc.

MR. TAYLOR: I think we have a perfect right to do that, Mr. Chairman.

MR. PAULLEY: Mr. Chairman, to Mr. Taylor, I give you all of the rights and privileges that I give to other individual in the Province of Manitoba, providing they are not behind bars.

MR. TAYLOR: Mr. Chairman, I think the Honourable the Minister misunderstands my comment. When I use the word "we" I mean the Province of Manitoba, and I'm agreeing. The Minister may find it hard to understand but I'm actually agreeing with him and I'm saying surely the province has the right to forbid people to open stores on certain holidays, certain selected holidays, surely. I don't say that for a second. I'm just simply saying that to the extent that this bill, apart from its other faults, reports to do something with respect to the Lord's Day, as it is defined in both the provincial and the federal statutes — it doesn't call it religious, it doesn't call it the Lord's Day but once again the nomenclature isn't too important — I suggest that the bill is probably *ultra vires* on that ground.

MR. PAULLEY: Again, Mr. Chairman, the word "Sunday" is used in the context of a holiday, and there are other holidays. One of the purposes of this bill, to be perfectly frank, is to legislate a gentleman's agreement that was entered into by a number of stores. My point, Mr. Chairman, is that the absence of comment in respect of the other holidays named, do I have your support . . .

MR. TAYLOR: You have my support.

MR. PAULLEY: . . . on Bill 18.

MR. TAYLOR: You have my support, Mr. Paulley, yes indeed.

MR. PAULLEY: And the support of the organization that you represent?

MR. TAYLOR: I think I would say that. Surely. We stay closed on those other days at the best of us.

MR. PAULLEY: But never on Sunday?

MR. TAYLOR: I just suggest to you, you can do this better than you're doing with Bill 18.

MR. PAULLEY: But never on Sunday?

MR. TAYLOR: Never on Sunday, no.

MR. PAULLEY: Thanks, Mr. Chairman.

MR. CHAIRMAN: You have no further questions? Thank you, Mr. Taylor. Mr. Allan Freed.

PASTOR ALLAN FREED: Mr. Chairman and honourable gentlemen, in our respectful submission to the Standing Committee on Law Amendments this 18th day of May, 1977, we, as representing the Seventh Day Adventist churches of Manitoba, wish to address ourselves to the inclusion of Sunday and Saturday in Bill 18, which deals with The Retail Business Holiday Closing Act. We are cognizant at the inclusion of Sunday and Saturday in Bill 18 is not set forth as a religious issue. But it is a deep concern of our members throughout the province that in a pluralistic, multicultural society such as we have in Manitoba, freedom to choose a day of worship, or a pause day, or a rest day, is not set forth as an inalienable right but is set forth only by toleration and exemption.

Recognizing that democracy is a luxury enjoyed only by the orderly, it is a deplorable commentary on our society that legislation must be enacted that would limit the democratic principle of freedom. Notwithstanding, it is commendable that the Honourable Mr. Paulley, who, having to work under extremely difficult circumstances of community pressure, in dealing with such a delicate issue as Sunday legislation, has included in Bill 18 the principle of equivalence as set forth in Section 4. This further substantiates his innate desire, and that of his colleagues, to uphold the Canadian Bill of Rights, thereby ensuring religious and non-religious freedom for all people without discrimination as he has previously set forth in a pamphlet publication from his office entitled, "Manitoba Labour Laws."

As commendable as Section 4 is, it is our concern that the powers of municipalities of Section 8 may be so construed as to abnegate the freedoms allowed in Section 4. In no case should the municipal legislation be more stringent or restrictive than the provincial Act. If this is not recognized

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then it simply means that on the municipal level they can effectively emasculate the provincial legislation.

It is our desire that the provisions of Section 4 be not diluted by that of Section 8 and therefore strongly appeal to the Standing Committee on Law Amendments to retain Section 4 of Bill 18, in the wording of "inalienable rights" and not merely of exemption, and further to construct the wording of Section 8 so that it will not abnegate the freedoms of the citizenry provided for in Bill 18.

May we suggest that the last phrase of Section 8 read thus, "But nothing in this Act shall be construed to confer power on a municipality to prohibit the carrying on of a retail business on a day when the carrying on of the retail business is not prohibited by this Act."

It has been mentioned previously about stores, etc., being open on Sunday and just a thought in the interest of democracy — Would it not be feasible that legislation could serve the individual a day of his choice of a pause day or a rest day under the principle of one in seven and if that retailer could without bribe or penalization gain willing employees, should he not have the freedom to stay open on whichever day he would ever choose.

We thank you, Mr. Chairman, for giving respectful consideration to this presentation.

MR. CHAIRMAN: Thank you, Pastor Freed. There may be some questions that honourable members may wish to ask. Any questions Committee members have? Hearing none, thank you.

PASTOR FREED: Thank you.

MR. CHAIRMAN: Mr. Goodwin, President, Bar Association.

MR. GOODWIN: Thank you, Mr. Chairman. I have again some comment on Bill 18 and I am handing out to the members of your Committee copies of my comments. One preliminary remark however — Mr. Taylor in his presentation suggested that Sections 4 and 5 should be amended to include a reference to Section 2, and I would suggest that if those sections are to be amended that the same reference should also be included in Section 6.

The comments that the Bar Association has on Bill 18, the specific comments are directed to Section 5 subsection (d), Section 5 subsection (e) and Section 9. I recognize Mr. Doern's comment to the use of the number three employees; it's an arbitrary figure. We suggest it is rather small in terms of the family-owned business and we suggest it should be increased to five, which in itself is an arbitrary figure, and we recognize that in itself.

Comment on Section 5 subsection (e), which is intended to exempt from the operations of the bill the pharmacies. I'm wondering in looking at the definition as to whether this would exempt the normal type of pharmacy we see in this day and age where at times it almost appears as if the dispensing of drugs is an ancillary part of the regular business of the store.

I would second Mr. Taylor's comments in respect to the penalty provisions contained in Section 10. The minimum fine of \$1,000 seems rather severe for what in cases could be either a minor or an inadvertent breach of the Act. We cite there the three-man operation which hires an extra delivery boy at Christmastime thereby having four employees working full-time in the store and he is subjected to a fine of \$1,000 on a rather minor transgression.

Our main concern, however, is with Section 10, the regulation section. I should state that my understanding of the purpose of regulations is that they are not to either enlarge or abridge the statute itself; they're merely there so that the statute can be implemented in its operation. Having said that in general terms, we suggest that the Section 10 is ill-drawn. It begins by saying that the object of the grant of regulation in making power is to carry out the Act and the regulations are ancillary to an Act and must be consistent with the Act. But then it says, "without restricting the generality of the foregoing, the Cabinet may make regulations not inconsistent with the Act," governing what really are other matters." The effect is not wholly clear but it appears to be intended that the second part, conferring broad special powers to make regulations, will override the earlier part restricting regulations to the purpose of effectuating the Act.

This leads to the second and the more important point. The matters which the Cabinet has been authorized to regulate by Section 10, subsection (a), seem on the face of it to have nothing to do directly with Sunday closing or all the rest of the bill. This section purports to empower the executive to make laws limiting the number of days per week and the number of hours per day that retail businesses may stay open. More than that, it is broadly enough worded "a retail business establishment" is the term used, to allow regulations governing not only types of establishments but an individual retail business establishment. Our view is that it is questionable whether, (a) such powers should be granted to the executive in an Act generally concerned with a different or at least more restricted subject matter, (b) the Legislature should, without the most substantial cause and after a deliberation, delegate away its effective power to set policy and to determine substantive legislative provisions affecting the weekly and daily span of merchants' operations and perhaps especially in this so in a Statute with penal provisions, and (c) it is questionable whether the executive should be given power to issue isolated decrees not having the generality and impartiality of ordinary law that could have enormous impact on the affected sectors of such a decree.

Those are the comments of the Bar Association on Bill 18, Mr. Chairman.

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MR. CHAIRMAN: Thank you, Mr. Goodwin. There may be some questions that honourable members have. Mr. Sherman.

