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of the

Legislative Assembly of Manitoba

Standing Committee

on

Public Utilities

and

Natural Resources

Chairperson

Ms. Bonnie Korzeniowski

Constituency of St. James



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON PUBLIC UTILITIES AND NATURAL RESOURCES

Wednesday, July 26, 2000

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

**CHAIRPERSON – Ms. Bonnie Korzeniowski
(St. James)**

**VICE-CHAIRPERSON – Mr. Harry
Schellenberg (Rossmere)**

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Lathlin

Mr. Aglugub, Ms. Cerilli, Mr. Dewar, Mrs. Driedger, Mr. Gilleshammer, Ms. Korzeniowski, Messrs. Loewen, Maloway, Penner (Steinbach), Schellenberg

APPEARING:

Hon. Steve Ashton, Minister of Highways and Government Affairs
Mr. Harry Enns, MLA for Lakeside
Mr. Jack Penner, MLA for Emerson
Hon. Jean Friesen, Minister of Inter-governmental Affairs
Hon. Jon Gerrard, MLA for River Heights
Hon. MaryAnn Mihychuk, Minister of Industry, Trade and Mines

WITNESSES:

**Bill 14–The Provincial Railways
Amendment Act**

Mr. Roger Cameron, General Manager, Public and Government Affairs, Railway Association of Canada

Mr. Gord Peters, President and General Manager, CANDO Contracting

Mr. Steven Van Wagenen, Southern Manitoba Railway

Mr. Don Fyk, Manitoba Chairperson, Western Rail Coalition

**Bill 16–The City of Winnipeg
Amendment Act (2)**

Mr. Jae Eadie, Councillor, City of Winnipeg
Mr. Wayne Motheral, Association of Manitoba Municipalities

Mr. Jerome Mauws, Association of Manitoba Municipalities

**Bill 31–The Electronic Commerce and
Information, Consumer Protection
Amendment and Manitoba Evidence
Amendment Act**

Mr. Brad Fry, Chief Executive Officer, Mind Computer Products

MATTERS UNDER DISCUSSION:

Bill 14–The Provincial Railways
Amendment Act

Bill 16–The City of Winnipeg Amendment
Act (2)

Bill 31–The Electronic Commerce and
Information, Consumer Protection
Amendment and Manitoba Evidence
Amendment Act

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Mr. Clerk Assistant (Rick Yarish): Good morning. Will the Standing Committee on Public Utilities and Natural Resources please come to order. The first order of business this morning is the election of a chairperson. Are there nominations?

Ms. Marianne Cerilli (Radisson): Yes. I would like to nominate the Member for St. James.

Mr. Clerk Assistant: The Member for St. James, Bonnie Korzeniowski, has been nominated. Are there any further nominations? Seeing none, Ms. Korzeniowski, would you please take the Chair.

Madam Chairperson: This morning the Committee will be considering the following bills: Bill 6, The Water Resources Conservation and Protection and Consequential Amendments Act; Bill 7, The Protection for Persons in Care Act; Bill 14, The Provincial Railways Amendment Act; Bill 16, The City of Winnipeg Amendment Act (2); Bill 21, The Water Resources Administration Amendment Act; Bill 29, The Health Sciences Centre Repeal and Consequential Amendments Act; Bill 31, The Electronic Commerce and Information, Consumer Protection Amendment and Manitoba Evidence Amendment Act; Bill 37, The Miscellaneous Health Statutes Repeal Act.

We do have presenters who have registered to make public presentations on Bill 14, The Provincial Railways Amendment Act; and Bill 16, The City of Winnipeg Amendment Act (2).

It is the custom to hear public presentations before consideration of bills. Is it the will of the Committee to hear public presentations on Bills 14 and 16 first? We also have presenters on Bill 31. In what order do you wish to hear the presentations?

Ms. Cerilli: Madam Chairperson, I would recommend that we would hear Bill 14, Bill 16 and then the presentation on Bill 31.

Madam Chairperson: I will read the names of the persons who have registered to make public presentations this morning.

Bill 14, The Provincial Railways Amendment Act: Roger Cameron, Gord Peters, Steven Van Wagenen, Don Fyk.

Bill 16, The City of Winnipeg Amendment Act (2): Shannon Parkinson, Councillor Jae Eadie, Garth Steek, Wayne Motheral and Jerome Mauws.

We are just waiting for the names for Bill 31. We will read them shortly.

Ms. Cerilli: I also just wanted to recommend the order for the bills once we have heard all the presentations. Can I do that now?

Madam Chairperson: Is it the will of the Committee for Ms. Cerilli to? *[Agreed]*

Ms. Cerilli: So we would hear after that, Bill 6 and Bill 21, and after that we would hear Bill 7, then Bill 29 and then Bill 37, in that order.

Madam Chairperson: Could you please repeat those bill numbers, Ms. Cerilli?

Ms. Cerilli: Certainly. After hearing all the presentations, we would consider Bill 6 and then Bill 21 and after that Bill 7, then Bill 29 and then Bill 37, just to try and group the bills according to minister, just to make it more orderly.

Madam Chairperson: Is this the will of the Committee? *[Agreed]* As we wait for the names for Bill 31, those are the persons registered to speak this morning. If there is anybody else in the audience that would like to register or who has not yet registered and would like to make a presentation, would you please register at the back of the room.

I would like to remind presenters that 20 copies are required of any written version of presentations. If you require assistance with photocopying, please see the Clerk of this committee. I have been informed that one or more of the presenters are from out of town. Did the Committee wish to grant its consent for out-of-town presenters to be heard from first? *[Agreed]*

The names of the presenters for Bill 31 are Brad Fry and Neil Stern. How does the Committee propose to deal with presenters who are not in attendance today, but have their names called? Shall these names be dropped to the bottom of the list? *[Agreed]* Shall the names be dropped from the list after being called twice? *[Agreed]*

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

Ms. Cerilli: Yes, I would recommend that we listen to the presenters for about 10 minutes and then have 5 minutes for questions.

Mr. Harold Gilleshammer (Minnedosa): Well, I think we have a limited number of presenters

here, and we have the rest of the morning. I would suggest that maybe we allow a half an hour for each presentation. This is some important legislation. People have come from out of province to make their presentations, and I think we should respect that.

Madam Chairperson: We have proposals that the speeches are 10 minutes and that they are half an hour. Do we have any comments?

Mr. John Loewen (Fort Whyte): Well, I agree with the Member for Minnedosa (Mr. Gilleshammer). We do not have an onerous number of presenters, and I think they are here obviously of their own time and volition to give input to the bills that are before us today. We have heard over and over again in the House how this government is prepared to listen and to make adjustments based on comments they hear at committee. The people that have taken the time and the effort to put their presentations together and to come here this morning, it is only fair and I think imperative on us to listen to what they have to say. So I do not think a time limit of 30 minutes is too onerous on this committee, and it certainly gives people the opportunity to voice their opinion.

Ms. Cerilli: In the spirit of compromise, I will move that we have 15-minute presentations, with 5 minutes for questions.

Mr. Gilleshammer: Well, I know that the Minister of Highways and Transportation (Mr. Ashton) is going to bring in numerous amendments this morning on the railway bill. I think we need time to look at those. We need time to question the presenters. I see a limited number. Some of them are in from out of province, and I think this is very important legislation. Again, the Government has indicated a willingness to listen to presenters in committee to amend legislation, and I would ask the Minister of Highways and Transportation if he would not agree to 15-minute presentations, and 15 minutes in questions, knowing that not everybody will take that much time.

* (10:20)

Madam Chairperson: Ms. Cerilli, if you are making a motion, could we have it in writing, please?

Ms. Cerilli has moved the presentations be 15 minutes, with 5 minutes for questions.

Voice Vote

Madam Chairperson: All those in favour, say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those not in favour, say nay.

Some Honourable Members: Nay.

Madam Chairperson: The Yeas have it.

* * *

Madam Chairperson: As a courtesy to persons waiting to make presentations, did the Committee wish to indicate how late it is willing to sit this morning?

Ms. Cerilli: I would recommend that we agree to sit till 12 noon, and at that point, we may reconsider it. If there is maybe only one presenter, we may push through till the end, but I would recommend that we sit till noon.

Madam Chairperson: Is it the will of the Committee? *[Agreed]*

Bill 14—The Provincial Railways Amendment Act

Madam Chairperson: I will now call on Roger Cameron, Railway Association of Canada. Please proceed with your presentation.

Mr. Roger Cameron (General Manager, Public and Government Affairs, Railway Association of Canada): Madam Chair, committee members, my name is Roger Cameron. I am General Manager of Public and Government Affairs for the Railway Association of Canada. There are other members of our association that are with me this morning that have been recognized by the Committee to speak on this subject.

There are two bills before the Legislature that affect the railways and the short lines, in particular, in Manitoba. We have some com-

ments on both that are part of the submission, but I will focus on Bill 14 in my remarks this morning. I will try to take less time than you have allotted.

The Canadian railways are part of the of the North American railroad network. They handle more than five million carloads and containers of freight, and transport more than forty-five million rail commuters and intercity travellers annually within Canada.

The Railway Association of Canada speaks on behalf of six railways operating in Manitoba and forty-eight other railways operating in Canada which represent virtually all freight and passenger rail activity in the country.

The railways provide, manage and maintain their own infrastructure, unlike our principal competitors, the trucking industry, which rely on provincial taxpayer support to provide and maintain the overburdened road network.

When the Canada Transportation Act was passed in mid-1996, there were 31 members of the Railway Association of Canada. Today there are 54. On average, there has been one new railway company created in Canada every two months since mid-1996. All the short lines and regional railways in Manitoba affected by or interested in the issues before you today have been created since that time. Manitoba's railways employ more than 5400 workers, meet an annual payroll of some \$323 million, purchase some \$216-million worth of goods and services and make capital investments to modernize their equipment and facilities in excess of \$82 million a year in Manitoba. As well, they pay approximately \$42 million a year in property, fuel and corporate taxes to the province. In Manitoba, 1727 kilometres of track have been transferred to new owners and operators since mid-'96. Operation of only 364 kilometres of track in the province was discontinued during that period.