MR. SHERMAN: Just one question, Mr. Chairman. I take it from your presentation, Mr. Goodwin, that you read Section 5(d) as meaning the number of employees employed for the sale of goods or services in the retail business establishment referred to in that sub-clause would be three in total, a total staff of three. That's the interpretation you give this.

MR. GOODWIN: Yes.

MR. SHERMAN: The reason I asked that question is I think there is a question in the minds of many of us as to just precisely what that sub-clause means, whether it means three at any one given time or three in total right across the board. But you interpret it as three in total, is that correct?

MR. GOODWIN: It says "at all times" and that must mean three at all times.

MR. SHERMAN: That's my only question, Mr. Chairman.

MR. CHAIRMAN: No further questions. Thank you, Mr. Goodwin.

For information, the members of the Committee may wish to know the Jets won 5-1; 6-1 pardon me. I'll have to make another amendment to this.

Mr. Bastable.

MR. BASTABLE: Mr. Chairman, I am representing a group of independently owned and operated Manitoba retail food dealers. We have formed a committee within the last five weeks and just to give ourselves a name, we have called ourselves the "The Victims of Bill 18" and we really feel that we are the victims. The Retail Business Holiday Closing Act is designed primarily to close most retail food stores on Sundays and holidays and its exemptions permit a host of businesses to function and some of these are questionable as being of a necessity. We ask the question: Who else is this Act signed to affect other than the independently owned and operated food stores? The independently owned and operated food stores wish to provide a service to our many consumers who, for convenience sake, and for other personal reasons, wish to shop on Sundays or holidays and are, by this Act, are being denied our right to work.

I would like to just interject here that last Sunday in 23 of the stores of which I am speaking — and this is not all of them — we had a total of 15,523 totals on our cash registers. This is not a small group of people that are shopping Sundays. It is becoming a way of life and we feel that our business, our retail business, should expand and go along with the way of life. It has been traditional for the community owned and operated independent food store to be available at all hours, at all days, seven days a week, to cater to the wishes, desires or needs of its neighbours. So, all of a sudden, our government feels the need to protect the large chain stores who do not wish to open on Sunday and the union employees who do not wish to work on Sundays and holidays but we feel that we have the right of free enterprise, as businessmen of this province, to work if we so feel fit.

Mr. Chairman, I am accompanied tonight by many members of my committee who feel very much as though we are being discriminated against by the fact that we find the exemptions in this Act permit horseraces, gambling, the sale and consumption of liquor, theatres, bowling alleys, billiard parlours, the Convention Centre, the Stadium, anything you want to name, except food stores. We are appealing to this Committee that Bill 18 is devised primarily to close food stores, particularly those with more than three employees.

Today in the food business, or in any retail business, a store of three or less is a very very small store, in fact, it is pretty hard to operate one and this is where we feel the discriminatory part is coming in and if this bill must proceed, we would like to have the independently owned and operated retail food operator on that exemption list.

Mr. Chairman, I am only speaking from a few notes here. I have brought some legal representatives who will state our objections to the bill from a legal angle. That's all I have to say. Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Bastable. There may be some questions. Mr. Minaker.

MR. MINAKER: Through you' Mr. Chairman. Mr. Bastable, do you own and operate your own store?

MR. BASTABLE: Yes, I do.

MR. MINAKER: How long have you owned and operated that store or a store in the general area where you have operated?

MR. BASTABLE: I've been in the store since 1929. I've owned and operated it since 1947.

MR. MINAKER: And it primarily has been a family-operated store since 1929?

MR. BASTABLE: Yes, sir.

MR. MINAKER: What is the general number of employees that you employ at the present time?

MR. BASTABLE: I have a smaller store, I fit into the category of the smaller type but I have 7 or 8 employees.

MR. MINAKER: This would be because of the number of hours that you stay open you require this number of people. Normally during the operation of the store, how many people might be on staff?

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MR. BASTABLE: Five, six, depending on the days.

MR. MINAKER: Your store, does it offer everything, like fresh cut meats and groceries.

MR. BASTABLE: Yes, sir.

MR. MINAKER: A store that offers this type of fresh cut meats and normal groceries, what would you say would be the minimum amount of staff that you could have on hand to provide a service to the public?

MR. BASTABLE: Many of the stores that are open today are much larger than mine, they are shopping centres. I am just on a street corner and I would say that their staffs could go anywhere from ten to twenty. We feel that this exemption should not apply to size, that it is not a crime to become large. We start small and we grow and if it is criminal to get beyond three employees, then we don't see the rights of the legislation.

MR. MINAKER: I wonder Mr. Bastable, have you had any comments from some of your customers with regard to the fact that you might not be able to qualify to stay open?

MR. BASTABLE: Yes, I have. I have had petitions signed which are in our wholesale but many of them shop in our store on Sunday. They find it convenient and we have all the regular merchandise that any larger store has and at competitive prices with the larger stores. It does not force them to go to a smaller operated convenience type stores which do not have the variety of, as you point out, fresh meats and so on.

MR. MINAKER: Mr. Bastable, do you feel that you have better prices than the smaller convenience type stores that are known throughout the city?

MR. BASTABLE: I believe I have, yes.

MR. MINAKER: And probably the customer comes there for that reason, not only for the fact of a large variety of foods and the fresh cut meats you offer but also for the price.

MR. BASTABLE: Well, I would gather that might be so.

MR. MINAKER: Mr. Chairman, I wonder if I could ask Mr. Bastable . . . If you are restricted as to this Act goes through as the way it is presently worded, that you will not be able to be open on Saturday and Sunday as you presently are, what kind of economic impact do you think that will have on you with regard to continuing your business?

MR. BASTABLE: Well, Mr. Minaker, I am speaking on behalf of a group and it might not have the same effect on me as it could have on the balance of the group. But being as many years as I have been in the grocery business and have competed with chain stores all my life, no matter what Act is passed will still be in business, some way or another. But I still reserve the right to oppose this type of legislation which I feel is aimed directly at the retail independently owned and operated food retail in Manitoba. There is no one else.

MR. MINAKER: Thank you very much, Mr. Bastable.

MR. CHAIRMAN: Further questions? Hearing none, thank you, Mr. Bastable. Mr. Jessiman.

MR. PAULLEY: Mr. Chairman, I don't want to be discourteous to the balance of the delegations; unfortunately, I am under the care of a physician who told me not to stay out all night. I don't know. It is a desire, I believe, of the Committee, Mr. Chairman, to hear all of the representations and on that understanding that I am not being discourteous as the sponsor of the bill if I leave now, I would like to have the permission to do so. —(Interjection)— Well, Mr. Chairman, it isn't a question of standing for me; I'd sincerely hope you will stand up for me.

MR. CHAIRMAN: Mr. Jessiman.

MR. JESSIMAN: Mr. Chairman, my name is Ian Jessiman. I have a small number of copies of a presentation that could be circulated. My colleague, Ken Regier will deal with the constitutional aspects of this question. What I intend to do, Mr. Chairman, is to make some observations and some recommendations on behalf of the group of independent grocers which we represent.

The opposition of our group stems from our deeply held belief that the Act in concept is not based on the principle of observance of Sunday or Holy days. If the Government was acting on such a principle, it need only enforce the present Federal Lord's Day Act or the Lord's Day Manitoba Act.

We believe the legislation is discriminatory in that it adversely affects, by the boiling down process, an isolated group of individuals within society while exempting others indistinguishable for purposes or reasons for being; and that its effect is confiscatory in that it attempts by legislation to deprive a small group of a business purpose enjoyed in this province without interruption for many years.

It is our contention that this is a thinly disguised Sunday Closing Statute which endeavours on the one hand to align support from religious orientated groups for observance of the Sabbath while, on the other hand, providing both an alternative opening procedure which would include opening on Sunday and numerous exemptions which would even more seriously violate the Sabbath than the selling of food.

With respect to the specific recommendations that we have, or objections if you like, to the Act, we feel that Section 4(1) is clearly prohibitive, it amounts clearly to a prohibition. We believe that the very head-note of Section 2 supports that contention in that it clearly states "retail businesses prohibit

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holidays.” We believe that this attempt to prohibit a retail business from opening on Sunday — and opening on holidays which include Sunday — is a thinly disguised attempt and, as such, is an attempt by this House and your Committee to grant here something which is without the authority of ourselves to do.

We believe that Section 5(d) requires further precision in the drafting. This has been commented on earlier. I have noted that there has been at least two interpretations of it. I believe that it will create an administrative nightmare and certainly from the point of view of policing or inspection, requires much to be desired.

There should be added, in our opinion, if this bill was to be proceeded with and we certainly think that it should not be, that it should be withdrawn at this stage for the reasons that have been mentioned by those before me, but that if it was to be proceeded with, there should be an exemption 5(m) which would be a new subsection granting an exemption to independent grocers.

Our question becomes “Why not?” It seems to me that all other exemptions granted in the Act are distinguishable in purpose, namely livelihood and profit.

We also feel that Section 9, penalties, appear to be heavy penalties and more in line with those imposed in the criminal matters. These penalties are greatly in excess of those provided under the present Lord’s Day Act — there’s been mention of that — and there’s perhaps an area for comment that perhaps those should be increased slightly but to these amounts? These are a tremendous penalty. We think that they far outweigh any need to be imposed in an Act, the purpose of which is expressed in the preambles.

We say that the portions of Section 10, being the regulations, should be withdrawn in entirety. We agree with those that have said that before us and we feel that it is not good enough to say that it can be consistent as long as it is not inconsistent with the Act. We say that the intent of the Act is expressed to be one which is dealing with closing of retail businesses on holidays including Sundays and we ask what that has got to do with hours of work and those items defined and outlined in sections A and B.

We respectfully request your serious consideration of our submission here, and I would ask that Mr. Regier now make a presentation with respect to the constitutional aspects, unless any of you have questions which you wish to direct to me.

MR. CHAIRMAN: Thank you, Mr. Jessiman. Are there any questions any honourable members have? Hearing none, thank you. Mr. Regier.

MR. REGIER: Mr. Chairman, I know it is getting late and that this is not a Court of Law. There have been questions asked by the Honourable Mr. Green and the Honourable Mr. Paulley. I’m rather sorry that Mr. Paulley had to leave. He and Mr. Taylor seemed to be in the same camp in agreement that a provincial Legislature could legislate on religious holidays such as Christmas, New Year’s Day, Pension Day and other days. In fact the Supreme Court of Canada disagrees, and for better clarification of the position of the Independent Merchants’ Association I did prepare a brief, or an opinion, for the Attorney General, and out of courtesy to the other parties, forwarded copies to them, they were hand-delivered today. The concern that I have, not only on behalf of my clients, but as a lawyer in this province, is that the Attorney-General as the chief law officer of the province, will be involved in the passage of a bill which is clearly *ultra vires*. — (Interjection) — Well, we’d . . . it if we were to, but we would save a lot of taxpayers’ money, I suppose.

MR. REGIER: The point really is that the law of Canada on the matter of Sunday observance, was expressed in two Privy Council decisions as well as by the Supreme Court of Canada. It clearly states that the matter of Sunday observance is within the sphere of federal jurisdiction because it has to do with criminal law. That’s what the courts tell us.

A province can pass a statute that is permissive or create an exemption to The Lord’s Day Act of the Federal Government, that’s Section 4. It cannot prohibit, that law is clear. Yet Bill 18, by definition (Interjection) — I think the point really is that by your bill you define “holiday” as having certain days in it including Sunday. So what you can do is you can replace the word “Sunday” in Clause 2 at the end; you can replace the word “Sunday” in Clause 3 instead of “holiday” and what you end up with is a prohibition, and the law is clear, that you cannot have a prohibition. You can’t get around that. The point also is, that in Clause 4 you have a prohibition of doing business on a Sunday specifically. You can’t do that either.

Those are the points that I would like to make, and as I have said, I have provided an opinion for the government. I would like them to give the courtesy of reading it, considering it, and it is clear that the legislature is being asked to do something that it cannot do. I’m happy Mr. Pawley is here, the Attorney-General, as the chief law officer. He is under an obligation and a duty to consider statutes and advise the Legislature accordingly. In my mind he couldn’t, in conscience, tell the Legislature of his province that they can pass this statute. We are governed by the law of *stare decisis*. We must follow legal precedent. You can’t make your own rules despite what has been said here today. Thank you very much.

MR. CHAIRMAN: Mr. Green.

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MR. GREEN: Mr. Chairman, I would merely like to ask Mr. Regier whether statutes have gone to the courts and have been found to be *ultra vires*.

MR. REGIER: Yes.

MR. GREEN: And do you believe that the Attorney-General, who advised that those statutes enacted, was behaving unconscionably?

MR. REGIER: I am saying . . .

MR. GREEN: I am asking you the question. Statutes have gone to the courts, both in the Province of Manitoba and in other provinces, and have been found by the courts to be *ultra vires*.

MR. REGIER: Yes.

MR. GREEN: Do you believe that the Attorney-Generals of the provinces where those statutes were passed were acting unconscionably having passed the legislation which was subsequently found to be *ultra vires*.

MR. REGIER: Not quite . . .

MR. GREEN: Well, that's fine. That's all I am interested in.

MR. REGIER: . . . that's the way it is in here. If I might, I have the utmost regard for your Attorney General, and if there was any implication that he would act unconscionably . . .

MR. GREEN: Or that I would act unconscionably or any one of us.

MR. REGIER: . . . but I take it that the purpose of this session today is for people to express views . . .

MR. GREEN: I take it we are entitled to differences of opinion as to what the law is.

MR. REGIER: Well, certainly, that's why we're here.

MR. GREEN: Thank you very much that you accept and you tolerate me having a difference of opinion with you.

MR. REGIER: Obviously.

MR. GREEN: Thank you very much.

MR. CHAIRMAN: Are there any further questions. Mr. Lyon.

MR. LYON: Mr. Regier, you mentioned an opinion that you had prepared, a copy of which was made available to the Attorney General. This opinion, is it possible to have it made available to other members of the committee in order that we may have the benefit of it?

MR. REGIER: Actually, there were copies that I had caused to be delivered to you, sir, as well as Mr. Huband, and if you don't have them I apologize.

MR. LYON: All right. No, I just haven't seen them, that's all.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: It just arrived, I believe, this afternoon so you may not have received yours yet.

MR. LYON: Yes, thank you.

MR. CHAIRMAN: Any further questions? Hearing none, thank you Mr. Regier.

MR. REGIER: Thank you very much.

MR. CHAIRMAN: Mr. Thibault.

MR. THIBAUT: Mr. Chairperson, members of the committee, seeing the hour we're at, it may be appropriate to question whether we should be discussing Bill 18 or the draft bill recently brought down on the subject matter of overtime. —(Interjection)— In the interest, I suppose, of social progress we will persevere with these overtime hours this evening.

A MEMBER: No one and three-quarters here.

MR. THIBAUT: I believe Mr. Taylor has left, but I wanted to assure him that I agreed with him in one of his comments wherein he said that he felt that possibly labour would not agree with all of the things he was presenting to you this evening. He was correct in that.

The Manitoba Federation of Labour, the executive council of that federation, examined Bill 18 in its draft form, and for the interest of the committee you should know that among the affiliates participating in that examination were the unions known as the Retail Clerks' Union, the Retail Wholesale Workers' Union and the Canadian Food and Allied Workers. So largely, their reactions to the bill are contained in what comments I will make this evening. I do have, Mr. Chairperson, some copies of the bill — I don't think enough to go around to this large group — but I will make them available first off. If I said copies of the bill, I meant copies of the comments that I will be making.

It is the purpose of our Federation of Labour to take objection to certain aspects of the bill and to give some suggestions for improvement.

1. In Section 4, subsection 1, therein provides for the option to stay open on Sundays, provided the store remains closed on Saturdays. We take objection to this. This presents the opportunity or foot-in-the-door, if you may, to a further breakdown of having a common day of rest, and the day that families and friends can plan to be together. It will be an opportunity, we feel, for some to exploit the market potential, leading to more and more stores opening on the usual common day of rest, that is Sunday. This can lead to a dog-eat-dog situation and one it would be far better to eliminate from the start. We feel strongly there should be no option offered and urge that this aspect of the legislation be

ndrawn or corrected.