The new short lines and regional railways have successfully retained existing traffic with the North American Rail Network and have grown their business. Eighty-seven percent of freight customers are satisfied with the service provided by short lines, according to findings of

the Angus Reid group. By virtue of the small size of short-line railways and the fact that their employees do a wider variety of tasks than those of larger railway companies, these enterprises are flexible in identifying and responding to customer needs and local business opportunities. As a result, short lines have lower labour costs and less equipment expenses than the major railroads. Many of them do not need as much motive power for local switching and the relatively slow speed branch-line operations. Typically, most of the rail cars needed to serve short-line customers are owned by either the mainline railway partner or by leasing companies.

The margins of new short-line railways are typically very slim. Any undue restriction in access to capital or responsibility for disproportionate labour costs flow straight through to their bottom line. This, in turn, stands to limit the creation of new short-line railways, decrease the short-line operator's ability to respond quickly to local business development needs and opportunities, prevent intensive reinvestment requirements and result in higher rates and higher costs to Manitoba shippers and producers.

Turning to Bill 14 specifically, the major changes proposed in Bill 14 by the Railway Association concern procedures to be followed by provincial railway companies with a discontinuance of service or transfer of a railway line. The term "railway" in these comments is intended to mean a holder of a licence to operate a railway. In general, Bill 14, as written, would require railways to comply with a lengthy process which could involve a number of public bodies, yet result in inconclusive outcomes. Without better definition or clarity on several issues, potential investors and lenders could be averse to participating in the short-line rail business in Manitoba.

For example, Bill 14 introduces a definition for discontinuance and transfer of exiting rail lines which removes the somewhat objective criteria of uneconomic operation, an alternative means of transportation contained in section 33 of the Act. It retains, however, the right of the Board under section 16.1 of the Act to impose whatever terms and conditions on an approval that the Board deems appropriate. By removing

the criteria, it becomes less certain under what terms discontinuance will be granted or carried out by the Board. This lack of criteria makes a review of any board decision difficult at best.

With respect to line transfers, sections 34.2 and 34.3 create uncertainty with respect to a potential transfer of a railway line or operating interest therein to another railway company for continued operation. In particular, if multiple purchasers come forward under the planned procedure, in sections 34.2 and 34.3, the Act does not provide for a mechanism to determine which purchaser the railway company should sell to. In addition, the wide discretion of the Board, as outlined, to approve or place conditions on any potential transfer will result in uncertainty with respect to the ability of a railway company to sell its interests or at what cost.

The allotted time periods are too long to allow for a reasonably quick liquidation of assets in case the firm is failing or traffic has been lost. For instance, if the last customer on the line stops shipping, there is no possibility for a reasonably expeditious discontinuance process even if there is clearly no longer a need for a railway. The proposed legislation would take almost half a year longer to work through the process of offering a failing railway to various levels of government, critical time during which the railway would be required to remain in operation subject to all the costs of a common carrier.

This is especially problematic to potential investors, who will be concerned that, in the unfortunate case of insolvency, it will be difficult to secure partial compensation through liquidation of assets. The legislation as proposed does not address the concern of our AC members. The subsequent municipal or provincial legislation could prevent them, through expropriation without full compensation, from removing the rail line assets altogether.

* (10:30)

Finally, there is nothing requiring a party expressing interest in a line to close the transaction or put any funds at risk. This can lead to potential abuse in the purchasing process

by allowing parties to express interest even though they have no real intention or ability to purchase a line. Transfer could be delayed indefinitely by simply not having funds available to close the transaction. The party expressing interest should be required to post a non-refundable deposit prior to entering negotiations of \$2,000 per mile line, for example. The holder of a licence, at his sole discretion, may agree to accept a lesser deposit per mile of track. In section 34.2(9) there is also a requirement that the licence holder negotiate in good faith.

To strengthen that process, this requirement should extend to all parties with a remedy that allows stopping the negotiation if a prospective purchaser fails to negotiate in good faith.

Overall, these aspects of Bill 14 will discourage short-line investments in Manitoba. As a result, marginal lines that might otherwise be transferred to a provincial carrier could be discontinued under federal jurisdiction or sold to municipal/provincial governments, thus requiring public funding to continue operations. Suggestions for how these issues can be addressed have been outlined in proposed amendments to Bill 14 in appendix 6 of our submission.

I do have a few brief comments on Bill 18, The Labour Relations Amendment Act. If you wish, it will take a very brief time to review them. The point is that they do have a significant impact on the operation of railways.

Madam Chairperson: I am sorry, but we are not considering that bill today.

Mr. Cameron: This submission is intended to assist the Government in its effort to develop new, innovative, and sustainable short-line railways in the province, railways that will generate an array of local economic opportunities in Manitoba. As currently drafted, certain aspects of Bills 14 and 18 will likely inhibit the start up of short-line railways in the province. This means that lines that might otherwise be transferred for continuing operations will be discontinued but surely is not the intent of the province.

Once again, the RAC would like to express its gratitude for the opportunity to present its

recommendations on these bills before the Manitoba Legislature. Thank you very much.

Madam Chairperson: Thank you, Mr. Cameron, for your presentation. Do members of the Committee have questions to address to the presenter?

Hon. Steve Ashton (Minister of Highways and Government Services): I want to thank the presenter and can indicate that we are looking at a number of amendments that I think will deal with a number of the concerns that have been raised. We will go over some of the proposed amendments. I want to assure the presenter that what we are looking for is a balance similar to what is in place with the federal legislation of allowing for a certain entry into short lines. Obviously, that has been a significant benefit to the province in a number of areas, but at the same time balancing out the need to protect the interests of the communities. What I can indicate is that we do have a number of amendments we are looking at to deal with some of the concerns that were raised. I appreciate the feedback and presentation this morning.

Mr. Harry Enns (Lakeside): Madam Chairperson, just a fast look at your information material that you laid before the Committee, sir, indicates that—it is the first time I have seen a listing of regional short-line railways. It is a growing list. The point that I was making is that this is taking place in all parts of Canada, with the possible exception of Newfoundland and Nova Scotia having members there. My question to you, sir, is—

Madam Chairperson: I would remind the presenter and all members that they must be recognized before speaking.

Mr. Enns: My question is: Is this kind of legislation unique to Manitoba?

Mr. Cameron: The legislation, in principle, is not unique to Manitoba. With the development of short-line and regional railways, other provincial governments have addressed these issues in various ways. Our concern is that the more unique each provincial government deals with these issues, the more difficult it is for perspective investors or operators of short lines to

determine whether or not a property is potentially viable.

I think the thing that people should keep in mind is that the lines that have become short lines were lines that had limited opportunity for success or continued operation under previous structures. The thing that the short lines have brought to this process is flexibility, local involvement with the businesses in their areas. They have been successful at providing responsive service to those customers for a number of reasons, not the least of which is the flexibility that they bring to the table in providing that kind of service. Largely, that is through employees that are able to do a number of different kinds of tasks that are important to the whole transaction.

The other thing is that the short lines and regional railways, by and large, are feeders to and from the high-volume main-line operations, in most cases, is traffic that originates for delivery to a destination a long ways away from where it is loaded. It is not impossible but usually not normal that traffic moves within a few miles on an existing short line. There are cases where that has happened to the benefit of both the short line and the customers. The flexibility to engage in that kind of operation that is responsive to shippers' needs is very real.

I think the other point, in terms of the nature of legislation in other provinces, is the importance for the province to take leadership and show direction in these kinds of issues because the economic benefit is to the province, it is not just to a local municipality, per se. The ability for individual municipalities to introduce by-laws or measures that affect the viability of these small businesses is a serious cause of concern.

Madam Chairperson: I am sorry. Time has expired for questions.

An Honourable Member: Leave.

Madam Chairperson: Is leave granted? Leave for Mr. Gilleshammer.

Mr. Harold Gilleshammer (Minnedosa): Thank you to the Minister for allowing leave to hear from someone who has come in from outside the province to make a presentation.

Mr. Cameron, from your presentation on this bill and the roadblocks that it is going to put in the way of the development of short lines, and given that Bill 18 would force a new short-line railway to not have the flexibility of hiring staff who perform many functions, would you foresee any short lines being developed in this province in the future, given the principles that are put into this bill, the roadblocks that are there and the possible acceptance of Bill 18 to force short lines to accept the unions and the pay scale and the restrictions that they would bring with them? Would you see another short line being developed in Manitoba?

Mr. Cameron: Probably not, but not for the reasons that people might assume. The principal competitors of the short lines are trucking companies, largely owner-operators. They do not have those kinds of union structures that are being proposed for short-line railways.

Madam Chairperson: Thank you, Mr. Cameron.

I now call on Gord Peters. Please proceed with your presentation.

Mr. Gord Peters (President and General Manager, CANDO Contracting): Good morning, ladies and gentlemen, Madam Chairperson. My name is Gord Peters. I am the President, General Manager and founder of CANDO Contracting from Brandon, Manitoba. I have enclosed a few things in a file, quickly get into it, company background of who CANDO is. CANDO Contracting is a full-service railway company. We operate several short lines and railway switching contracts in Canada. We are Canadian, employee-owned, a company that has headquarters in Brandon, Manitoba.

CANDO operates the Barrie-Collingwood Railway in southern Ontario. This railroad is unique in Canada in that it is the municipal governments that own the line. The shippers have committed to long-term haulage agreements with us, which includes yearly capital improvements. So they have assumed the capital requirements of that particular line. CANDO Contracting is the chosen operator of that line, so we partnered with them both with shippers, government and ourselves to create a successful

short line. The contact person for Barrie is Mr. Rick Newlove. If anyone wants to call him, his phone number is there.