2. Relative to Section 5, subsection (d), wherein it stipulates that the legislation does not apply here, at all times, employees do not exceed three, including the owner. This does not seem specific enough. Does it mean that total number of employees over a full week cannot exceed two, if the owner is involved or does it mean that there may be any number of employees, say twelve, during the course of a week, or say six or eight at normal store hours and other days of the week, and limited to one at any one time on Sundays? Unless this is altered to be more specific to clearly mean, no more than a total of three people during the course of a week, it can lead to more possible exploitation.

3. Relative to Section 9, the Penalty Section. Here again, there should be more specifics. The question will be, "Who is the guilty one?" As we see it, this could only be the one who makes the decision that stores will be open and who requires others to work on that day. This is not broad enough. Otherwise the one penalty could act only as a licence to do business. We suggest those making the law should include the person in charge of each store as well as the owners. We suggest well that the penalty be progressive and doubled for successive violations. The \$1,000 minimum could only apply to individuals other than the corporate owner, and in those cases — that is the cases of the corporate owner — the minimum should be \$5,000 with no ceiling. So this could be progressive and doubled with each successive violation. We feel this is necessary to assure there will be real deterrents and to prevent a flouting disrespect of the legislation.

Other than the above, gentlemen, we feel that the legislation is sound and urgently needed. We appreciate having the law apply as well to general holidays as this has been one area where some retail establishments have taken advantage in the past. In conclusion, we seriously urge that yourable consideration be given to the changes we have referred to, and we do, gentlemen, submit this with the greatest of respect. I thank you.

MR. CHAIRMAN: Thank you, Mr. Thibault. Mr. Johnston.

MR. F. JOHNSTON: Just briefly, Mr. Thibault, in your Section 1, when you refer to Section 4, you say that the choice of remaining open Saturday or Sunday could lead to much more opening on Sunday.

MR. THIBAULT: That's what we say. That's what we believe, yes. We're afraid of that.

MR. F. JOHNSTON: In other words, if a chain or a store or anybody decided that they would rather not compete with the clothing stores downtown and the pubs, etc., they may decide that Sunday is a better day for them and stay open' and they have that choice under this legislation.

MR. THIBAULT: There could be a variety of reasonings from individual businesses, one to another, as to why they may wish to exercise the option.

MR. F. JOHNSTON: Thank you.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: I thank you, Mr. Chairman. Mr. Thibault, you refer in Section 1 of your presentation, to a fear of the development of what you describe as a dog-eat-dog situation. Can you tell me where the Manitoba Federation of Labour stood with respect to the *status quo* situation before Safeway and Dominion Stores and everybody got into the act of opening and competing on Sundays, when we had a situation where the major chains were closed but there were a number of smaller stores operating? What was the Manitoba Federation of Labour's position at that time?

MR. THIBAULT: Well, I think we have indicated in our closing remarks in regard to this legislation that we have never opposed the smaller groupings remaining open on Sunday, certain essential retail services relative to public requirement on Sunday. I think we are on record as not having been opposed to these small groupings having the privilege to operate on Sunday. We are primarily concerned in cutting to a minimum, wherever possible, the "non-need" of working persons having to disturb their Sunday. This is our ultimate and objective desire. However you wish to cut it beyond that, this is our main motivation.

MR. SHERMAN: But would you not agree that the situation was brought to a head by the actions of some of the major chains in the grocery retailing business?

MR. THIBAULT: I can't profess to a long experience in the Manitoba situation but I am aware that this question has been a fairly long smoldering one in this province as well as in others. I am not aware that all of a sudden the question of Sunday work became prominent. I think we have to do a lot of thinking on the question of Sunday work. We are tonight, for example, dealing with a very sectionalized application of a bill relating to Sunday work. What are we going to do about the large employers, the International Nickels, the Dominion Bridges, those who work a seven-day week, who have a continuous operation? Why don't we get excited about that? You see, there is more to the Sunday closing bit than what we are discussing within the confines of Bill 18.

MR. SHERMAN: I recognize that, but your position in your presentation seems to reflect a professed interest, at any rate, in the right of the small, independent retailer to remain open and to operate on Sundays, but prior to the showdown which occurred as a result of the major chains getting into the picture, there were some very small operators open on Sundays. There were also some large operators, some larger retailers, opening on Sundays, so that the situation was not one of

just stores of three employees. There were independently-owned stores with many more employees than that who were operating, and what I am trying to get at is whether the federation at that time thought that that was a bad situation.

MR. THIBAULT: I don't want you to assume a policy position for the Manitoba Federation of Labour, but it's not a question of trying to protect the rights of the smaller retail groups, it's a question of realism, that certain Sunday services cannot be dispensed with. At least we haven't come up with a formula by which we can dispense totally with Sunday service. If you have that formula, I think all of us here, particularly myself, would like to know about it. We just don't have that formula, so it's a question of realism, not a question of preference provided to a minority section of the retail trade.

MR. SHERMAN: You have mentioned the federation's interest in maintaining Sunday as the usual common day of rest, and I think that's a position that a lot of people can associate themselves with but is there any religious connotation to that position, and would you look favourably upon an exemption, for example, under the Act that would permit people to make the choice of operating Saturday or Sunday on strongly-held and demonstrable religious grounds, such as is the case in the Ontario legislation?

MR. THIBAULT: I don't know that I particularly, or the federation, is qualified to make any kind of case for those who foresee problems within Bill 18 as to their religious convictions. I don't think I am qualified to deal with that area, and I am not making any presentation here tonight including that as an aspect of this bill. I stress again that our primary interest is to minimize the number of working persons who have their Sunday disturbed.

MR. SHERMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: No further questions? Mr. Lyon.

MR. LYON: Mr. Chairman, would Mr. Thibault acknowledge that it would be a fair statement that the federation, and in particular the Retail Clerks Union, really didn't become exercised about Sunday openings

MR. THIBAULT: Well, I didn't make that admission, so if you want to start it again, Sterling . . .

MR. LYON: No. Until such time as the majors, the unionized stores, opened up on Sunday, the federation as such

MR. THIBAULT: Well, I made no such admission. I responded to that saying that my limited experience in Manitoba indicated that this was a long-smoldering question before this bill came into immediate play now. Now, let's get it clear on what I did respond to.

MR. LYON: Well, how long have you lived in Manitoba, Mr. Thibault?

MR. THIBAULT: I don't think that's germane whatsoever.

MR. LYON: Well, I'm asking the question. It becomes germane when I ask it.

MR. THIBAULT: You're not a policeman and I'm not on trial.

MR. LYON: How long have you lived in Manitoba, Mr. Thibault?

MR. THIBAULT: I refuse to answer personal questions.

MR. LYON: Oh, really.

MR. THIBAULT: I don't think it has any relationship whatsoever to the content of Bill 18.

MR. LYON: Mr. Thibault,

MR. THIBAULT: If you want to have coffee with me, I'll give you a biography on my life.

MR. LYON: No, I wouldn't have to look in that source.

Mr. Thibault, tell me this. You were here last fall.

MR. THIBAULT: That's right.

MR. LYON: Did the federation have any problem with respect to Sunday openings until Safeway and Dominion and the others started to open?

MR. THIBAULT: Well, all I am saying to you, Mr. Lyon, is that last fall or six months ago or three months ago was not the first entry of the subject of Sunday work or Sunday closing within the Federation of Labour.

MR. LYON: When did you make your first presentation to the Minister of Labour about this topic?

MR. THIBAULT: I wouldn't have an answer to that at this moment without checking the record on the presentations submitted to the Cabinet.

MR. LYON: But the hard fact remains that the support for this position from the federation came only after the problem arose with respect to the major stores being opened.

MR. THIBAULT: Well, you said that. I can't confirm that at all.

MR. LYON: Well, that's the fact and we all know it.

MR. THIBAULT: I am not sure if it is a fact, or anybody but you would say they know that. I don't know.

MR. CHAIAN: Mr. Barrow.

MR. BARROW: Until your last convention in Brandon, this was on the floor. I think prior to the convention, going back several years, the policy of labour was for Sunday closing over a number of years.

MR. THIBAULT: I believe, Mr. Barrow, you are absolutely correct. All I am saying is I cannot

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nfirm that without checking the record. There is no question that at the last October convention it is very prominent, and prior to that, it was a prominent subject of discussion within the family of the federation.

MR. BARROW: One more question. The Saturday closing, you can open Sunday. The chain store wouldn't open some stores on Saturday and some on Sunday, it either has to be one or the other. Do you honestly think that a store would close on Saturday to open on Sunday?

MR. THIBAUT: Like I said earlier, I don't know what might be devised by one or another store owner. I could foresee a large owner having several stores in one city and spreading the openings rationally between Saturday and Sunday.

MR. BARROW: You can't do that in this legislation.

MR. THIBAUT: I am not sure if they will not find a loophole in this legislation; what little I've seen it, it doesn't appear to be that airtight. I hope you're right, Tom.

MR. BARROW: You'd prefer to take the Saturday out entirely, right?

MR. THIBAUT: Yes. Our brief said we think there should be no option, that Sunday should be a closed day beyond those that the bill permits to operate on Sunday.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: In your brief under Section 2, you indicated with regard to the number of employees in an owner-operated store . . . I was wondering, did the federation discuss at all whether or not, where there was a family unit operating the store on a Sunday where it might exceed four, and this does actually happen, where you might have four or five people, but of the immediate family, operating the store — was there any discussion considered on this aspect?

MR. THIBAUT: First off, point number two is seeking or suggesting there should be more clarity at that point. It seems to be very ambiguous as to what it means. I think Mr. Taylor was correct in his summation that it meant the total of three at all times, and from the standpoint of the federation, that, I think, is the maximum it should be — not four for this reason or five for that reason — maximize at three, irrespective.

MR. CHAIRMAN: Any further questions?

MR. MINAKER: Mr. Chairman, I wonder if I could ask Mr. Thibault what his feelings are that if there is a case where there is a family-operated store, that there are four or five in the family and they want to work on the Sunday, what his opinion is on that? Should they be allowed to work on that Sunday in operating that store?

MR. THIBAUT: That will depend on what the law is in its final form. I wouldn't want to surmise at this point whether the law should be modified. I have made a submission here and I am not making it as a personal opinion, I am making it on behalf of the Manitoba Federation, and we have suggested a maximized number of three, irrespective. I just said that before.

MR. CHAIRMAN: No further questions? Mr. Adam.

MR. ADAM: Mr. Thibault, just one question. I would like to ask you, sir, you mentioned that you thought there may be some loopholes in regard to the firm that had more than one store and therefore could have one store open on Saturday and the other on Sunday. If you were satisfied that there were no such loopholes, would you then be more favourable to that, the Saturday option?

MR. THIBAUT: No, I don't think at this moment I would be prepared to say that it would make any difference. I didn't suggest positively that there were loopholes. I said we did think that possibly where there was an owner with more than one store location, he might exercise the option and this could be a weakness. This would be a loophole. Beyond that I generalized and I said I don't know how many more loopholes might be found in the legislation. It's a rare piece of legislation that some of my good friends within the legal fraternity could not find a loophole in. I've had some of those experiences, if I might say, and that's with all respect to the best-intended devised legislation that you might find.

MR. CHAIRMAN: Further questions? Thank you, Mr. Thibault.

Mr. Allard.

MR. ALLARD: Mr. Chairman, I have copies for the members of the committee.

MR. CHAIRMAN: Thank you.

MR. ALLARD: Mr. Chairman, members of the Committee, we are appearing before you today in support of Bill 18 on behalf of some 10,000 Manitoba citizens, representing 4,000 members of our union, the Retail Store Employees Union Local 832, and their families. This bill as we see it will bring sanity to the marketplace, will have an effect on controlling food prices, and most important, will afford many citizens of Manitoba a guaranteed day to spend with their families.

We would like, however, to offer a few suggestions and comments dealing with certain sections of Bill 18.

I. Section 4(1). Although we would have preferred Sunday to be designated as a day that stores be closed, we understand and are prepared to accept the option for store owners to close either Saturday or Sunday. In reality, it will result in stores being closed on Sunday, but will still give the

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options to some store owners, if they have strong religious beliefs, to close their stores on Saturday or Sunday.

2. Section 5(d). This is an excellent section. It obviously means that retail business shops which have more than three employees at all times must close their doors either on Saturday or Sunday. It is a very practical proposition, relatively easy to enforce and most superior to the Ontario legislation which deals with square footage. This square footage in Ontario had made a mockery of legislation and many store owners, including food supermarkets, have, in effect, put a curtain across their store and left open 2,400 square feet of business just to get around the legislation.

We understand that here in Manitoba prior to Bill 18, some employers of food chain stores anticipated the 2,400 floor coverage and also were putting up curtains.

3. Section 9. This section deals with penalties, and here we believe that these are not stringent enough. We strongly believe that they will invite defiance and violation, or will be a licence to operate on Sunday. We recommend, therefore, that this particular section be amended and the penalty increased to not less than \$5,000 for the first offence, not less than \$10,000 for the second offence and a possible suspension of business licence on the third offence.

It is also important here to ensure that the penalty applies not only to each individual store, but to each individual store manager or person working in the store, so that the fine is not just against the company. A \$1,000 fine, or even a \$5,000 fine assessed against, for example, Canada Safeway, would open all of their stores in Winnipeg on Sunday, would only be a licence to operate and the law would simply be bypassed. We urge you therefore to increase the penalties.

4. Section 10(a). This is an excellent section. We support it without reservation because it gives the Lieutenant-Governor-in-Council the right to regulate the opening and closing of stores on a day-to-day basis. Because of this provision, we urge the government, after the bill receives Royal Assent immediately to deal with this matter and prohibit stores that fall within the Act from opening between the hours of 12 midnight and 8 a.m. Some convenience stores in the City of Winnipeg have opened hours a day, which has resulted in an increase in crime and nuisance for local residents. Seven Eleven are the stores to which we refer, of course, and the City of Winnipeg has documented many cases of crime and consistently made representation for these stores to be closed at night.

In fact Dominion Stores in the City of London, Ontario, and A & P in the City of London, Ontario have two of their food supermarkets open 24 hours a day, six days a week. The same could come here to Manitoba.

No one can successfully justify why stores of that nature should be open 24 hours a day, the same as a hospital or a police station. In fact Winnipeg at the present time has more night shopping than many provinces in Canada. Normally stores are open basically from 9 a.m. to 10 p.m., six days a week which affords citizens ample opportunity to do their shopping, including certain items that may have been missed in their normal weekly grocery shopping.

We have general observations to make. We support this bill of course, as we have stated on many occasions, because it will control food prices to consumers; it will give consumers the opportunity to have many hours of shopping; the overwhelming majority of store employees want to stay home with their families on Sunday; we are confident that the overwhelming majority of the public support this legislation.

It will control food prices to consumers in this way. If no legislation exists, all food supermarkets will want to compete with large, independent stores on Sundays, and that's how it came about. At the cost of opening on Sunday will be passed on to the consumers, you and I. It is not a matter of just one or two stores opening. This has resulted and will result in all stores opening. Only legislation of this type can control it and bring fair competition to all.

It will give consumers the opportunity to have many hours of shopping. We have clearly explained above that six days a week opening from 9 a.m. to 10 p.m. gives this opportunity. It should also be noted that many small independent stores which have three employees or less — Poppa-Mommy Stores — will continue to open, in fact, some of their business might even improve. Thus, Winnipeg and Manitoba will not be without milk or bread on Sundays.

It should also be noted that the so-called small independent grocery stores which have suddenly come to oppose this legislation, while they represent an extremely small minority of grocery store owners, are not so small in themselves or independent. Family Fair, for example, in Charleswood is larger and newer and does more business than many regular food supermarkets. They are not so independent because most of them are affiliated, as Family Fair is, to the Merchants' Consolidated Warehousing, which gives them advantages in purchasing, advertising and others.