* (10:40)

Going on to Central Manitoba Railway, CMR is a wholly-owned subsidiary of CANDO. We were the first provincially licensed railway in Manitoba, April of '99. CMR operates a rail line from Winnipeg to Pine Falls, about 65 miles, and a second line from Winnipeg to Graysville, about 55 miles. We began operations in May of '99, a little over a year ago, after obtaining a licence from the Manitoba Motor Transport Board. We currently employ 21 people, and from May to February of this year, paid out about \$615,000 in direct wages. Also in that time CMR purchased about \$1.5 million worth of products and services from other Manitoba companies. We paid \$130,000 in property taxes, \$16,000 corporate capital taxes and \$33,000 worth of road fuel tax in our locomotives. This information is included just to illustrate that a short-line railway does have a definite benefit to the Manitoba economy and should be considered when reviewing the following.

I guess the concerns—I have outlined both Bills 14 and 18, and I will just deal with Bill 14. Bill 18 is in there for information. To start with, I feel that Manitoba does need some legislation. This is an issue that we have been in the industry for a long time, since 1978, CANDO, and with the previous government and the minister of transport, we have talked about the need for some type of a control, so we agree with that, but there are some concerns that have come forth lately, the proposed Manitoba Railway Act, the amendments to that we have concerns with.

To start with, I guess the major concern with Bill 14 is that, although the Provincial Government states that its purpose for this amendment is to make it easier to establish a short line, they in fact have done the opposite. The removal of the proof of financial viability requirement, contained in the original act, has very little effect on establishing a short line. On the other hand, the changes relative to the abandonment or transfer of a line have an extreme detrimental effect on a short-line railway's willingness to

take a chance on a marginal line. The risk that a short-line operator takes on purchasing and operating a marginal line is mitigated somewhat by the value of the asset. That is why we look at it, if there is a solid asset there, we will take a little harder look at it. The new process for abandonment, as proposed, severely reduces the value of the asset as it may take up to 24 months to realize its value. The short-line operator would then be forced to incur all the costs that go along with this new process including financing charges, legal, and in-house expenses while this time goes on even though there could be no traffic on it.

Number two, it is our belief that the commercial lending institutions will not be willing to lend to short-line operators with the current proposed legislation as these loans are secured by rail assets. Commercial lenders would look at this as a major obstacle in their ability to secure their loan to the short-line operator. The lenders, especially on a marginal line, once again would require absolute assurance that we would have unrestricted access to the assets should the operator default on the loan.

Three, the amendment as proposed, only allows for an expression of interest by a party, whether it be another operator or a level of government. We would like to see a provision that in order for an expression of interest to be valid, the party expressing the interest would be required to submit a deposit of \$25,000. This deposit would not be refundable unless a short-line operator selling the property closes the deal with the party expressing the interest or another party, if more than one expression of interest was received.

The final concern is that you can go through the whole abandonment process offering a line to every imaginable party out there, and you still require the approval of the Motor Transport Board to salvage the line. It seems redundant that if you have gone through the process, approval should be automatically given. Therefore, it should not be legislated that it is required.

I will leave a few comments there, on Bill 18, just for reading. A lot of the same things we are looking at, major competition—ours is the trucking industry—we want to be held, hopefully, in the same light to them.

On page 3 is a clear example of what can go wrong. Some of you might be aware, Cando Contracting currently is involved in a situation that has a direct bearing on the matter before us. Cando recently purchased the Cowan subdivision from CN Rail as abandoned line. This line had gone through a very lengthy, federal abandonment process. During the federal process, the municipalities involved had the opportunity to purchase the line, but were unable to close the purchase with CN. Our original intent in purchasing the Cowan was to try to establish rail service in a portion of the line. With the proposed legislation facing us, it became apparent that abandonment was the most logical course of action for this line, with much opposition to this coming from the affected municipalities. To that end and once again, I stress that we did not buy this as an operating railroad. It was an asset that had gone through a process similar to what we are talking about here.

To that end we approached the municipalities only and offered to evaluate any business plans or proposals that they had, similar to Barrie. To that date, we have received neither from any of the affected municipalities. The municipalities involved have since tried everything from municipal heritage designations to land reclamation by-laws to make federal legislation governing the abandonment of this line, ineffective. That is what we are seeing here, an ineffective legislation.

We feel that similar abuse of provisions of Bill 14 by a rogue municipality or individual could jeopardize the whole short-line industry in Manitoba. It becomes very apparent that Manitoba requires a strong, provincial, land reclamation act to put a level of predictability in the closure of uneconomical lines. The province plays a leadership role in other sectors such as hydro, telephone, and water to ensure that the interests of all Manitobans are protected. The short-line industry in this province needs the same level of protection to survive and expand in this province.

I have enclosed a press release that we put out with regard to the Cowan, and also, to give you a little depth of how serious this is, some pictures on the condition of the track in Cowan, Manitoba. It is two miles under water. We

cannot get out of it. The fact of the matter is that thing went through a process to be abandoned. Everybody went through it. Now it still does not mean anything, because there are more hurdles being put up.

Quickly into solutions on Bill 14; I am an individual and entrepreneur that likes to offer solutions. I do believe we need some protection.

One, to address the concerns about the realization of asset value and our ability to finance acquisitions, modify Bill 14 to reduce the time incurred by the short-line railway in abandonment or transfer provisions.

Two, to protect against frivolous expressions of interest by individuals or governments, introduce a non-refundable deposit system, which requires the interested party to have a level of financial responsibility with their submission of interest.

Three, modify the Act so that upon completion of the abandonment process, approval by the Motor Transport Board is automatic.

Four, and probably the most critical by far to what we are seeing today, is to increase the effect of the Act. Introduce or incorporate some type of land reclamation provisions for railways similar to Alberta Land Surface Conservation and Reclamation Act, which has proven to be very successful in Alberta. You can see a lot more short lines. I have included a page on what that is.

I cannot say enough about that last part, because in the last month and a half, it has become very clear that that is the biggest hurdle in this whole thing. I can live with some time, and do the process. I think everybody should have a say. But, at the end of the day, we are still stymied in this. I think that the success of any short line in the future in Manitoba is seriously in doubt, if some type of provincial leadership is not taken on what the ultimate outcome of these lines will be. Thank you very much.

Madam Chairperson: Thank you for your presentation, Mr. Peters. Do members of the Committee have questions to address to the presenter?

Mr. Ashton: I thank the presenter. I can indicate that I am certainly aware of some of the concerns that you have expressed. There have been meetings with departmental officials. We are looking at amendments, I think, that will deal with a number of the concerns that were in place.

I am just looking at the potential solutions. Once again, we are trying to achieve a balance in this legislation. I think you have identified some legitimate points. A number of their amendments that we will be bringing in, afterwards, will address those specific points. Not perhaps, exactly in the way that you are looking for, but I think a number of your points about the certainty of the process, the timing of the process, and the way in which other offers can be put through in the process are legitimate. We will be trying to address them and, at the same time, still keep the general intent of the Bill. Thank you.

Mr. Gilleshammer: Thank you, Mr. Peters, for your presentation. Very telling in your proposal here, you are saying that this proposed legislation makes it apparent that abandonment is the most logical course. So, with the potential for other short lines, that is potential we are never going to see, in your opinion, if we pass this legislation the way it is.

Mr. Peters: It is ironic that, I believe, it needs to be more. This thing has to be referred. I think if the Province is serious about this, look at Alberta's. The land reclamation one is the issue. I mean, just tell us what the rules are. We got on our books right now, or we are actively pursuing a couple of short lines in Manitoba. I know that we will never be able to move forward if I do not know what the ultimate rules are, neither heritage or land reclamation. This bill needs some teeth in it for those aspects. If you asked me to pick any one area of this bill to go after, I would say add to it, and add that component part to it.

Mr. Gilleshammer: So you are looking for the same reclamation rules that Manitoba Hydro and telephone and water utilities have at this time?

* (10:50)

Mr. Peters: You get lines: hydro lines, telephone, utility lines across this province. If you

did not give them—and the railways actually got it, too, to build new lines, expropriation power where we look at the best interests of the whole province.

In reverse, this is happening to us here. We are dealing now in town with the railroad that has tried to show everyone—and everyone is welcome to it. We will take you for a ride on it if they do not believe us. You cannot bring it back to life, and yet that is going to be used as an example, a bad example, on these new railroad lines we are looking at. So, if we knew what the procedure was, that no individual could hold us up, we would move ahead. If we do not know that, I am afraid that we cannot move ahead.

MTS and that are very clear. If they want to expropriate or whatever, they can do it. There is a procedure in place. You follow it and away you go. This is just a big void out there, and it has shown, as they said federal, this does not even help the federal people. Everybody is tied into this in Saskatchewan and Manitoba. The only province that is successful right now at working at this is Alberta. I believe it is largely because of land reclamation that set the rules.

Madam Chairperson: Mr. Penner, Emerson.

Mr. Jack Penner (Emerson): I will defer to the critic until he is finished.

Mr. Gilleshammer: Over the last few years, government has encouraged short-line development. Your company and others have invested considerable resources and time in short lines. Does this bill put your investment at risk?

Mr. Peters: Our particular line, Central Manitoba, puts any marginal short line at risk. Our particular line that runs out to Carman and central Manitoba, we handle some 10 000 cars a year. It is very highly run. So those car numbers give you revenue. We have no plans at all to do anything with that, so it does not matter what happens. There are no succession rules, stuff like that. We are more concerned with: Are we going to expand here? Are we going to expand south of the border in Ontario or in Alberta?

Mr. Jack Penner: Mr. Peters, we thank you for coming out and making this kind of presentation.

We believe that short lines have a very significant role to play in this province. I believe that most of the municipalities would concur with this.

The ruthless abandonment of the Crow and imposing the kind of financial liabilities to municipalities now, in large part, and significantly to the province of Manitoba in road construction and in ensuring that we have a load-bearing capacity within our transportation grid must be recognized. The federal Liberals simply said we will have no part in this and they still have not come along with any kind of program that would compensate municipalities for bridge construction, road construction, and those kinds of things. For that reason, I concur that we need to ensure that we go to the most economical means of transporting our agricultural goods.

Madam Chairperson: Excuse me, but the question time has expired.

Mr. Jack Penner: Could I just ask one question? Are the Minister's comments part of the time allotment of the question period, or are they not?

Madam Chairperson: Yes, they are.

Mr. Jack Penner: Then I would suggest that the Minister refer his comments to the end of the process and allow the questioners at the table adequate time to pose questions to the presenters.

Mr. Ashton: I would like to indicate that I am doing nothing different than any other minister. I remember sitting here for 11 years and ministers would, I think, acknowledge the comments. I thought it was important to indicate to the presenter that a number of the points that he has raised—has raised, by the way, in the past with the Department, and I appreciate the feedback we have received—are going to be dealt with. I did it in about 30 seconds or less. I think, Mr. Penner, if he had been a little less lengthy in his comments which were into the questions, we might have avoided this problem. What I suggest is if the concern is to have the question placed and then the presenter respond, I think we can deal with that. I think the Member, if he recalls his comments were getting a bit more into a

discussion and debate rather than questioning. I think that we could have leave perhaps to have the presenter respond. I think that is normal process. I think my comments were probably briefer than most ministers were.

Madam Chairperson: Is there leave to have—Mr. Penner, Emerson, on a point of order.

Point of Order

Mr. Jack Penner: On a point of order. I asked the Chair to give consideration to the presenter and the valid point the presenter made. All I was trying to do in my comments was to underpin the presenter's point of view that we need to do everything possible. I would think that the Minister would appreciate my comments, because, in large part, I was supporting his initiative to bring the point home during this debate and questioning period in committee of the requirement of the federal government to have brought some money to the table when they abandoned the Crow. I was going to ask Mr. Peters what kind of investment—

Madam Chairperson: Excuse me. I was about to ask if it was the will of the Committee to provide leave for the presenter to answer the question.

Ms. Marianne Cerilli (Radisson): I just want to clarify then if we are going to allow leave for two more minutes of question period time.

Madam Chairperson: Thank you for your comments, Mr. Penner, but you do not have a point of order.

* * *

Madam Chairperson: Leave has been granted, I believe, concluding the comments for Mr. Peters with a two-minute limit.

Mr. Jack Penner: I was just going to ask Mr. Peters what kind of an economic development initiative he thinks that the short-line railway development could be in this province, and what kind of global kind of investment opportunity, in dollar terms, he sees in this process.

Mr. Peters: I think, in closing, I would like to stress that I am a Manitoba entrepreneur. We

have been in this business since 1978. We think we know what we are doing. We have got a very successful Manitoba-bred team of employees that want to expand and do more business here. I am looking to this committee, the Manitoba Government, for support, support to set provincial rules that I know are clearly defined to where we go. I would urge you, I am looking for your support here as a short-line railroad. If we do not get it, if we get a half-effort, I am very concerned about the outcome at the end of the day. Thank you for your support, very much.

Madam Chairperson: Thank you for your presentation, Mr. Peters. Time has expired for questions. I am sorry, there is no leave. There had been a two-minute proviso granted.

I will now call upon Steven Van Wagenen from Southern Manitoba Railway. Please proceed with your presentation.

Mr. Steven Van Wagenen (Southern Manitoba Railway): Thank you, Madam Chair and committee members. My name is Steven Van Wagenen, I am the Assistant Vice-President and General Manager of Southern Manitoba Railway. I appreciate the opportunity to comment on the proposed amendments to The Provincial Railway Act, Bill 14. A copy of my presentation notes, as well as a brief which we have submitted, is provided for your reference.

As a brief introduction, Southern Manitoba Railway began operations of the former CN line from Morris to Elgin, Manitoba, during August of last year. Both the railway, and my family as new residents of Manitoba, have enjoyed the opportunity to build relationships in the communities, as well as southern Manitoba, which has made a significant financial investment in Manitoba, has been active in working with the companies, as well as the municipalities that we serve in building an efficient, viable railway system.

* (11:00)

We recognize the interest of various stakeholders regarding short-line railways; however, my purpose in addressing the Committee today is to highlight three risks to Southern Manitoba Railway created by Bill 14: Risk to our

investment created by changing rules; risk to our investment through the determination of a net salvage value; and risk to investment due to the operating licence requirements.

Each of these risks is outlined in greater detail in the brief, and I will touch briefly on each of those.

First of all, a risk to investment created by changing rules. Southern Manitoba Railway invested in the province of Manitoba expecting to be successful; however, it knew it would be able to seek approval from the provincial regulatory authority, the Motor Transport Board, to discontinue its operations if the operation turned out to be unsuccessful. It would obtain approval upon satisfying the Board that the operation was no longer economically viable or that there was an alternative, effective, adequate and competitive means of transportation available to the shippers of goods that would be affected by the discontinuance of the railway line. The entire process of discontinuance of operations would take approximately three months.

Bill 14 radically changes the rules regarding discontinuance. Bill 14 would require Southern Manitoba Railway to advertise its railway line assets for commercial sale, and if a buyer were not found, to offer the assets to either the provincial or municipal governments at a net salvage value. This process mirrors the process under Division 5 of the Canada Transportation Act. As a matter of fact, any interested person or party, including municipal governments, could have purchased the assets of the rail line at a net salvage value when offered by the federal railway.

Bill 14 will give governments a second chance to purchase railway line assets at a net salvage value. However, Bill 14 will now expose Southern Manitoba Railway to serious and substantial economic risk that did not exist at the time it received its licence to operate.

We propose amending section 33(3). Bill 14 must specifically exclude Southern Manitoba Railway or other current licence holders from the proposed new discontinuance sections. Such exclusion would not prejudice the rights of producers, shippers or municipal governments

along its railway line. Practically speaking, from a service perspective, producers and shippers now have ready access to CP rail lines located to the north and south of the Southern Manitoba Railway and in close proximity. Given the efforts made to date and which Southern Manitoba Railway continues to make, it is reasonable to conclude that if Southern Manitoba Railway is unable to operate successfully, it will be due to the availability to those producers and shippers, their use of the nearby CP lines and their pursuit of other options. This situation will obviously make the rail line unattractive either to other commercial operators or to the local governments along the railroad line for purchase for continued operation.

Secondly, risk to investment through net salvage value determination. If Southern Manitoba Railway is not specifically excluded from complying with the new discontinuance provisions, then its capital investment in the railway line is clearly at risk, a risk that did not exist when licensed to operate. Accordingly, if Southern Manitoba Railway must submit to the discontinuance process mandated by Bill 14 and a determination of net salvage value for its railway line assets is required, it would be unjust to expose its capital investment to those assets to the negative effect that any laws passed hereafter will have on their value. Southern Manitoba Railway submits that any net salvage value evaluation must exclude the value of any negative effect due to laws, regulations, rules or by-laws that are enacted subsequent to the issuance of the operating licence to Southern Manitoba Railway and that affect the railway line assets owned by Southern Manitoba Railway.

From Southern Manitoba's perspective, investment in short-line railways in an environment of changing rules will substantially diminish. Investors will lack the confidence that their investment will not be threatened by railway assets and land control laws.

We recommend amending sections 34.3 (6), (7), (8) and (9) to achieve the following:

First, appropriate action taken to exclude the negative effect of any railway assets and land control laws enacted subsequent to licensing which affect SMR.

Secondly, the determination of net salvage value shall be referred to the Canadian Transportation Agency rather than an independent appraiser. The agency has developed expertise in determining net salvage value for rail lines bought by governments under Division V of the Canada Transportation Act. Its decisions have established principles and procedures for determining net salvage value. The rail industry is familiar with and is governed by these valuation principles and procedures. Alternatively, the legislation should ensure that an appraiser and/or arbitrator determination of net salvage value would be based on the principles and procedures of the Canadian Transportation Agency.

Third, risk to investment due to operating licence provisions. We are also concerned with section 30(2.1) of Bill 14. This section is designed to provide the Motor Transport Board with authority to amend an operating licence to remove specified traffic from the service obligation of the carrier where the carrier would otherwise suffer financially. This amendment does not specifically contemplate amendment of a licence where the holder is applying for a discontinuance of its operations and is engaged in a process that could last almost two years. The section also does not address other aspects of service, for example, restricting the need to serve a railway line to one or more portions of the line or requiring service only when a specific number of railway cars are to be moved.

We recommend amending section 30(2.1). Southern Manitoba Railway proposes amendments to permit an application to the Board to amend a licence to relieve against service on the basis of economic hardship during the discontinuance process. Grounds for the application will not only be on the basis of specific traffic but also on the basis of geography, number of cars, or any other basis that in the discretion of the Board is appropriate under the circumstances. The relief section now does not specifically contemplate the discontinuance process, nor does it contemplate that, although service to move specific traffic, for example, grain, may be required, such service may not be required at all points along the line.

In conclusion, Southern Manitoba Railway is concerned with the risk placed upon its

investment in Manitoba through Bill 14. I ask the members to exempt Southern Manitoba Railway and others already holding an operating licence from the new discontinuance provisions of the Act. In the alternative, I ask the members to reconsider the proposed amendments to ensure they encourage continued investment in Manitoba while minimizing risk to those who have already made a significant investment.