In other words, they ignore the fact and refuse to understand that if they open their stores, others also will. On that point, our members have consistently over many years supported Sunday closing legislation and that is self-explanatory.

The Manitoba Federation of Labour, representing some 90,000 trade unionists in the Province of Manitoba has also for many years supported Sunday closing legislation. We are confident that the overwhelming majority of the public support this legislation.

In the last three months of 1976 when Dominion Stores in particular, followed by Safeway and

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ers opened on Sunday, the public opinion clearly swung in favour of Sunday closing legislation, a result of a newspaper survey, telephone surveys and open-line radio show and newspaper polls, as it never has before. We are confident that the public today is still overwhelmingly in our of this legislation.

In conclusion, we wholeheartedly support this legislation with the exception of the few suggestions and comments we have made. This government must be commended for this legislation, not just on behalf of our organization but on behalf of the great majority of the public who support it. We would like to thank you for the opportunity of presenting this brief.

MR. CHAIRMAN: Thank you, Mr. Allard. There may be some questions honourable members may have. Any questions? Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I would like to ask Mr. Allard the same question I asked Mr. Allard. Notwithstanding the saving clause on the bottom of Page 4 of the union's presentation, I would like to ask Mr. Allard where the Retail Clerks' Union stood on this whole question eight months before the major change invaded the Sunday field and brought this whole issue to a head.

MR. ALLARD: How about 1968?

MR. SHERMAN: How about 1968?

MR. ALLARD: Yes, 1968, the Manitoba Federation of Labour, the Winnipeg District and Labour Council and this Union, involved with the merchants on Portage Avenue, headed by a Mr. Norman Hughlin who is now the President of the Chamber of Commerce, made presentations to 17 municipalities by a committee called "The Committee about Store Hours" — that's where it started originally and we have not stopped that fight as of now.

MR. SHERMAN: I'll have to talk to him. That was going to be my next question, Mr. Chairman. Whether or not that particular campaign to which Mr. Allard refers was related to the specific issue it's before the House at this time. It is my understanding that campaign was related to night closing.

MR. ALLARD: It was related to the store hours, that is correct.

MR. SHERMAN: But it was not related to Sunday operations specifically.

MR. ALLARD: Not specifically but that's where it originated, in 1968 we started to have some laws about controlling store hours.

MR. SHERMAN: But, was the Retail Clerks' Union exercised about the retail operations that have existed in Manitoba on Sundays in the past prior to the time that the whole field was blown wide open by the chain stores' activity last year?

MR. ALLARD: No, we support the principle of the "Poppa-Momma" operation and that is why we are putting limitations. What came about is that the larger independent stores started to remain open and that's what blew it up. There's no question about that. That brought it to a head. The next step was 7-hour opening because we saw it in Ontario.

MR. SHERMAN: Well, Mr. Chairman, the Union's presentation makes reference on Page 2 to the problem of crime and the problem that results from 24-hours a day operation by such outlets as 7-Eleven Stores. I wonder whether the delegation, whether Mr. Allard, has any current figures on that subject and is aware of the fact that because of campaigns introduced particularly in the 7-Eleven chain, by management personnel in that chain and a number of measures introduced in an education process, that my information is that there has been a substantial and significant reduction in the incidence of crime in store operations of that kind and that with proper programs of that type the problem can be virtually eliminated.

MR. ALLARD: I'm not competent to answer that. I think you should direct that to the Chief of Police of Winnipeg. I'm sure he could give you the information required.

MR. SHERMAN: Just one other question, Mr. Chairman. I must say I am somewhat mystified by the enthusiastic endorsement that the brief gives to Section 10. I would just like to ask Mr. Allard whether he really believes as a free citizen in a free democratic society that any government, any government of any political persuasion, should be given the arbitrary and authoritarian power to dictate to people in terms of business operation such as would be provided under Section 10.

MR. ALLARD: While it might go against the grain of many people, I think that society has an obligation if it cannot control itself that some form through the government agency has to do the controlling for themselves. That's why we put up stop signs for people, we put lights, etc., etc., and if it cannot control itself — and I'm meaning the establishment of grocery operators — then something has to be done.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Yes, Mr. Chairman, I would like to ask Mr. Allard if the labour legislation that as referred to earlier, or whichever legislation is put into, states that a person cannot be forced to work on Sunday, what objection would you have to that?

MR. ALLARD: I am not so naive as to believe that even if the legislation was there that people could not be coerced into working on Sundays. As you know, we have a minimum wage in this province and there are constant violations of employers who pay those people less than the minimum

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wage, so that would not resolve anything.

MR. F. JOHNSTON: Well, if the law is there, Mr. Allard, they would be subject to prosecution if they did force somebody to work on Sunday or if it was brought to the attention of say, your union that somebody was working on Sunday, wouldn't that law be there to be upheld if people want it upheld?

MR. ALLARD: Well, you're bringing up two different issues. One is that employees under a union contract would have the exercise of channelling their grievances through the union, that is correct. But those employees who have no union have got no channel to bring their grievances and the employer has a captive audience. "Now you work for me or do you not?" Coercion is very simple.

MR. JOHNSTON: On the other question. You mention the size of the stores. A person that has been an independent store for many years wouldn't you say that the reason why he has made a store larger is because the rules have been laid down by the larger stores, he has to have that type of shopping centre or a self-serve type of store to be competitive. Is there nothing wrong with an independent man changing his business to become competitive with others?

MR. ALLARD: No argument on that. Of course not. He can grow.

MR. JOHNSTON: Well then what is wrong with the larger store, an independent, becoming larger and as we have had stated earlier, that he be allowed to stay open Sundays? Just because he grows bigger doesn't mean that he's changed at all.

MR. ALLARD: Well the only problem there is that as he becomes bigger, he becomes more competitive in his business and falls into the same as the chain stores.

MR. JOHNSTON: The other question is that I have personally not found that in the store I deal with that does stay open on Sunday, that his prices are higher on Sunday.

MR. ALLARD: You will find that eventually.

MR. JOHNSTON: If he doesn't increase his present staff at the present time, I can't see why he would, if he wants to remain competitive.

MR. ALLARD: Well there's a normal cost of operation if your store remains open longer and more hours, your cost increases, no question about that.

MR. JOHNSTON: But they are open now.

MR. ALLARD: Yes, but you will have a wide opening. All the stores will be open and you will see an increase in the cost of the merchandise.

MR. JOHNSTON: Well, fine, thank you.

MR. CHAIRMAN: Any further questions? Mr. Lyon.

MR. LYON: Mr. Allard, the reason for this bill, as I think you said, or you admitted in the course of your presentation, the answer to one of your questions, is because of the recent problem that arose with the chain stores starting to open on Sunday in competition with some of the large independently owned stores.

MR. ALLARD: That brought the situation to a head, no question.

MR. LYON: Right, right. Prior to that time there was not too much public concern or concern over it, even with your union with respect to the *status quo* that is with the operations that were opening, large or small.

MR. ALLARD: We have no concern as I said before with the "Poppa-Momma" store operation but those stores which are larger and have necessitated the opening of the supermarkets, that's when the concern became involved.

MR. LYON: And when did that come to your attention, Mr. Allard?

MR. ALLARD: Some time last year.

MR. LYON: Some time last year. Did you or your union at any time lay an information under the Lord's Day Act (Canada) or petition the Attorney-General to issue a *fiat* under that statute to prosecute anyone for staying open on Sunday?

MR. ALLARD: No, we did not.

MR. LYON: Was there any reason for your not taking that action?

MR. ALLARD: Well, the reason was obvious, is that the prosecution fine was merely a licence to stay open so it served no purpose.

MR. LYON: Well, I don't know if you're familiar with previous prosecutions under the Lord's Day Act, certainly in the decade of the Sixties, prosecutions under the Lord's Day Act had their effect. They closed movie theatres, they closed other organizations that started in this way. This legislative act as other witnesses have said tonight was there, occupied the field and was capable of being used. You are saying that you didn't seek the use of it because you thought it wouldn't be effective.