Southern Manitoba Railway requests the determination of net salvage value be referred to the CTA or legislatively based on the procedures and principles of the CTA and that the Motor Transport Board be granted authority to amend operating licences according to circumstances during the discontinuance process. Thank you.

Madam Chairperson: Thank you for your presentation, Mr. Van Wagenen. Do the members of the Committee have any questions to address to the presenter?

Mr. Gilleshammer: Thank you for your presentation. Would it be your opinion that your company would not have got into the short-line business if these rules were in existence at that time?

Mr. Van Wagenen: It is fair to say that Southern Manitoba Railway would have built its business plan differently in anticipation of such legislation. Obviously our due diligence process included a lengthy review of the current legislation and rules regarding short-line railways in the province.

Mr. Gilleshammer: Would you think there would be other short-line railways developed or come to Manitoba under this existing legislation?

Mr. Van Wagenen: I believe that it will significantly slow the process. Again, as I mentioned before, we are changing the rules. From Southern Manitoba Railway's perspective, not knowing what the rules may be or if they would change from one year to the next makes our investment in the province uncertain. Therefore, those that would finance our purchases would also be uncertain and less willing to provide financing.

Mr. Gilleshammer: I take it from your comments that you would like to be grandfathered

under the existing legislation and not be subject to this new legislation so that the rules that applied when you started your business would continue to exist for the Southern Manitoba Railway.

Mr. Van Wagenen: That is correct. That was outlined in my comments today that, given the environment in which we entered business, that would be fair. As far as changing the rules, we would be aware of the new rules in any future investment.

Mr. Gilleshammer: The Minister of Highways, from time to time, has to expropriate land to build new highways. It seems to me what he is doing here is expropriating your investment. Do you agree with that?

Mr. Van Wagenen: Speak carefully here, right? I think our concern is that we have made a significant investment in Manitoba. We would like to see that investment preserved so that we can have confidence, and we would like to do more. Obviously we would like to grow our business. In order to do so, we need to make sure that the investments that we have made are not in danger.

* (11:10)

Mr. John Loewen (Fort Whyte): I would certainly like to welcome you to Manitoba and congratulate you on your successful venture, as well as the previous presenters, in particular Mr. Peters. It seems to me that we have an ideal industry for this province, one that allows local entrepreneurs to step forward and one that encourages investments from out of province, the way the laws are presented now. With regard to the new legislation, the Minister has indicated that he has prepared to amend the legislation. Have you seen those amendments?

Mr. Van Wagenen: I have heard briefly. Each of the items presented for amendment was encouraged by those. However, none of the amendments proposed answer any of the concerns that I have outlined today regarding that salvage value determination, operating licence changes, and the whole environment of changing rules.

Mr. Loewen: Thank you for those comments, and I guess, I am going to ask you to comment

on some of the other presentations that you have heard seeing as how the members opposite refuse to allow us to continue questioning them. Having, I guess, briefly seen some of the amendments, have you any comfort that those amendments will satisfy the concerns of the previous presenters based on your knowledge of the industry?

Madam Chairperson: May I say, heads up. One minute left speaking. This is just to provide people with the opportunity to time their answers.

Mr. Van Wagenen: I will be quick. We are encouraged by the time limit being reduced. Obviously, that is a concern to us as well as the other presenters. We are encouraged by the deposit that is required for someone that would seek to buy the railway line that would force them to negotiate in good faith. I think all of the comments that have been made, they are all concerns. The three concerns that I highlighted in my presentation only add to the concern of the railway industry in general, that we have made investments, and we want to preserve those investments.

Mr. Loewen: Well, based on the legislation in the amendments, and again, I think it should be obvious to this committee that anybody who starts a business makes an investment.

Madam Chairperson: Excuse me. Time for questions has expired.

An Honourable Member: Leave.

Madam Chairperson: Is there leave? Leave has been granted, two minutes.

Mr. Loewen: Thank you. Well, just following that, I assume that when you got into the business that you probably had thoughts of expanding your business in Manitoba, and I am just wondering if this legislation, even in the amendments, gives you any encouragement to expand your business in Manitoba, or will you be looking elsewhere?

Mr. Van Wagenen: Obviously, in beginning any business, you are looking forward to growing that business and improving your revenue. Where those future investments may be

made would depend obviously on where you feel secure in your investment. At this point, we are uncertain as to what the final outcome may be of the proposed changes to The Provincial Railways Act. Therefore, it is not fair to comment on what would happen in Manitoba and if the changes would provide the level of comfort that we need to continue investing. That is why I have proposed the changes that I have. I believe that a business that comes in under one set of rules should be protected in such a way that the investments that they have made that contribute directly to the province should be protected and that would encourage future growth.

Madam Chairperson: Thank you for your presentation.

Mr. Loewen: Just one final question with regard to your knowledge of the industry. Is it safe to say that Bill 14 and Bill 18 are, from your opinion, inextricably tied together and both of them will handcuff your ability to expand in Manitoba?

Madam Chairperson: Mr. Van Wagenen, briefly, please.

Mr. Van Wagenen: It is fair to say yes. The way we operate our business, we have to be secure in our investment. We have a limited number of employees that are required to do several tasks. If we were not able to operate under that scenario, it would be very difficult for us to be profitable in our business.

Madam Chairperson: Time for questions has expired. Thank you for your presentation, Mr. Van Wagenen.

I will now call upon Don Fyk from Western Rail Coalition. Please proceed with your presentation.

Mr. Don Fyk (Manitoba Chairperson, Western Rail Coalition): Good morning, Madam Chairperson, honoured ministers, committee members and staff. My name is Don Fyk. I am the Manitoba Chairperson of the Western Rail Coalition, and I am also a producer. Our committee represents approximately 22 different communities or committees wanting to set up or start up short lines in western Canada, both Manitoba, Saskatchewan and Alberta.

On behalf of the Western Rail Coalition, I am pleased to have this opportunity to present the views of the coalition on Bill 14. In your handouts you will see Bill 18 for your reading. We are delighted that the government has seen fit to address one of our major concerns relating to the development of short-line railways in Manitoba. I refer here to those sections of Bill 14 that place some process around the abandonment of provincial railways. We feel that a shortcoming of The Provincial Railways Act was the one, once a short line was created, that the Act failed to properly deal with public interest should the short lines seek to abandon. The abandonments proposed in section 33 and 34 of Bill 14 do much to address our concerns. However, we would like to make the following suggestions.

Sections 34.3(6) to 34.3(10) set out the process for arriving at a net salvage value when a government or municipality wishes to buy a rail line but cannot agree on a price with the seller. It is a two-stage process with first, an agreed upon appraiser and then an arbitrator if an appraiser is not mutually satisfactory. Our concern with this process is that the determination of the net salvage value is complicated and must be beyond the expertise of local appraisers. Since the Canadian Transportation Agency conducts net salvage determinations on a regular basis, we suggest that the Province consider using the services of the agency for this determination. We understand that the agency will provide this type of service. We also suggest that this would eliminate the need for the second part that allows for an appointment of an arbitrator plus that act could state that, in the event of a request for net salvage determination, the parties would engage the services of the Canadian Transportation Agency to conduct that determination.

We understand, as well, that there have been some amendments proposed to Bill 14 that would shorten the time for the process. We are of the opinion that this process is not overly long as stated in the Bill. When a rail line is gone, it is irrevocably gone. It does not seem undue to have the process leading up to the decision to take out a rail line one that allows all parties a chance for careful consideration.

There has also been some discussion around requiring a deposit with an offer to purchase. We

do not object to this notion where the proposed buyer is a private company, but we reject the notion that a municipality or government should be required to provide such a deposit. To require this is to question the sincerity and integrity of the Government. If a private buyer is required to provide such a deposit, we believe the Act should stipulate that the deposit will be returned if the deal is unsuccessful.

There has also been some discussion around exempting existing short-line railways from the provisions of the Bill. We are very concerned about this suggestion and urge the Government to resist this effort.

* (11:20)

I have some comments on Bill 18 which I will leave out for your reading. The other thing I would like to mention that is not in our handouts here is from our perspective, us being the coalition of producers, branch-line abandonment is shifting cost to government and the private sector. This provincial government, or any provincial government, has a huge stake in the transportation system. If it is going to change, give all taxpayers a fair and equitable chance to salvage the tracks and cut the overall transportation costs. Do not tie the hands of local governments and communities. This infrastructure is in their backyard. It is these who suffer and pay the consequences. All we are saying is give them a chance.

In closing, we would like to thank the Committee for its consideration of our suggestions. We hope you will take them seriously. Thank you.

Madam Chairperson: Thank you for your presentation, Mr. Fyk. Do members of the Committee have questions to address the presenter?

Mr. Gilleshammer: Thank you, Mr. Fyk, for joining us this morning. I am not sure I understand what the Western Rail Coalition is. Do you own and operate a short line yourself?

Mr. Fyk: No, we are a grass-roots organization, representing the various different communities or committees requesting to start up and initiate short lines. We are basically the clearing house

and the people who go and give them the backbone support so that we can hand them off to other potential short-line operators and also deal with the bigger problem, which is the Canadian Transportation Act or the agency.

Mr. Gilleshammer: Have you been involved in the development of either of the short lines that were represented here today?

Mr. Fyk: My involvement goes back to July 3, 1996, when the Canadian Transportation Act came into being. Since then, I have been involved in quite a few different short-line communities or committees wishing to set up short lines in Manitoba and Saskatchewan. One of them is Southern Manitoba Railway; the other one that is still an ongoing issue is the Cowan subdivision, the Irwood subdivision. I could go on to various points in Saskatchewan.

Mr. Gilleshammer: I understand you are a grass-roots organization. Are you working at all with municipalities and the Association of Manitoba Municipalities?

Mr. Fyk: Yes, we are.

Mr. Gilleshammer: Could you just expand on that? Are you employed by them, or you are just a volunteer working with short-line groups?

Mr. Fyk: Basically, this was started up a little bit before my time, although I have been involved with the Act itself, dealing with the Act. I came into being as the Manitoba chair approximately two years ago. At that time, the grass roots were set up in Saskatchewan. I have taken over the position as the Manitoba chair and supporting the initiatives, as I mentioned, saw the Manitoba Railway and the ongoing concerns with the Cowan sub and, again, other railways. We are basically a grass roots. Our funding has basically run out. I am here as a volunteer, as a producer, as a concerned citizen, not only for myself, but for all concerned producers in both provinces but, in this case, specifically Manitoba.

Mr. Loewen: Thank you for your presentation. Am I correct in understanding that you have no investment in a short line, personally, and your organization has no investment in a short-line railway?

Mr. Fyk: I personally have no investment, neither does the Saskatchewan share. We are just basically people helping other people try to facilitate short lines. We have to realize that this problem is not just with Bill C-14. It starts with the monster, which is in Ottawa, and then everybody tries to ride on the coattails. It is very difficult to make these amendments, and the CTA is under review, as we speak, as of July 1. It is very important that we, as grass-roots people, try to make some initiative changes, because we have been in the trenches basically doing and supporting whatever government can do for the producers of this province.

Mr. Ashton: I was just going to make a couple of comments at the end.

Mr. Loewen: I am a little astounded by one portion of your presentation where you are, from what I read, assuming that it is fair ball to question the sincerity and integrity of private companies but not of government. Am I to take from that that you believe that governments are, at all times, integral and sincere in their dealings and that private companies are not?

Mr. Fyk: I am a businessperson as well. I run three businesses in the province. I would also question if somebody threw that one at me as well. Based on governments, these people are there basically representing the best interest of the ratepayers. I think they act in the best interest of the ratepayers. As a concerned citizen or as a concerned businessperson, I have done many transactions. I guess if I did not have to put out a certain kind of deposit or some sort in this particular case, I would say, I really do not have an answer.

Mr. Loewen: Well, thank you. Just in my closing comment, I find it a little ludicrous that one would question the integrity of private companies coming to the table to make an arm's-length transaction and spend the time and due diligence needed to look into these situations and at the same time not imply the same rules of operating to governments.

Madam Chairperson: Time for questions has expired. Thank you for your presentation, Mr. Fyk.

Bill 16—The City of Winnipeg Amendment Act (2)

Madam Chairperson: Before we go on, the Committee had agreed to hear out-of-town presenters first. However, the representatives from the Association of Manitoba Municipalities have asked that they be left as the last presenters on the list. Is there leave of the committee for this? *[Agreed]*

I now call on Shannon Parkinson from Spence Team on Patrol. Shannon Parkinson. Is Shannon Parkinson here? Shannon Parkinson? Shall we drop the name down to the bottom of the list?

I call upon Councillor Jae Eadie. Do you have copies of your brief?

Mr. Jae Eadie (Councillor, City of Winnipeg): Yes, Madam Chairperson, earlier this morning I tabled with the Clerk copies of my speaking notes plus a copy of suggested amendments that the City is suggesting should be made to Bill 16. They may be distributed at the pleasure of your Clerk.

In any event, Madam Chairperson, if I may proceed, I have just a very brief presentation to make to your committee.

Madam Chairperson: Please proceed, Mr. Eadie.

Mr. Eadie: Thank you. I am here as Secretary of Intergovernmental Affairs for the City of Winnipeg's municipal government. I am accompanied by Ms. Ursula Goeres, who is City Solicitor and Manager of Legal Services for the City of Winnipeg. At the end of my presentation, if there are any questions from committee that perhaps are more legal or technical in nature, with your permission I would ask that Ms. Goeres might want to try and respond to those types of questions.

Madam Chairperson and Committee, I am here to indicate to you that the City of Winnipeg very much supports and applauds Bill 16, which is in front of you today. The Bill responds in large measure to the concerns that the City has identified in dealing with problems related to arson and a deteriorated housing stock which exists in certain areas of the city. For the most part, the provisions that are contained in Bill 16

will enable the City to act more quickly and effectively for the benefit of its citizens.

While I say to your committee that most of the provisions of Bill 16 are very positive, there are about three aspects of the drafting of this bill that we feel should be addressed and which we are suggesting to your committee should have some amendments.

The first matter involves the method of service that is prescribed for those orders which are not intended to result in the demolition of a building. Throughout Bill 16, there are four provisions, which allow the City to serve notices by registered mail, by fax, or other method of service which provides confirmation of delivery.

These alternate methods of service are very helpful, but unfortunately the wording that was used in those provisions requires that before the City proceeds with service by registered mail or a comparable alternative, it must attempt to effect personal service. Section 440(1)(b), for example, permits the City to send certain notices requiring compliance with The Public Health Act or a health by-law by registered mail, but only if the person cannot be located for personal service after a reasonable effort has been made. This same wording appears in relation to service of orders relating to fire safety, dangerous buildings, and building standards.

We are asking that the wording, which requires that personal service be attempted in every situation prior to service by alternate means, simply be struck out.

I point out to your committee that under the existing provisions of The City of Winnipeg Act, the City is permitted to serve a variety of routine notices by registered mail or in some situations by posting the notice on the property. Comparable provisions in The Municipal Act, which applies to every municipal government outside the city of Winnipeg, permits other municipalities in the province of Manitoba to proceed immediately in serving notices by methods other than personal service.

* (11:30)

At present, a significant volume of notices which are issued by the City are served without difficulty by registered mail. We believe it would serve no useful purpose to require the

City to take additional steps of serving or attempting to serve all such notices personally. We also anticipate that property owners affected would object to this change in process, as the City then would be entitled to recover from them the costs paid to process servers.

So to clarify, all of my comments thus far relate to the service of orders that are not intended to result in the demolition of a building.

My second area of commentary involves also the service of orders. I refer now to the service of orders issued by a medical health officer with the intent that the health officer could subsequently authorize the City to demolish a building if the order is not complied with. Such orders today are issued under section 438 of the Act. In Bill 16, presently it provides in section 439 of the Bill that for a building to be demolished by the City under those provisions, the order must either be served personally or by such substitutional service as a judge of the Court of Queen's Bench may order on application by the City.

I wish to advise your committee that last month City Council adopted a recommendation from the Executive Policy Committee approving an additional request that this bill be amended to provide another alternative for service of notices which are issued by the medical health officer and are intended to result in the demolition of a building.

The other satisfactory method of service which the City urges be authorized in these situations is newspaper publication of the order and the City's intent to demolish a building if the order is not complied with.

I believe in this regard my colleague Councillor Garth Steek, who represents the River Heights constituency, will be appearing in front of your committee this morning to give you an example from his constituency of a case where the existing law has simply allowed an untenable situation to drag on so long that area residents have simply become very frustrated at the inability of the City's municipal government to serve a demolition order on a building. It is a building you might not expect to see in a constituency called River Heights, but this kind

of thing happens in many areas of the city. This is not an inner-city-related issue only.

The other matter I will raise with your committee is a technical drafting issue. Throughout sections 438 to 441.6 of the current legislation, there are a number of references to enforcement of the provisions of The Public Health Act and the regulations passed under the Act. In several places in Bill 16, reference is omitted to the regulations and refers only to the Act. That is important because the majority of the orders issued by the City are based on violations of the regulations.

A final comment I want to make, which is not in my notes because as I was reviewing this bill again last evening, this thing jumped to mind, I want to raise it with the Committee. It is the matter of appeals. If you refer to section 441.1(1) on page 3 of the Bill regarding appeals, the Act stipulates that appeals under these orders must be made to a standing policy committee of council.

I am not expecting today that your committee will recommend a change in this process. I do want to indicate to the Committee that this requirement in the Act has become very onerous and very burdensome for our committee process. The standing policy committees of City Council are indeed the workhorses of the City's municipal government. The development of policy and legislation takes place in those committees. To mandate by act that the committees also now have to deal with appeals simply is becoming a considerable burden under our processes.

I would certainly like to put on notice all members of this committee and the Government that while I do not expect to see a change now for this particular bill, I certainly would hope that when the major overhaul of The City of Winnipeg Act comes, which I hope is going to be at the 2001 session of this Legislature, this section of the act will be amended to empower City Council to determine what the best method of an appeal process should be. If my colleagues want to continue the standing committee process, that is fine. If we want to find another method that takes this burden away from the policy committees and sets it into some other

venue, that ought to be a decision of City Council, not a decision of the Legislative Assembly. You really have to be there to understand how currently this process really does and can burden our committee process. It is much different than the process you have here.

As I say, I hope that that section, I am serving notice now that this is a section of the Act that really needs to be changed. The City ought to be empowered to make decisions with regard to an appeal process and not have it mandated by the Legislature to a standing policy committee of council.

With those few remarks, Madam Chairperson, I conclude my presentation. As I said earlier, my brief and the suggested amendments that the City is proposing have been submitted to the Clerk. If there are any questions of the Committee, I will do my best to try to answer them. Thank you very much.

Madam Chairperson: Thank you for your presentation, Mr. Eadie. Yes, your presentation has been distributed. Do members of the Committee have questions to address to the presenter?

Mr. John Loewen (Fort Whyte): Thank you, Councillor Eadie, for your presentation today. Thank you to the members opposite for freeing up my microphone. Your comments, in some cases, mirror the comments that we made in the House on this bill prior to moving it to committee. I think they are certainly worthwhile recommendations and worthwhile amendments to the Act. We thank you for that. Just by way of comment, I guess we are hopeful that the Minister and her staff will take these comments under consideration and perhaps postpone the passage of this bill through committee until they have had time to reflect on the amendments and on the comments made today.