MR. ALLARD: That's right, we didn't go that course.

MR. LYON: Did you have any consultations with the Attorney-General about the utilization of the Lord's Day Act (Canada)?

MR. ALLARD: Well that I'm not aware of; I couldn't say. It's possible in the years gone by we may have had, but I can't say that for sure.

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MR. LYON: Well, you know, I am happy that you don't share the sensitivity of the previous witness. We are merely trying to establish that this is a recent situation that arose because in your opinion one of the larger independent operators started to stay open on Sunday, then the large chain operators moved in in competition with them and that's what brought us here tonight with this bill in front of us.

MR. ALLARD: Really, it was a dormant situation.

MR. LYON: Right.

MR. ALLARD: And what created it was the larger independent stores who started to remain open on Sunday and the other major food stores have to be competitive and therefore they open. And that's what brought it to a head.

MR. LYON: Yes. How many months or years later after the independents had been open was it before the large chains got into the field?

MR. ALLARD: I'm not too sure on that. I couldn't say with accuracy.

MR. LYON: Because if this had been a matter of public concern or concern for your union, you would have been pressing for this kind of legislation years ago. The fact is, there was no need for it until the chains started opening in competition with the private store operators this past fall. And as Mr. Paulley said tonight in the course of one of his remarks, a gentlemen's agreement was arrived at in order to give him time to prepare legislation which we are now facing and I presume that gentlemen's agreement was between the Minister of Labour and the large chain operators or was your union involved in that arrangement?

MR. ALLARD: What kind of operators, did you say?

MR. LYON: The large chain operators.

MR. ALLARD: And some independents.

MR. LYON: Safeway, Dominion, etc.

MR. ALLARD: Yes, some independents.

MR. LYON: Well, did any of the independents, the large independents that you are aware of, cease operations on Sunday?

MR. ALLARD: No, they did not.

MR. LYON: No. So they obviously were not a party to that arrangement?

MR. ALLARD: They were a party to it, yes they were.

MR. LYON: With Mr. Paulley?

MR. ALLARD: Yes, they were.

MR. LYON: I see. But Safeway, Dominion, Loblaw were a party to the arrangement with Mr. Paulley

MR. ALLARD: Also. Right.

MR. LYON: . . . and your union?

MR. ALLARD: That is correct.

MR. LYON: Yes. Your concern is quite legitimate and it's understood. You are acting on behalf of our people. Your people are employed largely in the large chain stores, that is Safeway, Dominion, Loblaw? Right?

MR. ALLARD: That is correct. With some independents also.

MR. LYON: With a few independents.

MR. ALLARD: A few independents.

MR. LYON: Yes. But the bulk of your membership would be comprised in the large national or international chain.

MR. ALLARD: That is correct.

MR. LYON: Yes. So you are quite legitimately here expressing your view on their behalf and we accept it in that regard. I thank you for your frankness.

MR. ALLARD: Mind you, just to add on that note, is that in doing that we are also receiving the support of the citizens through their petitions which have been sent to Mr. Paulley.

MR. LYON: Your union has distributed petitions?

MR. ALLARD: Yes, we have sent petitions to Mr. Paulley.

MR. LYON: And the view of your membership, I would take it, because I know a number of members of your union as neighbours and as friends and so on, the views that I have run into talking to members of the Retail Store Employees is that they don't want to work on Sundays, isn't that right?

MR. ALLARD: That is not the majority wish of the members, no. You are not talking to the right people. But I wouldn't be surprised at what you are saying. Of course not, they can express their opinion.

MR. LYON: I am just referring to individuals who are members of your union that I have talked to and who on a man-to-man or face-to-face basis say, "No, I really don't want to work on Sunday. I think this is probably pretty good legislation."

MR. ALLARD: Yes, but this is not indicative of the petitions we have received from our own members.

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MR. LYON: Ah! Well, what do those petitions say?

MR. ALLARD: Well, we have received about 60 percent, signed.

MR. LYON: Saying what?

MR. ALLARD: In favour of Sunday closing.

MR. LYON: That's what I am saying. That's what I'm saying.

MR. ALLARD: In favour of Sunday closing.

MR. LYON: Yes, in favour of Sunday closing.

MR. ALLARD: Okay. I thought you said they wanted to stay open.

MR. LYON: No, they don't want to work on Sunday. That's a natural human reaction.

MR. ALLARD: Precisely.

MR. LYON: Right. So you are here on their behalf representing the majority view of your ur

MR. ALLARD: I can't represent anyone else. That is correct.

MR. LYON: Right. And you don't purport to speak on behalf of the non-unionized employees \ work for the independents?

MR. ALLARD: No, that would be unfair. I can't do that.

MR. LYON: Right. And if they wish to work on Sunday, why that's their business as far as you concerned?

MR. ALLARD: We draw the line there though. We're not too clear whether they wish to work Sunday, that's the problem, but we know what our people feel.

MR. LYON: What is the nature of the collective agreements that you would have say with the m chains *vis a vis* Sunday work if Sunday openings became possible?

MR. ALLARD: The company pays the premium of double time the wage rate.

MR. LYON: Double time the wage rate.

MR. ALLARD: That is correct.

MR. LYON: And even with that inducement of double wages, 60 percent of your union do not w to work on Sunday?

MR. ALLARD: That is correct.

MR. LYON: Yes. Well, that's understandable too.

MR. ALLARD: It's not the money; it's the day off.

MR. LYON: Right, right. Thank you.

MR. CHAIRMAN: Any further questions? Hearing none thank you, Mr. Allard. Mr. Minaker.

MR. MINAKER: Mr. Allard, you indicated that the employees in your union didn't object to "Momma-Poppa" store I think you called it. I'm wondering, was there any discussion with regard family-owned and operated stores where there might be more, say, than three in the family who willing and want to operate the store on a Sunday. What would be your views on these type circumstances?

MR. ALLARD: Well, you have to draw the line somewhere and a figure of three we thought v reasonable. To some others they may think it is unreasonable but we have to draw the l someplace. You heard previous speakers say you could have 10 and 20; you could have 30 and

MR. MINAKER: Mr. Chairman, through you to Mr. Allard, wouldn't that in actual fact be endors legislation against the right to work for individuals, if they wanted to work on the Sunday and t were an integral family unit. I'm talking about the direct family now, where they would like to s open and operate their store on Sunday and they are not affecting anybody except their own fam

MR. ALLARD: It might very well; it might very well do that.

MR. MINAKER: But this wouldn't bother you?

MR. ALLARD: No. No, because I'm governed by legislation on many other things.

MR. CHAIRMAN: Mr. Shafransky.

MR. SHAFRANSKY: Mr. Allard, you indicated that you received petitions and that over 60 perc of the employees within your union were in favour of Sunday closing.

MR. ALLARD: That is correct.

MR. SHAFRANSKY: Did you receive petitions from other organizations and other groups w regards to Sunday closing?

MR. ALLARD: We promoted petitions from I'd say several thousand people in the city of Winnip and those petitions were submitted to Mr. Paulley. They are in his hands.

MR. SHAFRANSKY: The petitions were for Sunday closing.

MR. ALLARD: That is correct.

MR. SHAFRANSKY: Taking your position.

MR. CHAIRMAN: Any further questions?

MR. LYON: I have one or two other points.

MR. CHAIRMAN: Mr. Lyon.

MR. LYON: If this legislation were to be delayed a year, referred to the courts or, you know, if so of the constitutional arguments proved to be valid, would you or your union have objection to t

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dependent operators, be they large or small, continuing to remain open on Sunday?

MR. ALLARD: If they would continue to remain open, as I said in my opening remarks, all the stores are going to stay open. That is a commitment. Every chain store will be open.

MR. LYON: Is that, Mr. Allard, an understanding that you have from management?

MR. ALLARD: No, that is not an understanding. That is what we can read from management people.

MR. LYON: That's what you think management will do.

MR. ALLARD: That is correct, yes.

MR. LYON: And what about your union? Would you go along with that?