Hon. Jean Friesen (Minister of Intergovernmental Affairs): Thank you very much for the presentation. I know that our staff have had the opportunity to talk about some of these issues as well. Some of them, as you know, we will be looking at the possibility of some amendments.

There is one area where, as the Member for Fort Whyte said, your comments mirrored the

ones that were made by the Official Opposition. They are the ones that have puzzled me. It is the issue of committees and standing committees of council. You and I and other councillors have talked about the general issue of standing committees of council, and, yes, I hope in the overhaul of The City of Winnipeg Act we will be looking at that.

In terms of what is happening today, this particular bill talks about, it is section 441.1(1). It says in this section committee means a committee of council designated by council to hear appeals under this section. Both you and the Member for Fort Whyte have clearly understood this to mean a standing committee. That is not my sense of what it says nor of what it means. Is there something that our drafters are missing here or that I am missing here?

* (11:40)

When we went back to the definitions in The City of Winnipeg Act, it does not say standing committee. This is a committee designated by council for this purpose. It may be a standing committee if council so chooses. What we are trying to do is to give some flexibility here, but there may be some alternatives as well. So it is not the intent. Have we got this wording wrong somehow?

Mr. Eadie: It is my understanding that in The City of Winnipeg Act that a definition of a committee of council is indeed a standing policy committee as we know them. That is how it has been interpreted. If in fact the interpretation is wrong or if the wording of the act is not clear, then as one elected official in the city, I would certainly appreciate some written confirmation that the intent of the section of the act as it currently exists does in fact permit council by by-law or whatever to determine the type of committee that can be designated to hear appeals on this or any other matter. My understanding is that committee of council implies standing committee. If we are wrong on that interpretation, I would certainly appreciate written confirmation from your legal staff that in fact committee can be determined in whatever way City Council wants to determine it.

Madam Chairperson: One minute.

Ms. Friesen: The City of Winnipeg Act, in its definitions, says committee of council means a committee of members of council formed for the purpose of carrying out a specific responsibility as directed by council and includes a standing committee. Maybe there is some discussion that we need to have between our respective lawyers on this.

Madam Chairperson: Any other questions? Thank you, Mr. Eadie. I now call on Garth Steek. Mr. Garth Steek? The name will now be dropped to the bottom of the list. Mr. Wayne Motheral and Mr. Jerome Mauws from the Association of Manitoba Municipalities.

Mr. Wayne Motheral (Association of Manitoba Municipalities): Thank you, Madam Chair, and members of the Committee. On behalf of the Association of Manitoba Municipalities, AMM. I am pleased to present our association's position with respect to Bill 16, The City of Winnipeg Amendment Act.

As many of you are aware, the AMM was created on January 1, 1999, as a result of the merger between the former Union of Manitoba Municipalities and the Manitoba Association of Urban Municipalities. The AMM now represents all 201 municipalities throughout Manitoba. This allows us to speak with one unified and strong voice on behalf of municipalities. The AMM would like to offer our support for the tone and substance that have been offered in these amendments to The City of Winnipeg Act. We echo the comments that Councillor Eadie has made on this bill on behalf of the City of Winnipeg. As Manitoba's future is closely tied to the strength and vigour of our largest city, action must be taken to ensure that complacent and negligent property owners who are not fulfilling their legal and societal obligations do not threaten Winnipeg's vitality.

As the Minister noted in her comments on second reading of the Bill, Manitoba will not be able to thrive unless the core area is revitalized and the historic and valuable neighbourhoods in the inner city are renewed. We believe that these changes will give the City the tools it needs to confront the task of revitalizing older neighbourhoods, specifically by dealing with the issue of derelict housing. In light of the concerns

about arson and other issues arising from a deteriorating housing stock in some areas, the City clearly needs the authority to deal with these problems in a way that is sensitive to both the concerns of residents in the affected areas and to the ratepayers across the city.

In terms of the specifics of the legislation, we are supportive of the provisions that give the City more authority to deal with the vacant, boarded-up buildings that have created a blight in some of Winnipeg's neighbourhoods. By simplifying the process of inspecting these buildings and restricting the length of time they can be boarded up, this legislation will give the City the authority to take action on these properties on a timely basis before they pose a threat to the community. We are pleased that in emergency situations the City will be permitted to take immediate action to repair or demolish dangerous buildings and collect the costs of this action. The additional authority provided to Winnipeg's medical officer of health to determine an appropriate time frame for compliance with a health order should also serve to enhance the City's ability to deal with properties that pose a threat either to the occupants or the neighbourhood.

We share the concerns expressed by the City of Winnipeg that some of the notice provisions in the legislation are too onerous. Specifically the requirement that personal service be attempted in every situation can be time consuming and costly. In many situations the City and other municipalities are allowed to serve notices by use of registered mail. We believe that this should be adequate in most cases.

In situations where the medical health officer issues an order that could subsequently authorize the City to demolish a building if the order is not complied with, we agree with the City that it is too onerous to require that these orders be served either personally or by some form of substitution service that might be ordered by the courts. We believe that newspaper publication of the order in these situations should be adequate and will help the City to keep its costs down.

As I indicated in my opening remarks, the AMM is pleased with the tone of the Bill as well as the substance. Municipalities of all sizes, whether they are cities, towns or rural muni-

icipalities, are the closest to the grass roots and need the authority to take action on problems in a way that is responsive to local needs and sensitivities. We are pleased that this legislation has been brought forward both in a consultative way and in a way that empowers the City to take action in its own way in its own time. Through this type of co-operative approach we believe the Province can play a positive role in the revitalization of our communities.

In closing, I would note that this bill complements the action taken in Bill 2 to deal with the arson threat faced in a number of Winnipeg's neighbourhoods. Together with the action taken by the previous government to strengthen the City's authority, the AMM believes that the City has been given the tools it needs to assist inner city residents in transforming their communities into places that are vibrant and exciting. Thank you for listening.

Madam Chairperson: Thank you for your presentation, Mr. Motheral.

Mr. Jack Penner (Emerson): Just a brief question: Do the rural municipalities currently have the kind of authority that is being asked for under this legislation granting the City of Winnipeg to deal with derelict buildings?

Mr. Motheral: If you do not mind, I will ask Mr. Mauws—he was mentioned on the report—to come up and answer that.

Mr. Jerome Mauws (Association of Manitoba Municipalities): No, my understanding is under the present Municipal Act there is no provision for other municipalities outside the City of Winnipeg. It is something that we have not discussed at our board level. Nothing has been brought forward by our membership at this time. However, in future there may be a need to also deal with this in The Municipal Act as well.

Mr. Jack Penner: The only reason I ask the question is I have had a number of issues brought to my attention lately dealing with the same matter in some smaller communities. I am wondering whether the municipalities or the municipal organization might want to approach the Minister to give the same kind of authority to municipalities and/or small communities.

Mr. Motheral: I am sure that this is something that we have to look at. As I say, we are mem-

bership-driven, and as soon as we get resolutions, et cetera, from our membership we will certainly look into that possibility.

Mr. Loewen: Thank you for your presentation. As I mentioned before, we are in general very supportive of this legislation. In your presentation you referred to Bill 2, and again I will just go back to that briefly in the context of this legislation, because once again this legislation is very permissive legislation. It uses the word "may" on numerous instances as opposed to the word "shall," which does present administration difficulties in terms of actually following out—I am encouraged that I have been told by the Minister's staff that this bill in fact does not require any regulations.

My understanding to date is the changes made as a result of Bill 2, which was pushed through this House I think very quickly, to date there have been no properties registered under Bill 2 as a result of what I am led to believe is a need to write regulations.

So I, just by way of comment, am hopeful that we will not run into the same problem with this bill, because, as was mentioned by the presenters, anyone who is aware of the situation in the inner city realizes how desperate that portion of our community is for revitalization.

It is imperative upon all of us to act as quickly as possible, so again I am hopeful that with this bill the permissive nature of it will not lead to a slowdown in the enactment or in allowing the City to take the appropriate action.

Ms. Friesen: I want to thank the AMM for presenting. I see this as a significant event, when the AMM presents on a City of Winnipeg bill. I appreciate your coming and doing that. I also appreciate yours and other members' general support for this bill and for the direction of the Bill. You have raised issues that are similar to some that the City of Winnipeg has raised and that also the Opposition has raised. I should give notice that we are planning to address some of them but perhaps not all of them at this stage. So we will do our best.

* (11:50)

I did also want to respond also to the issue that the Member for Fort Whyte raised. He did

raise it in his speech yesterday—the day before—on the issue of Bill 2 and the fact that no orders have been filed to date. We did check into that issue. The City advises us that they have had to make changes in both the form and process of issuing orders. That has taken a little time to enable the registration in the Land Titles Office, but city staff have advised us that they do intend to make full use of this in the future. There have been, I think as you were indicating, some regulatory, at the city level, issues in dealing with this, but I appreciate your general support and thank you very much for presenting.

Madam Chairperson: Are there any further questions? Thank you for your presentation, Mr. Motheral, Mr. Mauws.

I will now at this time call again upon Shannon Parkinson. Is Shannon Parkinson here? The name will now be dropped from the list. Mr. Garth Steek. Mr. Garth Steek is not here. His name will now be dropped from the list.

Bill 31—The Electronic Commerce and Information, Consumer Protection Amendment and Manitoba Evidence Amendment Act

Madam Chairperson: I now call on Mr. Brad Fry and Mr. Neil Stern from Mind Computer Products on Bill 31.

Mr. Brad Fry (Chief Executive Officer, Mind Computer Products): Thank you. It is just me today.

Madam Chairperson: Do you have copies?

Mr. Fry: No. Actually I just found out about this bill last night. So I never had time to—

Madam Chairperson: Proceed with your presentation, Mr. Fry.