MR. ALLARD: Definitely not.

MR. LYON: So that would then cause to arise a new area for collective bargaining within your existing agreements, or what?

MR. ALLARD: What particular section are you thinking about?

MR. LYON: Well, not to any particular section but to the principle as to whether or not you work on Sunday. I take it now that under your collective agreement you are prepared to work on Sunday provided you get double time.

MR. ALLARD: Yes, as you probably are aware. I'm not aware of any contract in Canada which is negotiated which will tell the employer when to open his doors or when to close them. That is only done by legislation, not by contract.

MR. LYON: And your only objection then, I take it, to independents remaining open on Sunday would be the larger independents because that in turn, you think, is going to trigger the national and the multi-nationals opening on Sunday.

MR. ALLARD: There is no question; it will. It has done that already.

MR. LYON: Did your union give any consideration or have any discussions with the Attorney-General about the utilization of the Lord's Day Act (Canada) to prevent the large independents and the large chain stores, that is Safeway, Dominion, Loblaws, etc., being open on Sunday or being prosecuted.

MR. ALLARD: I'm not aware of that, no.

MR. LYON: Okay, thank you.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Just one final question, Mr. Chairman. Would you, Mr. Allard, agree with me that petitions really are a kind of an uncertain and inexact yardstick of measurement.

A MEMBER: Only when they don't say what you want.

MR. ALLARD: That's right.

MR. SHERMAN: I mean for example you would not have circulated your petition among the hundreds of people who shop on Sunday at, say, the Charleswood Family Food Fare.

MR. ALLARD: Ah, but Mr. Sherman, you know very well that on that very Sunday there was a radio census taken which was favourable to Sunday closing. Petitions convey an expression of some people's feelings.

MR. SHERMAN: That's right. Petitions are circulated among the people you want to circulate them among, generally.

MR. ALLARD: Well, we went two ways. We circulated the petitions to our members firstly because that was the concern there and, secondly, we circulated the petitions throughout several thousand members of the community through organizations.

MR. SHERMAN: Well you know I certainly respect the results of your petitions, I think that that has been taken into account. But I'm sure that you would suspect that there have been petitions with many names attached to them circulated on the other side of the argument.

MR. ALLARD: Probably, yes, probably.

MR. SHERMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: I notice in your brief, Mr. Allard, that you said that the situation of opening longer hours has occurred in London. Are the wage rates comparable in London to Winnipeg?

MR. ALLARD: I would say so, yes. Yes. I think they are comparable to Winnipeg, the wage rates.

MR. BOYCE: As far as double time for Sunday?

MR. ALLARD: That I'm not certain. I'm not certain if they have double time or time and a half. They do have a premium for Sunday work though.

MR. CHAIRMAN: Mr. Green.

MR. GEN: clerks' Mr. Allard, your retail union is an international union with many many locals in the United States, is that not correct?

MR. ALLARD: That is correct.

MR. GREEN: And the locals have agreements in the United States which provide for premium overtime on Sunday in certain cases?

MR. ALLARD: Correct.

MR. GEN: And is it not a fact that in the United States it is generally the case that all of the stores have opened on Sundays?

MR. ALLARD: Yes, they have.

MR. CHAIRMAN: Any further questions? Mr. Shafransky.

MR. SHAFRANSKY: I wish to indicate that Mr. Barrow and I went around through Polo Park various stores, Dominion, Loblaw's, Safeway, and asked various employees — in fact about 50 — of the 50 not one favoured the idea of support of Sunday being a day that they would like to work.

MR. CHAIRMAN: Order please. Was that a question? Order please. Was that a question or a statement? Are there any further questions?

MR. LYON: Just one further one, Mr. Allard. Have you heard the opinion expressed, as I have heard, I'm sure many members of the Committee have, that what the public of Manitoba are perhaps looking for is availability of some stores to be open on Sunday, that is presumably the smaller convenience stores and so on, independent stores and so on and so forth, but what they seem to be opposing, what people seem to be opposed to, is the large wholesale opening of shopping centres and so on on Sunday? Have you heard that opinion expressed?

MR. ALLARD: In general, yes. There is a skepticism or an optimism that if the stores open in a shopping centre, maybe the entire shopping centre will open. There has been that expressed, yes.

MR. LYON: Right.

MR. ALLARD: But it's not confirmed.

MR. LYON: Was your petition refined to the point where it made that kind of distinction that I seem to run into, and many others run into? We want certain stores open on Sunday but we really don't want it wide open.

MR. ALLARD: No, the petition strictly mentioned food stores.

MR. LYON: Of course, from your union . . .

MR. ALLARD: From our point, yes.

MR. LYON: . . . I would expect that, yes. But what about the outside petitions that you receive from the general public. Were they specific on that point or not?

MR. ALLARD: Well, we did not receive them. They were sent to the Minister of Labour. So I did not see them.

MR. LYON: I see.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Dealing with the competitive situation here, is it not the fact, Mr. Allard, that the employees of the independent stores are competing with your members in the same way as the independent stores are competing with Safeway?

MR. ALLARD: Definitely.

MR. GREEN: And that if the independent stores are open on Sunday and the stores that you want for are not open on Sunday, then that is potential work for your members being hired by the independent stores?

MR. ALLARD: It's competition. There is no question about it.

MR. GREEN: Absolutely. So your position is not to try to help the independent stores or to shut the chain stores, your position is that you want to retain as much work as you can at good wages negotiated by union for your members.

MR. ALLARD: That is correct.

MR. GREEN: And the existence of a group of stores that can stay open and compete with your members for that work is a problem for you, unless your members work too. And if one word everybody works.

MR. ALLARD: That's what will happen. There is no question about that.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Carrying Mr. Green's argument to its logical conclusion then, I would ask Mr. Allard whether that is not tantamount to asking for legislated restraint of competition? (Interjection) —

MR. CHAIRMAN: Order please.

MR. SHERMAN: Well let me perhaps expand a little bit on that question. Legislated restraint of competition in your area which will result in restraint of competition for other people in other sectors of the business community. — (Interjection) —

MR. CHAIRMAN: Order please. Mr. Allard will answer questions for himself. If he doesn't want to answer, he doesn't have to answer.

MR. ALLARD: I'm just waiting for some cool to come in now. No, the situation is one of being competitive. There is no question about that. It creates an unfair competitive position for our people if the others stay open and ours are closed. So the end result will be they will open.

MR. SHERMAN: But, on the converse, doesn't it create an unfair competitive position for retail store operators if we pursue your objective?

MR. ALLARD: No, everybody's in the same pot with the exception of the momma-pop

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ations, which we accept.

MR. SHERMAN: Well there are stores between the momma-poppa stage and the major retail n stage. These are business people too.

MR. ALLARD: We don't draw the line there.

MR. CHAIRMAN: Mr. Barrow.

MR. BARROW: Mr. Allard, the main purpose of your bill is for people to spend a day together with family, is that right?

MR. ALLARD: That's also one of the major factors. That is a major factor.

A MEMBER: It's our bill not your bill.

MR. CHAIRMAN: Order please. Order please. Remarks will be directed through the Chair, please. If you are going to start getting y, we have had a long evening, the Chair has been very temperate. If you are going to start getting y the Chair is going to rule with a very firm hand. Are there any further questions? I'd like the arks addressed through the Chair please. No further questions. Thank you, Mr. Allard. We have more. Mr. Palk.

MR. PALK: Mr. Chairman and gentlemen, representing the Seven-Eleven Stores, I only have two / brief observations. The first is with respect to subsection (d) of 5 which has practically been austed but I sense that the intention of the legislation is that at no time should there be more than e employees on the premises for the sale of goods or the provision of services. I think that if that e tidied up to prevent the ambiguity, then that would be satisfactory.

I agree also with respect to Section 10, the regulations' with Mr. Green that the fatal words or the ortant words are "not inconsistent therewith." However, I think it could be cleaned up, ticularly (a). But otherwise those would be my only comments.

MR. CHAIRMAN: Thank you Mr. Palk. Are there any questions any members have? Hearing none, nk you. Committee rise.