Mr. Fry: My name is Brad Fry. I am co-founder and chief executive officer of Mind Computer Products based in Winnipeg. We do about \$40 million annually in business. We have about 100 Manitoba employees, and something you may not notice: We do already over \$10 million annually directly in e-commerce business directly over the Internet. Most of it is in what

would be called the B-to-B sector or the business-to-business sector, but a lot of that is also in the business-to-consumer sector. As a result of the success we have had so far, we are now spinning off a new company, and I am co-founder and chief marketing officer of this new company. It is called eMindBiz, and it is an e-business hosting and development company. It is going to be doing an IPO in the next couple of months. It will employ mostly high technology development staff. The business plan shows that it is going to be very profitable within even the first year. It is not going to be a typical dot com that loses money hand-over-fist for ten years, and then does not do anything in the end. Our goal is to build e-businesses. So any legislation that impacts on any aspect of that is a concern to us. That is one of the reasons I am here today. It is just to address some of the brief concerns.

The premise of the success of Bill 31 is based on trust by consumers and businesses in whatever electronic commerce system ultimately is developed in Manitoba. The Government should, and needs to, take a leadership role by endorsing or perhaps defining e-commerce practices and enable both consumers and businesses to trust, use, and develop their own e-business and e-commerce initiatives. Bill 31 has a potential to expedite e-business development within Manitoba. We support this initiative, but we see some potential challenges. I have a list of about four issues that I would just like everybody to think about as they are reviewing this bill.

The first one is dealing with the amendments to The Consumer Protection Act. Changes to that act should not stifle business from going on-line. Small and mid-size businesses that form the bulk of e-businesses today and probably more than 90 percent of e-businesses in the future will hesitate to develop an on-line presence if legal protection for the businesses and their transactions is weak. I do not know if you have the Bill in front of you, but if you look at Part 6, section 116(1), the Bill defines limitations on consumer liability where a credit card is lost or stolen, and in section 116 (1.1) related, where use of that card is unauthorized. We agree with those protections. They are great, but there is no definition that a business can use that describes what an authorized use of the card is. So there is no definition to tell a small

business that, if you take a card, this is now an acceptable transaction. You have only defined what is not acceptable from a consumer point of view. This is a major deficiency since businesses that cannot trust the integrity of the transaction will not go on-line in Manitoba, and they will go elsewhere to process their financial transactions.

In addition, there is a reference back to Part 3 of the Bill, item 20(3), which deals with errors when dealing with electronic agents. That is rather vague. Subsection (b) indicates an individual can cancel and agree to Internet-based contract on becoming aware of an error, but there is no time limit based on that cancellation. Instead the word "promptly" for the reaction is used in there, but "promptly" has really no meaning in that respect. So I would like you to review that use of that word. Also, section (c), point (i), allows cancellation of a contract as long as the individual who made the contract deals with it in a reasonable manner, but there is no definition of what reasonable is. What is reasonable to you or me is different than anybody else. We think that is really vague and has to be clarified.

One of the most important aspects of the Bill is the introduction of e-signatures. Electronic signature methodology needs to be accepted by major financial institutions. If a small business accepts an e-signature-approved purchase under the rules in the Bill, for example, and processes a credit card as a result, and if the consumer subsequently tells a credit card financial institution that there was no authorization to make the charge, then will the transaction be charged back to the small business as is common practice today? The Bill does not clarify that. I am not sure. I am not a lawyer. I do not understand if that means that those companies that are based outside of Canada that are doing financial transactions by credit card in Manitoba are going to be liable for that transaction. Typically, they just put it back on the small business. So that is a major concern there.

So can businesses be confident that the Bill 31 e-signature will be accepted by all financial institutions consumers do business with? That is a question, I think, the Bill leaves unanswered.

Another aspect of this bill is the local partnering opportunity that will be presented for government services. Manitoba government services will be expanded and improved via

Internet—there are some references to that in the Bill—and there is a huge opportunity through partnering and outsourcing for the Government to facilitate the development of local talent and local e-businesses. The concern that I bring to the table is that this opportunity could be wasted has happened in the previous Desktop Initiative. I would be very happy to address any of those concerns in questioning.

The final point that I want to make is that everybody should understand the flexibility of this bill needs to be there to evolve over time. You are going to be competing with other governments, competing jurisdictions that will establish more advantageous e-commerce environments. Competing governments could easily attract a larger base of e-businesses by adjusting their e-commerce tax rates or many other factors.

In the Bill 31 document, it stated that electronic commerce is an important engine for economic growth in Manitoba. These laws must be able to evolve almost as quickly as the underlying technology that the Internet is based on. If there is any doubt as to the effect of it, I have just given you an example of one company in Manitoba that does 25 percent of its business totally electronically, no human intervention whatsoever.

There are 42 000 businesses in Manitoba. With companies like our new company launching to help more businesses become e-businesses, you can expect that number to be a phenomenally huge number, in the billions of dollars, within a short time, probably less than three years. The movement of that capital or those transactions outside of Manitoba can happen almost overnight. This bill has to be thought of not just in terms of leading the way that consumers get protection, but also in how business is conducted over the Internet in Manitoba. That is really all I have to say.

Madam Chairperson: Thank you for your presentation, Mr. Fry. Do the members of the Committee have any questions to address the presenter?

* (12:00)

Mr. Jim Penner (Steinbach): I would like to ask the presenter, Mr. Fry, since the word

"unauthorized" was used but "authorized" was not defined, how he would define "authorized"?

Mr. Fry: The integral component of "authorized," as envisioned in the Bill, is use of the e-signature. We actually agree with that approach. Our concern is on the enforcement side, because, as a business based in Manitoba, the law certainly applies to me and to our company here. But to businesses that actually support the financial transaction, do they recognize the authorized transaction as being valid?

Today, if I use a Visa card in the store or somewhere and the consumer phones the credit card company and it is not based in Manitoba, that financial institution automatically charges back to the small business for that charge, simply based on the consumer complaint, unless you can prove that the transaction occurred according to the rules of the financial transaction company. Those rules right now require a signed credit card slip, which is not possible over the Internet manually, but it is possible with the e-signature. We like the e-signature approach, but if the financial institution does not accept e-signature, and you are requiring small business to accept e-signature, then the small business is being put at risk. As a result, they will not do e-business in Manitoba.

That is really the concern. Does the e-signature hold validity on the financial institution that is not based in Manitoba? I do not know the answer.

Mr. Jim Penner: I would like to ask Mr. Fry to expand on his comment that the charge-backs where a cardholder denies the purchase or wants a correction, the charge-back goes back to the business. Can you just clarify that for us?

Mr. Fry: In a typical, everyday credit card transaction that most of us are involved on a daily basis, you process your card, it is swiped through a machine of some kind, and typically you sign a credit card slip. That slip is what the credit card financial companies deem to be proof that the transaction was authorized. On the Internet, there is no such way to do that authorization because there is no paper changing hands, but yet the credit card agreements still require that proof.

So this is a very progressive piece of legislation in the sense it is now trying to authorize

an e-signature which can have appropriate protections, and those are actually covered in the Bill, and that is great. Our concern is that that applies to the business here in Manitoba. Does it apply—

Madam Chairperson: Order, please. As the hour is now 12 noon, is it the will of the Committee to continue the questions? *[Agreed]* Mr. Fry, please continue.

Mr. Fry: Without knowing that it applies to the financial company that is actually authorizing the transaction, although we agree with the intent of the Bill and we believe the e-signature is the answer, there has to be enforcement that goes beyond the small business. The small business would be bearing the brunt of the charge-back, which is actually specified in the Bill. Although it specifies in the Bill that the financial institution has to take responsibility, the policy and the practice of those financial institutions is simply to charge it back to the business that did the transaction in the first place.

Where I am seeing the problem is that the Bill is saying the business is authorized to make the transaction because it has now got this e-signature and it has got a consumer consent, but the financial institution, which is separate from that, may or may not agree that that is a valid transaction. What the Bill will ultimately do is take small businesses out of the equation of being on the Internet in Manitoba, because they will see it as too risky because they will be forced to accept the transaction because of the e-signature part of it.

Hon. Jon Gerrard (River Heights): Just to put in capsule your point that it is essential that the Bill is clear enough on what is acceptable from a business practice point of view and the applications for transactions which occur within Manitoba, that it cannot just define what is not acceptable to consumers, but it has got to define what is acceptable to business in terms of credit cards and in terms of signatures.

Mr. Fry: Yes, and with one additional criterion, that it also has to have enforcement on the

financial institution that does the credit card approvals. You can force it on a small business. You can put it on the consumer. But, if the financial transaction is just going to come back to the small business, you are actually reversing the whole thrust of this bill.

Madam Chairperson: Time has expired for question period.

Hon. MaryAnn Mihychuk (Minister of Industry, Trade and Mines): I ask leave just to put a few comments in trying to respond to some of the questions.

Madam Chairperson: Is there leave?

Ms. Mihychuk: I would just like to thank the presenter and congratulate his business on the significant steps that they have made to being a true e-business company. They have done remarkable work in that sector.

This bill, in terms of the credit card charge-back provisions, has been deliberately general so that we could harmonize the procedures through jurisdictions as well as make them quite specific through regulation. So, the transactions from the consumer will have to go through a series of accepted steps to prove purchasing or whatever the action would be. Ultimately, the charge-back provisions would also be considerably limited if the consumer did not obtain the item ordered, would be one legitimate reason, or if the company at the other end did not exist. The intention is that consumers will be protected but that small businesses will have clearer measures to protect themselves as well. It was left vague so that it could be defined in regulation.

Madam Chairperson: Thank you for your presentation, Mr. Fry. That concludes the list of presenters that I have before me this morning. Are there any other persons in attendance who wish to make a presentation? Seeing none, that concludes public presentations.

The hour being 12:05 p.m., committee rise.

COMMITTEE ROSE AT: 12:05 p.m.